

Business Ethics

An Indian Perspective

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Preface

The importance of ethics in business is emphasised upon by its appearance on the motto or coat of arms of several reputable Indian organisations such as TATA Group of Industries, Infosys, Wipro, Godrej, and so on, as well as on a number of relevant Indian websites. Ethics and professional competence seem to be two aspects of major significance: they are really both part of the same family of concerns. One cannot imagine being incompetent and ethical any more than one can imagine being competent and unethical. Business ethics, community responsibilities and governance in India are now assuming greater importance in all spheres; there is a pressing need for all of them.

Among the striking negative illustrations is that of the Bhopal disaster, and is so on two counts. The first is that it happened at all; the second is that the response of Union Carbide was tardy, insensitive and legalistic. Even if the disaster could not have been prevented, the response could have been more generous and more prompt, instead of the long drawn out litigation that eventuated. Those two factors underline the need to be considerate of human values. The fallout to that company was reputational damage, and greater expense.

In some countries, where a technical breach has been committed, a court must have guilt formally recorded. What can, and does, happen is that penalties may be mitigated by virtue of an established case that the company was genuinely trying to be ethical. The kinds of buttressing evidence are issues such as the existence of a formal and readily available code of conduct, an active ethics committee, ethics training, and regular reporting to the Board on ethical matters. Sometimes this mitigation, and thus saving, can run into sums of money far in excess of the sums spent on an ethical infrastructure.

It is worthy of note that the European *Journal of Business Ethics* published an issue in 1997 that dealt with business ethics in various countries, including India. That international comparison is a valuable one. That value is enhanced by an understanding that, whether we like it or not, the prevailing view of business ethics is a global one, and one that has firm roots in Western values, as well as Indian ones.

There are numerous books that deal with corporate governance and which, sometimes, couple it with ethics. Although the connection is an obvious one, the present work deals only with ethics. The combined subject is too large and too new to allow a proper portage that would embrace so complex a culture as

India, particularly as India is only the second country in the world to reach a population of over a billion people. Further, it is the world's most populous democracy. Also the country's economy is growing and is expected to continue to grow till the end of this decade: as such ethics is deserving of all the attention it can get despite the current economic downturn.

This present work takes a particular perspective that is not shared by any of the known works (at least not works written in English — that is not to say that such works do not appear in any other Indian context).

The theoretical background and practical approaches are essentially responses to man-made organisational ones: they do not deal with the regrettable disasters that are the result of natural forces (such as tsunamis, floods, earthquakes): but do deal with disasters that have unmistakeable business elements (such as industrial explosions or chemical contaminations).

This book deals with ethics in a manner intended to be useful to business in India and other emerging economies — and that is to be put in context. In the Transparency International Corruption Perception Index for the Asia-Pacific region, India ranks 90 out of 145 (New Zealand is ranked first and Bangladesh bottom). That, in itself, is an interesting finding worthy of ethical debate and investigation.

The authors have attempted to provide a work that gives a background and an explanation of salient principles, cases and methods of solution of ethical issues. An essential feature of this book is that it is to be useful not only to senior students and business executives, but also the kind of book that students will use when they move from study into professional positions.

This work is an Indian succession of a similar work first published in Australia by the first author, and now out of print. For this reason it has been the subject of much feedback for improvement. It now contains material suggested by previous users of that other work. The authors would be grateful for further comments and suggestions that might lead to improvements for future editions of this presentation.

Ronald Francis

Mukti Mishra

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Ronald Francis

Mukti Mishra

Contents

<i>Preface</i>	<i>v</i>
<i>Acknowledgements</i>	<i>vii</i>
1. Introduction	1
The Purpose of this Book	1
The Necessity for Business Ethics	5
The Need for Strong Ethical Guidelines	7
Earlier Attempts at Ethics in Industry	7
Some Implicit but Salient Issues in Ethics and Commerce	8
Means and Ends	9
Ethics as a Luxury	10
Corporate Governance	10
<i>Concluding Remarks</i>	13
<i>Summary of Chapter</i>	14
<i>Multiple Choice Questions</i>	14
<i>For Discussion</i>	16
2. Justification for Ethics	17
Introduction	17
Money Matters	18
Bankruptcy	20
Late Payment of Accounts	21
Corruption	22
Delayed Capital Expenditure	22

Bribery	22
Secret Commissions	23
Shadow Economy	24
Tipping	24
Corporate Matters	25
Corporate Philanthropy	25
Ethics and Profit	27
Economics, Opportunities and Ethics	30
Ethical Investment	30
Three Beneficiary Views on Ethics	31
Guidelines for Ethical Issues	32
<i>Summary of Chapter</i>	35
<i>Multiple Choice Questions</i>	36
<i>For Discussion</i>	37
3. Some Basic Principles in Ethics	38
Introduction	38
Language of Globalisation	39
Practical Benefits of Ethics	39
Aspects of Ethics	40
Relationships and Values under Constant Test	41
Equity of Relationships and Ethical Behaviour	41
Ethics and the Vulnerable	42
Defences in Product Liability	43
Interests of the Smaller Shareholder	43
Power and the Professions	44
Labels and Victims	45
Formal Versus Personal Relationships	45
Difficulties in Social–Business Relationships	45
Goodwill	46
Leadership	46
Industrial Relations	47
Organisations and Ethics	48
Corporate Climate Audits	49
Defining the Corporate Climate	49
The Advantages of Corporate Climate Audits	50
Experts and the Corporate Climate Audits	51

Political Issues	51
Politics and Casuistry	53
Codes for Public Servants	53
The Application of Codes Outside the Workplace	54
<i>Concluding Remarks</i>	55
<i>Summary of Chapter</i>	55
<i>Multiple Choice Questions</i>	55
<i>For Discussion</i>	57
4. The Nature and Theory of Ethics	58
Introduction	58
The Nature of Ethics	59
The Relevance of Indian Moral Teachings	60
Definitions	60
Ethical Absolutes and Consequentialism	61
Bases of Morality	61
Aspirations or Punishment	63
Principles and Ideology	63
The Pervasiveness of Actions	64
Right Action and Right Thought	64
Relative and Absolute Ethics	65
Stages of Moral Development in Humans	65
The Naturalistic Fallacy	66
Types of Virtue	67
John Stuart Mill's Utilitarianism	67
G. E. Moore's Philosophy	68
Quantification and Ethics	68
Techniques for Quantifying	69
Excellence	71
<i>Concluding Remarks</i>	74
<i>Summary of Chapter</i>	74
<i>Multiple Choice Questions</i>	74
<i>For Discussion</i>	76
5. Origins and Explanations of Ethics	77
Physical Factors in Ethical Decisions	77
Physical Matters	78

Psychological Theory and Ethics	81
Sociobiology	82
The Benefits of Co-operation	82
Cross-cultural Issues	84
Culture and Ethics	86
Personality and Ethics	87
The Effect of Migration on National Character	88
Bases of Codes	89
Emergent Ethics	91
<i>Concluding Remarks</i>	92
<i>Summary of Chapter</i>	92
<i>Multiple Choice Questions</i>	92
<i>For Discussion</i>	94
6. Legal Aspects of Ethics	95
Introduction	95
Complying with the Law	97
The Legal Weight of Codes	99
Ethics as a Contract	100
Legal Versus Moral Behaviour	100
Some Legal Cautions	101
The Hart–Devlin Debate	103
Ethnic Differences and the Law	104
Legal Pluralism	105
Formal and Informal Codes	107
Natural Justice	107
Governmental Regulatory Bodies	108
<i>Concluding Remarks</i>	109
<i>Summary of Chapter</i>	110
<i>Multiple Choice Questions</i>	110
<i>For Discussion</i>	111
7. Identifying Ethical Issues	113
Preventing Ethical Problems	114
Being Ethical in an Unethical Environment	114
Confronting Ethical Dilemmas	115
Economics of Ethical Decision Making	118

Approaches to Dilemma Identification and Resolution	119
Disposition of Cases: Applying Sanctions	120
The 'Decision Tree'	124
<i>Concluding Remarks</i>	126
<i>Summary of Chapter</i>	127
<i>Multiple Choice Questions</i>	127
<i>For Discussion</i>	129
8. Fostering Ethical Behaviour	130
Fostering Ethics	131
Formal Teaching in Ethics	133
Other Methods of Teaching Ethics	136
Gambling as an Encouragement to Ethical Behaviour	138
Assessing Ethical Performance	138
Corruption Index	140
Particular Organisations Relating to Ethics	141
Ethics and other Organisations	142
Biological Matters	143
International Matters	144
Whistleblowing	145
<i>Concluding Remarks</i>	147
<i>Summary of Chapter</i>	148
<i>Multiple Choice Questions</i>	148
<i>For Discussion</i>	150
9. Principles and Cases	151
Key Principles of Ethics	151
Preamble	151
Primary Principles Outlined	152
Case Study: Medications to Third World Countries	163
Case Study: Copyright of Yoga	165
Case Study: Bank Takeover	166
Further Cases for Consideration	167
Commentary on Resolving Cases	175
Web based Cases	176
<i>Summary of Chapter</i>	176
<i>Multiple Choice Questions</i>	176

10. Corporate Social Responsibility	178
Introduction	178
Mapping the Terrain	179
Dealing with other CSR Aware Corporates	184
A Proposed Framework for CSR	184
Examples of CSR Initiatives in India	185
1. ABN Amro Bank NV	186
2. Aditya Birla Group	187
3. Infosys Technologies Limited	188
4. Ballarpur Industries Limited (BILT)	188
5. British Gas (BG) India	189
6. Intel India	190
7. Tata Sons	191
8. ABB Ltd.	192
9. Tata Steel	193
Profit and Sustainability	194
<i>Concluding Remarks</i>	205
<i>Multiple Choice Questions</i>	205
11. A Proposed Code of Business Ethics	207
Code of Conduct for Business in India	207
Cases	227
Case One : The East India Company	227
Case Two: The Glass Ceiling	230
Case Three: Discrimination on Health Grounds	232
Case Four: Trade in Human Organs	234
Case Five: The Whistleblower	236
Answers to Multiple Choice Questions	239
References and Searches	241

1

CHAPTER

Introduction

THE PURPOSE OF THIS BOOK

Ethical Dilemma

An elderly widow went into a business office to conduct a simple service transaction. The businessman said that the service was not too difficult to perform, and charged her Rs. 1,000. The old lady paid with a new Rs. 1,000 bill. Unknown to her there was another Rs 1,000 note stuck to the back. When the businessman saw what had happened he was confronted with an ethical dilemma: should he tell the lady?

The brief story above clearly illustrates the nature of dilemmas. No one who hears this story is in any doubt about its intent. We know instantly and intuitively what is wrong. This book attempts to make this knack for intuitions more explicit. Feeling alone is no guide: presumably tyrants, psychopaths and ideological maniacs are all convinced of the righteousness of their feelings. It is by the use of reason about those feelings that we come to some kind of moral understanding.

Does this by extension mean that law and ethics are two separate realms? Certainly not. In fact, we believe that they occupy complementary functions especially since they are both concerned with human values and with providing remedies and improvements to derelictions of behaviour.

Before proceeding further, a reminder that the Republic of India is a Constitutional Republic consisting of states, union territories, with New Delhi as the national Capital. Further, India is the second most populous country on earth (after China), has more than one-sixth of the world's population. It covers nearly one a quarter million square miles and, according to the Encyclopaedia Britannica, just over 2 per cent of the earth's land surface. It shares its borders with six other countries which cover over 9,000 miles.

India is ethnically diverse, having a myriad of religions, sects, castes and tribes, along with numerous linguistic groups. However, one of the contributions the West made to India was that of providing a common language, English. It is no small matter that India has managed as well as it has, considering its diversity. Further, it has a rapidly growing economy, a varied industrial base and has expanding agricultural growth. Some of the fairly recent social legislation has been aimed at undoing the disadvantages to the socially vulnerable: among these are the 'untouchables', women, and certain tribes.

This book has two themes. While there are many books on business ethics, this one attempts to distinguish itself from others in that it is aimed specifically at the Indian market. There is a resource list, a full set of references, and a proposed general code for Indian business. In order to be user friendly there is a comprehensive index. It is intended that this work is of value both for teaching, and as a work of reference for business in India.

Though this work has an Indian orientation—it is not ignorance of the fact that we operate in a world of increasing global convergence and concerns. Here, we might add that there is also a reverse flow. For example, Indian companies now assign importance to employing increasing numbers of expats. Expats also find the Indian market more challenging to work in Indian companies' hunger for global expansion through mergers, acquisitions and partnerships mandates the significance and importance of ethical challenges at transnational level). To that end this work addresses the issue in both cross-national and cross-cultural values. By considering values from a cross-cultural perspective both we are challenged to justify our ethical stance. The increasing internationalisation of trade and commerce makes it more pressing to develop a code of conduct that accommodates a diverse cultural ethos. One might ask if it is possible to write a code that is as acceptable in Delhi as it is in Durban? Would it be enough to achieve the more modest aim of having a code that is as acceptable in Connecticut as in Kolkata? Would such a code be as binding on those lower in the business hierarchy (e.g. junior executives) as it is on CEOs and Directors? The advent and development of research have generated a need for guidelines.¹ These guidelines in the form of codes for commercial practice (including charitable organisation have been recognised for centuries.

Another issue is the application of the same principles to governments. The respect for ethical principles (honesty, promise-keeping, etc.) should be applicable to governments across the globe. Here the fundamental issue is the need of a commitments from political parties to honour their promises, in the same way that businesses are required to honour their undertakings. Governments demand that businesses honour their obligations while exempting itself. The universal application of business ethics becomes more difficult where there is a need for a general code: a clever country should also be an ethical country. Such a code need clear guidelines for its application—and equally clear sanctions when it is breached. Technological advances make it imperative that a code be revised from time-to-time to accommodate new offences (such as computer hacking); it must also capture nascent values such as protecting the ethical informer (the whistleblower).

¹ There is an Indian National Code of Ethics for Researchers prepared by the Indian National Committee for Ethics in Social Science Research in Health. The relevant document, Ethical Guidelines for Social Science Research in Health (2000) deals with social science research in health, but the essential principles seem to have a wider application. They are to be found in.

<http://www.hsph.harvard.edu/bioethics/guidelines/ethical.html>

These improvements need to be driven by more than minimum standards. As has been said so aptly we are more in need of good examples than warnings. Ethics is about improvement; such aspiration to improvement means exceeding the minimum requirement. Some issues are of overarching importance, such as preserving the safety, personal dignity and integrity of individuals. Ethics is less about sanctions and blame than it is about setting standards and encouraging compliance by individuals themselves.

Companies that adopt a code of ethics and commit themselves to observing it, gain several benefits. First, their staff know that they are operating openly and honestly; second, it is good for their business reputation in both the medium and the long term; third, adopting and committing to a code could be a powerful defence in any court where the company might be accused of improper behaviour; and finally, a good reputation makes it easier to obtain venture capital. These tangible and intangible reasons for ethical behaviour in business have beneficial outcomes.

It seems that there are barriers to the easy introduction of ethics into corporations. Among such barriers is the belief that it seems like a luxury that businesses cannot afford. One of the major points of this present work is to provide advice about how to remove these barriers. It is argued here (in the section on Ethics and Profitability) that the lack of attention to ethics may prove to be very costly. This view is supported both by persuasive argument and by corresponding evidence.

Another barrier is the difficulty of developing an ethical code. Another major aim of this work is to help to remove that difficulty. This may be achieved by being informed, by having the arguments cogently marshalled and by providing a process by which it is possible to identify and resolve ethical dilemmas. This work does not pretend to be definitive. It does, however, aspire to be seen as one that will foster and enlarge our understanding of the relationship between ethics and business.

This is not a legal text; but it is useful to draw attention to the complementary nature of ethical codes and legal principles, as is done in the chapter on legal issues. In order to make this book useful in training, exemplary cases are included, as is information about the use of a decision tree, a resource chapter, references and a comprehensive index.

This work proposes a code that may be of general application to business and commercial enterprises. It is intended to apply both to organisations that provide goods and those that provide services and of course to those providing both goods and services. Its application, except in specially defined circumstances, should be independent of other group identities such as caste (since it still plays a major role both within and out side the government; even thrust level is also determined by the caste you belong to) gender, ethnicity, political affiliation and religious philosophy. It is intended to improve the overall standard of Indian business, placing business behaviour above personal, ethnic group interests and absolute commercial gain—although the latter point does bring sustained substantial benefits in the long run.

The overall purpose of the book is to provide a concise guide and be a resource book for those interested in business ethics. Recent interests, issues, concerns in the topic of business ethics which is compounding in geometric proportions has shown the need for such a work. The busy manager or executive, for instance, probably does not have time to read extensively on this complex issue. Although there are many books in this burgeoning field of business ethics, most of them are of American origin. Although there are several books on business ethics in India there are none known that use the approach and scope of this present work.

Business courses at technical and academic institutions address such issues as ethics, and it is in these places that views, attitudes and opinions are formed. This early learning sets a tone that could persist throughout one's working life (as the twig is bent so the tree is inclined) (and, to some extent, personal life too). It is sincerely hoped that a work such as this will act as a guide for developing and fostering a consideration of ethical principles, and act as a force in developing ethical issues as positive as well as normative behaviour.

In acting according to a code of business conduct it is crucial to keep our sense of proportion—not to strain at gnats yet swallow camels. In Britain there was a concept called 'enclosures'; this referred to the fencing (or enclosing) of unoccupied or untitled land. This resulted in the development of a group of landed people, and of a large underclass who were deprived of the right to the use of hitherto common land. This practice started in the 13th century and continued in various forms without adequate control until the British Parliament legislated for its control in 1845. Of that 'enclosure' movement there was an apt rhyme:

The Law Doth Punish Man or Woman
Who Steals the Goose from off the Common
But Lets the Greater Felon Loose
Who Steals the Common from the Goose

In India, land used to belong to the various royal houses, and thus was conceptually enclosed. *The Land Reforms (Fixation of Ceiling on Land) Acts*, were enacted during 1960s to further the Directive Principles of State Policy, provided under Part Four of the Constitution of India under Art. 39(b) and (c). Article 39 provides that the State should, in particular, direct its policy towards ensuring that the ownership and control of the material resources of the community are so distributed so as to subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. To achieve this purpose the land reforms were brought about. The land reforms acts were challenged as being violative of the fundamental right to acquire and possess property. The right to property was deleted from the list of fundamental rights by a Constitutional Amendment (42nd) and only now made a legal right. The land reforms laws were included in the Ninth Schedule of the Constitution and their judicial review was barred. The word socialist was added to the Preamble by the 42nd Amendment Act of 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds of caste, colour, creed, sex, religion, or language.

Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth equitable and provide a decent standard of living for all. This in effect emphasises a commitment towards the formation of a welfare state.

This general concept of enclosures raises the very substantial issue of socio-political crime. Generally, crime in any country is petty crime: most ethical breaches are of an insignificant nature. The point does not, however, accommodate the real concern that the bigger the offence the more likely it is to be seen as beyond conventional scope, more likely to be committed by those in power, and more likely to be of a nature that allows it to be disguised as policy rather than offence.

In its formative period, the common response that this book got from colleagues was 'business ethics—that would be a short book!'

Our rejoinder to such a response lay in our attempts to find appropriate and helpful guides for the businessperson. The available guidance is in the form of legal statutes, or of custom and etiquette, and is often remote and difficult to access, these may cater to niche groups such as directors and accountants only.

THE NECESSITY FOR BUSINESS ETHICS

In an increasingly complex world the ambiguity and diversity of situations has increased. As our information bases becomes more complex, decision making becomes increasingly hard. In such complicated and fluid situations there is a countervailing need for a set of guiding principles. The interest in business ethics may be related to recessions and their likelihood, and also to recent changes in the law. The earlier practice of taking cover behind limited liability entities is now more readily prevented. Directors may not have the shield of non-liability: they must act responsibly or face the legal consequences, both civil and legal: this public exposure of irresponsible behaviour has probably had a beneficial effect. An understanding of business ethics also necessitates an appreciation of some legal concepts such as the duty towards care, safety, harassment, issues of privacy and freedom of information.

The relevant body in India for company directors is the Institute of Directors,² which has a wide group of affiliations. The Institute is clearly devoted to enhancing directorial responsibilities and improving corporate governance. The website gives its vision as being one that promotes the socially cohesive community of top executives worldwide. It also aims to be a nodal organisation for the directors to fulfil their leadership role in creating wealth and happiness of all stakeholders of the business enterprise and the society at large. The word 'sustainable' is also part of the Institute's aspirations. A useful addition would be explicit expression of the values that define good directorship and good governance.

The commitment to ethical behaviour needs to be supplemented by explicit teaching and the need to foster a business climate in which ethical behaviour is seen to be the norm. Whistleblowing (ethical informing) is at the extreme end of the ethical spectrum. It is an action undertaken only in situations of ethical failure, or even a direct breach.

Among the knotty ethical problems one encounters are these: how to engage in honest dealings with clients, integrity in conduct, standard setting for employees; how to deal with informers (whistleblowers) who are ethically right but an embarrassment to the company; how to deal with a problem of ethnicity in the workplace without seeming to be racist (or ethnist) (we use the word caste-ist frequently in India and most of our politicians do thrive on this concept); Under what conditions is it all right to accept gifts? Are sexual peccadilloes of a certain kind bad for business? If national espionage is acceptable does that make it all right to indulge in industrial and commercial espionage?

It is also necessary to address the issue of government-induced competition. There are more than four public sector oil companies doing the same business, and competing with each other under an administrative price mechanism. This is not so much a matter of competition as a waste of resources and quality man-hours.

In many countries there is the issue of loyalty, where loyalty to family and friends runs counter to loyalty to principles of objective fairness.

² Available on www.iodonline.org

One of the essential aspects of ethics is consistency; caprice and ethics are inconsistent concepts. Ethical or moral principles that are amended for local circumstances, and for dubious motives, are not admired. Legendary national figures seem to develop feet of clay when some changed their affiliations and expressed beliefs in order to accommodate the changing religio-political views of the time. More recently there is a concern about the standards of political life. The consequences of this has been the enactment of the *Parliamentary Code of Conduct*. Any code of ministerial conduct sets aspirational standards in order to offset a failure to adhere to the standards imposed by the Code. A public comparison of actual conduct compared to the standard required by the Code should highlight conformity to those standards and principles.

Codes of ethics need to be standardised. It is not appropriate to have a series of codes of increasing leniency from which to select. One might imagine an organisation containing several subgroups. The 'corporate flagship' might run the 'best' ethical set with 'lower' subsets being run according to more lenient standards. Another form of that principle would be where a national company might have overseas subsidiaries, and require only the national head office to conform to top standards and require a lesser standard in countries with more lenient rules. Such an exercise would turn ethics into expedience. It would be preferable to have the entire organisation imbued with aspirations to the most developed set of standards.

Where there is an ethical commitment one needs to consider how that commitment might be organisationally fostered. Among the issues that need attention are having an appropriate committee to take care of ethical issues. Figure 1.1 shows how a corporate structure might accommodate such a committee.

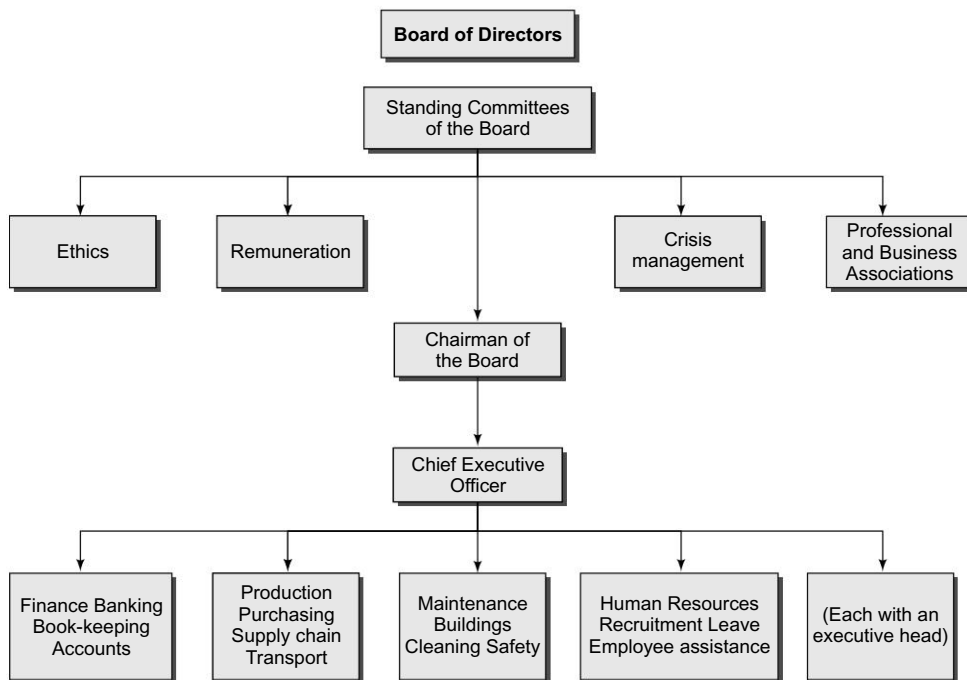


Figure 1.1 Hypothetical Corporate Structure

THE NEED FOR STRONG ETHICAL GUIDELINES

The world recession of the late 1980s has shown the need for firm ethical guidelines for business. The reputation of business is tarnished with each corporate failure. While not all company collapses are due to unethical behaviour (issues such as poor banking practices, union intransigence, bad management, the chasing of high profits and high interest rates are also implicated), an ethical judgement is made on those collapses.

Organisational behaviour may be compared to crime. Much of what we see as common crime is often petty and sad. Houses of Parliament, corporate boards and powerful organisations may well operate by standards that, if followed by the powerless, would invite sanctions. If you produce and sell tobacco you may be well paid; if you cultivate marijuana you could end up in court. Robbing may be done with a six-gun or with a fountain pen (to paraphrase Joan Baez).

Ethics also involves employee issues such as fair wages, safe working conditions, work morale and industrial relations. It also involves shareholder and company issues such as a fair and reasonable return on invested capital, regularity and security of payment, and knowledge of honest dealing; and company issues such as being a good neighbour, a patriot, and making proper and productive use of natural resources, quality of goods and services, honest advertising, fair pricing and safe products are also linked to ethics.

This list may be extended to include relationships between organisations (e.g. rival companies), unions and employers, individuals within the organisation, and between organisations and the community at large, as well as ethnic issues such as discrimination in the workplace, the clash of principles in cases of international contracts, and issues for firms with foreign subsidiaries.

A website that gives shareholder information in the form of data 2003.³ Despite being outdated it does, at least, form a guide to issues and complaints. For example, the most common complaint was non-receipt of dividend (40 per cent), followed by non-receipt of share certificates. The smallest listing identified was that of transfer of shares (2 per cent). What the site does not give is information about other sorts of complaints, such as directors' emoluments, the conduct and chairing of annual general meetings and contributions to political parties.

EARLIER ATTEMPTS AT ETHICS IN INDUSTRY

In the past two centuries, at least in our culture, there have been several attempts to introduce ethical dealings into business. Treating individuals as deserving of ethical consideration led some industrialists and social philosophers to treat commerce as not being confined to profitable outcomes. Technology, even of a lesser kind, has its capacity to improve the lives of those of lower economic status.

Gandhi did make the point that the spinning wheel and sewing machine were a few of the most useful inventions ever devised. It removed the extreme drudgery, out of the making of clothing and raised the output enormously—thereby conferring a general benefit. Such inventions may, of course, be used in an exploitative manner: they may also, if used properly, confer substantial benefits to extended families, and to collage and village enterprises.

³ Available on www.iteportal.com/ite_annualreports03/pdfs/pg20-26.pdf

In India the movement designed to provide fair working conditions and to minimise exploitation of workers has resulted in a strong set of trade unions based nationally. India has also adopted a mixed economy with the government framing laws to achieve that objective: it has also framed the *Child Labour Prohibition Act* among other legislations.

In Britain, as it turned out, the fair treatment of workers was profitable although that did not seem to be the main motive for its institution. The 'New Lanark' venture of Robert Owen is an instance. In the early 18th century he bought a textile mill in Scotland in which workers were treated in a dignified manner, were well-paid, and encouraged rather than criticised. The results showed increased productivity and increased profit. Prominent Quaker families, such as the Cadburys and the Frys, have contributed much to ethics in the commercial environment; they have also contributed to social issues, such as prison reform.

Socialist philosophers such as the Russian, Prince Kropotkin, and the Frenchmen, Charles Fourier and Comte Saint-Simon, have expounded the merits of social co-operation. These earlier attempts have had a chequered background. One might even regard the whole socialist movement as one that had its genesis in ethical concerns about equity, fair play, human values and the quality of life. The way they panned out is not always what the well-intentioned theorists expected, but there can be no doubt about the good intent of many such social theorists.

Corporate greed may bring in money, at least at the time, but it will not satisfy moral values. Recent interest in stakeholder values is an example of our moral connectedness: it is, significantly, a field growing in importance.

SOME IMPLICIT BUT SALIENT ISSUES IN ETHICS AND COMMERCE

Some issues are 'understood' but never made explicit. The language that we speak, and our manner of expression, all convey attitudes implicitly rather than explicitly. Sometimes this may be viewed as a bit different; at other times, places and contexts, it may become a judgement. To speak in a language foreign to us is to inhabit another world. While speaking (say) Hindi in New Delhi is to inhabit one world: to make a major move across the country to (say) Pondicherry, and to speak another language while there, requires a different mindset.

Another example of a similar nature that the writers can recall is the language problem in Quebec, Canada. The division runs along the lines of English-speaking and French-speaking. In the largely Francophone Quebec, Anglophones and Angloscribes are vilified. The inspectors who monitor Francisation are known, in the argot and without affection, as 'tongue troopers'. The net effect of unreasonable bilingual language monitoring is to diminish civil liberties, diminish business with the English-speaking world, reduce tourism and bring the language ideologues into odium.

In addition to formal language there is also substantial scope for misunderstandings in non-verbal communication. The misuse of personal space, the use of particular words, attitudes to punctuality, and the provision of specific food items all carry the capacity for misunderstanding. What is seemly in one culture may be unseemly, or may seem unethical, in another. Misunderstandings could be seen, by some, as insults (e.g. a beckoning signal in one culture may be seen as an obscene gesture in another). An everyday instance of the outstretched arm pointing directly, in the Western culture is taken as offence; in India pointing may often be regarded as a gesture ancillary to speech wherein one is simply making a

point. Later in this work some suggestions are offered for cross-cultural dealings. Despite brave, and largely unsuccessful attempts by psychologists, it is still not possible to completely formalise this non-verbal communication; all we can do is to try to understand, and follow some basic principles of good manners.

Another issue is that of balancing individual rights and the common good. A striking recent instance being that of ban on smoking. Smokers, as well as non-smokers, have rights. There are several issues in deciding to employ or not employ smokers. One issue is the health risk to self and others. Other issues concern the time taken by such employees who have to go outside to smoke; the problem that smoking may or may not annoy other workers, and smoke in clothes and hair may irritate highly valued workers with a specific allergy to smoke. In addition, smokers may annoy customers/clients.

Whereas, in many Western countries the ban on smoking is highly specific and monitored, in India it is more tolerated and banned only in places there is an explicit sign indicating the ban. The statistical prevalence of health problems caused by passive smoking is one issue; what is important but less appreciated is the effect on those who have allergies. The addiction, or mild pleasure to the smoker may be more than outweighed by the deprivation to the victim of the right to breathe properly. The rights of smokers have to be considered against those of non-smokers. As Oliver Wendell Holmes so aptly, and metaphorically, put it: 'The right to swing your fists ends where your neighbour's nose begins'.

MEANS AND ENDS

Codes of Ethics are designed to produce particular results but, just as importantly, they are also designed to tell us how to behave in particular situations. They are, therefore, goals to be achieved, although sometimes the sight of the goal is lost. Technology may displace some problems; for example, robots in the workplace reduce the probability of humans being injured.

Elsewhere in this work the distinction is drawn between deontological theories and consequentialist ones. Deontological issues of duty are seen to be worthy in their own right; consequentialism holds that the morality of principles is determined by outcomes. One of the enduring dilemmas here is that of whether or not the end justifies the means by which it is achieved. Doing good by force, or doing good by stealth, have overtones that go far beyond the particular.

The bad press sometimes accorded to pharmaceutical companies is often over the issue of the way in which they provide generous donations to medical practitioners in the hope that it will produce a favourable attitude to their products, leaving aside the much good that they do. Given the intrusive nature of their products it is not surprising that pharmaceutical businesses attract some criticism. Some such companies, for example, are alleged to offer free computers to medical practitioners, and to promote 'brain tonics' for babies in Third World countries.

Perhaps one of the ways in which the public might be reassured of the ethical behaviour of pharmaceutical companies would be to use independent bodies to conduct the epidemiological studies associated with their products. Promotion in a free-market economy may lead to abuses, but such abuses need careful documentation, and a code by which they may be judged. It is easy to put up a villain and condemn by accusation rather than by evidence.

ETHICS AS A LUXURY

Ethics may be seen as a luxury affordable only by the affluent. Someone starting a new business, and with a severe liquidity problem, might need to adopt some dubious strategies in order to survive economically. Only when the organisation is well established might one have the luxury of foregoing an immediate return, and of taking the long-term ethical view. Companies that operate with substantial goodwill (and offer unconditional money-back guarantees for their products or services) gain incalculable benefit over companies that do not observe such practices. It takes many years to build up a good reputation, and is of enormous financial benefit to the companies that continue to maintain their good name.

Although individual transactions may be foregone, other customers will continue to use such companies because they know that if a poor purchase has been made it is easy to exchange or get a refund. The basic issue here is whether or not one wishes to foster a continuing relationship; it would be prudent to behave as if one had such a relationship in mind.

At the highly practical level there are issues of ethics and gullibility. Two recent examples are those of fraud using the web, and the advertising of fraudulent schemes. The first of these has come to be called 'e-fraud'. The Internet, not surprisingly, has been infiltrated by criminals. Those interested in the subject of e-fraud might consider relevant editorial articles on that subject. We might also make the point that the growth of e-commerce is accompanied by an increase in e-fraud. Another overview of particular value is that of Tan (2002). His article explored the prevalence of online fraud, what influences it, types of web fraud, and ways to arrest such growth of fraud.

The second salutary lesson is derived from the Australian Securities and Exchange Commission. An advert was placed seeking investors to further develop a new animal that was a cross between a goat and a sheep (a geep). The advert said that 'Angora Geeps are a new hybrid breed which is turning the Australian wool industry on its head. After years of testing and research the first herd of Geeps are reproducing naturally and have a soft, highly marketable fleece. The new fleece is the natural equivalent of 60% wool and 40% angora and is attracting a premium price in many overseas markets. We're currently looking for new investors. Returns are only around 30% at present but with the introduction of Cashmere Geep fleece in December 1998, profits are set to soar. For more information contact Australian Rural Textiles on 1300 300 630 for the cost of a local call.'

That advert brought a host of replies. Potential investors then received a warning that it was a hoax, that there was no such animal and to be careful in future. This really demonstrates the gullibility of some members of the public.

CORPORATE GOVERNANCE

The non-moral applications of corporate governance include efficient decision making, appropriate resource allocation, strategic planning, and so on. In its moral sense, good corporate governance has come to be seen as promoting an ethical climate that is both morally appropriate in itself, and consequentially appropriate in the sense that ethical behaviour in business is reflected in desirable commercial outcomes. Here, the links are with due diligence, directors' duties and the general tightening of corporate responsibility.

Corporate governance should set a proper example of good intent, and provide to those lower in corporate hierarchies the clear message that it is 'do as I do' as well as 'do as I say'. Middle and lower management find it hard to be ethical when it seems that the top of the corporate hierarchy have no commitment. The message of sincerity will always filter down, and no amount of deception will foster the view that a board is ethical when it plainly is not.

Additionally, the commitment to ethical corporate governance by a board will enhance the prospects of an ethical infrastructure within the organisation. That ethical infrastructure is a manifestation of the commitment, a means of preventing and resolving ethical problems, and an impressive demonstration of sincerity.

The issue of corporate governance had its genesis in several sources. The pressure to have corporate governance was, however, compelled by recent demonstrations of corporate greed. The scandals associated in India with unhealthy relationships between banks and stock brokers is a prime instance, and all helped fuel the need for better governance.⁴ Although it is a commercial site there is much useful information to be gained from a perusal of web. Among the useful contributions made there is the issue of corporate compliance, and covers such issues as cyber law compliance, directors' responsibilities, and the treatment of subsidiaries as part of the parent company.

Significant learning experiences have been derived from major Indian corporations. The difficulties have included the clarification of the issue of conflicts of interest and the need for non-executive directors, now a legal requirement. As expected, the issue of good governance continues to develop and is currently directed towards better communications between boards and investors. In particular, the issue of the smaller shareholder is one that is likely to develop.

Here the problem is that the major shareholding is frequently under the control of institutional investors, thereby depriving the smaller shareholders of any voice in issues of concern to them. This principle is the rights-of-minorities to a say (and action) in matters of concern to them. One of the weapons the smaller shareholder may use is that of adverse publicity. Bodies representing smaller shareholders can exert some influence. The type of concerns that exercise investors are those of the ways in which directors are appointed and re-appointed, the salaries received by directors and senior executives, the issuing of bonus shares to senior executives, performance-linked rewards, and the ethics of some of the company's activities.

The Department of Company Affairs is the body which monitors Indian corporates. Ideally, guidelines should require revelation of the fees of all directors and the total salary packages of the five highest paid executives. Companies should have to give reasons for any pay rises of top executives. Annual return should, in a properly run corporate world, list individual salaries, share options and benefits. Such a principle would permit shareholders to compare profits and share price with total salary packages. Those requirements should also be released to overseas markets to be revealed to shareholders. The requirements, and the constant updates, are readily monitored via the web.⁵

⁴ <http://www.madaan.com/corporatecompliance.html>.

⁵ There is a Government website that is helpful www.mac.gov.in: by following the prompt reference access will be found to the *Companies Act of 1956* (two parts); the *Companies Amendment Act 2006*; and the *Competition Act of 2002*. This latter Act is the one that regulates fair competition, and provides sanctions for breaches.

Ethical corporate governance requires strong ethical leadership. Further, mergers, leaner organisations and accountability have all had their impact. In such a changing world it is imperative that we have some fixed values. Caprice is the enemy of good commerce and it is by the adoption of such values that we put certainty into our transactions. Trade winds are winds that are good for trade in that they blow constantly and in a known direction. With that constancy we knew, with some degree of certainty, that sailing ships would get to their destinations on time.

Undue emphasis on purely commercial aspects of any enterprise will most often produce a counter reaction. Good corporate governance requires commercial insight and commercial courage; but no less than that it requires adherence to the principles of honesty and integrity. Not only does this ethical attitude preserve reputational advantages but it may also be seen as a serious means of corporate risk management; it is also intimately tied to having worthy corporate visions and aspirations.

With the increasing globalisation of the economy the need is still more pressing to be ethical in governance. Confidence in the integrity of corporations is vital to continued manufacturing and servicing and the institution and monitoring of an agreed code of conduct enhances confidence in commerce. Firm and clear corporate legislation can do much, but so can the 'softer' principles that clear our understanding of ethical dealing, and enhance the quality of human relationships.

Good governance enhances stakeholder value, company morale and productivity. There is a national stock exchange of India.⁶ What is interesting about that Exchange is that its corporate structure is one of the first de-mutualised stock exchanges in India. The ownership and management has no connection to the right to trade on it. It is set up as a limited liability company which is owned by leading institutional Indian investors.

Although such works may or may not have legal force that should not detract from their merits. Self-regulation will seldom be an adequate substitute for governmental regulation. Such self-regulation does, however, monitor the performance of members of associations and serves as a means of developing rules that may eventually be given legal force.

When the Chinese formulated their language they recognised that the word 'crisis' had two distinct elements, and two discrete symbols to reflect those meanings. The first element was 'danger', the second was 'hidden opportunity'. Among the questions that we might pose: are we provided with useful benchmarks of positive ethical values? This should further be tested against such questions as: Are they achievable? Do they foster pride? Do they develop a sense of purpose? Do they reflect best-practice ethical principles? Do they build on positive community beliefs? Are they globally applicable?

Questions of proper functioning are formalised in various ways. At a more formal level the Indian Stock Exchange, for example, requires listed companies to disclose in their annual reports, their policies on corporate governance practices.

On a yet higher scale, in 1999 the Organisation for Economic Cooperation and Development (OECD) had corporate governance under consideration. Currently, there is no uniformity about corporate governance within its constituency. The OECD taskforce, which is considering the issue, has to come to terms with who exactly are the stakeholders, and what role they should play in corporate governance.

⁶ Their address is www.nseindia.com. On that site there is a Mission Statement.

The issue of how the rights of shareholders are to be protected is to address, and is to be found under the title ‘How should the rights of stakeholders be protected’. The response given is that ‘The Principles acknowledge that stakeholders have rights established both by law and through mutual agreements and call on companies to respect these rights. Those principles call on boards to draw up a code of ethics and introduce an effective compliance programme to ensure that this code is followed. Regulators should ensure the existence and proper functioning of an insolvency framework that can protect and enforce the rights of creditors. Individuals within companies—so-called whistleblowers—who wish to draw the attention of a company’s board to inappropriate behaviour or activities should be able to do so in full confidence that their complaints are treated confidentially’.⁷

Some of the world’s largest economies do not always have transparency as the main point in corporate governance. Secret deals, the ‘old-boys’ network, family collusion and power-broking are often seen to be inimical to good strategic management. The belief that transparency might breach personal privacy or commercial secrecy may be true but it is argued here that, apart from genuine commercial secrets or national security, the strategic plans and commercial tactics belong to all stakeholders. Transparency is the long-term friend of commercial stability.

With increasing public investment in the stockmarket there will be increasing pressure to be accountable; this point will be made more forcibly by groups that represent the smaller shareholders. The larger fund investors and their collective voices could have ethical codes of their own. One can see the when the joint interests of large and small investors come together to require companies to be both profitable and ethical. In other words, the apparent conflict of interests (large and small investors, secrecy versus transparency, different stakeholders, etc.) will have to be reconciled. The unnecessary tensions, the time-wasting disputes, the adverse publicity and the reputational damage that flow from such unresolved conflicts all work to the detriment of good corporate governance. Put differently, this rapprochement of policy differences and the reduction of unnecessary secrecy is good corporate risk management.

It is not surprising that an issue as important as corporate governance should have received careful and detailed attention.⁸ The overall significance of corporate governance is that ethics must start at the top and be constantly fostered there. Without an ethical leadership there will be no ethical following.

CONCLUDING REMARKS

The purpose of industry is to serve human needs—market is the servant, not the master, of human needs. According to Adam Smith, the essence of capitalism is that the two should co-exist for the benefit of each other. Significant among the nominated factors in declining business must be that of the perceived quality of business activity. In the United Kingdom there are more than 170 companies that display codes of behaviour, but few say how they are monitored and few have mechanisms for reporting breaches of ethical codes.

⁷ www.oecd.org/faq.

⁸ Such a work is available, being cross-national and over 1200 pages long. Its scope is both empirical and theoretical Hopt et al (1998).

14 *Business Ethics*

A scan of a sample of annual reports of major corporations will show few to report adequately on ethics. While some asserted commitment to ethics, almost none gave details of ethical infrastructure, monitoring or training.

Professionals who operate with substantial goodwill (and offer highly professional services) derive incalculable benefit over those who do not observe such practices. It takes many years to build up a good reputation, and is of enormous benefit to those who continue to do so. Goodwill is a marketable commodity and forms part of the assessable value in selling a business. Although individual transactions may be lost, customers will continue to use a reputable business because they know that if the service is in any way inadequate, simply approaching the business will produce a remedy. The basic issue here is whether or not one wishes to foster a continuing relationship; an ethical stance is that which behaves as if one has a long-term relationship in mind.

Summary of Chapter

This chapter provides a broad justification for ethics, and its importance in business. Amongst other things the chapter emphasises the benefits of being ethical in business, some of the salient points about means-and-ends, and whether or not ethics is a luxury that small, new, or struggling businesses should avoid in a harsh competitive world. Discussion is provided on ethics as an essential underpinning for such salient issues as corporate governance. It is argued that a firm commitment to ethics is essential, both for social benefit as well as for establishing a stable base from which all businesses operate.

Multiple Choice Questions

Select the best answer from the options given.

1. The most important reason for having a Code is that:

A it provides a formal frame of reference for values	[]
B it is required by the Board	[]
C it helps establish a good reputation	[]
D it gives employment to HR staff	[]
2. Despite cultural diversity it is important that we consider:

A various principles of value	[]
B always follow the UN principles	[]
C give salience to the dominant national culture	[]
D follow only your own religious laws	[]
3. Cultural relativism means

A One culture is quite as good as any other nominated culture	[]
B Culture is the only reference point for a values system	[]
C activities should be interpreted in terms of one's own culture	[]
D One culture should be compared to another	[]

-
4. It is the function of an ethics code to:
- A set standards ☐
 - B apply sanctions ☐
 - C neither ☐
 - D both ☐
5. Ethics is about
- A improvement in standards ☐
 - B rewards and sanctions ☐
 - C reputation ☐
 - D all of the above ☐
6. Ethics is about
- A tangible and intangible benefits ☐
 - B only tangible benefits ☐
 - C only intangible benefits ☐
 - D something other than the above ☐
7. Ethics is the same as
- A legality ☐
 - B strict compliance ☐
 - C conformance to agreed values ☐
 - D following black letter law ☐
8. Where does ethical loyalty primarily lie?
- A towards family ☐
 - B towards agreed principles ☐
 - C towards the company ☐
 - D towards professional standards ☐
9. Ethics is concerned about
- A the means of achieving something ☐
 - B the ends to be achieved ☐
 - C neither of those ☐
 - D both of those ☐
10. Time frames are
- A crucial part of ethics ☐
 - B irrelevant to ethics ☐
 - C of marginal interest to ethics ☐
 - D an explanation of spatiality ☐

For Discussion

1. What are the main arguments in favour of a codified set of ethics? Consider the number of arguments and then attempt to put them in order of importance.
2. If you were to be presented with a real dilemma in business in which you had to breach the Code in order to serve some higher good how would you justify such an action (consider, for example, the Code enjoins you to act so as to maximise profit within the law, but doing so would breach someone's privacy).
3. Imagine you work in an organisation in which there is a very diverse array of cultural backgrounds. Several of those backgrounds are held by people who are to serve on a Committee to develop an organisational Code of Ethics. It is inevitable that differences of principle will occur. How are they to be resolved?
4. It has been put to you that ethics is a luxury that is affordable only to those organisations which are well established. New, and small, organisations have to compete in a very difficult and competitive world. What arguments would be persuasive to a new or a small enterprise in order to convince them that ethics is an enterprise that is worthy in its own right, as well as being good for business?
5. Which religious traditions have explicit principles that are of direct relevance to business? What do such principles have in common? In which ways are they in variance? If such variance exists which should prevail?
6. It has been put to you that one of the merits of ethics is that it provides an underpinning for the principles of corporate governance. What do you make of that argument? If it is rejected what other principles should underlie corporate governance if they are not ethical ones?

2

CHAPTER

Justification for Ethics

INTRODUCTION

The purpose of business has been defined in various ways. It may be held that its purpose is to create goods and services to meet human needs—not to make money for its own sake. This point of view has been well expressed by Estes in his book *The Tyranny of The Bottom Line*. In that work he notes that companies originally were not meant exclusively for profit. Indeed the royal charters given were for purposes apart profit—the extension of empire, aggrandisement of the emperor nation, as well as the loftier motives of bringing ‘good’ to less-favoured places. The accounting procedures used to inform faraway investors have come to have a life of their own and unreasonably dominate measures of corporate success. Estes’ solution is the admirably simple one of adopting more appropriate and more diverse accounting procedures.

This point has also been addressed recently as an idea for the triple bottom-line reporting. Recasting this argument we might say that financial accounting is one of the reporting criteria, the other two being sustainability and social justice. There is a persuasive argument that all of these criteria are for the benefit of long-term profit and add economic value to the organisation. From this perspective, the creation of profits for shareholders and creation of jobs, are necessary conditions for success but not its purpose.

The expression ‘not for profit’ somehow implies worthiness, often deserved. One unintended consequence is that it may be taken to imply that the opposite, ‘the for-profit’ organisations are thereby less worthy. That point has been elaborated by Farmer (1965). From this Farmer noted two kinds of profit: one is the pursuit of profit by bloated plutocrats intent on extorting every bit of money that can be; the other kind is that of the more honourable ‘resource allocator’. This distinction seems to be a very worthy one.

Rasmussen, Malloy and Agarwal (2003) have examined the relationship between functioning and profit for public services bodies and commercial enterprises. They found that public servants’ ethics were driven more by external and cosmopolitan sources, whereas commercial enterprises are driven more by self-chosen principles and by personal ethics.

Professionals who operate with substantial goodwill (and offer highly professional services) derive incalculable benefit over those who do not observe such practices. It takes many years to build up a good reputation and is of enormous benefit to those who continue to do so.

Ethical Dilemma

You have been offered an entrepreneurial opportunity that promises a 50 per cent p.a. return. It involves an arrangement with someone who provides dentures saved from cadavers. As the dentures would otherwise be burnt or buried and therefore be wasted, it is put to you that it is providing a service in supplying dentures to be sold in the bazaars.

Is there anything ethically wrong with the proposal?

If you feel uneasy (at least in a business sense) what is the basis of that unease?

If you were to learn that the relatives of the deceased did not mind, does that make a difference to your view of the transaction?

How would you address conflict of religious sentiments if you foresee any?

It is possible to conceptualise this issue of relationship between contracting parties by noting the different perspectives that might be adopted. Graafland (2002) has done just that; his four perspectives are: (i) win-win in which ethical behaviour enhances profit; (ii) a licence to operate in which minimum compliance is essential, (iii) an 'acceptable' profits perspective to assure financial continuity, and (iv) an integrated perspective. What this analysis does is to provide a framework for consideration.

The motives that lie behind transactions are not the only criterion by which one may decide if an ethical case is worthy—but is one that affords a defence to the whistleblower against allegations of malice. Further, an assessment of motives become a part of the procedure by which one would want to know that all collegial approaches had been tried and had failed. Whistleblowing is not a definition but rather a continuum.

Among the difficult issues here are those of distinguishing conduct from intention, internal from external disclosure, what is important and what is not and whether finding 'loopholes' in the law and in regulations is ethical practice. Here, one has to recognise that there may be good intentions, and bad outcomes and bad intentions and good outcomes. There are different ways of doing good or doing harm. One may do harm by a deliberate act or do harm by failing to do what should have been done. A deliberate act may be by intent or be inadvertent. Thus the matrix is shown in Figure 2.1.

MONEY MATTERS

Information about money matters is crucial to business. We must be able to trust the integrity of financial reporting if we are to make any sensible business decisions. The use to which money is put is to be contrasted with the way in which money is first gained. That enduring dilemma is the theme of Shaw's play *Major Barbara*. Among the questions posed is that of the Salvation Army taking profits from the

sale of arms and putting it to charitable use. Readers interested in that issue are commended to Shaw's preface; after all, Shaw's plays are simply excuses for his preface.

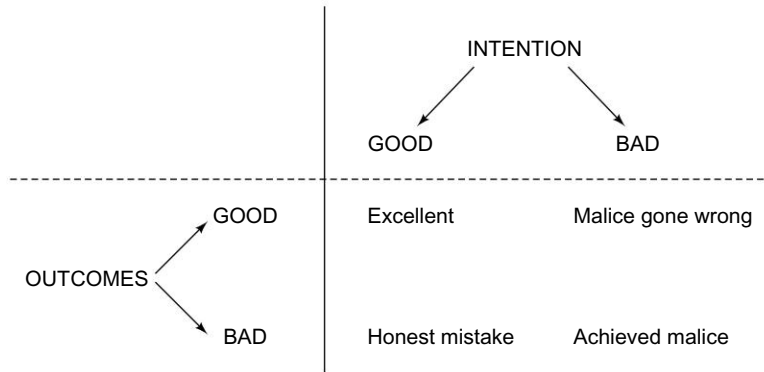


Figure 2.1 Intention and Outcome

While legal and innovative approaches to auditing are commendable, ones that are devious and with the intention to subvert proper accountability are to be deplored.

Whether or not the presentation of information is 'creative' is a matter of fine judgement. Further, there is always the danger that accountants may lose control of the ethical presentation of accounting information. Both the labelling of information and its inclusion and exclusion are areas of concern. There is a convenient check list that might help to alert the balance sheet reader (Davis, 1989).

Ethical Dilemma

You wish to establish a line of credit, and have been asked to complete a credit rating application form. In all, there are over 30 questions ranging from the obvious and relevant (such as name and address) through to questions about your spouse's work.

Would you answer every question put to you by a credit-checking agency?

If you would not, at which questions would you baulk?

How does one decide which questions are unnecessarily intrusive?

One is reminded of the charming story of London auditors who at the beginning of this century had a simpler technique. The chief auditor would go to the company accountants and have them swear on *The Bible* that the accounts were an accurate representation of the company's financial position.

Professional motives and national interest may not always be the same. One instance is the immediacy of reaction to ‘information’. For example, stock exchange brokers are paid a commission on the shares they buy and sell for their clients. That impulse to immediate activity may not be in the best interests of the shareholders. A takeover bid might push up the value of the shares, but not to any necessary advantage to the economy and possibly to its detriment as a whole—but to the benefit of brokers.

Buy and sell activity is not concerned with long-term performance. Perhaps that impulsive activity could be dampened by permitting trading in particular stocks once a month, rather than as frequently as is possible at present. The dampening of activity would need to be national; if it were not, there would be the distinct prospect of other exchanges picking up rejected business.

BANKRUPTCY

Bankruptcy is a legitimate way of formalising a situation in which it is impossible to pay all debts. The issues in bankruptcy needs no lengthy discussion here, save that it can be improperly used. Someone who wishes to repudiate debts can use it in a manner that is not the one intended by commercial law. In the United States there is an Act, which contains provisions not widely available elsewhere. Chapter 11 of that Act permits companies in difficulties to trade back to commercial health.

Chapter 11 of the *United States Bankruptcy Code* allows a reorganisation for both corporations and individuals. Those who take advantage of this provision are permitted to seek protection so that they may stay in business and reorganise to best advantage, under the Bankruptcy Court’s supervision. In this they must do their best to satisfy company debts and contractual obligations. If the company’s debts are greater than its assets then the stockholders receive nothing, and the creditors end up owning the company (for what that may be worth). This process is in contrast to Chapter 7 of the Act, in which the business stops operating and the trustee sells the assets and distributes them to the creditors, using legally defined priorities.

In essence this chapter permitted companies to reorganise themselves and retain staff. The law no longer required that a company be insolvent before filing. The intention of this Act was clearly to help save companies, to benefit the economy and reduce the number of Corporate collapses. According to the website, the largest default in American history was of the United States Corporation, Worldcom, Inc., listing more than 103 billion dollars in assets as of its Chapter 11 filing in 2002. ‘The bankruptcy was triggered by the discovery that in the previous several years, the company had fraudulently over-reported its assets by an estimated 12 billion dollars’. There are many companies with similar histories such as Adelphia, Tyco, Sunbeam and so on where billions of dollars were embezzled and sheltered under bankruptcy acts.

Using Chapter 11 as a strategic option to reduce financial liabilities appears not to have been the intention. Chapter 11 may be used as a commercial debt reduction strategy and as a means of breaking union agreements. The question posed is ‘Is it ethically proper to use bankruptcy as a commercial strategy to repudiate debts, and to break agreements?’ The *US Bankruptcy Abuse Prevention and Consumer Protection Act, 2005*, many years in the making, has now tightened the burden of proof before it is possible to file for bankruptcy. It deals with debt relief, the protections of assets and the usual sequel of bankruptcy filing.

It will be seen from that American experience that bankruptcy is a topic subject to continuous review. A similar Indian review was set up in 1999 by the government. That review Committee was headed by V.B. Balakrishna Eradi, a superannuated Judge of the Supreme Court of India for remodelling the existing laws relating to insolvency and winding up of companies and bringing them in tune with the international practices in this field. In an article,¹ R. Bagnai has given an account of the recommendations of that Committee—‘Corporate insolvency laws in India’.

The ‘Recommendations’ of the Committee are followed by a ‘scheme of insolvency laws’, by an analysis of ‘Sick industrial companies’, ‘Institutional machinery’, ‘pursuit of individual claims’, ‘The stacking order of priorities’, ‘Compromises and arrangements’ and a number of other highly relevant considerations. What is also useful about that analysis is that it also gives reference to the relevant documents and Acts which govern insolvency. It will be seen that this highly complex issue contains issues that are of financial, ethical, stakeholder, reputational and social interest. The article concludes with comments about the extent and limits to which governments ought to intervene where bankruptcy is an issue.

LATE PAYMENT OF ACCOUNTS

The late payment of debts, particularly for small businesses is a significant problem. Liquidity and cash flow are crucial to small and new businesses. Depriving the rightful owners of money that is theirs is, arguably, a form of theft. Companies with liquidity problems may be forced into bankruptcy by the failure of their debtors to pay on time. Thus, there is an argument for legislative provisions to be enacted to protect the vulnerable. Among the remedies might be restitution in the form of punitive interest—recoverable by the injured party without cost. Some European countries are now beginning to recognise this problem by introducing legislation.

Business people of experience will recognise many of the ploys used by bad debtors. Apart from the obvious ‘I am not paying’, there are: ‘Times are good, therefore my cash is out there working (I have a liquidity problem).’ ‘Times are bad, therefore I have a cash flow problem.’ ‘You got it wrong; it was a bad product; not what I asked for’; ‘it was late’, and so on.’ ‘If you insist on payment I will have to go bankrupt and put my employees out of work.’ Some dubious characters even send cheques unsigned, or in some other form, that makes them unusable. Other tactics of bad payers include threatening dire consequence if demands for payment are pressed and paying a nominal amount with an empty promise to pay more when something happens, for example when they are paid money that others owe to them.

Delaying payment for months and even years can happen. The authors’ experience of the longest debt is a professional one. That particular debt was paid to a colleague seven years late. He wrote a sarcastic thank you letter, to which he received a reply from the executor of the deceased’s estate, who was settling all outstanding bills.

It is believed and perhaps with a little justification, that some organisations—including some government departments—have a policy of paying their creditors only after a long delay. This may be done in order to earn interest on the money.

¹ Available on the website www.legalservicesindia.com/articles/corin.htm

CORRUPTION

Corruption is a subject of continuing and serious concern to all business enterprises. The international organisation, Transparency International, notes that corruption flourishes in secrecy, with transparency being the best antidote.

The institutional and social relations view of the antecedents of corruption has been examined by Collins, Uehlenbruck & Rodriguez. Using a sample of over 340 business managers in India, having familiar or political affiliations who accept corruption as a norm are more likely to use corrupt practices. Those with professional background behave to the contrary.²

DELAYED CAPITAL EXPENDITURE

The urge to delay essential spending distorts the long-term commercial benefits and is an impetus to corporate behaviour that is commercially inappropriate. Basing rewards on such an ephemeral thing as recent profit and the indecently large returns to executives may not be in the company's best interest. The imposition of a rule that restricts payouts to exiting executives is only part of the solution: one would also need to restrict other rewards, such as bonus shares and share options. Additionally, there is need to ensure that no insider trading takes place. Wei, Cahan & Allen (2005) have shown that an increased level of insider trading is associated with decreased pay performance sensitivity. The long-term interests of a company largely depend upon long-term perspectives: it is, in other words, important to invest in the future.

BRIBERY

Bribery in countries where it is the norm often creates a psyche of the 'everybody does it' syndrome. In some cases there may be a thin line between the legitimate and the unethical. In some countries the wheels of business are lubricated by careful application of 'sweeteners'. The *American Foreign Corrupt Practices Act* forbids bribery, but permits facilitating payments. These payments 'must be small, made only to a low level Government employee for the sole purpose of ensuring that the recipient does faster what he is already obliged to do in the normal pursuit of his duties'.

It is a curious principle that some form of bribe is necessary to secure good performance; imagine tipping a surgeon before an operation in the hope that he or she will take that extra bit of care. When away from home it may be necessary to accept alien practice when dealing with the hewers of wood and drawers of water. What is less clear is what one should do when doing in business at a higher level. These financial practices alien to our ways are matters that bear on ethnicity and compel us to consider our notion of what constitutes the eternal verities.

Whether or not the presentation of information is 'creative' is a matter of fine judgement. Further, there is always the danger that accountants may lose control of the ethical presentation of accounting information. Both the labelling of information and its inclusion and exclusion are areas of concern. There is a convenient check-list that might help to alert the balance sheet reader (Davis, 1989).

² Those with an interest in corruption reports and surveys are recommended to the Transparency International website (www.transparency.org)

SECRET COMMISSIONS

Any form of economic extortion is abhorrent. Someone being personally threatened by a robber and having a wallet or handbag taken under threat is not held culpable. A business person from one country, in seeking a contract, may be 'required' to make a secret payment to an official of a foreign power for the supply of a product. The question arises, is the blame any less because it is not personally threatening?

Various countries have their own way of describing secret commissions (bribes). In Italy the secret commission is called *la bustarella* (little envelope); in Mexico it is *la mordida* (diminished or wasted away); in Africa it is *dash*; in Germany it is *schimengeld* (grease money); in the Middle East and other places it is *baksheesh* (in this case usually given by a superior). Perhaps the most commonly understood term in India is the simple one 'bribe'.

In 1977 the *US Foreign Corrupt Practices Act* was passed 'prohibiting American corporations from offering or providing payments to officials of foreign governments for the purpose of obtaining or retaining business abroad'. The present writers draw attention to the restricted nature of this proscription. The difficult issue here is whether the imposition of Anglo-Celtic standards on other cultures is appropriate. A secret commission may lead to the firing of an employee if that employee is found out. In other words, not to use the secret commission to get a contract may be perceived as incompetence and lead to termination of employment.

Such decisions on balances of outcomes may be seen not as ethical, but rather as pragmatic judgements. The firm commitment of an organisation to principles on secret commissions should make such decisions easier. That position may be complicated by the nature of product or service being offered. If the service were use of a technology with clear human benefit (e.g. equipping a hospital), would we apply the same criteria if the goods were weapons or a service supplying terrorists?

Is it enough that manufacturers of weapons, chemical warfare and other instruments of destruction are ethical if they deliver quality products at a reasonable price and on time? Are companies that produce effective napalm, anti-personnel bombs, and dumdum bullets ethical—provided they produce the quality products at a reasonable price? What one might do is to set clear guidelines so that the temptation to give a bribe or to cheat, is set against a clear directive. One might, for example, decide that a token of esteem of not more than 0.01 of gross annual income is OK, or that managerial approval of gifts of not more than Rupees 10 are acceptable—or some other clear criterion.



Ethical Dilemma

Your organisation supplies a professional service, both within India and overseas. The continued success of your organisation requires that you provide your services in countries with cultures alien to Indian ways. There is a prospect of an excellent contract in one country. You have been advised by your agent that you are likely to be awarded the contract provided a financial inducement is given to the relevant government minister. If the contract were to be signed, the 'inducement' would amount to about 3 per cent of the contract price.

Such a sum would need to be paid in a way that indemnified the recipient. Is that acceptable?

It would be useful to have clear written guidelines where there is a temptation to cheat or bribe in order to get company or personal advantage. It can help to have clear cut-off points on what constitutes gifting (e.g., whether calendars on new year may be acceptable, but crates of drink are not).

SHADOW ECONOMY

Another form of dubious financial dealing is that of the shadow economy, which is by its very nature, difficult to examine and to quantify. Its discovery may be by way of social indicators, by cash indicators, by national account discrepancies, or by detailed surveys. It is difficult to run a planned economy based on a restricted source of information. The issue is not the restriction of economic information but rather, the circumvention of agreed standards of reporting and payment; and the proper payment of fiscal dues.

The uncovering of aspects of the shadow economy might also reveal criminal activity such as money laundering and tax evasion. Current interest in secret societies (the Mafia, Yakuza, Triads, etc.) is of interest because they reputedly each have their own code of loyalty, honour and silence. The difference is that the code is not a mainstream one nor does it operate by scrutiny by conventional bodies.

Underground financial activity has its counterpart at a higher level in cartels. Most commonly these are forbidden for reason of the power that they accord to those engaging in cartel agreements. Presumably, we do not make the same criticism of governments on the grounds that we are supposed to control them at the ballot box. There is a capacity for cartels to engage in improper price fixing, which is contrary to our notions of a free marketplace.

The issues and data about child labour in India have been given in a 1991 report by Weiner. Later studies that addressed the issue of urban bias was outlined by Chaudhri (1997), who noted that approximately 10 million children were involved, but the numbers are declining. He did note, however, that there is still a strong bias towards child labour in rural, as distinct from, urban areas (see also Basu & Van).

The Human Rights Watch (see reference list) has reported a number of problems. Here we might categorise them as being of three kinds: one is the dangers from the work itself, an occupational health and safety issue; the second is the direct abuse by those in authority (such as beatings, and arbitrary arrest); the third is the lost opportunity that deprives those whose potential is never to be fulfilled.

TIPPING

This misapplication of financial practices finds expression in diverse ways. In some cultures it runs counter to the precept of open and proper financial reward for work done. The notion of tipping, for whatever reason has been fairly common. With the advent of migration and tourism the idea of obligatory tipping has been practised in some commercial transactions. It is curious that tipping does not have 'rules'; why should one tip a hairdresser but not a train driver; tip a ship's steward but not the purser; tip the doorman but not the receptionist? Why did the airlines institute a policy of 'no tipping'?

Compulsory tipping may be regarded as a form of moral blackmail, which introduces an extra tax on consumers without their consent. This is not to say that tipping should be prohibited, but the degree of social duress placed on people makes it an unwarranted imposition. An obligation to tip, without the freedom to choose, amounts to an improper tithe: in some cases it may become a secret commission.

Where a 'service charge' is added to a bill it could be considered a minor form of extortion. It is preferable that payment for services and payment to employees be of the open kind. It is not suggested that tipping be banned, however desirable that might be. What is suggested is that compulsory tipping, forced service charges, be regarded as unethical.

CORPORATE MATTERS

The complexity in the issue of corporate matters is the extraordinary range of possibilities for commercial decisions. That complexity is compounded by the role of boards and of CEOs. Where the organisation is large enough it may require the board, CEO and other functionaries to operate in different ways. This complex issue was discussed by Andrews (1984). One might argue that playing by the rules is advantageous in that it is a sustainable position and that it gives the essential certainty that commercial activity requires, a point made by Skrabec (2003).

In the modern world the issue of corporate governance has become important. The composition of boards, the separation of Chairman of the Board and CEO has become an issue, the rules of engagement, reporting practices, the formality of meetings, and the problems with AGMs have all been considered as controversial.³

CORPORATE PHILANTHROPY

Corporate philanthropy needs to be subject to the same management controls and accountability as ordinary business practices. The success of such philanthropic activities by industry depends on commitment, decision-making priorities, periodic evaluation and the active involvement of employees. Among the forms that this philanthropy might take are: the donation of old office furniture to worthy charities, the donation of surplus office equipment to newly starting small businesses and the encouragement of staff to give time to help worthy enterprises (such as painting the local kindergarten), financial donations, payroll deductions, giving assistance at the local hospital and employee participation in philanthropic schemes.

For an account of corporate philanthropy in India see Sidel (2001), who outlines issues related to corporate philanthropy in the non-profit sector. Clearly defined objectives of the philanthropic programme should ideally, be related to the corporate objectives of the donating organisation. There are taxation implications for such philanthropic donations. Thus a company's interest in corporate philanthropy need not be based purely on altruism. Apart from the ethical benefits it also breaks down formal communication barriers within the organisation; it affords a means of advantageous advertising that the company is committed to positive and constructive things; and it provides a sense of worth within the community, thereby raising employee morale.

³ Although it is a commercial site there is much useful information to be gained from a perusal of <http://www.madaan.com/corporatecompliance.html>. Among the useful contributions made there is the issue of corporate compliance, and covers such issues as cyber law compliance, directors' responsibilities and the treatment of subsidiaries as part of the major company.

Any corporate philanthropy is best done in a spirit of goodwill. Acts of seeming generosity by organisations not noted for generosity of spirit might not be well received. Banks, for example, have attracted a degree of odium, seen to stem from their treatment of customers, particularly small businesses and private individuals. Where banks have made mistakes on a large scale the smaller customer may perceive it as unjust. Bank imposts on small account holders may be seen (rightly or otherwise) as a means by which the bank recovers money lost as a result of poor banking practice in its larger loans. It is implied generally that corporate philanthropy applies to external and needy cases. One of the difficulties here is that for family businesses the philanthropy may be applied within the family. Indeed, one of the main reasons for the business may be to assist the family. In this case nepotism is the explicit motive.

Another form of philanthropy is that of debt forgiveness. Its major drawback is that the sense of amnesty it creates may generate an expectation of its application in future and other cases. Such an undesirable expectation would be counterproductive to the long-term profitability of the business. One may be philanthropic with time, money and equipment: less appreciated commodities that may be given are knowledge and data. Information is the lifeblood of business, and covers the span of business knowledge from technical knowledge to ethical insights. A readable account of corporate philanthropy is available (Knox & Ashworth, 1985).



Ethical Dilemma

Corporation Madrakuta has been a strong and consistent donor to arts projects, including art prizes, drama funding, religious charities and orchestra support. It is alleged by their critics that they are simply buying good publicity, cheap advertising, and gaining tax deductions in the process.

In response, the corporation asserts that they are returning to the country in which they operate some of the advantages that they, the company, have enjoyed. To this the critics reply that if they wished to return some benefit to the community it could be done anonymously.

The corporation counter argues that they are paying and therefore have every right to be identified with that support.

Give an opinion in this case.

With respect to corporate philanthropy some may regard it as a cynical exercise to make associated gains. That may be so, and is not necessarily a serious handicap to doing good work. Better still is when such philanthropy is invested with genuine virtue. Bright (2006) has addressed such an issue.

Whatever the reasons we do need to recognise that corporate philanthropy has some material advantages, such as tax relief and the capacity to recruit and maintain good staff. It also has some non-material advantages, such as improved morale, a sense of fostered merit and an improved reputation. This last point has some material consequences in that a good reputation has commercial value.

The authors know of one case where a large and benevolent company returns to the community which supports them. A senior executive in the last year of employment before retiring is given a philanthropic community task. The car and a small office go with it but the work done is for community

benefit. A replacement executive is installed and the about-to-retire executive is available as a mentor, and is in a non-threatening and non-interfering position. At the end of that year the executive retires having completed a worthy community task, has eased his or her replacement into the role, and has the great moral satisfaction of having done a really worthy task.

As a graphic illustration, Lifeline India is a BT/Cisco Systems/One World International joint venture. Their goal is to access information and give expert advice on agriculture, animal husbandry and agribusiness in Northern India (Blake, 2007). Farmers dial a designated number using interactive voice response, and ask their question. The organisation then searches the database before responding. If the database does not have the answer the question is referred to experts. This system provides evidence-based information and gives internet access which would otherwise not be available. The admirable part of this system is that it fosters self reliance: metaphorically speaking, it teaches them to fish rather than giving them a meal of fish.

ETHICS AND PROFIT

The twin issues of profit and responsibility affecting commerce are commonly seen to be opposed. These issues, it is argued here, have much more in common than in opposition. Plainly those in business are there primarily to serve corporate ends, of which such measures as profit and market share are critical. Companies also seem to be driven by quite reasonable concerns such as long-term reputation and the desire to contribute to the economy.

This contrast of perspectives between profit and ethics is more apparent than real. Corporations with a good reputation do benefit by having fewer problems recruiting and retaining good staff; they do not lose their best people to competitors. Losing a good staff member depletes one's own resources as well as enriching the competition, and is thus a double loss. The boost to morale by being ethical should also help to lessen depletion of human resource contributions by reducing absenteeism and productivity and by the reduction of pilfering, and of improper payments.

In the marketplace repeat business results from a reputation for fair trading and saves on advertising. Companies with a genuine commitment to ethical policies prevent most of the problems that commonly beset annual general meetings. Organisations with ethical commitment largely avoid the problems that happen to shadier organisations. A well-regarded organisation should have fewer problems with raising venture capital, fluctuations in share price, loss of market share or any of the conventional indicators of unsuccessful commercial activity.

Finally, if a problem were to occur, the evidence of ethical commitment of an organisation could act as a substantial defence against accusations, justified or otherwise, were a case to go to court, as is evident in some court judgements in which good intent is mentioned. Ethics may be regarded as good risk management.

A high-integrity ethical code also supports the reputation of an organisation. A firm commitment to ethics, as evidenced by objective pointers, supports an argument that a breach was an aberration. After the breach it demonstrates remorse and that the organisation is sincere in its intention not to re-offend. The use of an ethical code goes beyond specifics and addresses a broader range of conduct in that it shows a commitment to good citizenship.

Some empirical studies examine the connection between being ethical and being profitable. Two Canadian studies, for example, show that connection. One study used a rating system and found that the companies with the highest score on social responsibility over the long term also made the most money (Stoffman, 1991). A later study found a correlation between responsible performance and long-term profit (Bastien, 1997). Some American studies have looked at public companies with codified sets of ethical principles and found that they earned more, and grew more quickly than other companies. One particular study reported a similar finding in that those corporations using the 1997 Business Week ranking (which rates eight publicly reported measures of financial reporting) did better than those corporations that did not have codified sets of principles (Verschoor, 1998).

Imagine a case of a company in the business of food products being careless about hygiene. A widespread knowledge of this, with the company being defensive and non-responsive, would lead to a suspicion about their products, and of a consequent diminution of sales. There have been cases where a retailer has displayed a notice that '... we do not stock the products of Company X'.

The role of tainted food is important, but reports vary as to the part that is played by private for-profit organisations. Clearly, the use of flavours, colouring and other additives may contaminate or poison. Additives included in food may have a beneficial effect, such as making the food more appealing, but have side effects ranging from carcinogens to allergens. The World Health Organisation sees tainted food as a significant and widespread problem. Millions of children die each year from diarrhoeal disease.

Dehydration and disease contamination are strongly implicated here. Among the problems are: poor food handling practices, lack of hygiene, and the transmission of infections. Food storage at temperatures of 28 to 38 degrees Celsius, those most commonly found, are the ideal temperatures for producing pathogenic organisms. Education, community leadership, and practical guides are included in the measures most effective (see Sheth & Dwivedi, 2006). For a more recent account (see Cruz & Bahna, 2006).

Suppose we were to deal with businesses in cultures in which the competitive advantage is seen to be gained by tyrannical social policies and draconian labour laws. Would we rather not deal with them? That is a doctrine of retreat which, in the long run, affords no relief. One of the reasons that certain national institutions are admired is because of the relative absence of corruption. Education, business practices, political stability and social cohesiveness are all enviable qualities. It is the ethical stance which invests these processes that makes them admirable and it is the resulting reputational advantages that makes the companies profitable.

Within corporations, the advantages to be gained by ethical behaviour are that ethical commitment enhances morale and thereby helps to retain skilled employees, makes it easier to recruit good staff, reduces absenteeism and affirms loyalty and commitment to the organisation.

Organisations that do not regulate themselves invite regulation by outside agencies, maybe in a form that is less well informed and less palatable than self-governance. One example of a related initiative that seems to work well is the 'Quality audit review' of accounting practices used by CPAs. It is becoming increasingly obvious that inattention to ethics will incur compliance costs, which can exceed the cost of instituting an ethical infrastructure. This will be not only in terms of money but also in terms of reputational damage.

Also in the wider frame of reference it should be noted that what may benefit a company in the shorter term may hurt the wider social fabric in the longer term. Downsizing may help to contain a difficult

period in a company's life, but the redundancies result in social welfare payments for which we all ultimately pay. This is quite apart from the loss of skill and input to the economy as a whole. It is a waste of human resources and a burden to taxpayers.

A few years ago in USA, a Johnson & Johnson shelf product medication, Tylenol, was reportedly maliciously contaminated by an outsider. The company responded with immediate withdrawal of the product. That is in contrast to the reportedly tardier response of another major international company to its Bhopal factory disaster; and the equally tardy response of a major multinational, which allegedly, inappropriately marketed infant formula milk to Third World countries. That such reports may be true is of concern; that one of the companies responded immediately and responsibly is also important.

Here the principle seems to be that the response should be immediate, concern for people, animals and the environment and that it should be ahead of legal requirements rather than driven by them. Whatever the truth of these incidents, it is clear that a prompt and humane response is both ethical and in the company's interests.

This impressive range of arguments applies with greater strength in a global economy. The financial advantages of being ethical are too obvious to need elaborating. What does deserve emphasis is the contribution that ethics can make to the enlargement of our general as well as our commercial understanding. It is a significant means of promoting international harmony, and provides an acceptable forum for debates on values in a manner that does not always compare with other frames of reference. The point about the long-term benefits of being ethical is well canvassed in a book called 'The Loyalty Effect', which used the appropriate subtitle of 'The hidden force behind growth, profits and lasting value' (Reichheld, 1996).

This brief overview of the positive relationship between ethics and profit combined with our knowledge of commerce leads us to believe in the robustness of the direct connection.

Business ethics, like education may seem costly, but not as expensive as the alternative. We do not admire the shady entrepreneur, those fleecing the public and those expatriating ill-gotten funds to tax havens. Profit at any price is no longer an acceptable edict. The argument from Dickensian Britain, that the economy would suffer if children were no longer permitted to sweep chimneys is no longer tenable.

Exploitation is not admirable in any of its forms. Despite the current push to recognise the validity of diverse cultural ways we must conclude that some ways are less equal than others. There is nothing admirable at all in human exploitation of the use of slavery and of the manufacturing instruments of torture. At the risk of sounding like moral colonisers we have to conclude that some values are non-negotiable.

It is interesting to note that many business people have the idea that ethics is admirable but a luxury that is contrary to corporate objectives. It is also believed to be something that is an intrusion into serious business actions and that it is difficult to implement and maintain. What this section does is attempt to rebut the idea that ethics is inimical to profit; quite the reverse. Ethical behaviour and long term profit are essential companions.

A high-integrity ethical code also supports the reputation of an organisation. A firm commitment to ethics, as evidenced by objective pointers, supports an argument that a breach was an aberration. After the breach it demonstrates remorse, and that the organisation is sincere in its intention not to re-offend. The use of an ethical code goes beyond specifics and addresses a broader range of conduct in that it shows a commitment to good citizenship. Ethics is good risk management should be the view.

One of the major difficulties in determining whether or not ethics is (financially) profitable is the use of the criterion of measurement. If one were to use market share the answer may not be the same as if one were to use return on capital or dividend per share. That problem is exacerbated when one thinks of the time frame issue.

There are several notions about the relationship between ethics and profit. The polar opposites are that profit is the first priority of a commercial enterprise: the opposite view is that ethical responsibility is prime. The integration of ethics and profit should be capable of being rationalised but, as Le Menstrel (2002) argued, the reductionist approach fails to capture the complexity of the issue. What he did propose is an 'optimal' solution. Commercial behaviour should be neither, in his terms, 'venal' nor 'sacrificial'. The authors have never met anyone of good reputation who admired commercial cheats.

ECONOMICS, OPPORTUNITIES AND ETHICS

The text is not meant to be oriented to economic policies, but rather to deal with a set of principles that are not time or ideology bound. With economic opportunities come criminal ones, as well as opportunities for unethical profit. This applies strongly to developing countries, where there is a weakening of indigenous methods of social control and coping. This creates a need for central agencies of control. Third World countries undergoing social and developmental change find themselves open to political instability. As one sociologist has argued, such a change is '... a significant feature of the Third World (with) its preponderance of military dictatorships, feudal overlords, religious despots or foreign masters' (Cohen, 1982).

This 'opened economic opportunity' may apply to recent migrants in already developed countries; they have little to lose and much to gain. If one arrives with nothing there is no way to go but up. While the majority of immigrants will undoubtedly behave appropriately, there are those who become unethically opportunistic in their new environment. Adam Smith's 'Invisible Hand' may occasionally find itself behaving with ill intent.

With the current trend towards privatisation of public utilities one is never quite sure whether competition is the goal and privatisation the means or whether competition is the respectable word used to justify privatisation. One of the significant difficulties here is that privatisation does not necessarily involve competition. In the absence of public accountability there may be a real danger that some other ends are being served. 'Commercial in confidence' contracts that involve contracts on public utilities have no discernible justification. It is the public's money, with the public's ownership, and has the greatest significance on the quality of life of the public.

It is thought in many places that the drive to privatise such public entities as transport, electricity or water is for political advantage. Governments that outsource such service do not, when the services fail to meet standards, get the blame: it is shifted to the providing company rather than blaming the relevant government minister.

ETHICAL INVESTMENT

One of the difficulties is in defining 'ethical investment'. When that issue is discussed it often emerges that one person is talking about the environment, another about cruelty to animals, another about arms,

another about alcohol, another about gambling, and yet others about fostering human dignity and independence. These issues, and others, make up the category of things called ethical investment. However, before it may be meaningfully discussed one would need to be clear about its constituents. What is common to ethical investment funds is that moral principles are a key factor in decision-making.

A sequential screening is sometimes thought to be appropriate. The first filter would be to consider various products (such as arms, gambling, polluting, etc.); the second screen would be for such issues as the least polluting activities; the third screen might be for the way in which the staff of the company are treated. The most recent concerns have focused on the exploitation of terrestrial resources, global warming and pollution.

Debt often falls most heavily on those least able to bear it. The bigger the risk the higher the interest rate needs to be; thus the needy have an added burden. An ethical solution would be to avoid making the interest rate punitive. Among the points of consideration are the interest rate on outstanding debts, usurious rates of interest on unpaid balances, credit cards and the overdraft rate.

Whether or not ethical investment bridges the gap between social responsibility and profit was examined by Hellsten & Mallin (2006). Among the issues that they consider is whether or not ethical investment is for ethical motives or as a form of commercial rhetoric. They pose a set of questions that bear directly upon ethical investment. Among such questions are: Do the funds follow the principles that they have set themselves? Who is involved in such schemes and what is their motivation? Is the function of such funds that of moral awareness or of performance in the marketplace.

THREE BENEFICIARY VIEWS ON ETHICS

To pick a theme mentioned earlier, there are at least three approaches to fostering corporate ethics. As Gagne, Gavin & Tully (2005) have noted, they are: developing managers and employees as committed functioning ethical individuals; the second is fostering the corporate environment; the third is the implementation of ethical policies and practices.

There are three sorts of benefits that are conferred by genuine commitment to ethics: they are within the company; within the business community; and in relation to the community at large. With respect to the company the commitment to ethics among other things makes it easier to both recruit and retain good staff; it improves morale; and it diminishes the prospect of debilitating internal disputes.

With respect to the business community a good reputation for ethics brings a relative ease of raising venture capital; it gives stability to value and, therefore, to commercial advantages (including share price); and it affords a substantial defence against allegations of impropriety. Even where a breach of compliance is technical and must entail a finding of culpability, it can result in a mitigating argument for a substantial reduction in penalty—something that is under judicial discretion.

The larger community in which a company operates benefits from a genuine ethical stance: it brings a good reputation, brings extra customer for goods and services without the need for extra advertising. Few adverts beat word of mouth for efficiency.

The goodwill that is generated by good behaviour is, itself a valuable commodity. Even the most rigid of accounting procedures recognise the value of goodwill and it can be sold for a considerable sum. To these benefits we might also add that the quality of life is enhanced by the operation of reliable and honest dealing. That, in itself, is a form of corporate philanthropy.

GUIDELINES FOR ETHICAL ISSUES

Social and Environmental Accounting

Accounting is traditionally concerned with the financial description of economic events in a specific organisation to specified users, typically reporting to investors, management and the appropriate Federal or State government instrumentality. Corporate social reporting retains the focus on the organisation but examines the other constraints, the determinants of traditional accounting. Thus corporate social reporting, social accounting has three dimensions:

- To whom should one account? In addition to the investor and manager, can rights to formal and systematic information be claimed by, for example, employees, trade unions, consumers, local communities and society in general?
- How should one account? What are the limitations of financial description? Are there times when it might be best to account in non-financial quantitative terms or in qualitative terms?
- For what should one account? What are the restrictions that the description of economic events places on the picture presented by accounting? Should one also be accounting for employees, for the consumers, for the effect on local communities, for the effect on society, for the effect on the environment?

This topic, like so many others, has inherent difficulties. Among such difficulties are the absence of universally accepted regulations; the absence of wider benchmarks; the scarcity of annual disclosure on these issues; and an explication of stakeholder relationships. Even if these issues were less problematic there would need to be a balance between financial, social and environmental outcomes. A review of this area is to be found in several places (Gray, 1991; Gray et al 1996). There is also an account of the impact of such competing on the bottom line (Elkington, 1999).

These broad themes have led to many theoretical and practical developments. The most important of the theoretical developments is the recognition that traditional accounting is a tightly restrictive subset of a wider social and environmental accounting. This restriction is especially difficult to justify on theoretical grounds and is important in considering the current 'green' debate.

One of the effective ways of fostering ethical support is to require triple bottom line reporting. The necessity to have a line item requiring a report is, at least, a firm impetus for those responsible to report something that has been done. A necessary heading with nothing under it, would be so embarrassing as to compel something be done simply in order to have a report. It may not be as good as a sincere commitment but the world is improved by burning candles than cursing the darkness.

Our moral concern for the consequences of commercial-industrial activity is now more readily appreciated. To that purpose, Sparkes & Cowton (2004) have linked socially responsible investment with corporate social responsibility. In their article they argue that socially responsible investment (SRI) has now become mainstream, and is a practice increasingly favoured by institutional investors. This movement has implications for shareholder pressure and for lobbying campaigns. The important point we should know is that the increasing sensitivity to sustainable development now forms a significant part of that push. The effects of globalisation, global warming, drought, intemperate weather, and pollution are now critical variables.

Governments have a general protective role, including that of protecting consumers. The protection that needs to be afforded is not to deny the principle of caveat emptor (let the buyer beware) but rather, to allow the consumer to make a rational choice. Whatever that choice, the consumer has the right to expect that goods or services meet certain standards (that the food is edible; that the toaster will not catch fire; that a professional is state registered to practise, etc).

In the global sense there is a problem of wider implication. Although we regulate imports and exports we do far less about pollution. The overdependence and thus depletion, of fossil fuels, the emission of pollutants are issues with global ramifications. It may be of benefit to the company, but to the detriment of the world community.

There is a more homely work on ethical living, written by Clark (2006). That work deals with a wide variety of relevant topics; including organic food, ethical investment and sweatshops. One of the charming expressions used in this work is 'greenwash' (an ethical view that cuts through dissimulation—and a neat twist on 'whitewash'). There are tips as varied as pensions information and reducing your carbon footprint.

Privacy and Freedom of Information

This issue is one of critical contemporary morality. The right to personal privacy is one that is more tacitly than expressly agreed—but is no less real. Intrusions may take many forms, some examples being the collection of irrelevant information; selling information; computer data matching; surveillance; and improper publication. Personal privacy principles have been tested again recently on the issue of whether or not work colleagues, or employers, should be notified if an employee is HIV positive or has AIDS. Here the issue is the preservation of medical privacy balanced against the risk to fellow workers and to potential victims.

For some employees, such as first aid workers and hospital employees, the risk of infection may be real; in other cases, where there is virtually no risk, a notification can cause unnecessary discrimination. The guiding principle here is that of the 'need to know'.

The management of information by computers poses a new technological threat. This includes improper data entry to computers, stealing from files, the introduction of computer viruses and illegal data matching. This latter point is recently developed and a grave threat to personal privacy. Single items of information about an individual reveal something, but the matching of data from different sources may reveal far more than is acceptable.

Among the data banks from which matching might take place are medical records, police records, applications for credit, financial sources, the defence departments and social security agencies. Information from these sources, when used in concert, may lead to conclusions not available by any other means. The concerns in this field are well canvassed in a book called *Big Brother* (Davies, 1992). The advent of the computer has made easier the retrieval of information; the linking of computers has made matching easier.

We may imagine a case in which the medical records show someone to be HIV positive; the police records show that this person has been convicted of a drug possession offence; the taxation office records show that payments due for child maintenance have not been made; and the subject was declared a security risk by a national security organisation. This information, used in concert, could lead to some accurate conclusions: they could equally well lead to erroneous ones. There are two difficulties here;

one is that the subject is unlikely to know that any conclusions are being drawn about him or her; second, some of the basic ‘information’ may be of dubious authenticity.

Breaches of personal privacy may be reduced by providing criminal penalties for those gaining, disseminating or using information illegally. Rendering such actions illegal makes breaches riskier and prevents their use by formal organisations. In other words, the use of sanctions increases the risk to offenders and reduces the payoff to users. The scope of application of such a prohibition to all cases will be debatable. From journalism to national security, from credit organisations to research, one may imagine arguments for exemption. Perhaps the universal ban might be supplemented by exceptions on the basis of public interest, as declared by a court.

Not surprisingly, it is government oppositions that press hardest for such legislation: incumbent governments tend to resist disclosures since these have the greatest capacity to embarrass them. Running counter to this is the issue that some state governments have enacted legislation that denies to the public information that is pertinent to publicly owned (and some now privatised) instrumentalities. Such denials could mean that the public have no way of knowing how these bodies are performing.

That such enterprises might mimic public corporations could be used as an argument for exempting them from public scrutiny—but they are not private corporations. Recent experience with a wide range of government organisations has shown that both public scrutiny and the distinct possibility of such, are powerful deterrents to mismanagement and corruption.

Shareholders and Stakeholders

It is worthwhile here to make two distinctions. One is between stocks and shares; the other is between shareholders and stakeholders. ‘Stock’ sometimes refers to a capital sum loaned to a company in perpetuity: shares are the proportions of ownership of a company. More often these terms are used interchangeably. How they are used depends upon the country’s law and its customs. It is also noteworthy that the shares exchange is called the Stock Exchange. Readers are advised to note the usage in the country under consideration.

Shareholders differ from stakeholders in that the former have a direct financial interest in the company. Stakeholders are those that have a stake in the enterprise, but not of a direct financial and ownership nature. Among stakeholders would be such entities as suppliers, consumers, transport, the taxation authorities and landlords. Taking that still further, all citizens might be considered stakeholders in the sense that they are all participants in the national and international enterprise.

Shareholders’ motives may be to invest for a fair return on capital, to show approval of what the company is trying to achieve or because of the feeling that the investment is making a contribution to the national economy. Shareholders may be concerned about advertising, how it may affect both profitability and the public profile of the company. If the purpose of a company is to make a profit it does not follow that the profit should be made at all costs.

A balance needs to be struck between the need to make a profit and the need to behave in a way that protects the legitimate interests of all stakeholders; including employees, shareholders and consumers. Shareholders may wish to support a policy of requiring investment to be only in ethical trusts. Managers of ethical trusts scrutinise companies for honesty, environmental safety and social responsibility. Such a list excludes companies that engage in gambling, arms manufacturing, tobacco and alcohol sales, animal testing, destroying the environment and in exploiting Third World countries.

One strategy would be to consider investment in sectors in which the chosen ethical grounds are not perfect, but to select the company that best approximates them. This financial vote of confidence is a recognition that we deal in an imperfect world, but give encouragement where it is due—and is more likely to improve. As one writer put it, ‘the best encourages the rest’.

Getting hardcore information on which decisions may be made is problematic for the average investor. With some initiative, the prospective investor can use the commercial financial advisers who run substantial research departments. It is also useful to consider looking at reviews available in the public domain, usually in journal article form. For an example of corporate, social and environmental reporting see Miles, Hammond & Friedman (2002).

The Upside of Business

This discussion of the ethical downside of business needs to be countered by one of its signal virtues. Lloyd (1990) argued that ethics is an essential component of business, but that business is a new life-form. He said that by human standards companies have the virtue of feral energy which seethe with suppressed violence. It is a vehicle for instituting new enterprises, products and services so that we accept it as a ‘... necessary evil’. As he went on to say ‘... the company, unfettered and rampant, is a familiar villain in the dystopian visions of the future ...’. As the company is a non-moral species it is motivated by the will to survive. It has no inbuilt empathy or morality.

As Lloyd said, ‘...we try to contain our “enfant terrible” by company law, anti-trust agencies, standards organisations, food and drug licencing authorities, regulatory bodies and pollution control agencies’. Against this seemingly serious detriment, companies have done much to be admired. As Lloyd put it, they created wealth out of chaos and work out of idleness. Business enterprises are characterised by vigour and achievement. While businesses may be cruel, and even predatory they are never cowardly or indolent.

It is this new life form, the corporate entity, which should excite our admiration. The contributions that it made, and continues to make, improve the quality of life, just as much as do democratic reforms. Without the enterprise and energy our life would not be as rich, nor as satisfying as it is today. What is essential is that ethics is seen as a means of counteracting its excesses, and of providing a more spiritual frame of reference to the goods and services that business so ably provides.

Summary of Chapter

This chapter expands on the issues outlined in the Introduction. In particular it outlines some of the money issues involved in ethics. Such issues range from the ethics of corruption, bribery and late payment of debts to the principles behind tipping. Additionally this chapter discusses some other salient issues such as research, social and environmental accounting, privacy and stakeholder issues. Lest it be thought that business is somehow ethically dubious the strong point is made that business is of enormous benefit to us all. The world would be a sorrier and poorer place without business enterprise. It is the containment of its social excesses that ethics seeks to contain.

Multiple Choice Questions

Select the best answer from the options given.

1. The basic justification for ethics is
 - A to maximise profitability ☐
 - B to behave according to agreed rules ☐
 - C to build a commercial reputation ☐
 - D to satisfy malcontents at AGMs ☐
2. A conflict of interest may be defined as
 - A where a disparity of wealth upsets balance ☐
 - B where one party is a bit vulnerable ☐
 - C where there is a breach of the equity of relationships rule ☐
 - D the doctrine of the separation of powers does not apply ☐
3. Bankruptcy is
 - A where the organisation is insolvent ☐
 - B where an organisation is corrupt ☐
 - C where an organisation is delisted on the stock exchange ☐
 - D where an organisation has a cash flow problem ☐
4. The late payment of accounts necessarily involves
 - A incompetent accounts clerks ☐
 - B a cash flow problem for the business ☐
 - C a policy of withholding payments ☐
 - D incompetent banking practices ☐
5. Bribery & secret commissions are
 - A culturally acceptable ☐
 - B unacceptable as business practice ☐
 - C Alright under certain circumstances ☐
 - D Are OK if they are called something else ☐
6. Tipping is
 - A a form of tithing ☐
 - B an arbitrary custom ☐
 - C a means of profiteering by business ☐
 - D something to be fostered for goodwill ☐
7. Corporate philanthropy is
 - A the donation of cash to worthy causes ☐
 - B the donation of time to worthy causes ☐
 - C some other donation to worthy causes ☐
 - D all of the above ☐

8. Self regulation of ethics is
 - A the best system available ☐
 - B one that requires legal backing ☐
 - C a good way to start ☐
 - D the worst possible way to start ☐
9. Ethical investment
 - A is an investment of time ☐
 - B an investment of money ☐
 - C an investment according to value principles ☐
 - D an investment that avoids shares in tobacco ☐
10. Stakeholders
 - A are the same as shareholders ☐
 - B may be the same as shareholders ☐
 - C are not employees ☐
 - D are members of the Stock Exchange ☐

For Discussion

1. An organisation is persistently late in clearing its accounts—commonly running to three months. This practice causes serious harm to smaller businesses as it makes their cash-flow problem one that threatens corporate existence. What principle is being breached, if any? What can a smaller organisation do about it?
2. An organisation is one that depends heavily upon research. It does not have a research ethics committee. It has been put to them that they either have one, or should refer their research proposals to some other relevant committee. Their response indicates that they think themselves so ethical that a committee is not necessary. You have been asked to write a position paper on this topic. Write it.
3. On the Transparency International website there is a ranking for countries by their propensity to corporate corruption. Look at that website, find India's ranking and comment.
4. The idea of corporate philanthropy is opposed at a shareholder's meeting, on the grounds that the business is there to maximise profit rather than give away money or services. Are the notions of profit and philanthropy anti-thetical?
5. Tipping may be voluntary, but it can turn into a coercion to provide more than the agreed charge for goods and services. What guidelines might be written that would help clarify its role?
6. Responsibility to shareholders has recently transformed itself into a concern for stakeholders. What is the distinction? Is it a useful one?

3

CHAPTER

Some Basic Principles in Ethics

INTRODUCTION

What is particularly interesting in India is the number of deeply and sincerely held separate faiths: they include Hinduism, Jainism, Islam and Sikhism. What those systems enjoin, consistently is, the value of such things as concern for insights, care for others, honesty and fair dealing. However, the views expressed in this work are more in the line of the explication of those traditions in business ethics derived from the West. The reason for this is that modern business is mostly a Western derived concept, and has thus developed a set of explicit precepts and of practices that act as a guide to modern global business. It is, in other words, the common ethical framework that now invests global business.

Ethical Dilemma

A particular country has a dominant religion, having 85 per cent of the population holding to that belief. The government decides that non-believers and believers of other faiths, should pay a tax or tithe.

What are the moral issues here?

Which principles for resolving this issue are the relevant ones?

Is this any different from the case where a particular religion tithes its members 10 per cent of their income in order to fund that religion?

What do you conclude?

LANGUAGE OF GLOBALISATION

It would be astonishing if the worlds' major religions and the run of common humanity, were at odds: largely, they are not. So many problems in ethics are common and historical. Such issues as honouring others, disparities of wealth, and religious tolerance are examples. More recently the formulations of covenants on human rights, fundamentalist intolerance, global terrorism and general vulnerability are everyday concerns. To that we now add moral issues that stem from new technology which were not previously possible. For example, the possibility of implanting an egg of one woman into the womb of another who then bears the child, poses the dilemma of who is the mother (the biological mother or the birth mother?). Where do ownership, loyalty, genes and affection come to balance?

The Upanishads were composed over many centuries, with the earliest from the 8th Century BC. At that time the notion of business, as we know it now, was not a social institution as is currently known. Both the core thought and spirituality expressed there are still generally relevant today.

Thus, the Vedas might now need extension and re-interpretation to accommodate modern dilemmas. Among such issues are the modern views of animal sacrifice, of sexual mores and of the alignment of national versus religious versus tribal versus cultural values. It is noteworthy that the Vedic commandments are ones that give honour to significant others; parents, mentor and guests. Such honour is enjoined in other religions, in other customary law and by common courtesy and is thus an expression of what comes close to a timeless verity (see also Knapp, 1998).

Mystical insights may be a guide to moral behaviour but the problem there may be that such insights may differ from one to the other. The mystical insight is a personal revelation and individually meaningful, is not quite the same as a divine revelation that comes from the godhead. That is the same sort of problem encountered by the Western notion of the weight given to individuals' rights versus the rights of society—evident in such ideas as the 'greatest happiness of the greatest number'. Under that idea one might be asked to sacrifice individual rights to accommodate general happiness.

PRACTICAL BENEFITS OF ETHICS

One might ask what practical benefits flow from ethics. This is a question more commonly asked in Western contexts than in Indian ones. Where such an answer is needed some of the following arguments have been found to be persuasive.

In-house,

- It promotes the use of a common standard and, thereby, diminishes debilitating disputes.
- Morale is improved.
- Absenteeism is reduced.
- Good staff are easier to recruit and to be retained.

Within the market;

- It enhances the corporate reputation.
- Improves the prospects of raising venture capital.
- Boosts market share and share price.

- Generates sustained profit.
- Establishes credibility in the eyes of the business media.

Within the wider community;

- It is a proactive strategy for dealing with the media.
- Acts as a defence in hostile forums.
- Gains customers with least promotional expenses.
- Improves the quality of life of all.

To this we have the counterpoint of why some organisations do not seem to value ethics so highly. Among such beliefs are that it is not profitable, it is largely irrelevant, it is time consuming without comparable value, that it is vague, and that it encourages whistle blowing. Some of these points may well be true and thus the need for effective rebuttals. To take one example, an organisation that had a low belief in the value of ethics finds itself in a disaster situation. Not having a humane restitutional policy, not having a legal defence to exploitative behaviour and having a media reputation that is adverse, could all cost the company dearly.

ASPECTS OF ETHICS

Remoteness of relationship makes it easier to behave unethically. Dropping a bomb is a less harrowing way of killing than is stabbing, at least to the perpetrator. Politicians removed from their electorates may find it easier to behave with less consideration for their constituents than they would to someone with whom they have day-to-day contact; cheating the tax office is seemingly less harrowing to the conscience than is cheating a brother. The key here is the concept of closeness.

It has been a sorry time recently for those concerned with ethics in both public and business life. Incompetence, venality, public corruption or negligence have been very much in evidence. Difficulties do not seem to have been confined to any particular jurisdiction. Recently there have been reports that starvation and malnourishment in India have been exacerbated by corruption in the food distribution system. Among the problems are those of caste prejudice, black marketing and local government failure to exercise proper control.¹

This litany of woe has a brighter side. Social, professional and business prominence does not seem to act as a barrier to being brought to account. Professional acclaim has not stopped prominent so-called researchers from being arraigned before professional tribunals; nor has prominence prevented ethical informers from raising their just concerns, and eventually being heard. What we cannot know is how many cases have been concealed and may never come to light; every silver lining has a cloud. Ideally, ethics should reflect social values and be responsive to them, but be above particular instances. They should not be at the whim of a particular pressure group or a political movement or ideology.

Individuals display an astonishing variety of response to ill fortune. Among such instances are those of a taxi driver stopping to rescue a person from a burning car and having his cash stolen while absent from their cab: of there being disasters wherein people will rush to help the victims and others will

¹ See Asian Legal Resource Centre; http://www.alrc.net/doc/mainfile.php/alrc_statements/417

follow though just for opportunities to look. Some individuals are psychopathic (guiltless, loveless and amoral); others have dedicated lives in the service of other people. To formulate a set of precepts and sanctions that would serve all cases equally is far from simple and probably not achievable.

RELATIONSHIPS AND VALUES UNDER CONSTANT TEST

Relationships are under constant test, the limits being special challenged by social deviants who do us a service by offering continuous challenges to accepted standards; thus not all deviant acts are harmful to group life. This point of view is provided in Erikson's analysis of the Pilgrim Fathers in America, and the general way in which that society treated deviants. He noted that deviants provided pressure towards making clear the basic social standards. The expulsion of extreme deviants cemented the remaining community in its agreed lifestyle and standards. The drawback of the harsh treatment of deviants is that it reduces social diversity and tolerance; it also reduces civil liberties as that society deprives modest dissenters from enjoying the benefits of the right to be different.

One of the unintended downside effects of anti-discrimination legislation is that it deprives us of the cultural debate that might so readily enhance our wider understanding of cultural issues. Those in power who act against the legitimate interests of dissenting individuals and groups are guilty of socio-political crime. The UN has paid attention to this topic and notes that a victim of crime or of the abuse of power, may be anything from an individual to an organisation; and that the harm may be more than physical including mental and moral.

A more homely instance of the importance of social values is that of the marketing and use of video games and video nasties. Such games that admirably highlight violence, the degradation of women and exploitation of the weak (for example) must generate an attitude of contempt. The incitation to violence, the adulation of bigotry, war and bloodshed have nothing to commend them. This point is particularly true for the young, who are the most common users of such 'games'. 'Amusement' arcades may well cater, in part, to the lowest common denominator; to the socially inadequate (people who take refuge from people in things).

EQUITY OF RELATIONSHIPS AND ETHICAL BEHAVIOUR

The dissonance of relationships is the basis of 'unethical' behaviour. The misuse of power imbalances a relationship. For example, a boss who wanted subordinates to confide in him for 'therapeutic' reasons would be misusing power. The role for which he or she is untrained involves a conflict of interest that could act to the detriment of one of the parties. It is probably true to say that the concentration of commercial or organisational power into too few hands is to the long-term detriment of both the organisation and the public as it is meant to serve, recalling Lord Acton's dictum that '... power corrupts, and absolute power corrupts absolutely'. Our notion of justice is essentially one of equity. There can be little justice where power is unequal.

There are occasions where vulnerabilities are self induced, where equity is disturbed by gullibility. A striking overseas example is the instance of the Australian Securities and Investments Commission (ASIC) testing gullibility by putting an advertisement out on April Fools' Day in 1999. Its aim was to make investors more cautious. The fake 'scheme' was an invitation to invest in a Swiss company set up

to provide blue chip companies with insurance against year 2000 millenium computer bug problems. That fake advertisement yielded 233 firm investors who committed more than \$4 m and a further 1,200 people asked for more information. The Commission informed the potential investors and destroyed the records. This experience should surely provide a cautionary message to those who were duped.

ETHICS AND THE VULNERABLE

One of the basic tenets of ethics is the principle of equity. The exploitation of the vulnerable is a particular expression of the breach of that principle. We do not admire those who take sweets from children, who misuse monopolistic power, attempt to negate the doctrine of the separation of political powers or criminals who attack soft targets (such as the aged, the lower caste and the frail). It is the imbalance of power, the unevenness of the contest that offends our sense of ethics. To this end we might note that equity is not only a principle but also a guide to what to do. If in doubt about an ethical course of action, choosing the solution that leads to restoration of balance of power is as good a guide as any.



Ethical Dilemma

An Ashram trustee is also a practising accountant. In the course of his Ashram duties he discovers an obscure piece of legislation that enables the organisation to avoid paying a particular tax on a related commercial enterprise to which it would otherwise be liable. He uses this knowledge for the benefit of the Ashram.

The case comes to the notice of the other trustees who, in turn, ask you to consider whether or not any ethical principle has been breached, and how it would seem if the accountant were not a trustee.

Interdependence demands equality of obligations and it makes no difference whether the obligations occur in a commercial, governmental or professional context. In the professional context a consultant's time is equalised by the payment of a fee; the confidence shown by a client are matched by an undertaking to keep such confidence. The professional consultant must treat clients with consideration because to not do so would harm the client; it would also harm the reputation of the practitioner and the profession. One cannot have a situation in which one side has all the rights and the other all the duties.

In the conventional method of having children the relationship of parents to each other and to the child is understood and balanced. In some cases of *in-vitro* fertilisation the balance is upset. Consider the case of a woman who is unable to carry a child but can supply an egg. To use a dilemma adverted to earlier in this Chapter, a fertilised egg is transplanted in a host mother (the birth mother) who, after birth hands the child back to the biological mother. The understood two-way relationship of mother and father parenting is unbalanced. Who is the child's mother? It is precisely this lack of balance that is at the heart of the ethical dilemma.

The equity of relationship may be one of equality of background and understanding or it may be one of equality of information. In the former case one might imagine an accountant and a solicitor entering

a contract. Both are well qualified professionals and both understand the need for advice from other professionals. One gaining at the expense of the other is seen as a matter of acumen rather than ethics.

An inequitable case would be that of (say) an art expert, approached by an old person having poor sight selling a picture she believes to be of no special value, whereas the art dealer knows it to be worth a great deal of money but does not reveal its true worth. In this case there is an inequality of background and inequality of information. Our ethical sense is offended because of the uneven contest. There are two principles here. One is the equality of interlocutaries: the other is the equality of information.

Our sense of ethics seems to require that we have a sense of equity of both before we agree that a decision is an ethical one. Ideally, a fair judgement should be between well informed equals and it is the absence of that equity that arouses our concern. If everyone were to act according to the loftiest ideals and with warmth and goodwill, no such guidance would be necessary. Given that we need such guides with simplicity of application, equity of relationship becomes imperative.

DEFENCES IN PRODUCT LIABILITY

The recording of decisions and information about suppliers is important to defences in product liability actions. Among the several issues that need to be canvassed are a system of product recall, appropriate insurance and early notification of product problems. There are at least four defences a manufacturer could use in product liability litigation:

- That the defect did not exist at the time of supply.
- That compliance with a mandatory standard caused the defect.
- That the product met the state of scientific and technical knowledge of the time.
- That the action goods were comprised of other goods for which those manufacturers were responsible.
- That the purchaser used it improperly

All of these point to the need for up-to-date information, good record-keeping and a firm commitment to quality control. It also requires an insight into the more complex aspects of product liability legislation.

INTERESTS OF THE SMALLER SHAREHOLDER

It is only recently that we have seen the interests of the smaller shareholder being asserted. The common belief earlier was that annual general meetings of larger companies were a formality, with the interests of the large investors being paramount. Among the concerns of the smaller shareholders were decisions of the board apparently detrimental to the interests of minor shareholders, dealings between the organisation and other companies in which directors had interests, the emoluments of directors, the accuracy of accounts and the rights of smaller shareholders to be heard.

One may imagine some interesting challenges. Suppose a minor shareholder were to demand an adjournment on the grounds that there has been director-related trading in the company shares. Ordinarily a minor shareholder would not necessarily have the votes to call for an adjournment but, with allegations of legal impropriety, it could work. It could be that none of these allegations was true, but the right to express them is important.

Questions may be raised by minority shareholders at company AGMs. The issues cover the broadest possible spectrum of corporate matters. Whether or not the seeming improprieties or denial of information are justified is not the point. Openness and accountability are principles of consequence. None of this is to be taken necessarily as a criticism of the organisations concerned.

The point is that there should be a mechanism that makes boards accountable to their smaller shareholders: boards of directors should be signalled as having failed to heed the concerns of smaller shareholders. While these bodies do not have a brief to specifically protect the smaller investor, a perceived failure to do so, and the disposition to conceal material information such as directors' benefits, may come to have a long-term detrimental effect on the willingness of the public to invest.

Ethical Dilemma

You are the CEO of a small manufacturing company in Pondicherry (150 employees). It has come to your notice that a rival company has gained illegal access to one of your engineering secrets and intends to use it for commercial gain. The intended use will have an adverse effect on your commercial viability. Your legal advisers tell you that recourse to law may not stop the rival company's action. Further, legal avenues are slow and expensive. It has been suggested by one of your senior managers, that a private investigator should be engaged to find information that might be used as a lever to restore your position.

What are the ethical issues?

POWER AND THE PROFESSIONS

The groups who may exercise or misuse power are the professionals, the unions, social control agencies and quasi-governmental bodies that control business. Trade practices acts commonly (though not always) outlaw price fixing/collusion. (Airlines have been fined \$500 million for price fixing and collusion and making monopolies and duopolies. This trend will probably be increasingly applied to the professions e.g., the easing of prohibitions on advertising). Professions are supposed to be distinguished by training, by the availability of a body of knowledge, by standards of professional qualifications, by the recognition of status and by their organisation into professional groups.

Those points are becoming increasingly apposite to business, resulting in the distinctions between business and professional work becoming increasingly blurred. In the near future it is predicted that the strictures and product controls that apply in the commercial world will be applied to professions. It is interesting to note that 'commercial standards' may be praiseworthy or pejorative, depending on the context of the remark ('mere commercialism' or 'not good enough to be marketed').

Expanding that idea might see its application of ethical strictures to unions. Preferences, prohibitions, non-democratic decisions and special privileges may become the subject of legal scrutiny and control. Legal chambers, the consulting room, the shop floor and the marketplace have enough in common to have us consider a collective set of rules.

LABELS AND VICTIMS

The application of labels does nothing for our understanding; deciding who is the victim, is of major concern. A succinct typology might be:

- Primary victims are those persons suffering directly.
- Those individuals financially or psychologically dependent on primary victims, for example spouse, child, parent.
- Those individuals whose lifestyles are greatly inconvenienced.
- All income tax payers, ratepayers, insurers, consumers and the like who have to pay higher charges.
- The wider society for whom it has a generally debilitating effect.

The social and civil relationships that most citizens enjoy within their countries may not be equally applicable to all those within national borders. A lack of perceived social stability among wanderers (gypsies, indigenous people on nomadic treks, hobos, tramps, itinerant labourers and other social transients) makes them a ready target for accusations of anti-social behaviour.

Wanderers are a group who are in society, but not of it. The significant feature here is that they are migrants who never arrive. Itinerant workers move to where their spirit takes them or, at least, where they perceive work to be available. As such they differ from mendicants, tramps and those whose intake of intoxicating substances make them unemployable. One might argue that wanderers do provide an essential pool of labour, but their members are vulnerable to exploitations by virtue of their lack of local ties and local support. For this reason they deserve consideration as vulnerable people.

FORMAL VERSUS PERSONAL RELATIONSHIPS

Relationships within organisations may be formal or personal. Where they are personal there may be a conflict of interest in that personal interests may be at variance with those that benefit the organisation. Office politics may cut across both of those issues. The perceived imperative of boosting one's career through administrative strategies may not be in the best interests of the organisation, but is nonetheless a powerful motive. Parkinson's law, that entertaining but nevertheless serious account, makes this point most aptly. How could we begin to understand organisations without the insights given to us by Parkinson. His analysis of how to boost your importance, for example, is one wherein one tries to acquire more underlings so that one is elevated by the increase of staff reporting to one.

It might be argued that relationships between individuals are the basis of all relationships; but that is to ignore the independent identity and temporal continuity of organisations. Large unions, nation states, traditional associations and religious institutions all have an identity that is greater than any of the individuals of which they are comprised. Some organisations have a corporate culture so strong that it resists changes by individuals who wish to subvert it (older traditional societies and universities, for example); other organisations have so evanescent a culture as to be readily subverted (such as new organisations with weak leadership).

DIFFICULTIES IN SOCIAL-BUSINESS RELATIONSHIPS

Difficulties in business relationships often turn out to be difficulties in the relationships of key players. To love everyone is an improbable counsel of perfection; sometimes one is obliged to have working

relationships with those with whom one would rather not associate. Fortunately for business and thanks to conventional courtesies, we have developed ways to cope with those whose personal style we dislike.

One particular relationship that may be detrimental to business is that of nepotism. It is not a method of personnel selection openly admired although some cultures regard favouring the interests of family and friends to be laudable. The exception to this general principle is that of family businesses one of whose major functions is to provide jobs for family members, rather than for those who may be better suited by qualifications or experience. The issue of nepotism largely is of dubious morality when it pretends to be other than what it is.

If it is understood that jobs within the family company are meant for family members, that is not a problem; it becomes a problem if there is a pretence (such as a false advertisement). In some cultures the exercise of nepotism may be the essence of ethical behaviour. Promoting one's own family, group or cohort could to some, be the only proper way to behave. This issue is one of loyalty and poses such questions as: when is staff poaching wrong and executive headhunting right? When is co-operation right and monopolistic or cartel behaviour wrong?



Ethical Dilemma

A contract position to supply an expert consultant to a hospital is advertised. You apply for the contract and learn that you did not get it because the consultant should preferably have been a member of the religion that runs that particular hospital. The hospital is a large one, and has a public and a private section. The advertisement did not specify religion as a criterion.

Is the basis of rejection a reasonable one?

GOODWILL

Goodwill is critical in relationships. Friendliness is highly rated by many companies because it evokes self-confidence, openness and co-operation. It is much more highly prized than being aggressive and competitive. This influences the notion that one of the most attractive qualities of companies exhibiting at careers fair is the friendliness of their representatives. Companies might have thought that the value of friendliness should be interpreted as a symptom of a lack of discipline and might have preferred their corporate personality to be characterised as tough, hard headed and resolute.

That attitude now seems to be changing with the perceived need to compete with other economies. It may be borne in mind that friendliness may take different forms. One form is that of being environmental friendly, another is that of being approachable, another is that of the friendliness of ease of setting up and running a business, another is that of being tax friendly. There is no doubt that a good score on these various manifestations of friendliness is attractive to business. No one wants to deal with a bureaucracy in which the guiding principle seems to be that of '... having a difficulty for every solution'.

LEADERSHIP

Leadership is about loyalty to persons or to ideals and entails being high profile. Leaders are highly visible, otherwise they are not leaders; thus prudence demands higher standards of them. There is a need

to give clear and unambiguous messages to subordinates; appearance may be more important than substance. Leaders should be seen to be acting according to principle, although it is tempting to suppose that some leaders have their following because they seem to have a will of iron: they may be wrong, but they are not afflicted by the doubts that assail lesser mortals.

Leaders must work with others within the organisation: (1) to understand the organisation's strength, weakness, opportunity and threat; (2) to understand the organisation's prevailing culture; (3) to create a vision of the desirable future and obtain buy-in; (4) to design a strategy that moves the organisation toward the envisioned future; (5) To integrate the various business and functional units in implementation of the strategy and to monitor and evaluate progress; and (6) to institutionalise achieved changes and make continuous change an integral part of the organisation's process of functioning.

Conflicts between individuals and organisations can be problematic. Often such difficulties stem from a conflict between the principles of the organisation and the wishes of the individual; and often entail a dispute over ethical principles. Examples are differences between unions and employers on redundancy issues, between individuals and management on occupational health and safety issues, and contractual obligations between individuals and organisations.

In this there are a number of dimensions, including those of whether or not the conflicts are healthy challenges leading to growth with goodwill, relating to the prevailing culture of the organisation. Seeing conflicts as opportunities to resolve and develop is constructive: to see conflicts as ill-expressed aggression is not constructive and is very expensive in financial terms. The analysis of the roots of conflicts and whether the agenda is open or hidden is vital here.



Ethical Dilemma

Your organisation is trying to develop and market a new labour saving device for the kitchen. In the product development division, a substantial variation of viewpoint is being expressed: one side holds that it is unfair to develop a shiny new kitchen toy, likely to be bought only by the wealthy—effort should be put into developing a product of maximum use to the underprivileged. The other side holds that the mission statement of the company is to develop any product that is ethical and legal, thereby boosting shareholder value.

How would you assess the relative merits of these arguments?

How would you know if the debate was constructive or destructive?

How would such a dilemma be most readily resolved?

INDUSTRIAL RELATIONS

Industrial relations are a significant feature of employee issues. Such issues include the less tangible quality-of-working-life (including status), scope for self-development and self-fulfilment, comradeship, pride in skill, a sense of belonging and value to others of the work done. Apart from these intangibles there are specific material issues such as fair wages, personal security and occupational health and safety. Of critical importance are the right to give and to withhold labour, the right to strike on vital issues of employee concern and the right not to suffer discrimination because of an ethical stance.

Running across this consideration is that of tribal and religious allegiances. Such loyalties run to great depth and often are the source of the world-view of its members and adherents. Group loyalties can be of immense benefit as well as potentially divisive. To disregard such group loyalty considerations from industrial relations would be as crass as leaving accounting standards out of annual financial reporting.

Professional relationships, as distinct from personal ones, are not totally dependent upon payment. The understanding that the relationship is a professional one is enough to make it so. For example, someone receiving treatment from a medical practitioner should not receive inferior treatment next time because a bill has not been paid.

ORGANISATIONS AND ETHICS

A Western analysis may liken the modern corporation to the medieval Christian church. The church has its hierarchy (bishops and laity/CEOs and workers), rites (services/company songs), ecumenism (mergers), sackings (ex-communication), and catechism (selection tests). Whyte argued that the modern corporation now minds its believers in a manner that emulates the medieval Christian church—those who remain within the fold are provided for from induction to death (womb to tomb or at least from first employment to retirement).

More recently Anthony Jay has applied the principles of Niccolo Machiavelli to this area. He argued that Machiavelli's frankness and amoral stance make an ideal guide. Parallels were drawn between instances of regal and baronial behaviour and those of modern corporations. Conquered principalities correspond to taken-over firms.

Religious faith equates to belief in the company philosophy and products. The reason that faith must be asserted and enforced is that, to use Jay's words; '... in corporation religions, as in others, the heretic must be cast out not because of the probability that he is wrong but because of the possibility that he is right'. Jay's analysis ranges over issues as divergent as the Danish conquest, naval policy and the British Royal Court. The parallels of these expositions are both instructive and persuasive. One could well imagine this analysis extended to an Indian context.

Ethical Dilemma

You are a senior executive of a middle sized manufacturing company in Chennai. The perceived view of the company is that quality and timely delivery are critical. Whatever else the company does it must be dedicated to producing a quality product.

The goods that you manufacture include armaments, land mines and cluster bombs.

Among the concerns you feel is that civilians are often the ones most endangered by those weapons and that the company view is both morally and commercially mistaken.

What is the ethical position?

What can you do?

What would you do?

CORPORATE CLIMATE AUDITS

There are several ways in which corporate climate functioning might be measured. Among the more obvious measures are those of staff turnover, absenteeism, customer/client complaints, sales (or clients seen), amount of service provided, quantity and quality of products, increases in receivables and decreases in orders or referrals. Organisations, like countries, have a prevailing social climate.

The corporate climate is also an essentially human attribute. It is the corporate philosophy, the prevailing attitudes within the organisation, the quality of the leadership, the efficiency of the organisation, and the emphasis placed on the team. The purpose of the corporate climate audit is to do the corporate equivalent of a medical checkup. Just as a checkup examines particular functions in detail, so too would the corporate audit.

Such an audit would examine both the organisational processes themselves and the individual's role within the organisation. What is being proposed here is that accounting might also include issues such as employee matters, the production of goods, the provision of services, community involvement, the environment, intellectual property, organisational plans as well as financial accounting.



Ethical Dilemma

Following a merger the new CEO asks a senior executive to sack half of the staff. When this task is complete the CEO then sacks the executive.

Is there a breach of ethics?

If so, what is it?

DEFINING THE CORPORATE CLIMATE

To attempt to be precise about the corporate climate is to try to define the indefinable. We all know about concepts such as love and hate, happiness and depression, poverty and wealth. Such concepts seem to evaporate under close scrutiny, but their seeming disappearance makes them no less real in our everyday lives. The corporate climate is another such idea. It cannot be formalised, but we recognise it when we experience it. Perhaps the nearest we can come to explaining it is to say that it is the values, ideals and assumptions (VIAs) that permeate the organisation.

These VIAs are not made explicit, nor are they necessarily part of any selection or induction process. Rather, they are an implicitly understood frame of reference for operating within the organisation. Airline pilots are not selected on the basis of being asked to subscribe to a policy of no-crashes; academics are not required to formalise the principle of acting with academic honesty; presumably no-one asks a religious leader whether or not he or she is a devout believer.

This understood frame of reference is not illustrated with expressions in rhetorical style; rather, it is illustrated by myth and legend. That point is well illustrated in Peters' and Waterman's *In Search of Excellence*. 'All companies we interviewed, from Boeing to McDonald's, were quite simply rich tapestries of anecdote, myth, and fairy tale.' One of the illustrations given is; '... two HP engineers in their mid-twenties recently regaled us with an hour's worth of "Bill and Dave" (Hewlett and Packard) stories. We were subsequently astonished to find that neither had seen, let alone talked to, the founders.' Behind this mythologising and implicit subscription to values is the notion of meaning.

It is difficult to imagine being a happy and successful employee of an organisation that provides meaningless goods or services. It is equally difficult to imagine being a happy and successful worker in an organisation for which the product or service is regarded as either alien or destructive. One might feel loyalty to the employing company, to individuals (such as close family), to families that have a dynasty of rulers (the Gandhi – Nehru family, for example), or to higher level principles, such as honesty, dignity and prudence.



Ethical Dilemma

As a middle level engineer in a Mumbai company you have been asked by the CEO to sign off a safety measure. It is largely right but you still have reservations about the final quality check. One of the problems here is that the company will lose a large contract if the safety measures are not immediately signed as satisfactory. You also have a good idea that it is alright, but the final essential check is required by your professional association.

The loyalty issue here is a play between the company that might lose the contract, those whose jobs might, therefore, be put in jeopardy, and professional standards.

Where does the primary loyalty lie?

THE ADVANTAGES OF CORPORATE CLIMATE AUDITS

The main advantages of the kind of audits proposed here are twofold. The first would be to understand the general climate in which an organisation operates; the second, to develop some concrete proposals for the improvement of company functioning. By using external experts to do the audit there is the advantage of bringing a fresh perspective to the corporate philosophy and to corporate effectiveness.

Among the issues that might be canvassed in the audit are staff morale and job satisfaction, occupational health and safety, staff selection and promotion and compliance with legislation. The audit should also deal with relationships with customers and suppliers, and dealings with other organisations. Prominent in such an audit is the matter of ethical dealings and principles (perhaps combined with a report on the ethical status of the organisation). To be ethically effective, corporate social accounting should not be simply a public relations exercise.



Ethical Dilemma

In a recent expansion program you have recruited a new partner for your organisation. During the selection process you use referees and the services of a management consultant. The newly selected partner seems to be fitting in well. You are, however, disturbed to discover a little later that another prospective partner, a rejected aspirant for the position, has drawn attention to what seems a miscarriage of justice.

In the selection process a referee for the successful applicant wrote an excellent reference, but was a close friend and did not disclose that information. You do not know how the rejected aspirant would have fared, but are concerned that the unprofessional behaviour might become known.

Have you breached any ethical principles?

If you are concerned what, if anything, would you do about it?

EXPERTS AND THE CORPORATE CLIMATE AUDITS

It is because of the evanescent nature of a corporate climate that it needs expert examination. There are parts of a corporate climate audit that could be carried out by different consultants with various backgrounds (financial, psychological and engineering, for example), as some aspects that require particular skills. The preferred outcome of the climate audit would be a written report to management, to be supplemented by an oral presentation to the staff on the findings of the study.

In addition, evaluations of particular staff members could be commissioned. This would involve, with the staff members' co-operation, the preparation of a report based on the job description, the staff members' perception of their jobs, their superior's views, psychological testing, and background information. One could imagine that a set of practices would be developed, like a statement of standard accounting practices.

POLITICAL ISSUES

A national or regional parliament may become involved in business that may intrude into areas in which it may not be an expert. More importantly it breaches the idea of government being at arm's length from the businesses for which it legislates. As the legislature, it sets the ground rules for business that might favour its own enterprises.

The notion of advertising, promise keeping and following proper procedures all seem appropriate to business. While government rightly legislates for business it may not always follow its own principles. Thus, one may imagine that, during the heat of electioneering, a political leader would make a promise. If elected that leader may then repudiate the promise. Suppose a leader was to announce that, if elected, a particular tax would never be introduced. On being pushed they are prepared to give an undertaking that if the promise is broken then they will resign from office.



Ethical Dilemma

A local government in Northern India has decided that private enterprise is more efficient at running essential utilities than is the government. To that end they call for tenders for a joint public/private venture and amend the legislation so that others may not compete.

The arguments against this is that the government which sets the rules is the beneficiary of its own self-interested legislation. Further, anyone who questions the arrangement is told that no details are available as the contract is 'commercial in confidence'.

As the government is an elected body and subject to the ballot box, they do have a form of accountability.

What is your ethical view of the arrangement?

Can you suggest a better arrangement?

Assuming that you were concerned, what could you do?

What would you do?

The oddity here is that a promise is made. If that promise is then broken the undertaking that the second promise would operate would require an enormous leap of faith. 'If I break my first promise, I promise to keep my second promise'. Framing it this way shows the absurdity of the argument. It is thus that we see the need to keep to the basics: a promise is a promise, not a provisional statement. Promises may be properly negated under certain conditions (e.g. with the agreement of all parties), but there is no such thing as a core or a non-core promise.

Failure to keep commercial undertakings would invite criticisms: political promises may be broken without legislative sanctions applied, which could be the case if such undertakings were in the commercial or manufacturing realm. What this amounts to is a form of hypocrisy. It is the 'do as I say, not do as I do'. It is, perhaps, such inconsistency of standards that may be a contributor to a lowered opinion of politicians.



Ethical Dilemma

You have been appointed to the board of a large Delhi based company. Being conscientious you work hard and seem to be appreciated. One day you overhear a conversation, clearly not intended for your ears, the gist of which is that you are known as an honest person, but politically naive to the point of being stupid.

It becomes clear that the reason for your appointment is as a front since you are known to be exceptionally honest.

Would you take any action?

It is extraordinary that it is a serious offence for a parliamentarian to mislead Parliament; but seemingly trivial to mislead the electorate. Given that the electorate is trying to make rational choices between parliamentary contenders, it is quite astonishing to expect them to make such decisions in the face of what many believe to be duplicity. Of course there are difficulties. For example, if a political party were returned to power in a jurisdiction with an upper house, but not in control of that house, then it might have its promised legislation defeated. At least the promise to introduce it could have been kept. It cannot be beyond human contrivance to devise a scheme that would accommodate such difficulties.

There are, of course, conventions that govern the behaviour of parliamentarians. Among those are the Westminster conventions and the principles outlined in the constitutions of countries. Additionally, there are such valuable principles as the keeping of a pecuniary interest register. As we need people of talent and probity in government, the fewer indefensible barriers placed in the way of honourable career aspirations the better. Notwithstanding the reputation of politicians, rational governance and the quality of life must all be improved by the development of and compliance with codes of political conduct no less demanding than those we would require of business.

POLITICS AND CASUISTRY

This occasional conflict of statement and intent on the part of politicians has elements of casuistry. Sincere adherence to ethical principles implies that there would be no use of casuistry, because its common use has undertones of intellectual prostitution. As Drucker has so aptly pointed out, it started as high morality, but in the end its ethics came to be summed up in two well-known pieces of cynicism'. 'An ambassador is an honest man, lying abroad for the good of his country', went a well-known 18th century pun. And 100 years later, Bismarck said, 'What a scoundrel a minister would be if, in his own private life, he did half the things he has a duty to do to be true to his oath of office' (Drucker, 1981).

That is precisely the point of difficulty with the casuistical approach. Instead of dealing with ethical imperatives, it deals with political realities, and thus with compromises. While there is nothing inherently wrong with compromises, their accumulation may lead to an erosion of standards. Thus, casuistry becomes an apologia for the powerful, the financial status quo and the primacy of political values.

A major aircraft corporation needed to obtain orders for its aircraft. To safeguard thousands of jobs substantial orders are needed. One might ask what is the difference between an aircraft corporation paying 'sweeteners' to prospective buyers and someone handing over a wallet when confronted with an armed mugger. Few would regard the handing over of a wallet as 'unethical'.

This notion of the over-use of casuistry is inimical to the development of business ethics. Nothing should stand in the way of the intention of a code. No special pleading, no devious argument, no clever inversions should subvert the intention of an ethical code to bring honest dealing to the marketplace. The manipulation of meaning is illustrated by the familiar quotation about 'turning the other cheek'. The forgiveness implied here is one interpretation: the other is the casuistical interpretation—'never let anyone hit you in the same place twice'.

CODES FOR PUBLIC SERVANTS

Public service ethics—or administrative ethics—has been defined as 'principles and standards of right conduct in the administrative sphere of government'. It is difficult to define a public servant. Any definition

would need to include those as diverse as the Indian equivalent of Sir Humphrey Appleby (from that admirable British political satire 'Yes, Prime Minister'), a police constable in Poona, and the tea maker in Chennai. Notwithstanding those whose service to the public is under political control may find themselves in ethical dilemmas of loyalty. This includes whether to remain silent on an issue in which their political masters wish them to remain silent, their accountability to the public and the loyalty they owe to their superiors in the public service hierarchy.

A public service code would need to clarify such division of loyalties. Public servants are enjoined to pay proper deference and respect to superiors. More controversially, they may be required to carry out instructions from a superior even when they believe the actions to be improper or illegal. Some jurisdictions now have codes of conduct for public servants. An ideal code would be one that sets out the basic values (the code of ethics), and then moves to specific precepts (the code of conduct).

Ethical Dilemma

You are a civil servant, and governed by the Public Service Code of Conduct. In recent times there has been a change such that civil servants are not there to give fearless advice but, rather, to serve the new administration so long as they may govern. That is their job, and one for which they were democratically elected.

The troubling thing to you is that public servants are now effectively told what advice to give, and what is acceptable and what it not acceptable.

What is your ethical position on this dilemma?

THE APPLICATION OF CODES OUTSIDE THE WORKPLACE

One of the basic problems of having a code of ethics and a code of conduct, either for business or for the public service, is the reach of that code. For example, if an accountant does some charity work as an accountant, and has behaved in some slightly improper way in that private capacity (working for a sports club, for example), should that peccadillo be a cause for workplace sanction? Suppose that it were to be so regarded, would (say) a car speeding offence be a similar cause for concern. In other words one might have to decide on the relevance of offending to professional functioning. A teacher found guilty of paedophilia is a clear case for sanctions: a teacher convicted of failing to pay a tax might be marginal, depending on circumstances: a teacher convicted of crossing the road while ignoring a police request not to do so is yet more marginal.

Here there are two principles to consider: one is who is bound by a code. Clearly the answer is those whose profession or occupation obliges it; the second aspect is, if a person is bound by a code is that binding restricted to what they do professionally. The answer to the first is much clearer than the answer to the second question.

CONCLUDING REMARKS

Ethics may or may not need justification. Whether it does or not depends upon one's view of its primacy. What is obvious is that there are many dimensions to business, such as finance, personnel, marketing, etc: it is the set of values that underlie what business does, that is significant.

Summary of Chapter

This chapter moves on to outline and discuss the organisational and social implications of ethics. This includes the range from political to professional; from private individuals to the public service. The chapter also deals with the issue of vulnerabilities and how codes might be an equitable aid to both prevention and resolution of such issues. It is sometimes argued that one of the most serious criticisms of ethics is that it is imprecise. To offset that there is a section here that shows how ethics might be quantified. Further, the 'reach' of ethics is also dealt with. Who is subject to which codes is a matter of great importance: who is governed by which code is an essential consideration both for the expression of the codes themselves and for way in which codes are perceived by those affected by them.

Multiple Choice Questions

Select the best answer from the options given.

1. UN Charter of Human Rights
 - A is a basic reference documents ☐
 - B not relevant to India ☐
 - C has been repealed ☐
 - D is a national political statement ☐
2. The commercial value of ethics
 - A lies in its capacity to increase turnover ☐
 - B has a consequence of improving the bottom line ☐
 - C lies purely in reputational advantage ☐
 - D increases market share ☐
3. Time frames for ethics involve
 - A short time frames ☐
 - B long time frames ☐
 - C no time frames ☐
 - D fluctuations in time frames ☐

4. Equity
 - A is a principle about equal relationships ☐
 - B is the same as honesty ☐
 - C is the same as prudence ☐
 - D is a principle that emphasises privacy ☐
5. Product liability
 - A means that users must be responsible for bad products ☐
 - B implies product recall ☐
 - C giving a misuse defence ☐
 - D means that manufacturers are responsible for bad products ☐
6. Professional ethics is
 - A monopolistic ☐
 - B designed to protect a profession ☐
 - C a necessary attribute of a profession ☐
 - D not directly relevant to practice ☐
7. Guanxi
 - A is a concept similar to the 'old boy network' ☐
 - B a term relevant only to China ☐
 - C must be familial only ☐
 - D has no relevance to Indian business ☐
8. Periodic ethics audits
 - A are required by the Indian Stock Exchange ☐
 - B a method of fostering ethics ☐
 - C a method of quantitative assessment ☐
 - D always use external consultants ☐
9. Political intrusion into business
 - A may be desirable in some circumstances ☐
 - B is anathema ☐
 - C politics should have no say in how business is conducted ☐
 - D State legislation over-rides Federal legislation ☐
10. The 'reach' of codes is
 - A restricted to those obliged to conform by virtue of membership ☐
 - B applicable to all ☐
 - C applicable to the public only ☐
 - D the same as the reach of the law ☐

For Discussion

1. Someone has put to you the idea that ethics and profit are opposed notions. How would you go about finding out whether or not this is true? What kind of evidence would be convincing to you? What kind of evidence do you think that a severe critic might find convincing?
2. Product liability is something that may be the subject of legal constraint. Is there an argument that proposes that it is good business practice?
3. If an organisation is in difficulty it is incumbent upon them to resolve the problem. In doing so it may be necessary to not only solve the problem but also to convince stakeholders that the solution is in hand. In doing so publicity experts may be used. What are the principles that should govern their input, bearing in mind the facts, perceptions of facts, the long term reputation of the organisation and spirit of good governance?
4. A management consultant has suggested that a corporate climate audit would be useful for your organisation. You have doubts about the value of such audits and need to think about how their value might be assessed. What are the questions that you would put to an expert in corporate climate audits?
5. Suppose that you work in a jurisdiction in which the public service has a strong ethical code. Suppose, further, that you have commercial dealings with that public service. Are you bound by their code? In other words, what is the reach of a Code?
6. In considering Codes what is the special importance of accountability?

4

CHAPTER

The Nature and Theory of Ethics

INTRODUCTION

It is interesting to note that the first real commercial contact with the West by India was through the institution of the British Raj, particularly the formation of the East India Company. The Company, with its slightly pompous alternative titles, was incorporated by Royal Charter in 1600. At that time, for European colonisers, trade was paramount in force and influence. The commercial advantages of exploiting colonial resources was very well understood and thus formalised by England. Starting as a monopolistic trader, the Company understandably found itself becoming a political entity and henceforth went on to become an agent for British imperialism. The Company was so influential in India that it even had its own army.

Taking over a large part of the area under the influence of the Dutch and the Portuguese, the East India Company traded in various commodities such as spices, saltpetre, cotton and silk. The influence of the company, responsive to production variations and market needs, moved into the tea trade with China—even it was implicated in the opium trade. The influence of the company gradually diminished, losing its monopoly in 1813, thereby becoming a management agency for the British government in India. That status was lost after the Indian Rebellion of 1857. That was a period of armed uprisings against the colonial authority of the British East India Company in India between early 1857 and mid-1858. The period and events are often referred to as First War of Indian Independence. The Company went out of existence in 1873.

The British colonisers of India took their commercial standards and practices to the lands they colonised, thus giving major commercial standards to India. It is thus that many modern Indian business practices are British in origin (as the twig is bent so the tree is inclined). It is readily recognised that India had a concern with morals and values when people in Britain lived in primitive conditions. What is different is that Indian values, while very sophisticated, were not oriented towards trade. It is this void that overseas international practices filled.

All the influences did not necessarily move in one direction. One of the reverse contributions is that of language. Many words have been taken from India; from Bandana to Yoga, Blighty, Bungalow, Char,

Jute, Mango, Mongoose, Pariah, Punkah, Shampoo and Teak. Those with an interest in such derivations are recommended to the website listed in References (*Words in English of Indian origin*). Another notable positive influence on the West was the demonstration of the power of moral force. The examples of Mohandas Gandhi and of Vinobe Bhave are striking examples.

It is curious how a system of trade was imposed upon a foreign nation, but happen it did. Despite this India is different: climatically; in population; in products; and in its social structure. Perhaps most notable is the caste system in India. While it is true that Britain has a form of caste system, it is not so overt (Are you titled? Are you wealthy? What accent do you have? Did you attend Cambridge or Oxford? Are you 'in trade'? In India the system is more overt that is, at once, both reprehensible and overtly honest.

The attitudes to manual skill, according to Anand (2007), is grossly undervalued. His book advocates due recognition of the dignity of labour, the valueing of essential skills, and the abolition of the distinction between skilled labour and mental labour. It is not that creativity is lacking in India. A recent report noted the unusual use of condoms. Freely distributed, the entrepreneurial noted quickly recognised their value for use as waterproofing material for houses, for carrying water, using as water balloons, for melting and making into toys and even for strengthening roads.

Whether or not pleas to end informal discrimination are heeded is hard to know. What is obvious is that attitudes will not change readily and will require legislative impetus as well as some social engineering. This issue is clearly a matter of high priority. It is of equal importance as the issues of development of a uniform civil code or of trying to have a powerful impact on the practice and rules of global trade. Given that the West tends to dominate global trade, it is well to try to understand the background from which the ethical part of understanding derives—all of this in the context of recalling that India is the world's most populous democracy.



Ethical Dilemma

Although untouchability is outlawed in India it continues to be in practice in some parts of the country.

What was the justification for fostering such a distinction?

What benefits, if any, does the caste system in general confer on society?

Apart from legal recognition, if one wished to make the caste system only of historical interest what could be done to make it so?

THE NATURE OF ETHICS

Ethics may be regarded as knowing what is right, doing what is right and feeling what is right; morals and ethics share these concerns. The terms ethics and morals are sometimes used interchangeably, although one can make distinctions (the word 'ethics' is from Greek, whereas the word 'morals' is from Latin).

More commonly, 'morals' refers to the standards held by the community, often in a form not explicitly articulated. 'Ethics', on the other hand, concerns explicit codes of conduct as well as value systems. It will be noted that this working distinction is more in accord with modern understanding than it is with the earlier European tradition of equating ethics to moral philosophy.

Perhaps a useful definition in this context is that ethics is a highly explicit codified form of behaviour designed to produce particular ends and act in accordance with particular values. There are admirable values that are not directly matters of ethics (such as wealth or success); there are other values that are of direct concern (such as honesty or fairness).

How ethics are relate to life's values has been debated by Plato to existentialism. An examination of this search for meaning and value finds expression in every age. Living ethically may consist either of following a set of rules or the precepts of an organisation; or it may consist in reflecting on how to live and then acting in accordance with the conclusions that are reached. This latter view is not about ethical absolutes, but rather about acting reflectively and with consideration.

THE RELEVANCE OF INDIAN MORAL TEACHINGS

Taking, for example, three different religious standpoints on moral propositions we see that the four Vedic commandments are: worship your mother; revere your father; obey your guru; and honour your guest. The four noble truths of Buddha are: that life is sorrow, the cause of sorrow is craving; removing the craving will end the sorrow; and the way that leads to the ending of sorrow is the noble Eight-Fold path. Jainism accepts three sources of knowledge, perception, inference and testimony. Each 'truth' is thus from a particular perspective (a view quite consistent with that of the British philosopher, John Locke). To claim absolutism leads to dogmatic intolerance. Right conduct has been implicated in five virtues: non-violence; speaking the truth; not stealing; chastity; and a detachment from worldly things. Many holy books from India are what, in the West, would be called metaphysical, *The Upanishads* and the *Sutras*, for example.

These principles also find expression in other cultures: honour the guest, respect one's parents and the basis of knowledge, being three examples. Advocating tolerance, craving leads to sorrow and not stealing, are common to many cultures. What is evident in the sacred writings of India is the universality of the propositions: what is absent is the highly specific guide to commercial affairs. It is thus that India has adopted, often under obligation, the commercial modes of the West.

DEFINITIONS

Ethics and morals are distinguished from etiquette in that the latter is to do with custom rather than values. The distinction is rather like distinguishing raining from not-raining. We know when it is pouring, and we know when it is dry and sunny—but we cannot be definitive when there are droplets. There is, of course, an extensive theoretical background to speculation about ethical rules, the best known principle being that of the 'Golden rule' (do to others as you would have them do unto you). In order for such a principle to be acceptable it should be of universal application across every conceivable situation.

This is more difficult than it sounds. For example, if a masochist were to act according to this principle, that person would consider it a duty to go around inflicting harm on others in the expectation that

everyone would receive pleasure from it. Those who derive pleasure and benefit from adhering to fundamentalist religious doctrines might wish to coerce others to believe the same. To invite is one thing; to coerce is quite another. In a pluralist society coercion is unacceptable because the accepted freedoms include those of being free from duress to accept ideas that are unpleasant. The issue is one of personal utility rather than one of concern for universal value. In essence it is a preventive rather than punitive approach. A variation of Rousseau's doctrine might be regarded as an improvement; 'Do what is good for you with the least possible harm to others'.

It is extremely difficult to formulate an ethical principle for which one cannot find an exception. One might debate whether or not ethical principles ought to be judged by their consequences (known as consequentialism). Normative ethics attempt to set ethical standards (or norms) for conduct. Whether these independent duties should be utilitarian has been the focus of debate. To have norms derived purely from what people do, rather than what they ought to do, was not only unsatisfactory but also missed the essential point that ethics is prescriptive rather than descriptive.

ETHICAL ABSOLUTES AND CONSEQUENTIALISM

There are cases illustrative of the reach of moral belief. For example, we would never regard as appropriate, capital punishment for the theft of a crust by a starving person. There is a category of issues, however, in which there is room for debate, an example being advertising by professionals. What was once prohibited may become permissible.

Deontology requires a commitment to the ethical act. Duties are not in the abstract but, rather, toward some person, group or idea. In hierarchical form they range from duty to self, to family, to local community, to the nation, and to humanity; they also range from the intensely personal to conforming to an ideal.

Duties might be contrasted with Utilitarianism. A problem with duties is that it is not possible to specify what one's duties and moral obligations are, only that actions are to be judged by the intention; a problem with Utilitarianism is that it ignores good intent and may become an ethically vacant ritual (how many angels can dance on the horn of a moral dilemma?).

Ethical codes are designed to produce particular ends but, just as importantly, they are also designed to tell us how to behave.

Post-modernism argues that clarity of concepts, of theoretical underpinnings and of philosophical certitude are no longer possible. In that same sense post-structuralism argues that there are no fundamental structures of both language and culture. It is, as it were, a form of philosophical nihilism that forces us to consider the bases of action and of thought. As there is a multiplicity of meanings we cannot be certain of the veracity of any.

Thus it might be argued that cross-cultural ethics forces us to reconsider our philosophical standpoints. It sees, among other things, the development and use of a universal ethical standpoint as leading to the abdication of personal responsibility. It also leads to the pressing need for an understanding of the stakeholder(s) issue and to an epistemological base from which ethics might proceed.

BASES OF MORALITY

The essence of an ideological view is that all 'facts' are interpreted in a manner consistent with the underlying world view. This procrustean approach to ethics is unlikely to lead to a commonly accepted

frame of reference. For that same reason the notion of professional ethics with a combined perspective of Kant, Mill, or G. E. Moore is unlikely. What is more likely is that we might take from such theories those elements that would add to our understanding. This conclusion of ideological promiscuity has the more respectable term 'eclecticism'.

There are issues common to all codes of professional conduct: among these issues are the role of professionalism (and its dangers), the relationship between the professions (with particular emphasis on the law), and civil rights in relation to ethics.

One of the earliest bases of ethics was that of Confucianism. Confucian ethics is not one of prudence, but rather of behaviour appropriate to relationships. The essence of Confucianism is the respect for tradition and the preservation of traditional relationships. Perhaps the most seemly translation is that of 'sincerity'. Individual behaviour must be appropriate to the specific relationship and thus optimise the benefit to both.

We might say that there are some poor bases for ethical systems; one basis is that the rule should be founded on God's ordinances. The difficulty here is that God's ordinances are interpreted differently by different people. Because of such inconsistencies the perceived ordinance may be no guide at all. Here the problem is whether or not good and evil lie within our nature. In the 4th century a Christian moral debate was entered between Bishop Augustine and a Romano-British monk, Pelagius. The former held that the inclination to evil is inherent in human nature; the latter that evil was self and situationally determined. By and large the former view prevailed. While the argument for the perfectibility of human nature (as by Rousseau and the Fabians) is difficult to demonstrate, it is a doctrine of hope.

Morality based on conscience is not a workable foundation since consciences appear to be inconsistent between people and even in the same person over time. Even if all consciences were in agreement, it would not rule out some possibility that they were not collectively mistaken.

The doctrine that pleasure or happiness should be our goal is known as 'hedonism'. One of the major difficulties here is the question 'What if an action were to produce happiness in some and unhappiness in others?' Is the happiness of the greatest number a better criterion? This form (of the greatest happiness of the greatest number) is known as 'Utilitarianism'. The difficulty with Utilitarianism is that minorities may suffer in the process of producing the greatest happiness for the greatest number.

By way of contrast we note that, according to Kant, morality consists not in the result but, rather, in the intention (whatever the result). This principle is known as the 'categorical imperative', and may be called the imperative of morality. Right action, so Kant argued, is not based on intuition or inclination but, rather, is based on law determined by reason. The human conceptual apparatus may know its form and limits; knower and known are interdependent. This view was regarded by Kant as a refutation of extreme empiricism and of scepticism.

A problem with deontology is that it is not possible to specify what one's duties and moral obligations are, only that actions are to be judged by the intention. A problem with Utilitarianism is that it ignores good intent and fails to protect the rights of minorities. The rules of prudence might seem desirable, but the value dimension is omitted.

Another basis of ethics might be that of a set of artificial rules exercised in a casuistical manner (see also the section on 'Politics and Casuistry' elsewhere in this work). At its best a casuist is someone who resolves problems of conscience or conduct; at its worst the term means being oversubtle, sometimes to

the point of being intellectually dishonest. This again deprives us of the value system that is an essential part of ethics. One is reminded of the story of a casuistical young man who killed his parents and then pleaded for leniency on the grounds of being an orphan.

ASPIRATIONS OR PUNISHMENT

Codes may be written in an aspirational or in a punitive style. The former is a set of propositions that are ideals (and may not be achievable); the latter is a set of prescriptions that, if breached, invite sanctions. Ethics is not about legalistic argument nor is it about punishment: it is, at best, positive and persuasive rather than prohibitive and punitive. Among other things it fills in the interstices of the law; it is modest (disclaiming a hot-line to the truth) and does not need a religious base. In an ideal world it would be culture free, but that may be too extravagant an expectation. At least we can try to formulate principles that transcend culture; it is the aspiration as well as the achievement that we should admire.

Ethical Dilemma

Your business is industrial chemicals. It has come to your attention that some of your products are being exported to countries with little concern for the safe disposal of industrial wastes. Those importing countries have a rather cavalier method of chemical waste disposal that puts the health of their citizens at risk. The position is complicated by the claims of competing groups, some within your own industry and some groups of civil libertarians and environmental protectionists. One group holds that the disposal of wastes is a national legislative matter and that overseas companies should stay out of internal matters; the other groups hold that we are all responsible for the consequences of our products.

These issues may be ventilated in the Indian media, and in international business journals. The CEO has asked you to prepare a note on the ethical issues.

How should the company defend itself if subjected to public criticism?

We see then that there are seemingly different principles from which we may derive morality. One of these is the intention that lies behind our ethical decisions; another is concern with the rules of conduct, ways of behaving and methods of procedure. The results we desire may come from ethical intention or from following specific processes. An ideal system would have both of these criteria acting in harmony.

PRINCIPLES AND IDEOLOGY

The way in which business presents ideas should conform to agreed principles of accepted behaviour. One major difficulty is that of distinguishing between agreed principles and ideology. Those 'explanations' that derive from a particular view of the world might take an ideological form (such as a particular religion, Marxism, moral re-armament, economic rationalism, etc).

The essence of an ideological view is that all 'facts' are interpreted in a manner consistent with the underlying world view, and courses of action are guided by those same views. Some of what passes for

economic theory is really special pleading for an ideological position. For example, Marxists tend to 'reduce' activities to economic ones, leaving out cultural and idealistic dimensions. Although there are economic aspects to education, public broadcasting, health, policing, museums and religion, such services cannot be expressed in purely economic terms.

The collapse of European communism might lead to the idealisation of capitalism with perhaps a diminishing concern with the provision of services for the public at large and to the economically and socially disadvantaged in particular. The point here is that the kind of reporting being discussed needs to be in terms of the general norms and not as a case of special pleading.

THE PERVASIVENESS OF ACTIONS

It is almost impossible to contain the consequences of actions. To take a relatively simple commercial example. Suppose that India had a policy of banning foreign ships from engaging in coastal trade (cabotage). As a 'closed shop' it protects Indian economic interests; it also protects Indian employment. If, however, smaller and/or substandard vessels were to be permitted it is likely that they would find themselves in trouble. The search for lost vessels, the rescue of crew, the refloating or wrecking of the vessel, containing pollution (such as ruptured oil tanks) are all losses to the Indian community. Here the issues are linked to the use of government resources, their diversion from other pressing applications and the degradation of the environment, and its impact on flora and fauna, and such like.

The point is that any principle has ramifications far beyond the immediate and obvious. The lesson from this is that we should consider companies, business themes and value systems as ongoing evolving enterprises. As was written earlier in this work, it is impossible to write a final and definitive code of business ethics because of the constant flux. Business, like all other forms of endeavour, is not a self-contained system but is pervasively affected by events outside its immediate scope.

RIGHT ACTION AND RIGHT THOUGHT

Among the more difficult questions to be addressed is whether or not ethics is right action or right thought. In an ideal world these would be congruent. Let us suppose that we have a choice between an organisation that behaved consistently in a way of which we approve (but for motives that we either do not understand or do not applaud) and an organisation with clear and excellent intention but with consistently disapproved behavioural outcomes. Arguably the first is preferable to the second. This is connected to what we see as the 'true' way of looking at things.



Ethics in Action

In a particular Third-World country malaria is endemic. A UN expert has recommended that a cheap and effective solution is to pour kerosene on all standing water in order to kill the anopheles mosquito larvae.

An environmentalist member of the 'green' movement has asserted that such a course of action would degrade the environment and would be of unknown effect.

You have been commissioned to report to the government.

RELATIVE AND ABSOLUTE ETHICS

On one point of view it might be argued that there is no such thing as an ethical absolute. Codes are derivations of the human mind and an imposition on the universe; they are invested with the different values the proponents attach to them. The need for such rules stems from a failure of goodwill. We try to capture justice by formalising it into legal codes. Legislators have performed this service in the form of protective legislation such as truth in advertising, enforcement of contracts, safety legislation and equal opportunity laws.

It is not easy to distinguish courtesy from ethics; it is equally difficult to distinguish ethics from etiquette. The way in which we commonly behave seems so appropriate that we are inclined to believe it to be morally correct. 'Good manners', whatever they may be, take on a prescribed air and the line is often so blurred as to make distinction impossible. To retrieve unsafe dumped electrical products and sell them in a flea market is clearly unethical; passing the port at table in a particular direction is a matter of etiquette.

An example of both bad manners and unethical behaviour is the non-recognition of free professional advice that is then used as though it were obtained elsewhere and for a fee. One of the authors was once approached by a real estate developer to whom he gave some well informed advice, with a view to possibly receiving a commission to research a novel real estate concept. Despite letters and phone calls, the developer never responded. Clearly, too much had been inadvertently given. The user (and that word is employed advisedly) exploited the writer by using that information commercially. This is seen as seriously discourteous as well as unethical.

STAGES OF MORAL DEVELOPMENT IN HUMANS

Kohlberg has argued that the development of moral sense in a child goes through phases. At the earliest phase the child defers to physical superiority and does not understand that others have sentience and desires.

The second phase has proper actions serving to satisfy the person's own needs; deference to the needs of others leads to personal satisfaction. Subsequent phases progress through loyalty and affection within the sphere of immediate family and friends; motivation to be a 'right person' in the eyes of others; determining right and wrong by loyalty to his or her own nation. At the highest level there is a quantum lift in moral understanding that has the person trying to develop impartial points of view, using self-justified moral principles.

This develops the notion of conflicting opinions and views and sees moral values as relative and needing to be tolerated. The final stage is that of seeing moral principles as being universal and consistent. Actions are completed according to abstract principles and the behaviour of others is seen as matching or not matching such moral criteria. The general thrust of Kohlberg's work helps us to understand how moral sense develops and how its development is hierarchical. Clearly, a code of business ethics should attempt to achieve the highest of the nominated categories.

Among the criticisms levelled at Kohlberg's approach is its ethnocentricity, in not properly addressing sex differences in moral development, considerations of filial piety, and in its lack of attention to community feelings. Further, the Kohlberg theory focuses on a cognitive style approach. In fairness to

Kohlberg we ought to note that cognition is one of the shared attributes of all humanity and so to criticise this common base is going too far (Kohlberg, Boyd & Levine).

A more generous spirited approach would be to regard Kohlberg's work as an initial benchmark and a point of departure for future development of ethical developmental theories. The general thrust of his work helps us to understand how moral sense develops and how its development is hierarchical. Again, a code of professional ethics should try to achieve the highest of Kohlberg's categories.

More recently we have been given an analysis of approaches to moral development that have been adopted by a variety of theorists. The analysis is buttressed by some empirical work, which includes subjects from different cultural backgrounds. This shift of the Kohlberg view from the Kantian emphasis on reason to a re-nascent interest in the cultural issues involved is timely (Langford).

THE NATURALISTIC FALLACY

The naturalistic fallacy is the supposed error of proceeding from factual statements, assertions about what is, to value statements about what ought to be. Thus a description of what Members of Parliament do is quite different from statements about what they ought to do; what drug dealers do is by no means the same as what they ought to do. To emphasise, we cannot conclude about what ought to be done from what is done.

The term was first used in a classical work by G. E. Moore in 1903 in his book *Principia Ethica*, but its origins may be found in another classic—David Hume's *Treatise of Human Nature* published in 1740. Hume asked that 'a reason be given for what seems altogether inconceivable how this new relation (ought) can be a deduction from others (descriptions of what occurs in nature) which are entirely different from it'.

Some moral philosophers have tried to bridge that gap by appeals to intuitions about what they take to be moral reality, while others have argued that the distinction is often bogus since many important terms such as 'enjoys', 'needs' and 'suffers' may be both factually true and morally significant. What is important here is to be cautious about moving readily from an 'is' to an 'ought'. Political rectitude, often the enemy of ethics and of democracy, frequently confounds these prescriptive and descriptive modes in setting circumscriptions to what is and what ought to be.



Ethical Dilemma

Suppose a compulsive gambler were, in a rational moment, to require a casino operator to refuse him admission on any future occasion—no matter what. Suppose, further, that the gambler were to turn up at the casino some months later and say that he had changed his mind about being refused admission.

What should the casino management do?

TYPES OF VIRTUE

There is a particular approach to ethics that is known as ‘Virtue Ethics’. The idea stems from Aristotle who held, in the *Nicomachean Ethics*, that human nature is characterised by aim. Of all the aims the most important one is the Good. It is thus that we could label virtue ethics as teleological—governed by the ends to be achieved. For Aristotle a person’s soul is divided into two parts, the rational and the irrational.

The rational part is characterised by the intellectual virtues such as logic, truth and evaluation: the irrational part is characterised by desires and wants. Rather than reduce morals to rights and wrongs the Aristotelean view prefers to cultivate the virtuous individual. Most importantly here, the point of seeking the Good is for character training, for others and for the body civic.

The term ‘virtue’ does not have sufficient meaning of itself. The dictionary definition of ‘moral excellence or goodness’ tells us little. A more analytical appraisal would include the moral virtues (such as honesty and decency); the intellectual virtues (such as intelligence and curiosity); the communal virtues (such as charity and respect for others); and the political virtues (such as a respect for law and a belief in the common good).

Using several sources, this present account outlines the key principles in ethics and a means of giving behavioural expression to what are otherwise high sounding principles without specific reference.

Virtue is sometimes used as though it were an absolute. Our attention has been drawn to the idea that people often use virtue, morality and ethics as though they formed a hierarchy (Dunsire). This is analysed in much the same way as the Maslow hierarchy of needs, where lower order needs are satisfied before higher order needs are considered. In assessing political morality the electorate first judges the legislature by considering the provision of basic services (civil service, social welfare, filling holes in the road). When those needs are perceived to be satisfied then the electorate considers other issues such as social direction.

JOHN STUART MILL’S UTILITARIANISM

Mill was a 19th century thinker who was both a philosopher and social reformer and who wrote two influential classic books, which were in four areas; logic, political economy, liberalism and ethics. His books, *On Liberty* and *Utilitarianism*, are still widely cited in political and ethical debates. The central thesis in, *On Liberty*, is that the only justifiable reason for interfering with the liberty of action of any mature person is to prevent harm to other people.

The central theses of utilitarianism are that happiness is the highest good, that there are lower and higher types of happiness and that there are individual people as well as groups of people such as associations and societies. States should aim to maximise the best happiness of the greatest number of people. Among the supposed weaknesses of Mill’s political and ethical accounts is the difficulty his two theories have in avoiding collision. It is not hard to imagine cases where reducing the freedom of some individuals would increase the happiness of a much larger number of people. This difficulty of failing to give due recognition to the rights of minorities might be regarded as a significant weakness in ethical theory.

G. E. MOORE'S PHILOSOPHY

G. E. Moore's book, *Principia Ethica*, contains four main principles. One is the indefinability of the 'good'; the second is that the only things valuable in themselves are states of mind, of which the most valuable are '... the pleasures of human intercourse and the enjoyment of beautiful objects'; the third is that right action aims to bring about a desirable state of affairs (ultimately valuable states of consciousness); and the fourth is that the ethical ideal is a complex compound.

We see from this that there are seemingly different principles from which we may derive morality. One of them is the intention that lies behind our ethical decisions; another is concern for with the rules of conduct, ways of behaving and methods of procedure. The results we desire may come from ethical intention, or from following specific processes. An ideal system would have these criteria acting in harmony.

QUANTIFICATION AND ETHICS

Quantification may sometimes act as a guide to the importance of an issue. The criteria of financial success in business might be expressed as hourly return per employee or capital value increase or gross profit or market share or turnover.

In cases of breach, one of the questions one might ask is, does the size of misdemeanour matter? Is cocaine dealing less moral than selling tobacco? Are arms manufacturers ethical by delivering quality goods at a reasonable price and on time? Is selling alcohol worse than selling a bit of heroin? Is a company ethical if it supplies good-quality products on time to make offensive weapons, napalm and instruments of torture? The answers to such questions should enlarge our understanding of what we regard as important.

Another quantifiable insight has been provided to us (Dunsire). This work contains an analysis of criminal offences within a giant corporation, comparing that organisation with a city of roughly equal size. The author of that work chose to compare the 300,000 employees of General Electric in the United States with a city of like population. The city produced 100 murders, 300 rapes, 4,300 assaults and 12,500 thefts. It is true that the at-risk populations are different and the offences and offenders differentially detectable, and so on, yet the force of the comparison is not too diminished. The CEO argued that 'It is utterly naive and ludicrous to believe they have hired the only 300,000 people in the world who won't steal or cheat or take drugs or do a lot of other things'.

Professional and business mobility works against developing loyalty to one organisation. How does one promote loyalty in a shifting set of commercial and industrial alliances? If national espionage is permissible, why not industrial espionage? Are company mergers for personal profit to be ethically permitted? Should ethical statements be cast in culturally appropriate terms? Under what conditions is it ethical to accept gifts in a business context?



Ethical Dilemma

You are the CEO of a large organisation with offices in several countries and have a company code of conduct devised and operating in your Indian office. For reasons of expedience you persuade your board to have that policy restricted to the Indian part of the operation and to exempt its application to the poorer, and lower compliance standards of the overseas parts of your enterprise. This issue is raised at the AGM. You commission one of your executives to write a defence of your decision. She asks you for advice about the kind of arguments you would like to see included in your defence. What would such arguments be?

TECHNIQUES FOR QUANTIFYING

There are so many things in the world that we admire, but seem unable to measure. Take the homely instance of shiny finish on cars. We admire the glossy finish, but cannot ordinarily assess how glossy and perfect it is. There is a story that Rolls Royce wanted to set a benchmark for good paintwork and came up with a ready measure. They decided that the standard of good paint finish would be met if someone with good eyesight could read The Times ordinary print by the reflection in the paint when the newspaper was held 15 inches away from the car.

Human judgement about values is a bit more problematic. However, there are ways of doing this. One technique is to use money as the reference point. Using money as a common denominator, a colleague comes up with the idea that it might be used as a means of quantification. He proposes, for example, to ask how much you would charge a bank to make all women staff wear a face-concealing veil? How much would a citizen take to dispense with periodic elections? How much to betray your country to a foreign power?

The author once put to a group the question of how much would they charge to appear in a pornographic video. The answers brought the obvious qualifications such as; 'Who would my partner be?' 'Would it be shown only overseas?' 'How explicit would the action be?' For some it was a totally unacceptable proposition. The application of monetary reward for the breach of standards is one clear and simple means of determining the value of such values.

A second technique is called the 'Delphi technique'. This is a method of getting answers to difficult and ambiguous questions. It is used as an analytical tool to make forecasts of issues characterised by complexity and uncertainty. It utilises the principle that several heads are better than one and that a sequence of attempts to solve the problem is superior to a one-shot approach. It is, in other words, a reiterative technique.

The main aims of the Delphi technique are to set out the goals and objectives; to consider a wide range of possible choices; to order those choices for importance; identify group values; gather whatever facts might be available; and use all of these to come to a conclusion. This technique is also invaluable where a pooled judgement is considered appropriate. It also, a fortiori, makes effective use of those with special expertise. This technique commonly uses the sequence of:

- identifying the issues;
- identifying the options; and
- determining an initial position.

The first phase gives rise to a consolidation of what is known and held. From this first phase disagreements are likely to become apparent. The next phase is, therefore:

- exploring the disagreements, and the reason for them; and
- evaluating the underlying reasons for such disagreements.

This evaluation leads to a restructuring of both the evidence and what such evidence might mean. It will be seen that the Delphi technique requires several ‘rounds’ in order to make proper use of its potential; but that is not to say that it cannot be used in one session. Those wishing to learn more of this technique are recommended to read books on group techniques. One excellent example contains several instances of the kind of problem for which the use of the Delphi technique is readily applicable (Moore, 1987).

To apply this technique a reference group is chosen to select (say) the important ethical principles that should appear in the company code. The group is asked to write down, without reference to each other, the principles they consider to be most important; they are then asked to rank them in order of importance—one being the most important. The group mediator then asks for the principles and enters them on a board, visible to the group, ending up with a list of ethical principles. With this comprehensive list the mediator then seeks to know how each principle is ranked by individual members. The results are entered in a tabular form. For the sake of simplicity suppose that there are ten people in the group and three principles.

Table 4.1 Ranking the results of a Delphi assessment

	<i>Goodwill</i>	<i>Dignity</i>	<i>Equity</i>
P1	1	3	2
P2	2	1	3
P3	3	2	3
P4	3	2	1
P5	2	3	1
P6	3	2	1
P7	2	1	3
P8	3	2	1
P9	1	3	2
P10	3	1	2
No. rank 1	2(6)	3(9)	4(12)
No. rank 2	3(6)	4(8)	3(6)
No. rank 3	5(5)	3(3)	3(3)
Total score	17	20	21

Thus, Goodwill was ranked first by two respondents, ranked second by 3 respondents, and third by five respondents. Giving a value of 3 points for rank 1, 2 points for rank 2, and one point for rank 3 gives a total of 17 points for Goodwill. A comparison of total scores in this fictitious example shows equity as being viewed as the most important.

Overall there are 30 judgements (ten people, each with their three listed choices). Each principle is considered for all ten people in the group and so there are ten rankings of 1st, ten rankings of 2nd and ten rankings of 3rd.

The unbracketed numbers are the number of people who ranked the relevant principle. We might assume that a first ranking is worth more than a second ranking and so we have weighted the ranks. A first ranking gets a weighting of 3, a second ranking a weighting of 2 and third gets no extra weighting. This is rather like the way in which punters and tipsters on horse races have first, second and third places weighted. If we add the weighted scores (in brackets) we arrive at a weighting of that principle for that group. From the table we can see that Equity ranks first, closely followed by Dignity. Goodwill scored well, but ranked third. If need be, these numbers can be manipulated statistically.

A second phase follows in which the group looks at results and may now discuss them. After that discussion they are asked to repeat the ranking process and perhaps add, delete or combine principles. The quantifying process is then repeated. After about three or four reiterations the conclusions will stabilise.

A significant bonus for this technique is not only that it allows us to quantify the seemingly unmeasurable, but it also engages the attention of the participants so that they become 'owners' of the conclusions and more committed to their implementation. Those interested in the wider application of simpler quantitative techniques as applied to ethics are recommended to read Francis & Armstrong (2007).

EXCELLENCE

One of the characteristics of excellent professionals is that they feel they live in an imperfect world; things are rarely as good as they should be. Given the frailties of human nature, the demands of time and of competing values, the solutions to almost all problems are less than perfect. A not uncommon expression of their concern is captured in the phrase 'they will find me out', that their self-perceived inadequacies will become evident to the external critic.

An essential precondition of intellectual or artistic eminence is the vision to see how things might be, to have an insight into ways of doing things better, of perceiving failings and the power to persuade others. This power to persuade may need to be exercised in the face of determined resistance—the will to go ahead despite powerful opposition. With such a view goes what seems a paradoxical humility. Knowing how things ought to be induces in first-rate professionals the idea that they must cope in a imperfect world.

This imperfection may be seen as something that invites adverse judgement. Exactly who is to express judgement, or why such a judgement might be made, is not fully explained. It is the inchoate sense of imperfection that lies at the heart of the concern. Lesser operators do not seem to be troubled by the notion of imperfection and therein may lie the core of the issue.

The Search for Perfection

The search for perfection is evident in many cultures and exists within our framework of dreams and aspirations. It has found expression in that near formless yearning for the 'Golden age' the 'Dreamtime', the 'Garden of Eden', for 'Shangri La', 'Utopia' the search for the philosopher's stone; for the elixir of life; and for the state of enlightenment. The current commitment to total quality management and best international practice is a recent expression of that idea, transferred to the business context. There is no doubt that quality sells goods and services and benefits an organisation in the longer term.

A renascent interest in corporate performance may be driven by commercial imperatives. As competition increases, so too, does the need to strive for excellence. It is curious that we expect, and get, 'total quality management' (TQM) in symphony orchestras (no sour notes, excellent performance, prompt starting, etc). Why can we not get the same from car repair garages, computer repair people and airlines? Perhaps it is the 'luxury' nature of the product that demands such quality; one would not otherwise pay such money for a non-necessity.



Ethics in Action

Suppose that the national radio in a particular country has allegedly been submissive to the pop music industry. The allegation is that certain recent songs are promoted as worthy for reasons other than their perceived intrinsic merit (perhaps for a financial consideration). Further, the allegation is compounded by a national radio broadcaster being hostage to a particular form of music rather than to presenting a wide variety of programmes that would appeal to the audience that the broadcaster is supposedly committed to serve.

A counter group has pressed the claim that the majority of people seek variety in broadcast material. Further, it has been asserted that those in straitened social circumstances have few cheap diversions in their life and deserve better than the continual bombardment of one particular sort of broadcast. Excellence, so it is argued, consists in serving the entire community. The ill, the elderly, students, the lonely, for instance deserve better than to be subjected to the obsession of a pressure group. They further argue that if the same amount of time now devoted to pop music were to cover a diverse array of activities, such as literature, hang-gliding, pottery, art, sex or religious rites, it would be a nationally enriching programme.

The radio programmers now have to respond to their board on this severe criticism, and have commissioned you as a consultant ethicist to compose a response.

Excellence and Values

Cormack has asked the pertinent question as to whether or not Western values are consistent with the search for excellence. He concluded that there is such a set of values and identifies them as: the inherent value of mankind; people are seen as an asset, what they are, and what they can become; it is our destiny to serve and to improve. The joy of good work; the satisfactory completion of something demanding brings fulfilment. The importance of service; this is not only service to customers, it is service to all; customers; neighbours; subordinates, etc. It is better to give than to receive; and performance is judged by the stewardship of assets (Cormack).

It might seem that these values are more philanthropic than commercial. Cormack argues that it is only by the adoption of these wider community values that we can become excellent. The relatively recent work on excellence (in the US) by Peters and Waterman is, arguably, one of the most important business books to appear in recent times. Even though the terms 'ethics' and 'business ethics' do not appear in the index, that work on excellence is clearly devoted to the subject.

Ethics as part of the Judgement of Excellence

In most professional work excellence is judged, in part, by the ethical codes. Excellence is, however, more easily recognised than codified. It is seen as a journey as well as a destination; a process as well as an achievement. As Peters and Austin so aptly put it, '... excellence happens when high purpose and pragmatism meet'. Judgements are not made on single issues, but on overall evaluation. The difference between statesmen and party hacks is that the former have a broader vision, substantial confidence in their own insight, a constructive approach and a moral tone to their views and behaviour.

The judgement of how well such criteria have been satisfied must be left to those fitted to judge. Exactly who judges might be a matter for debate. It may be that outsiders are best equipped: pilots may not be the best judges of aircraft design; vignerons not the best judges of wine; nor surgeons the best judges of the desirability of surgery. There are, however, some forms of professionalism in which sheer competence and artistry are sufficient; musicianship, for example.

In most forms of professionalism, however, values become significant. We do not accord to dictators the notion of excellence, despite their efficiency, dedication and list of accomplishments. Those to whom we accord excellence have generally acted according to commonly accepted moral standards. Over recent decades, various theories of management have, as one of their unstated premises, the search for more ethical ways of doing things. Team work theories, theory X and theory Y, primary social motives and the application of Swedish and Japanese methods have a common motivation.

Excellence is Positive and Profitable

Excellence is construed in the positive rather than the negative sense. A story that illustrates the unusualness of the negative is that of a job applicant who, when asked to nominate two referees of good standing, named the Commissioner of Police and the Chief Magistrate. On the applicant's interview he was told that neither the Commissioner nor the Chief Magistrate had ever heard of him. 'There,' said the applicant triumphantly, 'isn't that an excellent reference?'

It is worth noting that the companies on the Peters and Waterman criteria were also market leaders in their respective and diverse fields. Excellence, including ethical excellence is clearly profitable. In order to achieve potential, some values need to be emphasised and these include:

- the value of personal worth and self-esteem based on the uniqueness, significance and importance of the individual;
- the value of loving our neighbours, of placing them in esteem and promoting their growth and well-being rather than pursuing our own interests at the expense of those around us;
- the value of community and the responsibility of businesses to take the social and human dimension into their areas of shareholder accountability;
- the value of personal and corporate vision and the importance of our personal and corporate responsibility for tomorrow as well as for today.

Ethics as a Personal Matter

Ethical behaviour that flows from good intent and generosity of spirit is so much more appealing. The argument that ethics derived from a superordinate code, such as is commonly found in established

religions, is more enduring. Behaviour that does not derive from higher order principles is likely to be both sterile and short-lived. As Wilcox noted that how well police perform is not tested by the police; ‘... looking at how many people they arrest ... on this score, they could simply round up anyone who happens to be standing around with his hands in his pockets looking faintly shifty ...’ She then went on to note that saying that police are excellent requires that they have conducted themselves properly: that their methods are beyond reproach.

CONCLUDING REMARKS

The conclusion here is that we are able to recognise the presence of excellence, but often doubt whether a quantified judgement can be made. Like love and enmity, wealth and poverty, rain and shine we know it when we see it. Excellence is both an achievement and a form of dedication, perhaps of passion. Excellence must, of necessity, include ethical excellence. Although it is not possible to pronounce upon all of its attributes, it might best be captured by the notion that excellence is a process as well as an achievement; ethics is one of the travel documents, as well as the destination.

Summary of Chapter

This chapter deals with the conceptual basis for ethics. The distinction between morals and ethics is drawn, the background of ethics is outlined, and several theoretical approaches given. It will be appreciated that while Indian moral teachings are mentioned the theoretical approaches of Western thought are given prominence. The two reasons for this are: that the underlying philosophy of ethics (view and counterview) is more developed in Western thought; and that the conceptual background of Western approaches to ethics are the ones that invest the global community more than any other. The chapter concludes with considerations of striving for excellence and ethics as a personal matter. To this we should add the important caveat that Indian philosophical traditions have had a deep influence on Western thought. For an account of that point see Bilimoria, PrabhuJ & Sharma (2007).

Multiple Choice Questions

Select the best answer from the options given.

1. East India Company
 - A was always a management agency for the British government ☐
 - B had a continuous trade monopoly until 1873 ☐
 - C Went out of existence at the time of Indian independence ☐
 - D largely set commercial and management practices for India ☐
2. Ethics
 - A is the same as morals ☐
 - B is a formal code of specific application ☐

- C is a term of Latin origin ☐
 - D is an implied set of values ☐
- 3. An example of etiquette is
 - A passing the port from left to right ☐
 - B complying with the law ☐
 - C lighting a cigar in a crowded train ☐
 - D wearing socks ☐
- 4. Consequentialism
 - A is a deontological approach ☐
 - B views ethics by outcomes ☐
 - C is the same as virtue ethics ☐
 - D is a variant of hedonism ☐
- 5. Hedonism
 - A is 'the greatest happiness of the greatest number' ☐
 - B is the opposite of Utilitarianism ☐
 - C is the same as deontology ☐
 - D none of the above ☐
- 6. Compliance
 - A is an aspect of an aspirational code ☐
 - B gives us the option of compliance ☐
 - C requires conformance to a formal requirement ☐
 - D imposes no formal obligations ☐
- 7. Action Vs thought
 - A action is more important than thought ☐
 - B thought is more important than action ☐
 - C neither action nor thought are important in ethics ☐
 - D action and thought are based on professional ethics ☐
- 8. Moral development
 - A Kohlberg's theory is about moral development ☐
 - B Kohlberg's theory is about childhood behaviour ☐
 - C moral development is irrelevant to adulthood ☐
 - D takes place only in the workplace ☐
- 9. Quantification in ethics may be done by
 - A putting monetary value on prospective actions ☐
 - B comparing the value of one action with another ☐
 - C both A and B ☐
 - D neither A nor B ☐

10 Excellence is

- | | |
|------------------------|-----|
| A an aspirational goal | [] |
| B unachievable | [] |
| C a chimera | [] |
| D a fundumbulator | [] |

For Discussion

1. One might argue that ethics expresses timeless value that we should not break (e.g. torturing children is absolutely wrong). Alternatively, one might hold that it is only by consequences that we may judge moral actions. What would you conclude?
2. The notion that a Code should be aspirational might be taken to mean that it is something that may not be achieved. If this is so, then the case for moral behaviour is weakened: at least the law is clear about what is unacceptable. How would you overcome this aspirational moral code difficulty?
3. The Kohlberg analysis of moral development was founded on American society. To what extent is it applicable in India?
4. Give an example of how one might quantify the relative values of someone (say) stealing from a close relative and going naked to a formal occasion.
5. The search for excellence is sometimes characterised as being a holy goal that only generates anxiety as excellence is rarely achievable. As such it is a character trait that produces unhappiness. Is there substance to this argument?
6. In moral actions one might consider the centrality of moral and proper thoughts. Alternatively one might not be concerned with thought but, rather, with actions on the grounds that what happens is matters. Which of these seemingly opposing views do you find more congenial?

5

CHAPTER

Origins and Explanations of Ethics

Different nations will have differing views about the nature and origins of ethics. In a large, pluralist and vigorous democracy such as India there are bound to be varied explanations. One of the issues that may distinguish Indian views from the Western ones is the more widespread belief in reincarnation. The impulse to behave well in this life in order to benefit in a future incarnation may dispose some to a more moral stance. What is still problematic is to determine what that moral stance is.

At a wider level, different aspects of explanation might be proffered. These range from the physical, through the psychological and social, to the anthropological. Further, the explanations may be of practical or of religious account. What follows is an indication of the range of possible explanations.

PHYSICAL FACTORS IN ETHICAL DECISIONS

Whatever ethical systems we put in place will set a background for future generations. Given world population growth, whatever approach we adopt will have an impact on an increasing number of people. It is timely to recall that the present population of the world is growing at an accelerating rate. As recently as 1905 the world population was 1.7 billion; in 1985 it was 4.8 billion and growing at 78 million per year. In 2007, it was over 6 billion. Estimates of future growth are problematic: such 'estimates' are likely to be in error, however, since the population figures seem to be revised upward every few years. For young persons growing up now, about one-seventh of all the people who ever lived will have been born within their lifetime. This is an indication of population growth.

Although it is rarely said, value systems are commonly thought of as being spiritual and intangible. It may well be that there are explicable physical factors that affect one's moods and hence may affect ethical judgements. This consideration is a timely antidote to the intellectual parochialism that sees the dominance of non-physical approaches. Ethical judgements may be compounded of spiritual values, modified by genetic disposition, diet and food additives, cultural values, climate, education, religion, and illnesses.¹

¹A recent book that considered such issues is appropriately titled *Genethics* (Suzuki & Knudson).

There are occasions when physical matters are not only important in themselves, but are also a catalyst for a major cause. One outstanding example is that of the riots against the salt tax. Gandhi's march against the salt tax in 1930, a significant source of revenue for the British Raj, brought the tax on salt issue to the fore. His march to the sea at Dandi, where he collected salt, in contravention of the law, was a direct provocation. The eventual outcome being one of the drivers toward independence.

To balance this picture, one would need to recognise that the plundering of Indian resources is to be seen against a countervailing backdrop of a series of invasions over the millennia; in particular, the time of the British Raj. From the British occupation for well over 300 years we need to recognise the contribution of the development of national social systems; of the civil service; of railways and roads; of a system of government; of law; and of a nationally organised military. Some of this may have been by intent and some inadvertent—but the contributions do need to be recognised. It is also well to recognise that India is a member of the British Commonwealth of Nations—a recognition that the old British Empire has turned into something larger and morally different, from the old Empire.

PHYSICAL MATTERS

Genes

Some years ago there was a promising idea that an extra Y chromosome (the 'male' chromosome) was implicated in deviant behaviour, particularly that of violence. Subsequent studies showed that deviant karyotypes were related to a number of social measures, including hospitalisation, ill health, psychopathy and psychiatric disorder. Biological explanations hold that we cannot separate people's ethical and social systems from their brain and biological system; it is possible that ethical judgements may have a genetic component.

The idea that physical characteristics relate to moral behaviour was first examined in detail by a 19th century Italian criminologist, Cesare Lombroso. He believed that some individuals were born to be criminals. His interest led him to attribute criminality to a condition that represented a throwback to an earlier lower form of biological development, generally held in check by society and emerging only during times of stress. This basically physical view of the criminal was moderated in Lombroso's later approaches, leading him to conclude that the cause of anti-social behaviour is multifaceted, involving biological, social and environmental factors.

A variant of this fundamental physiological inheritance position is to view criminal *stigmata*, not as reversion to atavistic types, but rather as imprints conferred by trade or profession over generations. The relevance of physique to calling is an obvious one. Physique is also relevant to sport, hobbies and personal preferences. In times past, for example, a weakly lad was much more likely to be apprenticed to a tailor than to a smith. Further, it was probable that a son would follow his father into the same occupation.

In such a way a developing relationship would have been established between occupations and body build, an effect that would be likely to continue over many generations, although diminishing over time. This idea was examined in Germany in a study involving the assessment of seven variables measured on 110 men named Smith and a like number named Tailor (Baumler). The variables were:

1. Self-rating of suitability for a profession.
2. Suitability for occupations requiring physical strength.

3. Suitability for sports requiring strength or agility.
4. Height.
5. Weight.
6. Solidity (weight/height to form a quotient).
7. Hobbies indicative of strength or agility.

It was found that all variables except height showed significant relationships, all in the predicted direction.

This significant study is consistent with the pioneering work done by a German called Kretschmer. He found that whether one was physically fat, thin (or in between) was related to personality type. The development of that idea by an American (Sheldon) showed that with careful study there were small but clear relationships between one's body type (genetically determined) and character. The one clear finding that seems to be replicable is that the median shaped body is much more likely to be found among criminals; rarely are they very fat or very thin.

Ethical Dilemma

A company has produced a genetically engineered strain of mice that will, of certainty, contract cancer. There is a promise of great profit in the sale of the patented mouse to pharmaceutical companies. Your organisation has shares in the company.

Would you do anything?

If the transgenic organism were a microbe that would eat up ocean oil spills would you feel differently about it?

If the organism were an animal bred for human consumption (such as faster growing leaner beef) would that change the ethical position?

Brain Evolution and Ethics

One of the curiosa of biology is that of the human brain. Where most structures are modified into new structures (as the eye evolved from a light-sensitive area of skin to the focusing colour-sensitive organ it is now), the brain has evolved in a different way.

MacLean has pointed out that the 'old' (reptilian) brain remains and has an added 'mid-brain' (primitive mammal). In turn the 'mid-brain' remains and has an added higher order 'fore-brain'. Each of these structures retains its original function, but the function of one part is sometimes at odds with that of another. It may be that the warring impulses emanating from these different neural structures become what we perceive as conflicts, inconsistencies and the difficulties of ethical judgements. That the three brains retain much of their original function may be the origin of human aggression and inconsistency.

Diet

Dietary factors are also known to affect mood. These factors include vitamin deficiency, allergies, aberrant metabolism and the psychological destabilising effects of some food additives (such as dyes and flavour enhancers). The damaging effect of monosodium glutamate (MSG) on certain individuals is well known. Yet other dietary preferences appear implicated in behaviour. Behavioural disorders can stem from mercury, carbon disulphide and thallium poisoning. These chemicals are also known to aggravate epilepsy. It is common knowledge that the old saying 'as mad as a hatter' comes from the effects on hatmakers of that time from inhaling the fumes of mercury, used for 'blocking' hats.

Deviant behaviour may also stem from abnormal mineral levels; high levels of lead and cadmium and low levels of potassium and sodium also tend to be associated with undesirable behaviour. One of the best researched areas of food intake and behaviour disorders is that of the control of hyperactive children. This work of Feingold showed that many children who were so diagnosed were suffering from a reaction to harmful food additives. He showed that many troubled children could be helped by the elimination of certain additives from their diet.

The work on additives and food colourants was examined extensively in the 1980s, but that interest has now moved to the effects of diet in general. With that is linked the recent interest in the subject of obesity, particularly in First World countries. Among the more exotic recent developments has been that of considering pheromonic perfume additives (Winman, 2004).

The Feingold notion has recently received a review which puts the idea in a diagnostic perspective. This issue of the impact of ingestion of various kinds and their impact on behaviour will, no doubt, continue to be an area of interest.



Ethical Dilemma

A new domestic product, after being in production for a year, is found to be very environmentally dangerous. A recall is clearly required, but the recall will be extremely expensive. The compliance rate for the recall is impossible to estimate. It would be likely to have a higher compliance rate and be very much cheaper if the recall notice falsely represented the danger as being a health hazard to children. When you express reservations about this course of action the production company offers to donate half of the saving to medical research on fatal diseases of childhood.

Does that make the proposal ethical?

Conversely, behaviour and intellectual capacity and health problems, may be affected by the absence of some substances. One of the best known is that of iodine deficiency, which is a deficit that may produce mental retardation. In a review of nutrition and IQ, a psychologist reached the general conclusion that both mood changes and performance may be affected by nutrition (Wright). This range of evidence is sufficiently persuasive for us to be alert to the effects of physical factors on mood state. We know that certain psychotropic medications are prescribed to change mood state. Among the effects they can

produce are changed dispositions to others and to events. Since mood and attitude are so closely related and assuming that the disposition to ethical stances is mood related, the physical factors instanced may affect ethical judgement.

Environmental Factors

Aspects of the environment worthy of comment include noise, air pollution, crime rates and a feeling of safety: studies on subjects such as these form a useful counterpoint to sociological, psychological and legal approaches. One issue of common knowledge is the effect that temperature has on mood. When temperature rises to the mid-thirties (Celsius) it makes people irritable and is known to have an effect on murder rates, dubbed the 'thermal law of delinquency'. Other environmental factors include noise, barometric pressure, wind, rain, humidity, ozone, the quality of the light and hours of sunlight per day. At the Dead Sea the air contains bromide leached into it by evaporation. The resultant combination of warmth and a calming agent may have something to do with its popularity as a holiday resort.

The climatic variable that seems to have received much attention is the wind. In many parts of the world it is given a special name—the 'sirocco', the 'mistral', the 'hamsin', the 'chinook' and, importantly here, the wet and dry monsoons. Folklore notes a relationship between wind and mood; it may be remembered from schooldays how a windy day will bring about a corresponding boisterous reaction in children and those who have dealt with horses will know how disturbing a wind is to their mood—horses being strongly into ego states.

PSYCHOLOGICAL THEORY AND ETHICS

At the psychological level there is a theory that has strong implications for ethics. The deprivation of former benefits can lead to strong reactions. It is an important and interesting observation that people seem to dislike losing money more than they like gaining it. It explains why investors hold losing stocks and why losing a \$50 note evokes more emotion than does finding one. It may also explain the increase in suicide during the 1929 stock market crash.

The theory is called 'psychological reactance' and outlines '... a set of motivational consequences that can be expected to occur whenever freedoms are threatened or lost'. (Brehm & Brehm) It is, in other words, a theory of motivation and behavioural control. The theory holds that people are motivated to restore their freedom when their freedom is threatened. The question here is to what extent does a deprivation provoke a reaction that might transgress ethical principles?

There is a delightful illustration of this theory in Steinbeck's book *Sweet Thursday*, which recounts an incident during the era of MacCarthyism. A diverse and unlikely gathering of people, including a Californian golf caddy, were asked to swear allegiance to the United States. The caddy declined on the grounds that he did not plan to overthrow the Government of the United States, but might want to some day and wished to reserve the right to make that decision for himself. The relevance of this theory to ethics is that those who have perceived non-ethical behaviour to be profitable might be hard to move to the ethical commitment path. Rational argument, and empirical evidence are, among other things, essential to conversion.

SOCIOBIOLOGY

There is a field of inquiry called 'sociobiology'. It may be defined as the study of the biological nature and foundations of social behaviour. This important recent development is still in a state of controversy. (Ruse). That both the scope and nature of sociobiology is under critical review does not diminish the importance of the concept. Human sociobiology covers a diverse range of topics, such as aggression, optimal social group sizes, sex, parenting, kin selection and likewise. Among the features sociobiology tries to explain is that of altruism.

The Darwinian emphasis on competition should be complemented by a consideration of the virtues of co-operation. There may be a biological basis for complementary altruism, just as there is a basis for biological symbiosis. Our origins as tribal entities may find expression in the way that we structure our social institutions. The small tribe had functional significance.

The optimum size of a tribe depends on whether or not the group lives through hunting or agriculture. Notwithstanding, the group size is considerably less than that of most modern corporations. That human beings band together in groups of about ten has its origins in optimal size for survival. Perhaps for this reason the structure of organisations reflects our social origins. The use of work teams at Volvo in Sweden, the departmentalising of organisations, the parallel but independent functioning of the various entities under the 3M banner, and optimal size of controlling bodies (so amusingly portrayed in Parkinson's law) might all be expressions of our sociobiological origins.

One of the original expositions of sociobiology held that ethics is derived from biology. As a consequence the notion of handing over ethics to scientists was advocated. A refutation of that idea has been published (Singer). As the author asserted, sociobiology '...enables us to see ethics as a mode of human reasoning, which develops in a group context, building on more limited biologically based forms of altruism'. While sociobiology may aid our understanding of ethics it is not a sufficient explanation of them.



Ethical Dilemma

A chicken farm owner has a shed with a thousand birds. One night a predatory animal breaks in and bites the legs off hundreds of chickens; most die, the remainder have to be killed for humane reasons.

Should the owner sell the carcasses?

If so, under what conditions?

THE BENEFITS OF CO-OPERATION

Our general understanding leads us to believe in the benefits of co-operation. That intuition has been buttressed by the experimental work of Axelrod. His project began with a simple question; 'When should a person co-operate, and when should a person be selfish, in an ongoing interaction with another

person?’ In the Axelrod studies a number of strategies were used from a variety of disciplines. The clear winner was the ‘tit-for-tat’ strategy (TFT).

The ‘tournament’ played was the ‘Prisoner’s dilemma’, which involves two players (masquerading as prisoners), each of whom has two choices (co-operate or defect). Neither player knows what the other will do. Two individuals are detained by the police and charged with a bank robbery, which carries a hefty jail sentence. There is no solid evidence, so if neither says an incriminating word, the charges will have to be reduced to that of carrying firearms, attracting a much lighter penalty. However, each is offered the chance to bargain—to go free by turning in the other.

Two alternatives are available to each prisoner; to co-operate, with the motive of increasing benefit to both players jointly; or to compete, so as to increase individual benefit at the expense of the other. The best individual outcome is to go free and keep the money; the worst is to be betrayed and languish in jail in the irksome knowledge that the other is disloyal, free, and rich.

The best joint outcome (where both prisoners remain silent) is to receive a light sentence for carrying arms, but that is unstable since either individual can do better for himself by deviating (securing the best individual outcome for himself—but producing the worst individual outcome for the other). The worst joint outcome (where each betrays the other) lands them both in jail, though with a lighter sentence than a solitary burglar would receive. If both betray, then both lose—hence the dilemma. Such dilemmas clearly imply ethical values. Thus the seeming, and real, advantage of the TFT strategy is that it is basically ‘nice’. While defection receives a reaction, it is a forgiving and clear strategy. Defection yields a better immediate payoff but co-operation yields a better long-term gain.

It would seem on first reading that Axelrod has made the definitive statement, but recent work on games theory has yielded more sophisticated analyses. It is not so much that Axelrod’s analysis has been falsified but, like so many scientific discoveries, it has now been seen to have a more circumscribed application. The ‘Prisoner’s dilemma’ is a strategy appropriate for a dyadic relationship, and also for many professional relationships. For this strategy to work best a stable repetitive relationship is required. More complex social structures require further analysis. Those interested in recent developments in games theory relevant to this discussion are recommended to refer a recent book, *The Origins of Virtue* (Ridley).

The notion that corporate entities evolve, as do living organisms, is appealing. Few entities stay in their original form, or are incapable of modification. Theory in science, in ethics, and art and in biological organisms, is in a state of constant flux; that point is no less true of business.

Working with Others

In professional interpersonal relationships we are often obliged to work with people whom we do not admire, and would prefer to avoid. For such situations there are helpful guidelines to be found in principles such as the use of courtesy, limiting the time of interaction, and restricting the interactions to professional or commercial issues. A work aptly titled *Dealing with People You Can’t Stand* might commend itself to those with a bent for how-to books (Brinkman & Kirschman).



Ethical Dilemma

By genuine accident you find a business plan written by a commercial rival. That plan contains strategy, pricing policies and new product launching, which you read before you realised their importance.

What is the ethical course to take?

What ethical principle is at stake?

CROSS-CULTURAL ISSUES

These issues are of fundamental importance in that they deal with differing value systems, a point that is at the core of ethical systems. Ethnicity makes us confront competing views of the world and requires us to resolve our dilemmas if we are to continue to trade in a culturally diverse world. It forces us to consider our own position and to question whether or not we are indulging in ideological colonialism.

The capacity to resolve these issues, or at least to come to grips with them, is the acid test. This high sounding but important rhetoric translates into the question of how to resolve problems for firms with foreign subsidiaries e.g. Dr. Reddy's Lab, Infosys, TCS, Aditya Birla Groups and so on; for foreign firms with Indian subsidiaries e.g. HLL, Nestle, P&G, Gillette; for Indian companies wishing to bid for foreign contracts e.g. L&T, ONGC, BHEL, IRCON; for Indian companies that have employees from alien cultures e.g. HCL, Satyam, B&K Securities; and for organisations exporting products that, if sold at home, would attract unwanted attention.



Ethical Dilemma

You own a small business with thirty employees. Five of those employees are sincere adherents of a religion that is in a very small minority in India. They put to you that they should be given the holidays particular to their religion (on the grounds that other religions have their holy days recognised).

Do you see good grounds for acceding to their request?

Do you have any legal compulsion to comply? Would you set any or some conditions if you agree?

If complying were to have an adverse effect on your business what would you do?

Cross-Cultural Comparisons

Except in specially defined circumstances, the application of cross-cultural issues should be independent of other group identities such as gender, ethnicity, political affiliation and religious philosophy. One of

the most interesting challenges in ethics is the issue of identifying what is an ethical absolute and what is merely culturally relative.

Clearly, slavery and torture are not issues for which one might justifiably argue. More marginal are issues such as the limits of access to information; for example, in some cultures it is the family, not the individual, that is the basic unit. Shame and ill fortune are seen to beset the family rather than the individual. Should one, therefore, allow access to information for the immediate family (as distinct from the individual)? Among the pertinent questions are: What is the difference between a bribe and an appropriate gift? Should the local born of alien-born parents have parental wishes imposed on them against their will, and if so at what age? What are permissible forms of professional criticism?

One of the singular merits of ethical consideration in a cross-cultural context is the way in which it forces us to confront our own values, to develop them and to defend them. Cross-cultural comparisons afford a marvellous opportunity to examine the bases of our ethical codes in a manner that does not invite the heat as is the case with more commonly attending intercultural value debates.

Ethics is essentially about human values. Since not all values are shared we are compelled to consider the issues we have in common and those on which we have differences. For instance, what may seem self-evident in one culture may be ethically repugnant in another. Ethics affords an opportunity to discuss and resolve these human values in a non-threatening frame of reference.

That issue is compounded in developing countries where there is a weakening of indigenous methods of social control and coping, thereby creating either a need for central agencies of control or the development of an agreed code of conduct. This applies to professional as well as to business contexts.

In a world of increasing prospects of cross-cultural contact there is a perceived need for a guide to human behaviour that is minimally culture bound. A guide that is partly applicable way is readily available (Cialdini). His work sets out a short set of simple principles of application. It is a highly readable text, which is midway between popular exposition and the scholarly buttressed argument. We do need to recognise that Cialdini's work was derived from studies in the United States of America and may or may not have wider application. It would be impossible to provide a guide to every culture. What we can do is to add to Cialdini's list. Our additions would include:

Non-Negotiable Positions

- Be aware of your non-negotiable position (e.g. the provision of a dangerously low standard is unacceptable)
- Sensitivity to local customs
- Be sensitive to local standards and morales, unless there is a very good reason not to be (eg do not agree with the practice of genital mutilation of female babies)
- Asking rather than asserting
- Ask questions rather than make categorical assertions (e.g. 'What is the origin and significance of this formality?' rather than 'What a pointless ritual!')
- Similar values but with varying expression
- Be aware that we all value certain things (such as loyalty) but the way in which they are expressed may differ (eg some cultures value family loyalty above principle; while some value friends more

than organisational loyalty). In Indian context, friends are treated like families and very often bonds among friends are more intense than family ties

- Admiration in due measure
- Expressed admiration for that which is admirable rarely goes astray (e.g. 'What beautiful and functional architecture')

Touching Taboos

Every culture has touching taboos; be wary of these. They may take the form of who is touched, where and when. It is safer to assume that there is a touching taboo rather than the reverse. It is usually safe to shake a proffered hand.

Forms of Address

Forms of address vary with respect to formality. If in doubt keep the formal mode unless it is proposed otherwise. The common bases of humanity are to be found in everyday language. Such issues as the salience of the family (tribe, clan), and the wish for basic security, are supra-national, as are some material comforts and worthwhile employment. With basic issues in mind it is a good start to be aware of the basic concepts.

CULTURE AND ETHICS

Cultural values may conflict on several issues. Among such are the notion of collective responsibility, attitudes to women, judgements about body shape, usury, secret commissions, and loyalty-to-family over loyalty-to-principle. Among the important themes on business ethics are those of the need to resolve issues of values in relation to different cultures and to try to find principles that transcend culture; and the need to find means of teaching, encouraging and enforcing an ethical code in business.

Law, in many countries, prohibits a trade in human organs (eg selling kidneys, eyes, skin, etc), although there may be a flourishing underground market for such items. In 1987 the World Health Assembly held that there was concern over the '... trade for profit in human organs among living human beings'. Such dealing is an affront to basic human values. Removing organs from the deceased, without proper permission is a process fraught with dangers of abuse, save in certain circumstances (such as familial donation for a life threatening illness, or with consent). What needs to be made clear is exactly who is able to give legal consent and, if consent is given, who may over-ride it and under what circumstances.

To those who live in countries where that is the norm it may not seem repugnant, and may even be seen to be meritorious. In some cultures responsibility is comparatively individual. By way of contrast, in a novel set in ancient China a picture is drawn of a young man of 'good' family who commits a serious offence for which the death penalty applies. The wealthy father of the offender buys a young man of impoverished family to be executed in his son's stead. What is surprising, to us, is that the young man who is to be executed is delighted to help his family to honour and riches. The principle of family or cohort responsibility is not one that we espouse in our criminal law nor, very often, in our ethical actions. For us, responsibility is more often personal than collective.

Ethical Dilemma

A chain of food stores has decided to expand its operation with larger stores and attractive displays: among the displays is that of meat.

Some who shop there are offended by the open display of cuts of meat from various animals, some of which (such as beef or pork) are offensive to them. As a result they mount a protest, saying that such items should not be on display.

A counter group says that no one is forcing them to buy products from the chain store, and if they do not like shopping there then should go elsewhere.

What are the moral issues involved here?

Is there a creative solution?

Many Asian and African developing countries often have highly effective yet informal means of social control. It may be a matter of regret that a number of them appear to be opting for an institutionalised means of coping with social problems, using the occidental style. Cultural and tribal sanctions may still be better than formal policing. It is by the examination of issues such as informal control that we might come to an enhanced understanding of ethical substance, and of procedures that are effective in enforcing acceptable behaviour.

In recent times, some countries have shown an interest in learning from other countries (such as Sweden), and other cultures (such as Japanese). It is notable that the interest focuses on productivity and quality control rather than on ethical practices. Where other countries are seen to be more efficient, we might wrongly conclude that the advantages they appear to derive are only from efficient production, good management and so on rather than their strong ethical commitment. Ethnic issues deal in value system differences, so why not ask why there are value differences between the cultures of organisations? Why do some corporations conform firmly to a set of agreed ethical principles while others appear to be indifferent to the need for adherence to a code?

Among the factors that promote adherence to an ethical code must be the attitude of top management, strategic planning, whether or not the organisation is under economic pressure and what ethical criteria are used to select and promote staff. That understanding is complemented by those residents of alien origin, by certain internal tribal or national groupings and by those outsiders with whom we do business. The collision of cultural ways brings an obligation on us to justify our cherished beliefs, and entails the obligation to try to find common ground on principles that are superior to particular or sectarian interests.

PERSONALITY AND ETHICS

Individuals display an astonishing variety of response to ill fortune. In any disaster (earthquake, fire, flood, volcano, war, pestilence) there are inevitably those who risk their lives to save others and to protect property, while at the same time and in the same population, there are those who loot and rape and pillage.

There was a term, now fallen into disuse, known as 'moral insanity'. Just as there are people whose rationality is so minimal as to cause us to make the judgement of insanity, so too there are people whose moral notions are so primitive as to press on us the notion of lack of moral intelligence. As we have those whose cognitive ability is so negligible as to be regarded as imbeciles, so there are those whose moral notions are so lacking that we might regard them as moral imbeciles. Their notions of altruism, and of selfless contributions, are so minuscule as to lead the ordinary person to regard them as unbalanced and to be avoided where possible. This quality (or lack of moral quality) is characteristic of dictators, low-grade politicians and sundry psychopaths.

On the other hand, there are those who have lives dedicated to the loving service of others. The psychopathy exhibited by some in the community is a counterpoint to the altruism displayed by others. The public fairly readily distinguish the real from the pretence (if you can fake sincerity you have got it made!). Saints, both religious and secular, act as an inspiration to most. We admire and accord acclaim; we cite these moral souls as role models, and we use them to justify our common humanity.

Leadership

It will be appreciated that leadership is a most significant factor in ethical behaviour. Being in positions of power, leaders are able to have an influence out of proportion to their individual worth. Just as organisations enhance our power for good or evil, so too do leaders. There is an extensive literature on leadership, much of it current. In the reported investigations, an agreed terminology has been reached that includes characterising styles of leadership on various parameters. These include transactional leaders, charismatic leaders, and transformational leaders. Among the qualities that leaders may bring to leadership are idealisation and inspiration.

Leaders may well articulate the goals that others have not articulated, provide intellectual justification for those goals and help to align competing interests. Certainly, among leaders there has to be activity. William Whitelaw, once said of another politician, '... he goes around stirring up apathy'.

There are those who have been leaders but whose moral contribution has been inverted. Among such people are Napoleon, Hitler, Stalin, and Pol Pot. The form of leadership that articulates the concerns of some at the expense of others, as in the former Yugoslav republics, is not widely regarded as moral leadership. As yet we do not have a widely accepted term that describes someone who has not only the agreed qualities of a leader, but also moral stature (Gandhi, for example).

THE EFFECT OF MIGRATION ON NATIONAL CHARACTER

It seems to be commonly understood that a country that receives migrants from a diverse mix of culture changes. What is less commonly appreciated is the effect on the transferor countries. It is unlikely that all personality types are equally attracted to the idea of migration. Relocation may differentially attract the dispossessed, the dissatisfied, the enterprising, the social aspirant and the opportunist.

Whatever the personal qualities that typify the emigrant, that quality will be depleted in the transferor country; thus the value systems and social values of transferor donor and host countries are constantly modified. Translated into business terms; those who are 'head-hunted' from a competitor will bring to the new employer the double advantage, that of gaining the expertise for the recruited hunted and depleting the expertise of the competitor from whom they were hunted.



Ethical Dilemma

You have been asked to convene a conference in India. The majority of overseas attenders will come from a culture about which you know very little. You are anxious to make a good job of the conference and, to that end, commission someone to advise you about the visitors' cultures. In over enthusiasm you also decide to gain some information about the personal preferences (food, drink, entertainment, etc) of the foreign keynote speakers. It has been suggested to you that some of the delegates might like entertainment that, in your culture, you might regard as of distinctly marginal taste. At what point does this courtesy become inappropriate?

BASES OF CODES

Rational Versus Emotional Bases

Ethics must have a rational as well as an emotional basis; some ethical values may be captured by our intellect while others may not. Reason can tell us how to arrive at conclusions from other statements; it can also tell us the consequences of certain courses of action, but it cannot tell us what values we should adopt. Expedience (or mercy) may sometimes seem more acceptable than principle. We might, for instance, excuse the widow who steals to feed her children. Straitened circumstances could be mitigating, but would we make the same judgement in a business decision? The application of the principle 'without fear or favour' is not as easy on the conscience as it might seem. Our admiration of personal and family loyalty might not extend so readily to company loyalty.

Active and Passive Codes

It is preferable for ethical codes to be active rather than passive. They enjoin us to do things and behave in particular ways rather than invite us to ignore particular things. One might mistake consensus for acceptability; one may be consistent—and quite wrong. Codes are not likely to function well if they rely on blind obedience. The internalisation of values, and being generally accepted, are important aspects. This means that managers must pay attention not only to content but also to the process for determining that content. Ideally a code should be developed and disseminated to all staff, in an open, participative environment.



Ethics in Action

You are responsible for personnel management within the organisation. It has come to your notice that employees from a particular ethnic group have a higher work injury claim rate than expected. The employees from that particular group have also become a larger proportion of your workforce over the past three years.

The representatives of that group have started to ask that you employ more of their group when future vacancies occur. Their argument is that the staff would then become more cohesive, and thereby more productive. With a workforce of one ethnic background the safety signs, the shared understanding, and the social cohesion would all (so it is argued) reduce the accident rate.

Your board members are uneasy and ask you to identify the issues to be considered at the next board meeting.

Time-and-Place-Bound Codes

An important question is whether or not ethical principles should be bound by time or circumstance. To say that a case is particular or exceptional obliges us to examine the scope of the ethical principle. In other words, can one make an ethical decision without reference to the social context? To take a contemporary example, consider this:



Ethical Dilemma

There are local government-owned swimming baths. Under equal opportunity guides bathing may not be segregated; but if it is not segregated women may be sexually harassed.

One appropriate response is, of course, to prevent the sexual harassment by some means (employing guards, for example). Supposing, further, the case involved a minority group whose cultural background forbade women from bathing at the same time as men.

Should the general principle be modified for a minority culture when the legislation is clearly intended to apply to all?

Are the principles of the minority culture to be upheld?

Do the principles of the minority culture, which may have been good in the original circumstances, now apply with equal force?

Are they to be cancelled by living in a new social environment?

Ethical principles also need to be considered in the time context: they are principles that are for the long term rather than the short term. In the long term, ethical behaviour is better for business, but that is of no help to the small and hard pressed business that needs to make a profit now in order to survive.

Occupation of the high moral ground makes us feel good, but we need to ask the question, does it enhance the prospect of corporate survival?

People have long memories for kindnesses—and also for mean-spirited behaviour. Those who behave well are remembered with kindness for an astonishingly long time. Those who behave badly find in later times that the sky becomes dark with the wings of chicken coming home to roost. It is well understood in business that the prospect of an ongoing relationship is a wonderful stimulus to seemingly behaviour. It would be fairly easy, as con-men well know, to make profits on a short-term gain because the victims are unlikely to be seen again.

EMERGENT ETHICS

The idea that business ethics is emerging has been canvassed in an excellent work by Lloyd. He argued that we have, so far, encountered two alien forms of life; one is the company or corporation, the other is that of artificial intelligence (known to us through the computer). The comparatively recent development of the company parallels that of the evolution of living organisms. Companies are subject to modification, and benefit in the same way from competition and co-operation. The basic thrust of Lloyd's argument is that it is now appropriate to be concerned with business ethics; he also argues that this is in the best long-term interests of an organisation. Judging by human standards the company has feral energy, and has the capacity for non-moral violence. Without some fetters the company could become a rampaging villain who is a '... familiar villain in the dystopian visions of the future depicted in our literature' Further, Lloyd went on to note that the company is a primitive non-moral species of living corporate entity. For that reason, Lloyd argues, we need to contain our terrible child with company law, standards, laws, regulations, accountable reporting, pollution control, and licensing agencies.

On the positive side companies have done much admirable work. Among the improved and now accepted strategies is that 'nice' companies recognise not only the virtue of behaving well, but are also coming to appreciate the commercial value of that moral concern. From the point of view of the consumer the company has created order out of chaos: and noted that, generally speaking, '... where companies have had the nourishment they need to prosper, our lives have been better': corporations have been, perhaps, unintentional promoters of the common good. Occasionally, corporations have been '... cruel, predatory and, on occasions, vicious but it has never been cowardly or indolent. On the contrary its boldness and vigour have inspired us to great achievements'.

One of the difficulties of using the evolutionary metaphor is that, like every metaphor, it limps. It is possible that the Lamarckian form of evolution (the inheritance of acquired characteristics) is more appropriate to explain the development of company behaviour than is the Darwinian one. Lloyd recognises that in biological evolution the gene is the basic unit of inheritance. That cannot be true of the company. In its place he proposed that strategic themes are the building blocks of corporate evolution. Corporate life evolves by the natural selection of those who engage in the differential use of strategic themes. Just as genes propagate themselves in the gene pool via sperm and eggs, so 'stremes' (strategic themes) are propagated in the streme pool by the propensity to emulate winning strategies.

An example of an advantageous streme is that competitive advantage is a matter of producing new products quickly rather than existing products cheaply. Those companies able to overcome 'future shock' are the ones most likely to prosper. An example of a streme is that of using a 'hollow corporation'. Such

a corporation is entrepreneurial in that it has the business idea but contracts out the work. This allows for speed of response, reduces its need for infrastructure and capital, and makes it easier to contract with suppliers of goods and services who have a congenial ethical standpoint.

The Axelrod analysis is apposite here. Among recent changes in corporate functioning are the ways in which information is being substituted for capital equipment and money and the recurrent theme that people are the prime consideration.

CONCLUDING REMARKS

There are various forms of 'explaining' the origin of moral behaviour. The list of possible explanations varies from the purely spiritual to the purely physical. It is hard to imagine that any one approach will be perceived as adequate. For this reason it is important to understand the range of explanations for moral behaviour that could be offered. It is not intended that the reader be convinced about a particular approach. Rather, it is important to understand that others have different views about the origin of morality. It is only by such tolerance and understanding that the purposes of business ethics may be discovered and developed.

Summary of Chapter

This chapter pays specific attention to the types of explanations for ethics: they range from the purely physical and physiological type of explanation to those of national differences, personal predilections, and to rational versus emotionally based approaches.

The basis of codes is discussed: among the salient issues are those of active/passive; rational/emotional; time and sequence as a crucial aspect of ethics; and ethics as an emergent phenomenon. It is interesting to consider how ethics is more a construction of the human mind rather than something given by nature. It emerges from human nature, but is far less evident in wild nature.

Clearly, leadership is an important aspect of ethical practice. Any corporate ethical positioning requires a commitment from the top of the corporate hierarchy. Without such commitment the development of a corporate ethical stance is likely to fail.

This chapter discusses these vital considerations.

Multiple Choice Questions

Select the best answer from the options given.

1. Physical factors in ethics

- | | |
|---|-----|
| A are not worth considering | [] |
| B do make a contribution to our understanding | [] |
| C have been shown to be irrelevant | [] |
| D do not depend upon genes | [] |

2. Environmental pollutants
 - A are inconsistent with ethical production ☐
 - B are a necessary by-product of all manufacturing ☐
 - C are the same as resource depletion ☐
 - D have distinct benefits ☐
3. TFT
 - A is an example of equitability ☐
 - B was an idea devised by Ridley ☐
 - C applies to group social interactions ☐
 - D is a guide rather than an explanation ☐
4. Collegiality
 - A means being a member of a college ☐
 - B is the fostering of business & professional interactions ☐
 - C means being politically committed ☐
 - D taking collective responsibility for all actions ☐
5. On the matter of culture and gender we note that
 - A sexism is acceptable, depending upon cultural standards ☐
 - B women should be allowed to vote under certain conditions ☐
 - C there is no good reason for adverse discrimination against women ☐
 - D women are the equal of men in every respect ☐
6. Touching taboos should be accommodated
 - A according to cultural norms ☐
 - B be abolished ☐
 - C never be the basis for a legal case ☐
 - D never be applied as between male and male ☐
7. Indigenous values
 - A are irrelevant to ethics ☐
 - B are a valuable means of discussing ethics ☐
 - C should be the basis of business ethics ☐
 - D are always deontologically bases ☐
8. Migration and ethics
 - A There is no ethical dimension to migration ☐
 - B Political considerations outweigh all other factors ☐
 - C There is a moral aspect to migration policy ☐
 - D Migration policy is unrelated to business needs ☐

9. Moral insanity
- A is a personality condition in which social values are absent ☐
 - B is a purely physically based phenomenon ☐
 - C is a form of mania ☐
 - D is irrelevant to business ethics ☐
- 10 A memes is
- A a memory ☐
 - B a process of theorising ☐
 - C a form of political collectivism ☐
 - D a strategic theme ☐

For Discussion

1. It has been put to you that one of the world's greatest problems is that of unbridled population growth. Your business depends upon such growth as you need a continuous supply of new customers. This dilemma puts you at odds in that your commercial aspirations are at variance with your belief about the problems of over-population. How is that issue to be resolved?
2. One of the problems of writing an ethical principle is that it is intended to act as an overall guide. We also need to recognise that personalities vary a great deal. What are the issues of reconciling general moral guides with that of differing personality types?
3. How would one go about determining whether or not a disposition to moral behaviour is determined by genes alone?
4. It is known that climate does have an effect on human judgement. Does that mean that we should ensure that all human judgements (or, at least, some) are made under standard conditions (e.g. in an air conditioned room at 21° Celsius with a relative humidity of 60 per cent)?
5. Can one be sure that a developed Code will be usable across international situations?
6. Most cultures in the world are based on human interaction in which the face is visible. Just as many cultures forbid this for women, thereby negating the facial feedback that we take for granted in the overwhelming majority of situations. Does this forbidding of facial exposure, in principle, become such an issue that concealing of the face should be against the law?

6

CHAPTER

Legal Aspects of Ethics

INTRODUCTION

The complexity of the law is illustrated by the wayward statement: ‘...that if you can think about one thing that is inextricably related to another thing without thinking about the thing to which it is related you will have learned to think like a lawyer’. Obviously, the law is complex, but that is no surprise. Given the complexity of the human condition and the efforts we need to keep in order to make civil society work, it needs to be complex.

One of the major issues in this topic of ethics and law is that they are not the same thing. Law has immediate primacy, ethics has long-term concerns that might question the law: the law is concerned with formally expressed rules, ethics with debateable statements: the law requires compliance, ethics requires an attempt to meet aspirational standards. Courts are the arbiters of legal disputes, ethics often finds its resolutions in other forums. It is true that none of these distinctions is absolute, but it is also true that just because some form of behaviour is legal does not make it moral. An unjust law in any country, while still a law, could be a gross breach of human decency.

One might argue for a synthesis between legal compliance and aspirational self-regulation. There are three issues to be reconciled; one is the source of the rules themselves, the second is ethical underpinning of the legal standards and the third is rules of equity. This beneficial symbiosis would need to be accompanied by some form of reward system that has a direct outcome of benefit to the legal profession, to its practitioners and to society. Perhaps the most advantageous combination would be that of seeing minimum standards and aspirational standards as complementary aspects of regulatory control.

Underlying the Hart/Devlin debate (discussed later) is the unresolved debate on what law is. In the 19th century as the state increased in power and significance, positivism of the kind favoured by Bentham and Austin became the dominant paradigm of law in the common law world: the law is a command from the state (sovereign) which entails a sanction if it is not complied with. The law for them was posited by men to be obeyed by men and women. The rule of law is, amongst other things, an attempt to express guiding principles of the kind enjoyed and enjoined by the natural sciences. A secularist position with respect to this is that of secularism.

Following the Second World War there was an understandable renascent interest in law, and the extent to which there may be unjust laws, and laws to be resisted. Nazi Germany and the apartheid era in South Africa are striking instances. Gandhi's resistance to British Imperial rule is an arresting example.

The classical notion that the law was of divine origin and essentially immutable, found expression in many classic texts. An instance from the times of classical Greece was that of Antigone's story. Antigone's two brothers were killed in a battle for the control of Thebes. Eteocles who was defending the city, was buried with full honours. The ruler of Thebes, Creon ordered that the bodies of the invaders be left to rot on the battlefield. This was contrary to divine law. In defiance of the edict Antigone buried her other brother, Polynices, herself in accordance with the holy rituals prescribed by the Gods. Creon accused Antigone of having violated his edict which was the law of Thebes. Antigone replied;

That order did not come from God.

Justice, that dwells with the gods below, knows no such law.

I did not think our edicts strong enough

To overrule the unwritten unalterable law

Of God and Heaven ...

Creon ordered that Antigone be buried alive: she committed suicide.

In the 1970s there developed a theory of the common law that was based on 'principles' rather than rules. One might claim that the law is the set of principles by which rules were created. Hart claimed that law consisted only of the rules laid down by the law maker. Hart represents the continuation of the views of Austin and Bentham about the nature of law in the modern secular state. We may need to recognise that the law, particularly the common law, represents values which are present in the community itself.

Cases which produces the rules may not be law, the real law is the set of principles which underline the rule produced in each of the cases, and reflect values deeply embedded in the community. Rules on the other hand came and went and had lots of exceptions and clear limits to them. Principles may assume prominence in certain periods, but are long lived. When applied they have to be weighed against each other. If one is preferred the other principles are not ignored but continue to exert their influence. They generally have an ethical or moral content. An example of this is the principle that a person cannot benefit from his own wrong.

There could be inconsistency between two laws. For example, a law which holds that an heir should inherit under a legal will: contrast that with another law that holds that no benefit should accrue to someone who might benefit from their wrong. A son who murdered his parents should not benefit from a will which made him an heir.

The same debate occurred in Chinese law. In the first dynasty, Qin, which commenced in 221–206 BC saw a similar conflict. Legalists insisted that the law was a written law. It should consist of highly detailed codes or 'black letter' law with severe penalties. The Confucians argued that the true law was *li*, the spirit of the law or what is required for proper behaviour in the circumstances. Underlying was a conflict over the nature of human beings, were they fundamentally bad or fundamentally good. Legalists took the first view: Confucians the second. They saw that *li* educated people and encouraged them to develop to their fullest potential.

For individuals faced with an unjust law there may be a perceived moral obligation to try to legally change an immoral law.

The 'law' may seem distant to many smaller businesses, and may seem to be comprised of rites of no immediate relevance. Pomp and circumstance have little connection to their business concerns, or with the alleviation of pressing financial or personnel problems. It is curious that where we have consultants for just about everything there are so few ethics consultants. Such experts are in a position to help to arbitrate disputes and carry out independent audits of codes and procedures. They would be in a position to assess the ethical status of organisations and to advise how to comply. They would also be able to assist courts in their deliberations.

In this latter role we might boldly suggest that their function is similar to that of other expert witnesses (under current rules of evidence). Ethics experts would be well placed to conclude whether or not an organisation was sincerely committed to an ethics policy and had a properly set up ethics infrastructure rather than just public relations window dressing. Thus ethics is an honourable defence against imputations of impropriety, and a significant means of improving our quality of life. One of the problems here is the question of 'who is an expert in ethics'? This bears upon the difficult issue of how matters are presented (the expressions 'spin' and 'plausable deniability' come to mind).

COMPLYING WITH THE LAW

There are some forms of misconduct and misdemeanour that are called 'offences of strict liability'. Osborne's *Concise Law Dictionary* defined it as where '... someone acts at his peril and is responsible for accidental harm, independent of the existence of wrongful intent or negligence'. It is not intended here to support the notion of strict liability for ethical breaches. The law has one function; a code of ethics has another.

Perhaps the best guiding principle here is not that of strict liability but rather that whatever ethical solution is adopted it should improve the ethical position. It is recognised that in a somewhat contentious and difficult world whatever solution is adopted should leave the ethical position at least improved (see also the section in this work on 'Preventing and dealing with ethical problems'). In addition to the substantive issues of the law there is also the ethical issue of how legal processes are used.

It is not the function of a code of ethics to be an alternative to the law. If the law is seen to be inadequate, or mistaken, or outdated, or ambiguous, then the proper legally permitted procedures should be followed to have the law amended. Thus ethical arguments may inform the law, be an aid to the law, but never supplant it. Ethical codes also fill some interstices of the law (as shown below in the case of Moslem law), express the aspirational mode of the profession, and set standards in a manner that is a guide to both training and practice—in which sense they have ethical as well as legal compass. The distinction may not be a line but, rather, a grey area. Thus, one might have national research guidelines that are, at once, both regulations and ethical guidelines.

Writing ethical codes in the spirit of the law may be helpful. One of the difficulties is to ensure that strict formal codification does not lead to 'creative' opportunities to subvert the intentions of the code. It is regrettably common for the prescriptions of law to be so precisely worded that the precision is used as a means of subverting the intention of the legislation. An instance of this is the legal attempt to prevent

drunk-driving. Some conventional attempts to determine drunkenness included having the accused motorist try to walk a straight line, checking for excessive dryness of the mouth or excessive salivation; or that time-honoured one of asking the driver to say something difficult even for a fully functioning person ('The Leith police dismisseth us'). The difficulty of such tests was their inconsistency (salivation or dryness of the mouth), and the subjective nature of the tests (what deviations from the line are normal?).

One response to that difficulty is to use a relatively unambiguous test; perhaps a physiological one of alcohol percentage in the breath or the blood. It matters not that some people are affected differently by alcohol or that driving skill is impaired to varying degrees. Here the test is simply driving while exceeding the specified blood-alcohol limit. The clear imputation is that exceeding that blood-alcohol level limit defines being in charge improperly in charge of a motor vehicle.

In order to prevent subversion on the grounds of technical difficulty one might even specify the make and serial number of the blood-alcohol measuring instrument. Even that has been challenged in some places. For example, the seemingly unimpeachable criterion could be challenged on the basis that the charge specified the serial number of the device but omitted the dots between groups of numbers—showing how precise one must be in order to be technically unimpeachable.

It seems that there is no end to the ingenuity that some might bring to bear to refute a charge when that defence is clearly against the intent of legislation. One of the purposes of ethics is to act in good spirit as well as to abide by the code. Acting in good spirit most often means not having to be too concerned about details but, rather, that the ethical standards are met.

The reasons why people comply with the law are complex. What is clear is that internally dictated reasons for being law abiding are more effective and cheaper than forced compliance. Such internal imperatives are also readily modified by experiences with the legal system. Being treated with courtesy and dignity by the legal system, and perceiving it to be fair, are among the significant determiners of subsequent attitude to legal compliance.



Ethical Dilemma

Company X of Rajasthan has a set of ethical principles that was derived from an industry code in Orissa. The company developed that code and modified it in order to make it applicable to Rajasthan. A breach of the code has occurred and the matter becomes a matter for the courts in Rajasthan.

Company X has been asked to provide a written defence of the code and its application. The counter claim by others is that the code is not the law and therefore the law prevails.

You agree with this but hold that the genuine attempt to write a code, abide by it and have it consistent with the law is evidence of good faith.

If you were advising the court, what considerations would you propose for the court to consider in resolving this issue?

How would you establish a genuine commitment to ethics, and how internal enforcement of compliance was effected?

THE LEGAL WEIGHT OF CODES

Although a code of business conduct is not legislation, the adoption of and adherence to, a code must carry some legal weight. An organisation that has taken the trouble to develop and implement a code may be able to use it as a persuasive defence when faced with allegations of impropriety. One could propose to the court that the alleged offending organisation had a code to which they were genuinely committed; that they had a monitoring ethics committee, which both decided on ethics breach cases and constantly updated the code; that there was organisational training on ethics matters; and that reporting for inclusion in the Annual Report was a requirement. Further, the organisation of an ethical infrastructure could be presented to the court by way of mitigation, arguing that the breach was outside the norm, that the organisation acted in good faith and that the breach was an anomaly.



Ethical Dilemma

A government working committee dealing with a socially sensitive issue is composed of a diverse group of people. Critics of the committee argue that while it properly portrays the concerns of those who have representatives there, it fails to accord due weight to other significant groups. The groups represented on this committee (formed to report on the issue of zero population growth) are MPs, a male voter, a female voter, unions, demographers, business and social scientists.

Critics of the committee point out that resident non-citizens are not represented. By way of ridicule, a wag observes that lesbians are not included either.

You have been asked to report how one might seriously and ethically decide which groups should be represented.

At what point does one decide that representation no longer makes sense?

This notion of the legally persuasive argument of having a code might be termed 'soft-law'. Voluntary schemes, with government involvement, have much to commend them. Subscription to a code of ethics may be seen as a contract. Although ethics is not law, the fact of subscribing to a code may have some of the attributes of a legal contract.

It is not the purpose of a business code to be an alternative to the law; neither is a code meant to be a means of challenging the law, even though this runs counter to the principle of resisting unjust laws. Ethics should lead, inform, and persuade rather than be a passive follower. Conspiring to subvert the law is not an appropriate use for a code of business conduct.

It is not intended here that one should connive to ignore issues (such as safety), but a code may be used to raise unusual issues that require resolution. In a cross-cultural challenge this rather abstract point may be illustrated by the use of a factory example. If an employee from a culture in which all of the men wear turbans—and therefore cannot wear safety helmets—were to work in an environment requiring helmets, should such an employee be absolved from wearing a safety helmet? Does occupational health and safety over-ride cultural ways?

Self-regulation does, however, monitor the performance of members of associations and serves as a means of developing rules that may eventually be given legal force. One of the most significant changes in recent times has been the institution of a number of legal safeguards. These include such governmental institutions as the ombudsman, administrative appeals tribunals and privacy commissioners, as well as industrial complaints councils.

On balance there is much to be said for self-regulatory codes; they have all the mentioned merits of ethical systems, with the cover of the law to support them. The government has within its power the capacity to give legislative status to codes. It could decide, for example, that professional or business codes that are properly monitored or prepared should be accepted as the legal standard. Here the public availability of codes, ministerial control, proper supervision and legal consequences are matters that might be improved by legislation.

The law often uses a general standard of 'reasonableness', most commonly in responsibility for negligent conduct. If there is a widespread use of similar concepts and standards in industry codes it may indicate that it is 'reasonable' to expect industry to act in conformity with that standard, and where it has not, negligence may be established.

ETHICS AS A CONTRACT

Commitment and adherence to a code of ethics may be seen as a contract. Such commitment and adherence may be done formally, as is often the case with professional registration to do business. Codes may also be used as a standard that is legally persuasive. Given legislative approval these codes could become binding. An examination of any developed country will show hundreds of self-regulatory codes. These are of understandably varying quality. Here the public availability of codes, ministerial control, proper supervision, and legal consequences are matters that might be improved by legislation. There is, however, a substantial difficulty in giving legal recognition to self-regulatory codes. It is possible that a professional organisation may devise a code that fails to give due recognition to proper concerns. Such an inadequate code then receives the protection of the law—despite demonstrable inadequacies.

Among the problems of self-regulation are: those being perceived to be biased in favour of the professional group that constructed and used the regulations; any actual bias that might occur; and the difficulty of using a smaller group to promote its own standards. Governmental regulation has the merits of being universal to the jurisdiction in which it operates, is seen to have the force of law and may be used as a countervailing force to sectional interests.

LEGAL VERSUS MORAL BEHAVIOUR

By way of illustrating the differences between morals and the law these two distinctions are drawn:

- Legal distinguished from moral behaviour for example, non-payment of tax by a moral campaigner, but legal by the devious and 'creative' use of archaic statutes.
- Moral but illegal behaviour, for example, refusing to be conscripted into the armed forces for a war at odds with one's conscience.

In some business situations, particularly in small companies, and in companies with cash-flow problems, ethics may be seen as a luxury affordable only by the well established. It is in such situations that ethical behaviour is construed as whatever satisfies the law. Someone starting a new business, and with a severe

cash liquidity problem, might need to adopt some dubious stratagems in order to survive economically. Only when the organisation is well established might one have the luxury of foregoing an immediate return and of taking the long-term ethical view.

Older companies that operate with substantial goodwill (and offer unconditional money-back guarantees for their products or services) derive incalculable benefit over companies that do not observe such practice. It takes many years to build up a good reputation, and is of enormous financial benefit to the companies that continue to do so. Although individual transactions may be lost, customers will continue to use such companies because they know that, if a poor purchase has been made, it is easy to exchange or get a refund. The basic issue here is that whether or not one wishes to foster a continuing relationship, it would be as well to behave as if one had such a relationship in mind. Ethical Codes are essentially long-term propositions.



Ethical Dilemma

The law prescribes the minimum standard of care required in a construction operation. Despite that, an industrial accident has occurred that has killed two workers. Both of the families of the workers have sued the construction company: the basis of the claim is that the company did as little as possible to ensure safety.

The accident showed, at best, a lack of care toward workers, and amounted to negligence. (Negligence would suggest then that the 'minimum standard of care' referred to above has not been met.)

Where the law prescribes minimum standards, it is to be argued, those standards are guidelines only, and it is a reasonable expectation that companies will use those guidelines as a reference point to improve the overall standard of safety.

You are an ethics expert, commissioned by the court to give an expert opinion.

What would you argue?

How would you convince the court that ethics, rather than law, is a relevant concept?

Does this overall argument rest upon what is regarded as 'reasonable'?

SOME LEGAL CAUTIONS

The less experienced businessperson would be well advised to seek advice from an experienced colleague before considering litigation—a point often emphasised by lawyers themselves. Apart from the obvious, one needs to be aware of such issues as the financial expense unable to spend time on more creative activities, the emotional drain and the possible outcome being a lost cause. Added to this should be an awareness that there are vexatious litigants abroad. Although not common they can wreak more collateral damage than sometimes seems possible. Such people see legal remedy as their first choice and are determined not to seek other avenues of recourse. The law is most commonly a situation of last resort, and is an expensive solution. Courts take the view that reasonable means of dispute resolution should be attempted first. To counter this misuse of the legal system there is even a category known as 'vexatious actions', which Osborne (1964) noted as a proceeding which gives as a:

... party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or which is scandalous, frivolous or vexatious or may tend to prejudice, embarrass, or delay the fair trial of an action, or where no reasonable cause of action is disclosed.

A court may restrain a vexatious litigant from instituting or continuing proceedings. Anyone going to court should go with 'clean hands'. It is worth noting that this doctrine may only apply to 'equitable' remedies and not to those based on common law (some remedies for contract) or statutory provisions. Equity acts on the conscience of the parties and any remedy is discretionary. In some jurisdictions the judge may give no remedy where the person claiming it behaved badly. This means free of taint or sharp practice. That is to say, one goes in good faith in a defensible and reasonable position. That doctrine also involves explaining the circumstances being addressed.

Various ploys are used to make cases seem bad. One such technique is the ascription of a label to someone, so that the label seems to be the explanation. To label someone as 'one of nature's victims' may lead the court to believe that that description is the cause of the plaint and unintendedly be taken to be a partial exoneration of the perpetrator. Courts should be able to see beyond the use of labels: the adversarial process is intended to give both parties to put their case at its strongest.

As is commonly said in the law, it is up to the court to decide, not for the lawyer to prejudge: there is ethics at work in procedural rules. Such cases may present a dilemma to some in that too stringent a representation on the part of the lawyer could result in providing the litigant with a justification for behaviour that is still reprehensible. A relevant point here is that jurisdictions that use trial by jury use people drawn from the community, and a litigant who behaves badly may antagonise them or lose their sympathy. Representing oneself in court is possible. As we are constantly reminded, however, someone who takes such action has a fool for a client.

Finally, the aggrieved may use the threat of litigation to make an unethical point. The use of threats of legal cost, emotional distress and unwanted publicity (damning by innuendo) can be an effective, if somewhat improper, weapon. Counter tactics may be similarly used, such as bringing a matter to the jurisdiction of the courts so that, because it is sub-judice, it may not be discussed (the so called 'stop writ').



Ethical Dilemma

So that legal casinos in a certain state are seen to be operating properly the government has introduced firm legislative controls. In addition to the conventional legal safeguards (on issues such as safety, freedom from organised crime, honouring bets, etc) you are asked to chair a committee to report on the ethical issues that need to be addressed. Having accepted, and chaired two meetings so far, one midnight you receive a cryptic phone call 'requesting' you not to try too hard on the ethics issues. Failure to heed this warning would, the heavy breathing voice says, have unfortunate consequences for your family.

What would you do?

What should you do?

THE HART–DEVLIN DEBATE

In the early 1960s there was a debate in the United Kingdom (and elsewhere) about the application of law to the enforcement of morality. The debate was triggered by a paper given by Lord Devlin in 1961. This address was subsequently published as a pamphlet. In that paper Lord Devlin (then a Lord Justice of Appeal) compared morals and torts (the civil law of wrongs). He distinguished between *mala in se* and *mala prohibita*.

Mala in se is where actions are wrong in themselves, and breach the principles of morality or of natural law. They are wrong in themselves even if not punished—or even noticed by the state. The latter category of torts (*mala prohibita*) are what Lord Devlin called ‘quasi-criminal’. These *mala prohibita* offences are wrong because they breach statute law; they are wrong because there is an enacted prohibition that says they are wrong. An example of such actions are targets that are economic rather than moral (eg minor breaches of the various trading or transport Acts). As Devlin wrote, ‘real crimes are sins with legal definitions’. In developing his argument he noted that, ‘The concept of malice is hardly used at all. This deficiency affects not only the jurisprudential quality of the law of torts but creates an unnecessarily wide gap between the law of torts and the moral law’. Further, ‘The law of torts is the least satisfactory branch of the English law. It may not be by accident that it is also the one which, of its nature, has the least to do with morals.’

Devlin concluded that the judges of England have ‘... rarely been original thinkers or great jurists. They have been craftsmen rather than creators. They have needed the stuff of morals to be supplied to them so that out of it they could fashion law; when they have had to make their own stuff their work is inferior’.

A common tort action is that of negligence, based on the neighbour-principle used by Lord Atkin in *Donaghue v Stevenson* in 1932, which derives from Jesus’ statement to love your neighbour as yourself. This principle of reciprocity underlies most moral codes.

This general argument about the enforcement of a common morality and the use of the criminal law was contested by Professor Hart of Oxford (1963, 1987). In rebuttal he noted, *inter alia*, that it is not possible for a community as large and diverse as the United Kingdom to have a firm and unambiguous moral position. The common stock of ideas on right and wrong probably does not exist. Further, that although there is an obligation to obey the law, not all would hold that position without question. There is a corresponding need to consider laws that are patently unjust.

He opposed Devlin’s view that society may take any steps needed to preserve its own existence. The two points here are; (i) it depends on what sort of society we want, and (ii) what steps are necessary to achieve that society. In other words, Hart raises the question of the social ends we wish to achieve, and what means of achieving that end are permissible. An attendant fundamental question here is that of society having the right to enforce morality. The essence of the tension posed by these competing points of view is between the preservation of the state as such, and the preservation of ideals.

There is a succinct account of the scope and limits of the moral argument as a basis of law (Glover, 1977). The author noted that the issue of instrumentalism—which acts are instrumental in producing

certain ends—is critical to our understanding. Among the other issues raised are that certain axioms lead to certain principles of behaviour that may be unfavourable. Further, that often morality-as-a-basis is without proof; that many of the concepts that invest this argument are blurred and not distinct; that we must at least consider the logical adequacy of the espoused propositions. Yet further it is noted that we might be in favour of a course of action but deplore the consequences (in favour of war but do not want to be conscripted and sent out to kill).

In the introduction to his book on jurisprudence, Lloyd noted that the bases of law are variously listed as the wish for social control, the serving of sectional interests, local customs, the environment and derivative and prescriptive morals (Lloyd, 1985).

The contrast of the Devlin and Hart positions is that, on the one hand, the suppression of vice is as much the law's business as is the suppression of subversive activities; this is contrasted, on the other hand, with the view that the realm of morality is not the law's business. A later perspective on the issue of obedience to the law, and related to that debate, may be read in an earlier excellent summary (Campbell, 1965). It is clear that this debate is one of enduring quality, and echoes the debate over how secular the secular state or society should be.

ETHNIC DIFFERENCES AND THE LAW

The problem of ethnic differences and the law is compounded by those who come from cultures accustomed to a different form of law. For those not of the dominant culture there is the dual difficulty of not finding the law relevant, and of not understanding what is different about it compared with the law in their countries of origin. In most societies the dominant culture determines both the content of statutes and the forms of legal process. In this context the notion of the 'reasonable man' is problematic. The 'man on the Clapham omnibus' criterion is no longer applicable in India. Could we effectively rephrase this principle as 'the man on the Mumbai train'? One is reminded of A P Herbert's definition of the reasonable man as 'someone who walks sedately down the correct side of the road, breathing carefully through both nostrils and thinking proper thoughts'.

Where there is a tendency to draw a distinction between countries, that distinction must be seen as arbitrary. In an increasingly borderless world one is apt to forget the commonalities (Ohmae, 1990).

Some forms of misconduct and misdemeanour are called 'offences of strict liability'. The legal definition is 'liability without fault', where 'someone acts at his peril and is responsible for accidental harm, independent of the existence of wrongful intent or negligence' (Osborne, 1964).

Too firm an application of statutes may well subvert the intention of codes, and become punitive or legalistic. The law has one function; a code of ethics has another. Perhaps the best guiding principle here is not that of strict liability but rather that whatever ethical solution is adopted should be appropriate. It is recognised that in a somewhat contentious and difficult world whatever solution is adopted should leave the ethical position at least improved (see the section in this work on 'The decision tree').



Ethical Dilemma

One of the accounting professions has a code that has been in operation for decades. In a particular case, a practitioner has been accused of a breach of confidence and arraigned before the profession's ethics committee.

After a hearing, and a finding of guilt, that ethics committee decide that a warning be given to the practitioner, and that certain actions are to be undertaken by him, in order to improve future performance.

The aggrieved client who brought the complaint is still aggrieved that a punishment has not been handed out but, rather, the practitioner has been asked to improve performance, and conform to the code.

What is your view of the relative merits of punishments for transgressions compared to actions that are likely to raise ethical performance.

Are punishment and guidance, respectively, to be considered alternatives?

If both are used, should one of them have salience?

Which is likely to be the most effective?

How would you ensure that the aggrieved party is satisfied (if at all)?

LEGAL PLURALISM

The relationship between statutes and codes of conduct is complicated by issues of legal pluralism. The attempt to cope with legal pluralism is probably just as difficult as trying to cope with cultural pluralism. 'Private international law' (or 'conflict of laws') is the name given to our attempts to cope with legal pluralism across the boundaries of states, the objects of which are to:

- prescribe the conditions
- determine for each class of case the particular internal system of law?
- specify the circumstances in which a foreign judgement can be recognised as decisive of the question in dispute, and when the right vested in a creditor by a foreign judgement can be enforced by local action (Sykes, 1969).

Examples of legal pluralism within the same state, given by M B Hooker, are those of French law in Africa where persons subject to customary law were distinguished from those subject to civil law. The French colonial legislation was special to a colony, but legislative authority for colonies was vested in the central government in France. The laws of metropolitan France did not extend to the colonies unless this was specifically stated. In legal pluralism not only may the precepts of law be explicitly different, but so may be the assumptions underlying them (Hooker, 1975).

India is familiar with legal pluralisms family law depends on whether the person is Muslim, Hindu etc. Legal pluralism was a feature of European colonial empires before the rise of modern colonisation in the early 1800s. So in NSW, for example, British courts exercised no jurisdiction over aboriginal people in respect of what appeared to be crimes, torts or breaches of contract between themselves until after 1836. Similarly the Treaty of Waitangi recognised Rangatiratanga the authority of the chiefs. Quebec with its ongoing system of French civil law is a continuing example.

There are ‘families’ of law among which are ‘Romano-Germanic’, ‘common law’, ‘socialist law’, Hindu law, Islamic law, Buddhist law, and the ‘law of philosophy and religion’. It is the impact of colonial expansion, of the export of other forms of law, and the need to deal internationally that generated this issue. These ‘families’ of law sometimes act in a complementary way. Thus, the civil codes of Egypt require judges to fill gaps in those codes by reference to Muslim law. Countries that have an indigenous population face the vexed question of how to reconcile indigenous law. In Canada and the USA the word ‘nation’ is used following British practice from the 1700s law with that of majority law. That problem is compounded by the formalisation of only one of the systems of law at a particular time. Such ‘frozen’ law may be used inappropriately instead of being used and transmitted in an adaptive fashion.

One form of law that illustrates the adaptive oral tradition is that of the Bedouin. Although formally predominantly Muslim, their religious practices do not conform entirely to Muslim law—indeed, in some instances they predate it. The aspects of Islam that do not find full expression in Bedouin life are those more appropriate to sedentary or settled lifestyles. Desert survival depends on being nomadic, so as not to deplete the minimal grazing available. The economic and social principles developed by the Bedouin are designed to foster for tribals ends appropriate.

Notions of restitution and revenge play an important part in Bedouin law. There is no notion of ‘policing’ by the state in the Western sense; issues are either personal or familial. Although they operate by their own orally transmitted system of justice, they are subject to the sovereign state in which they live. In such cases the sovereign state may seek to leave the greater part of legal governance to the tribal tradition.



Ethical Dilemma

You are an owner/employer in a manufacturing company and have fifty employees. The company is in a small country town. Due to growth in business you want to employ two more factory hands. Having put an advertisement in the paper and obtained ten likely prospects, you decide to interview. The referees and CVs show the applicants to be the sort of persons you would seriously consider. Accordingly you decide to interview the likely candidates. Among them is a member of an indigenous group that still has tribal links.

In response to the letter asking him to attend an interview you receive a phone call requesting that he be allowed to bring along two tribal elders as advocates. Since his cultural background rests on collective responsibility he argues that such an interview best fits your needs, and helps to determine his suitability as an employee.

All of your working life you have held the strong view that responsibility is personal rather than collective. Do you find yourself persuaded that there is merit in the case?

Would you feel differently if the tribe wanted you to employ a member of the tribe rather than a nominated individual?

Would it be acceptable to you to have a contract with a tribe rather than with an individual?

Would you feel differently if you were the principal of a private college and the applicant were seeking entry?

Would you feel differently if the applicant were in the college and were to ask that a tribal elder be present at exams?

FORMAL AND INFORMAL CODES

The difficulty of distinguishing formal from informal codes is well illustrated by Williams (1971). He refers to the unpublished work of McNaughton-Smith, who suggested that society operates with parallel codes: Code One is similar to the formal laws, statutes and regulations whereas Code Two matches our informal but general social understanding. When someone breaks our informal rules (Code Two) we think of legal sanctions that might be applied (Code One). ('What are we going to arrest him for, sergeant?' 'I don't know, but I'll think of something.')

Imagine a case in a country town where a father and his seventeen-year-old son have a good day out together fishing. On the way home they stop for one beer at the local hotel. Strictly speaking this is underage drinking, but one cannot imagine making a court case of it. On the other hand if a sleazy stranger were in town and invited under-agers to drink with him it is likely that it would be noticed and disapproved. It is in such cases that the underage drinking law would be likely to be applied. The paradox here is the threat of 'working to rule'. McNaughton-Smith asks what are rules for if not for working to?—he has supplied the answer.

India has a federal system of government. Being an independent republic it no longer need reference to British precedents and regulations as neither India, nor its states, are colonies. However, Indian courts may inform themselves by looking at decisions from other common law jurisdictions.

NATURAL JUSTICE

There is a concept called 'natural justice', which, in essence, asserts rules and procedures to be followed in adjudicating disputes. This concept is an interesting one in that it is a legal concept, but is based on an ethical standard. The main principles are to act fairly and without bias. Each party should have the opportunity of stating and defending his or her case, and of challenging the evidence of the other side. It is clear that the right to be heard, the right to confront accusers, not to be a judge in one's own cause and precise notice of accusations, and so on are all essential elements. Natural justice is an invented concept, a human device, and the reason why we have courts? If there were natural justice we would not need to invent a judicial system. Similarly, there are no natural ethics, and that is why we invent them. Headhunting was natural in Borneo, but we neither admire it nor think it natural. They thought of it as 'natural', many others may not. To outsiders it might seem like a cultural artefact. It is interesting to reflect that fewer Dayaks have probably died in this way since the beginning of time compared with the number of civilians killed in Iraq since 2002. To paraphrase Malcolm Muggeridge, no-one who has examined his own nature for half-an-hour can seriously believe in human perfection.

Accountability and responsibility lie at the heart of ethics. To place the accounting where it rightly belongs and to make persons responsible, is crucial to our notions of justice and to ethical fairness. As a former British Lord of Appeal (Lord Moulton) held, there are actions constrained by law and the domain of free personal choice. Between these lie that which is neither free nor legally fettered; this is the area that he regarded as 'obedience to the unenforceable'. It is also this area that is probably the largest domain and the one in which our conscience is most active.

GOVERNMENTAL REGULATORY BODIES

It will be understood that governments might wish to control several aspects of the marketplace. Among the issues to be controlled are: assurance of genuine commercial competition. In this matter the Government has set up the Competition Commission of India, and enacted the *Competition Act of 2002*. This part of governmental control also monitors mergers and acquisitions.

The Reserve Bank of India has control of financial matters. Those functions must be viewed in concert with other issues, such as foreign trade, imports and exports and the overall financial market. Further, the concerns of the Reserve Bank of India include such issues as venture capital, interest rates, exchange rates, and currency reform. In the general conduct of business the issues of the good conduct of business and of prudential regulation are important. More specifically, India has deep concern for environmental issues.

Among the major concerns of the legislature are environmental issues. These include the protection of the environment in its various aspects. Included in major legislation are: *The Factories Act of 1948*, *The Mines Act of 1952*, and *The Dock Workers (Safety, Health, and Welfare) Act of 1986*. Directorates of various kinds support this work for example, The Directorate of Mines Safety, and The Directorate General of Factory Advice Service and Labour Institutes.

There is clear legislation and effective guides to business law in India. The best advice on these matters is, of course, a skilled specialist lawyer. Readers may, however, wish to become generally familiar with issues of concern before talking to an expert.¹

The Supreme Court of India is the final court of appeal, and often hears judgements on matters that essentially concern ethics. Appeals may be lodged with the Supreme Court and permitted by a Special Leave to Appeal. Among such instances are those of

- (1) The issue of making a registered medical practitioner responsible for the death of a patient (wherein the Court held that the practitioner must be proved to be negligent or incompetent (see Nair, 2005).
- (2) Whether or not Hinduism and Hindutva are synonymous with Indianisation (see Indianisation, 1989).
- (3) The principle of privacy and secrecy. This particular case involved secret ballot: the Constitution providing only for secrecy by the voter but also imposes obligations on relevant officials to ensure that voting privacy is preserved (see Kuldip Nayar, 2006).
- (4) A case of religious freedom wherein a particular religious group sought to challenge the Commissioner of Police concerning a parade and dance. The group sought permission to perform the '... Tandava dance in public with daggers, tridents, skulls and live snakes on ground of dance being prescribed by the spiritual head of Ananda Marga faith. Here the issues involved determining whether or not the Tandava dance was an essential part of the faith, and whether or not the proscription violated freedom of religious expression. The Supreme Court held that the group should be allowed to show such expression of their faith, but imposed some conditions which, in essence, assured minimisation of danger and discomfort to other citizens (see Acharya Jagadishwarananda Avadhuta, 2004).

¹ To this end readers are recommended to the website which covers law in India, ranging from the Indian Constitution downwards <http://indiacode.nic.in/coiweb/welcome.html>

- (5) A case which held that any trans-national corporation is subservient to the laws of the country in which it operates (the case in question being that of Union Carbide. The judgement also expressed views on jurisdictional proprieties and jurisdictional reach, noting that ‘... the Supreme Court of India pays considerable attention to formalised codes, particularly ones of law, but also to such Codes as are properly promulgated and enforced’ (see Charan Lal Sahu, 1989).
- (6) A final instance is one which involved the issue of whether or not employees of one entity were also the employees of a related, or the same, entity. In its judgement the Court held that ‘... the Code being a formally recognised document that carried substantial weight’ Further, the judgement asserted that proper weight be given to the reach of the Code, and to its time-frame. What is important here is the serious attention given by the Court to a serious formal Code (see CEAT Ltd, 2006).
- (7) It is possible, and does happen, that the legislature may give legal power to Codes of Ethics or Codes of Conduct. One example is that of the Medical Council of India. Under Section 20A read with Section 33(M) of the *Indian Medical Council Act of 1956* (102 of 1956) the Council has its Code recognised in law. This legal recognition is something that may become increasingly common. In order for such important recognition to be given the professional body would need to have a firm ethical infrastructure in place, to have a firmly monitored Code and to an obviously responsible (rather than self-serving) body.

The illustrations given here are illustrations of how seriously the Supreme Court views formal Codes: it further illustrates the distinction, and the overlap, of ethical/moral issues and the law. For those especially interested there is Handbook of Information from the Supreme Court of India.²

Of direct relevance here is the notion that India needs an independent ethics committee as has been canvassed. This recommendation was prompted by two cases: one of data manipulation—from a scientific journal; the other of allegations of plagiarism. The first case had implications for favourable treatment for multinational pharmaceutical companies; the second concerned the plagiarism of patent law issues concerned with new chemical entities and micro-organisms.³

CONCLUDING REMARKS

The general purpose of this chapter is to point out the relationship between ethics and the law. Where there are properly instituted and monitored codes of conduct for business and the professions the courts could well use those institutions in considering ethical breaches that also involve legal breaches.

It is held here that ethics, and the law, are complementary aspects of the same basic process of defining acceptable behaviour. Whereas the law commonly sets minimum standards and applies sanctions or restitution for breaches, ethics provides aspirational standards, which invite creative and quality insights and flexible solutions.

² It is available on the website <http://www.supremecourtfindia.nic.in/handbook.html>

³ For a full report on these issues see ‘Independent ethics committee’.
<http://www.scidev.net/News/index.cfm?fuseaction=readNews&itemid=3445&language=1>

This work is clearly not a legal text, nor even intended to proffer advice about legal issues. What it does, in this section is to point out the significant connection between values and the law.

Summary of Chapter

This chapter deals with the background and relationships between ethics, morals, and the law. To note that something is legal and therefore moral is to discount the independent nature of ethics and morals from the law. This issue is outlined and debated. Notions of legal pluralism, of ethnic differences, of such concepts as 'natural justice', and formal and informal codes are crucial to this debate. Apposite, too, is the extent to which the law might give legal recognition to professional and industry codes. The important distinctions, as well as the relationships, between ethics/morals, on the hand, and law on the other, is critical to this work.

Multiple Choice Questions

Select the best answer from the options given.

1. Jurismania is
 - A the disposition to go too readily to legal redress ☐
 - B a form of moral insanity ☐
 - C a form of legal behaviour particular to lawyers ☐
 - D a means of increasing the number of laws ☐
2. The Hart-Devlin debate was about
 - A morals versus ethics ☐
 - B morals without ethics ☐
 - C the intersection of law and morals ☐
 - D civil versus criminal law ☐
3. Black letter law is the same as
 - A compliance with strict legal interpretation ☐
 - B compliance with the spirit of the law ☐
 - C a form of jurismania ☐
 - D laws which are enacted ☐
4. Law
 - A is subordinate to ethical codes ☐
 - B over-rides ethical codes ☐
 - C is always codified ☐
 - D expresses the will of the people ☐

5. Legal contracts
 - A are set in irredeemable form []
 - B open to re-negotiation []
 - C are the same moral contracts []
 - D have the same meaning in different cultures []
6. Behaviour that is
 - A legal is also necessarily behaviour that is moral []
 - B legal is universally approved []
 - C legal is sometimes the same as behaviour that is moral []
 - D adaptable is also behaviour that is legal []
7. Vexatious litigants are
 - A those whose recourse to law is a recurrent nuisance []
 - B those who have need to constantly seek legal redress []
 - C those who vex judges []
 - D those who have taken more than one course of legal action []
8. The 'reasonable man' is
 - A the 'man' on the Mumbai train []
 - B the 'man' who pilots a jet fighter []
 - C the 'man' who is a logician []
 - D someone who agrees with you []
9. Among the attempts to cope with legal pluralism are
 - A the field of conflict of laws []
 - B private international law []
 - C neither A nor B []
 - D both A and B []
10. Which one of the following is an example of an informal code?
 - A a police person deciding if a law has been broken []
 - B a school teacher deciding whether a pupil is a nuisance []
 - C a breach of a professional code of conduct []
 - D parking in breach of local government regulations []

For Discussion

1. Suppose that your company had a code, but it was only for the company itself. Could you see any merit in getting formal legal recognition from the State to have it as a mandatory code?
2. Someone argues to you that if a particular course or action is legal it is, therefore, moral. Do you find that viewpoint persuasive?

3. The concept of ‘natural justice’ requires that we be equitable and balanced in treatment. For example, in court there is the right to confront witnesses, the right to cross-examine, and the right to be heard by an independent party. In the matter of ethics, do those same considerations apply?
4. In a case before you for consideration someone argues that although the company Code enjoins a particular action, that action is contrary to their religious beliefs, and is therefore unacceptable. How does one resolve such conflict of value?
5. Can you justify any case whatsoever for not complying with the law?
6. We all know that society works on a general understanding—often called the ‘Informal code’. Our laws and regulations formalise such understandings, but do not always capture the current essence of societal norms. How important is it that the law should be constantly updated to accommodate changing values?

7

CHAPTER

Identifying Ethical Issues

The 'reach' of ethics means that ethical consideration is confined to relevant issues: ethical consideration over-reaches when it attempts to do things beyond its brief. The main difficulty here is to decide when something is, or is not, within that reach. For example, an industry ethics committee may consider a research and development application. The outcome of the research was clearly seen to have implications concerning where and how the toxic waste would be dumped. The proposed study satisfied all the rules about good research design, skilled researchers, privacy, informed consent and the like.

The question here is to what extent the proposed research might include toxic waste disposal as within its brief. Committee members opposed to the dumping of toxic waste might see the proposal as providing support for the idea of toxic waste dumping and make approval very difficult.

The political agenda of the committee made resistance to this proposed research a possible example of over-reach. An even clearer case would be where (say) a personnel department decided, on the basis of expert input, to use a particular approved psychological test for selecting staff. It is not an ethics committee brief to say that a different approved psychological test should be used. That would be a flagrant example of over-reach.

None of this is to say that morals, as distinct from (say) research ethics, should not have the widest reach. In the political arena, for example, it will be recalled that resistance in India to British occupation was the subject of numerous uprisings over centuries, there being over 90 such on record.¹

It was not until the 19th Century of the Common Era that the revolts coalesced into an integrated opposition. From then, till just after the Second World War Independent India came to be formalised and later became a republic.

Another area in which over-reach is debated, is the extent to which personal behaviour might intrude into reputational standing. For example, should a business person who was found to have paid less personal income tax than that for which he or she was liable be taken to task by the company for which

¹ See, for example, (http://india_resource.tripod.com/revolts.html)

the person works? Do employing organisations have the right to intrude into some areas of private life—for example, should a religious charity forbid an employee from using legal brothels?

More recently, the issue of genetically modified organisms has come to the attention of the law. This seemingly ethical and practical problem must, inevitably, invite legislation; the law must be seen to be within reach of this problem. Among the issues that arise are: the over-use of pesticides and industrial waste; the legal status of new genetic entities; the consequences of the human genome project; the moral issues of cloning; and the ways in which profit and danger in these genetic enterprises might relate not only to the commission of ethical transgressions, but also become a significant issue in risk management.

PREVENTING ETHICAL PROBLEMS

Almost all (but not all) ethical problems that have come to the notice of the authors were preventable. Their emergence as problems most commonly stemmed more from carelessness than from malice. Awareness that there is an ethical dimension to most problems is usually a sufficient alert. Prevention, in its widest sense, might also be taken to advocate the prevention of problems from escalating into something larger than it need be. When faced with a threat of discipline there are some practical guidelines to follow. Among these will be an attempt, working through the appropriate officials, to contain the problem and to seek the least formal solution that can be managed.

A significant preventive measure is to make whatever may become a problem clear at the earliest point. This includes any factors concerning new customers, new contracts, and new dealings with outside organisations. The notion of an ounce of prevention being worth a pound of cure is still most apt. It is interesting to observe how often an ethical complaint is triggered by insensitivity, bad manners or a significant discourtesy.



Ethical Dilemma

An in-the-service employee of industry is often called on to work late, often without notice. She complains to her supervisor about the lack of consultation, the implications for her social life and the often short notice given.

The supervisor tells her that if she does not like the job she can look elsewhere for employment. To this, the employee tells the supervisor that she intends to report him to management for suggesting insubordination.

At this point, you are called in to advise, to identify the issues and to propose constructive solutions. What would you advise?

BEING ETHICAL IN AN UNETHICAL ENVIRONMENT

The behaviour of one's superiors is one of the greatest determinants of ethical (or unethical) behaviour; the behaviour of peers and of society's moral climate, also rank high. The implications for the teaching

of ethics is too obvious to deliberate. Since we are obliged to accept responsibility for our actions, we need to teach how to be ethical in what may be an unethical environment.

When an organisation fails to provide such an ethical climate the employees may find themselves at risk of losing their job, morale may suffer, as may efficiency. An indication of trouble is when self-protective memos (also known colloquially in the United States of America as CYAs—cover your ass) fly around the office and divert resources from what could have been more productive tasks. It is in these situations that we particularly need to provide protective devices for employees at risk.

Self-empowerment in ethics may be achieved by resorting to a hierarchy of questions that the ethically troubled may use. The first question is, 'Am I mistaken?' The supplementary questions are, 'Do I misunderstand the situation? Am I clear that this is an ethical issue? Do I have the relevant facts?' The second question is, 'Do I want to do something about it?' The answer may be 'No', or one might want to remark, and do the minimum (eg. let the ethical transgressor know that you know, but do no more; or let the ethical transgressor know and say that the matter is being ignored—on this occasion only).

The third question is a doing question. Here one sets out to change the ethos. It may be that the reaction to a particular issue is to use that as a lever to promote ethics in general, but yielding on the particular case. As a strategy this has much to commend it. The flexibility is not on the principles of ethics but, rather, on retaining the commitment to principle, by applying continuous pressure to have ethical principles followed.

Strong reward and encouragement for instances of ethical behaviour, social approbation, and due admiration are powerful tools. Criticism of a milder kind (unless for an outrageous transgression) is also commendable. A final avenue of self-empowerment is blowing the whistle.



Ethical Dilemma

A client of a lawyer comes for advice about a financial matter that could involve litigation. The lawyer gives the best advice possible and then sends a bill to the client.

The client objects to the bill on the grounds that law is there to serve the public and that, as the lawyer well knows, the client is in financial trouble. The client also goes on to say that this is a case of a professional exploiting the vulnerable.

To this the lawyer notes that professional services are based on just that—a fee for service, not for outcome.

What would you advise?

CONFRONTING ETHICAL DILEMMAS

When taking issue over a breach, or a seeming breach of ethics there are a set of pertinent questions that should be posed. Among them are:

- What, exactly, is the alleged breach?
- Precisely which section of the code has been breached?

- What is the evidence for such a breach?
- Is the allegation supported by the evidence?

If there is the evidence of a breach, the next part of the course is a hearing which not only considers all the arguments and counter-arguments, but also allows all parties to have their say - and be heard. If, after that, sanctions need to be applied then the following are some considerations:

- the sanction should be remedial rather than punitive, if that is possible
- the organisation should be seen to be active in redressing ethical breaches
- the experience is a learning experience for everyone

Facts in the Case

When considering ethical dilemmas it is sometimes difficult to be clear about the facts of the case. Facts and truth may not be the same thing. Untruths may be promulgated in various ways. One is to make a direct statement of untruth (the plain lie; *suggestio falsi*), an example of which is an advertisement that product X will cure condition Y (when it plainly will not). A second example is to suppress important information (*suppressio veri*), an instance being that of a company brochure soliciting investment funds when the manager knows the company is insolvent.

For information to be of use we must have faith in its integrity; anything degrading that trust must be viewed with suspicion. Without trustworthy information one is not in a position to make properly informed decisions. In hearing cases of ethics breaches we will recall the distinction between facts and truth.

The reasoning that might take place on a set of information may lead to logical conclusions. One of the illustrative stories about gestalt reasoning was given by Sinclair, in his book on logic. While talking of his early experiences as a priest, an elderly Abbé responded to the comment that the secrets of the confessional must often be of a kind disturbing to a young man, by admitting that it had indeed been so in his case, as the first confession he ever heard was a confession of murder. Shortly after his departure his visit was mentioned to a later caller, a local proprietor and well known, who remarked that the Abbé and he were old acquaintances. 'Indeed', he added, 'I was the Abbé's first penitent'.

The whole—the insight into the well known being a murderer is gained from the configuration of the information, not in the individual items. Note that the individual 'facts' are interesting in isolation, but that their connection reveals a truth. While we may be uncertain about some 'facts' we have to reserve judgement. In Scotland there is a third verdict in court. Where most legal systems have 'guilty' or 'not guilty' verdicts the Scots have an additional option of 'not proven' (or, as one wag put it, 'Not guilty, but don't do it again'). If, after hearing an ethics case, we are still not of the view that a complaint is sustainable, then the proper conclusion is to acquit. If the case was seen to be brought with unworthy motives an apology would also be in order.

Clearly this syllogism can lead to the obvious inference. P1 (the first penitent) was M (a murderer), and D1 (the dignitary) was the first penitent make it a syllogism from which a logical conclusion may be drawn. Here one needs to be cautious. Just because it is a syllogism does not mean the conclusion is true. At least one of the premises might be false or the rules of logic do not allow one to draw a particular conclusion (as in 'Transylvania has an arms industry, Ruritania has an arms industry, therefore Transylvania is Ruritania').



Ethical Dilemma

A company has a code of conduct that was instituted after a particular employee started work. That employee later breached the code and is liable for a sanction. He objects to the application of any sanction, on the grounds that he started employment under known conditions, and then management changed the rules without consulting him.

Should employees be bound by a later introduced code?

Invoking the Code

Where there has been a seeming breach of the code the first injunction has to be to make a restitutional approach in an attempt to identify and resolve the problem. It is useful to express concern in a friendly and helpful way, drawing attention to the actions thought to be in breach—and to the guiding principles. In circumstances where there is factual knowledge, or reasonable grounds for believing that an ethical breach has occurred, it is time to take immediate action.

The questions one asks and how such questions are put, is crucial. Questions cast in a particular form often presuppose the answer; for example, we have a cash flow problem, therefore how much do we need to downsize? Put another way we might say that we have a cash-flow problem and high production costs. Options that we might canvass are not necessarily to downsize. We could also advocate working smarter rather than harder; have employees buy shares; reduce upper level salaries; find new markets; consult staff about the possibility of them keeping their jobs but working four days per week, and so on.

However we need to be careful not to presume in ethical matters. For example, to say that someone has breached the Code and should be punished is to combine two separate issues. One is the breach; the other is punishment. As the author once found, a breach of a Code does not necessarily lead to a sanction. One such occasion was when a senior and experienced member of a profession breached his Code. When called to justify he gave a well-reasoned explanation of why the Code needed updating. His point was taken and the Code duly and formally amended. It is not being held that this kind of event is common: it is being held that questions should not necessarily entail one kind of answer.

Avoiding Aggressive Reactions and 'Solutions'

In social situations of any kind aggressive behaviour is not only disagreeable but often counter-productive. The use of assertiveness in defence is perfectly justifiable, but the use of aggressiveness is to be avoided. This comment is consistent with the Axelrod analysis of the tit-for-tat strategy.

In considering cases one would do well to recall that 'important' is not the same as 'urgent'. If one is driving down a one-way street with a barrier in the centre it is not important that one goes round one side or the other, but it is urgent that you make a decision. On matters of importance, one might be considering eventually enrolling for a higher degree; that decision is often not urgent (possibly being months or years away) but is clearly important. Some issues, of course, may be both. Readers will be able to make their own list. The important point here is that one is aware of the distinction.



Ethical Dilemma

The company, of which you are the Head of Customer Relations, has received complaints from the public that one of your products does not work properly. They want their money back, but your policy is to replace the faulty goods. The customer complains that they no longer trust your company products, but your policy is designed to maximise profit. Replacement is cheaper and easier than refunding.

How does one balance the customer wishes against the commercial imperatives?

Who is bound by a Code?

This theme, adverted to earlier in another context, notes that Codes, as distinct from morals, are both explicit, and have limited reach. A Code of Ethics is just that—formal explication of value principles, followed by a Code of Conduct, which gives explicit guidance about particular situations (such as accepting gifts).

What is particularly important is to recognise that a Code has limited binding capacity—as it properly should. A registered medical practitioner is bound by the Medical Code; a legal practitioner by the appropriate legal Code; a dentist by their appropriate Code, and so forth. Being a registered medical practitioner imposes no obligation to follow the Code which binds another profession (psychology, for example); and being a legal practitioner is not bound to act in accordance with the medical Code (although such Codes may have issues in common).

It is worth noting strongly that someone may be bound by two Codes. Imagine a registered legal practitioner as being bound by his or her professional Code and also by a company Code. In such cases the convention (and a very good one) is that the professional Code will prevail. The rationale behind this is that being employed as a professional gives primacy to that professionalism and also a Code that is superior to any commercial sectional interests.

Another problem on binding Codes is that of the wider stakeholders. Suppose that a sub-contractor does work for a larger entity then it is reasonable to expect that the sub-contractor will adopt the higher of the two standards available.

ECONOMICS OF ETHICAL DECISION MAKING

In this practical frame of reference, one needs to be conscious of the financial costs of decisions, but not bound by them. In a parallel instance, some years ago there was an analysis of the costs of persistent petty thievery (Parker 1970). The cost to the state of processing and imprisoning was many times the value of what was stolen; but that is no argument not to bring legal sanctions to bear. Economics may be a factor in consideration but that should never be a justification for breaching a fundamental ethical principle. If we hold that torturing or slavery is economically beneficial to the state that is not a reason to permit it.

As with crime, an ethical investigation and resolution may not be the cheapest means of dealing with a particular case. It is, however, something that needs to be done for reasons that have less to do with money than they have to do with high social and commercial standards and values.

APPROACHES TO DILEMMA IDENTIFICATION AND RESOLUTION

There are three basic approaches to be adopted when confronting ethical dilemmas for resolution. One is to consider them in relation to key principles (such as the principle of openness or the principle of equitability). A second way is to look at the dilemmas under the rubrics commonly used by the codes of the major societies (such as accounting). The third way is to consider the specific issues (such as under what conditions should a company do a product-recall?)

When trying to resolve an ethical dilemma the first consideration is that of testing the case against a key principle. In a case where (say) a contractor to the company for which you work has become a friend, but you are supposed to deal at arm's length. Would that imbalance the relationship? Where an employee has confidential knowledge of the contractor's business can a fair balance be kept, and be seen to be kept?

Could the employee misuse his or her position to dominate the relationship? Could there be a conflict of interest (ie. one has mixed motives) that might be to the detriment of one or the other? To maintain that delicate balance, considerable sensitivity is required: what might also be required is that of informing one's superior. Here the principle is one of transparency. The guiding proposition here is that corruption flourishes in secrecy.

Another way of looking at ethical problems is that of specific areas of concern. Most commonly, these will include safety of products, trading conditions, the environment, quality of service and such like. Under each of these headings there will be guidance. For example, under advertising there might be the principles of accuracy and propriety. Reference to these principles helps to resolve particular issues. Weasel words are not a help. For example, a motor parts company advertises that its car mufflers are 'guaranteed for life'. Does this mean for the life of the car? The life of the user? The life of the manufacturing company? The life of the muffler? (In this last case it means that it is guaranteed to last as long as its life, ie. until it breaks down.) and is thus a nonsensical statement. Ethics requires explicitness.

The third way of approaching such problems is to nominate precisely, for example, specific advice on commercial barter. The guideline is that barter should be avoided. Where, for some good reason it is employed, the book-keeping should show it as a commercial transaction and be recorded in equivalent monetary value. This third approach is most suitable for quick guidance, particularly for those cases where a long, reasoned account of the decision might not be needed.

In making decisions about anything considerations are not given in direct context. Equitability is both a process and a postulate. Adherence to the process of balance and fairness is crucial. Dilemmas arise through ignorance, inexperience, malice and/or an undeveloped code. While we may find it difficult to either prove or contain malice we can reduce ignorance and inexperience; and we can continually develop our code. While we can develop and refine our codes, and improve the processes by which they are exercised, there is always the limitation of what a code and its attendant procedures can do. Whatever is done is certainly enhanced by constant attention to both the content and procedures.

DISPOSITION OF CASES: APPLYING SANCTIONS

The disposition of cases represents one of the hardest tasks that confront an ethics committee. Among the difficulties are those of satisfying complainants, preserving the reputation of the company and the employee, upholding the reputation of Indian business, and to maintaining adherence to key principles. To make this task easier, many committees have devised a hierarchy of dispositions. One might imagine a grade of sanctions that could be applied. 'Sanction' is a curious word to use in that it is one of those very few words in English that can have the opposite meaning, depending on its context. It may mean authoritative permission or it may mean a provision for enacting a penalty for a particular transgression. Perhaps we should avoid the word 'sanction' because of its ambiguity and say 'disposition of the case'. What follows is an attempt at a continuum of dispositions.

1. The lightest end of that spectrum is exoneration, perhaps with an expression of regret that the case got as far as it did, perhaps also with praise for dignified and co-operative conduct.
2. The next level is ordinary exoneration and, where the presumption of innocence applies, that exoneration should be accepted in generous spirit. The words 'not guilty but don't do it again' present an improper interpretation.
3. Where the complainant is misguided, or loses his or her sense of good judgement, counselling may be called for. This counselling should be for genuine guidance and not a euphemism for punishment. The author recalls that a police officer, who was the subject of a complaint, was 'severely counselled'! That is not the function of counselling.
4. Reprimands of varying severity may be applied. The lightest known here is a case where someone commits a minor infraction of the code and admits that it was ill-advised. The sanction could consist of a letter from the chairman of the ethics committee agreeing that the complainant had been foolish. In a case like this a letter on record is enough. More serious sanctions may take the form of a formal letter of admonishment with a significant warning about future behaviour.
5. A reprimand may have a component additional to the punishment, such as a monetary fine or a temporary suspension.
6. A more serious sanction would be finding that the person is not a fit and proper person to occupy that position.
7. If the offence is so great (say, serious financial malfeasance or sexual interference with an employee), the justifiable action might be to refer the offender to the police, with a view to criminal charges being laid.

Guidance on Ethical Breaches: The Ombudsman

The concept of an Ombudsman has found favour in many countries. That office is from a Swedish word meaning '... an officer appointed by the legislature to handle complaints against administrative and judicial actions. In modern terms, and in many countries, the Ombudsman does not have the function of reviewing judicial actions, that being the prerogative of the courts of appeal. Notwithstanding, the Ombudsman's office is of high value. It provides a possible source of remedy that is not lengthy,

excessively procedural, nor expensive. The Ombudsman is not answerable to any body other than the legislature, but is independent of all levels of government.²

Among the punitive sanctions for those who find themselves in ethical dilemmas and are vulnerable in their careers, the use of an ethical ombudsman has much to commend it. Some organisations are also using the concept of a Corporate Ombudsman, who might also be advantageously seen as occupying a counselling and advisory role.

Such an independent position of confidentiality is suitable for an older, respected employee, or perhaps an outside consultant. This role may be complemented by the use of an organisational ethics committee, which would have a similar brief. It could be comprised of members who are experienced, and well able to maintain confidentiality. The last person one needs here is one who finds faults with every solution. Among the functions of such a committee would be that of monitoring the company code.

Since it is impossible to formulate a code that will remain static, these advisers could help in the monitoring and continual development of the code. Such codes are reflections of societal and corporate values; they are constantly challenged by issues that lie beyond the direct ambit of business, and are equally likely to be challenged by new business, and new social circumstances. For example, with the advent of computers it is now possible to economically search massive databases and put that information together to give an overview of (say) someone's personal life. This data matching may bring the need for a new principle governing personal privacy.

Some Creative Ideas

A constructive look at an ethical problem will often yield a solution that satisfies the ethical code, provides guidance for the transgressor and pleases the complainant. A significant feature here is not to get locked into the either/or mentality. The formal fallacy is called the fallacy of the excluded middle (it is either this or that, but cannot be anything else). If someone tells a business person that the options to fund a new piece of research are by either raising venture capital or by cutting back on current profits, almost invariably there is another way—getting a research grant from the government, for example. Other options that may be considered to have the research and development done by an interested university; enter into strategic alliances; or to sell the research idea at a profit and then think of a new one. As with this, so it is with ethical dilemmas. The aim is to find a solution to the problem that will be creative, constructive, satisfy the protagonists and lead to a confirmation or modification of the code.

Apologies

We are all bound to make the occasional mistake. The question here is what to do about it. Within this question there are several significant implications, among them the perceived 'loss of face', and the legal consequences of admission of liability. Such mistakes may be acts of commission acts of omission or those that may not have constituted best business practice.

There is a dilemma in the admission of guilt. Any admission of negligence might lead to the implication of legal liability for the fault. On the other hand, the admission of culpability could be disarming and

² For a fuller discussion of this concept, and of the cognate functions of the 'Lokpal and the Central Vigilance Commission (see <http://www.indiatogether.org/2005/jan/law-lokpal.htm>).

generate an attitude in which informal solutions are both sought, and implemented. The authors are inclined to the view that an apology for the occurrence, without explicit admission of guilt, is an emollient way of generating a restitutional attitude and which may also prevent damaging litigation.



Ethical Dilemma

A service provider gave mistaken advice, a point picked up by the customer and has become the source of a formal complaint. The managing supervisor is inclined to apologise, but the company has a policy of not apologising because it could be construed as an admission of culpability. Notwithstanding, the supervisor knows that an apology, with no charge for the bad service, may result in the problem being solved.

What are the considerations here?

Improvement Rather than Perfection (Ethical Gradualism)

To set a counsel of perfection may be both intimidating and non-achievable. Rather, whatever ethical action is taken should result in an ethical improvement. If every ethical decision were to result in an improvement, the multiplier effect would be enormous. The only caveat for this position is that it should not be taken as counsel to effect lesser ethical changes.

It hardly needs more emphasis, but educating people, including the teaching of ethical attitudes is important. Additionally, we know that early learning is more powerful than later learning. Aspiring professionals first encountering professional standards and conduct are in the most receptive position for insights into ethical problems and to the importance of professional ethics.

Although there should be no compromise with basic ethical principles, that is not to say that there is no room for discretionary matters. The accretion of a series of small successes may be a fair solution to an ethical dilemma and may also confer reputational advantage. There is a justification for being an ethical gradualist—under certain circumstances. To give a medical instance: there are some countries which use trained nurses as the first point of medical contact (or, perhaps, barefoot doctors). It is less desirable than using registered medical practitioners but it does provide a service that is superior to no-service.

One real-life example is that of a Western country buying products from a small Indian village. That village is set up with extended families working in concert for the common good and which employs all people in the village capable of making a contribution. The contribution, however, includes those of 9–13 year olds, with the unfortunate consequence of putting the Western company at risk of accusations of exploitation and of using child labour.

The Indian concept of a harmonious and productive extended family may be construed rather differently in a Western context. Such a Western importer might then take the gradualist option and provide a work contract under certain conditions. Giving a reasonable generous contract to a village might have a condition

imposed. For example, that all children aged 9-10 years old attend school two days per week. If that works out well the next contract might extend that to all 8 to 12 year olds—and so on improving for successive contracts.

Suppose the village were to be in need of a well the contractor could supply the drilling, pump, and trough with the village supplying the labour. In such a set of circumstances the overall benefit is to both: over the years the village gains important improvements, and the Western company continues to trade, helps improving the village, as well as putting itself into a morally defensible position.

Another real-life example: an organisational consultant had dealt with a client on several previous occasions; that client operating on a 'only profit matters' basis. After some time the client again approached the consultant, soliciting professional help in selecting a man for a new position. In one particular jurisdiction the law required that no adverse discrimination should occur on the basis of gender. The consultant therefore pointed out to the client that it was illegal to advertise for a man rather than for a 'person' or a 'suitable applicant'. The client had to agree that the advert should read 'person' rather than 'man'. Of course, there were many women applicants—and none got the job.

On the next round of appointments some time later, the same principle was applied: some women were interviewed, but did not get the job. After several rounds a woman was appointed and the client had come round to the view that personal qualities were more important than gender and thus the point eventually won. One might argue that women should have been appointed earlier, but one cannot say for certain that they were better appointees than were the men who applied. What matters here is that appointments were eventually made on merit and, equally importantly, that the client had adopted a more egalitarian stance (for a more detailed article see Francis, Gius & Coin, 2003).



Ethical Dilemma

The agreed code of ethics for a particular industry holds that the principles are inviolable (zero tolerance for breaches). The case of a minor breach has occurred, and the rules require a punitive sanction. As a supervisor you know that a restitutive response will solve the problem, but are counselled against using it as it is a breach of the code itself.

How inviolable should a code be?

Where does the basic loyalty lie?

Discriminant Analysis

Making ethical judgements parallels making judicial decisions. As has often been remarked, the difficulty is not so much getting the facts (although that can sometimes be a problem) but, rather, what to do with them. On consideration, so many of life's decisions are of that kind. Information is known or available, but what to do with it is really the difficult question.

We have a limited amount of information that we find useful, and need to give some kind of weighting to what is known. In medical diagnosis the signs and symptoms are not all of equal value. It is one of the

tasks of clinical diagnosis to assess the importance of such signs and symptoms. That point is no less true of business diagnosis, of commercial research findings and of ethics cases.

The technique of discriminant analysis is an excellent example of the quantification of this issue. Let us suppose that an anthropologist had found a skull and wanted to know to which tribe it might have belonged. There is no single characteristic of skulls that would permit such a judgement. Let us suppose that, from research, we were to know the importance of skull characteristics and their relative significance. We could then measure them (e.g. cephalic index, size of the supraorbital ridges, slope of the forehead, and the dentition, etc). That information, with the appropriate weights attached, would give us a high probability of being able to assign tribal identity. It is the collective information that yields the probabilistic judgement.

Promptness of Dealing

In ethics, no less than in any other form of adjudication, the principle of justice-delayed-is-justice-denied applies. Delay on the part of the ethics committee or investigatory committee, or a business employee or manager, confers considerable emotional strain on those involved. It also means that witness memories become stale and unreliable, that witnesses may disappear, and reputations be needlessly damaged. Promptness of dealing is an essential part of the process.

Procedural Principles

At the most practical level, there are procedures that deal with avoiding and resolving ethical dilemmas. What is important is to recognise and follow a set of guiding rules. They involve such issues as asking precise questions, and following a 'decision tree'. Thus, a complaint is to be followed by a search for evidence, an opportunity for the person complained about to respond, the right to challenge accusations and evidence, the right to confront witnesses, and the right to a hearing from an independent body. It is in these guiding rules that the key principles find their expression; that justice is not only done, but also seen to be done. It is by following these rules that hearing tribunals find their best defence against unjust accusations. If we cannot always have the goodwill that is desirable, we can at least make sure that the ideas of goodwill and equitability are always present in our processes.

THE 'DECISION TREE'

There are two senses in which we might consider procedural stages. One is the procedure for formally reporting and dealing administratively with a complaint. The second is the processes that an expert committee might use to resolve ethics cases. The first of these is that when an ethical complaint is made there are established procedures for handling that complaint. Most companies and organisations have nominated administrative procedures for dealing with formal complaints.

If a complainant is dissatisfied with the outcome of an ethical inquiry or complaint it is more likely that his or her sense of grievance will persist. While the abatement of a sense of grievance is not the only aim of an ethical judgement and outcome, it is one of the serious needs to be addressed.

The worthiest systems of approach that the authors have seen have involved a multistage process. When a complaint is received the first stage is a review by a tribunal or relevant officer who examines it

informally to see if it can be resolved at that level. If it cannot, then it goes to a smaller investigatory committee who reviews it and either resolves it or passes it on to the formal disciplinary committee. Eventually this may become a multi-tiered process. Some countries and some professions, have now formalised this procedure. This approach has the merit of having a comprehensive backup procedure while maintaining the aim of resolving issues as informally as possible without compromising professional reputations and societal integrity.

In trying to resolve ethical dilemmas, a committee would be attentive to the key principles; and would use a 'decision tree' (as nominated elsewhere in this work) as a complement to this approach. In other words, consideration of key principles is as much a part of the process as is the adoption of due process. The key factors that operate in a particular case are the need for consideration as for the processes of resolving the case (eg. What is alleged? What section of the code has been broken? What are the facts? What do the complainant and defenders have to say about it?).



Ethical Dilemma

A complaint has been received about a particular staff member. That person, however, is under medical care and cannot appear at an ethics committee hearing. In order for the issue not to be a strain on him, he requests that a relative appear in his place in order to have the matter resolved—but the rules require that the defendant be there to answer the charge.

This involves a change of protocol. How would you proceed?

The Sequence of Questions

The analysis of allegations and complaints perhaps may be put as a sequential filter. If the question fails at any point, the action is unethical. To put this in another way, the decision that an action is ethical is a residual judgement based on satisfying the steps outlined. This is consistent with the principle of natural justice, that a person is presumed innocent until demonstrated to be guilty. A Decision Tree is not only quicker but is also one that satisfies the due process. The list below is an attempt at such a Tree.

In using this process it should be understood that if a decision, or a proposed course of action, fails at one point, it is not necessary to test the proposition at the next level (eg if a proposal is considered to involve risk of harm, whether it is legal or not is irrelevant). Human rights are fundamental to the process of ethics. India had an important role in drafting the UN Declaration of Human Rights, and has been active since that Declaration (and thus is highly committed). In considering any course of action the questions we might ask are:

- Is the proposal consistent with the UN Declaration of Human Rights?
- Does the proposal involve risk of harm to persons, animals, or property, unless otherwise ethically agreed? (e.g. the crashing of a new car by a research institute to test its crash resistance).

- Is the proposal consistent with the law?
- If you, or your colleagues or organisation are bound by a code of professional conduct, is the proposal consistent with that code?
- Is the proposal consistent with the precepts of the code contained in this work?
- Is the proposal consistent with your conscience?
- Is the proposal in accord with the principles of your employing organisation?

It deserves re-emphasis that if an action or event breaches one of these guideline reference points then action is required. In such an event it is unnecessary to ask subsequent questions.

A word of caution about the UN Declaration. It has been pointed out by O'Neill (2002) that the Declaration is not an absolute. There are two serious criticisms that might be made of the Declaration, despite its manifest merits. One is that it includes an range of issues of widely different import. For example, the '... right to holidays with pay'. That is of lesser importance than many issues, and may be irrelevant to much of the world's population who are not employees.

The second criticism, and more trenchant, is that it expresses rights without a corresponding expression of obligations. The Declaration does not say what those obligations are, and also fails to express how such obligations are to be met. Further, the Declaration imposes no specific obligation on regimes to fulfil human rights undertakings.

The Two Quick Tests

In a busy life it is often difficult to make ethical decisions in haste. To assist those who might need a quick reference point there are two tests that many be helpful. The first is to imagine that you have decided on a particular course of action and then imagine the consequences. For example, in response to an environmental disaster involving your company, you have implemented the company response plan. The knowledge of the plan and the circumstances then becomes public in a court case: further, imagine that you are in the witness box and have to defend your plan and your action. You know the Press will be there. Would you be able to supply such a defence?

The second principle is to imagine the same circumstances as above. Instead of having to defend yourself in court, your family ask you to explain. After the explanation would they still be proud of you?

If still in any ethical doubt about any action consider seeking the advice of a trusted and honest colleague. If one is not available your professional adviser (accountant, psychologist or lawyer) could fill the same role. Using a solicitor has the extra merit of the communication having legal privilege. Whatever you decide, act as if the outcome were to become public knowledge.

CONCLUDING REMARKS

The general thrust of what is being held here is that there are some explicit points to be made about both the principles that underlie ethics; and due process in resolving dilemmas. It is only by such explicitness, discussion and constant attention, that ethics is to be fostered and maintained.

Summary of Chapter

Identifying and resolving ethical dilemmas comprise the content of this chapter. The three aspects of this process are identifying ethical dilemmas, confronting them and resolving them. In doing so substantial attention is to be paid to following specific processes. It is as important that this be done in ethics as commonly as is done in law.

A 'Decision Tree' is provided in order to facilitate the identification and resolution of dilemmas in a just and orderly fashion. The order in which questions are asked, and the provision of set criteria for judgement ensure the basic fairness of ethical inquiry.

The chapter includes a discussion of such issues as 'Should one be intransigent in applying ethical stricture, or is some form of gradualism sometimes a more appropriate approach?' Another question is how may one use apologising as a means of preventing formal complaints and to what extent is there a danger, in that an apology may be taken as an admission of culpability and therefore render one legally liable for any mishap?

In preventing and resolving ethical dilemmas the role of creativity is of importance, for which some suggestions are offered.

Multiple Choice Questions

Select the best answer from the options given.

1. Which of the following is an ethical issues?

A a breach of a professional code of conduct by a relevant professional	[]
B allegations of serious professional misconduct	[]
C allegations of business impropriety	[]
D breaking a law which has a moral basis	[]
2. Which of the following should take place in any alleged breach of ethical guidelines

A finding the section of the Code that has been breached	[]
B recording the facts of the alleged breach	[]
C deciding on the case	[]
D determining the sanction	[]
3. Which of the following is the direct expression of a plain untruth

A suggestio falsi	[]
B equivocation	[]
C suppression veri	[]
D a diplomatic fabrication	[]

4. Which of the following is a two valued logic statement?
- A on-off []
 - B guilty-non guilty []
 - C neither A nor B []
 - D both A and B []
5. If a company has a code and an employed professional within the company finds him/her self in breach, which code has primacy?
- A the company code []
 - B their professional code []
 - C their conscience []
 - D what their family tell them to do []
6. In ethical decision making which statement is acceptable?
- A economics never has a part to play []
 - B economics is always a consideration []
 - C economics should be prime []
 - D only in serious cases should economics play a part []
7. 'Guarantee' for life means
- A for the life of the purchaser []
 - B for the life of the object []
 - C for a specified time to be determined []
 - D as an unqualified statement it means nothing []
8. 'Sanction' has more than one meaning: which of the following is one of them
- A to punish []
 - B to agree, and to back the proposal or action []
 - C both A and B []
 - D neither A nor B []
9. Ethical gradualism means
- A where there is room for discretion guidance is prime []
 - B never use punishment for ethical breaches []
 - C gaining a degree in ethics []
 - D the use of procedural rules []
10. A 'Decision Tree' is
- A a method of proceeding to resolve an ethical breach []
 - B a branch office of the main company that determines ethics []
 - C determining the appropriate sanction for a breach []
 - D an instruction to come to a determined conclusion []

For Discussion

1. Preventing ethical problems is obviously superior to trying to resolve them once they arise. What are some of the steps necessary in order to build a protective-preventive system?
2. The outcomes of ethical discussions are of importance. Consider the role of proper procedures in ethical resolutions. How important are such formal procedures?
3. It has been put to you that the best way to identify an ethical dilemma is to see if it breaches your Code. Is this a satisfactory definition?
4. In science, so it is argued, the communication of findings is as important as is the research itself. Were those findings not communicated to others the research might as well not have taken place. Do you find that argument as persuasive in ethical resolutions as it is in science?
5. Suppose that you work as a legal practitioner in a large company. Suppose, further, that the company has a Code that enjoins certain behaviour, but that company Code is at variance with your professional Code. Which should prevail?
6. One of the aims of a Code is to provide aspirational standards. At the other end of the spectrum one needs to acknowledge that there are cases of breach which do require the imposition of a sanction. Where you are not required to be harsh think of some appropriate solution which acknowledges wrongful behaviour, but is restitutorial (one example is that of someone who recognises that they have behaved foolishly, and says so at the hearing. The Chair of the Committee could then write formally and agree—saying that the offender had confessed to behaving foolishly and that the Committee were in full agreement).

8

CHAPTER

Fostering Ethical Behaviour

The purpose of business is to make money; if it does not it will have failed in its primary aim. If it does make money, but does it in an unethical fashion, it will be in breach of the social system that permits and fosters its commercial activity. It is the aim of teaching ethics to constantly make the point that the purpose of business is to make money and to make it with honour.

To this end, ethical codes may be fostered by a number of devices. These include using outcome measures (discussed below), providing specific training for which due recognition is given, and devising outcome measures that may be used in promotion. This translation may be made concrete in some specific questions such as: How many technical breaches occurred? How many customers were misled?—and so forth. One of the significant tests of the effectiveness of a code is how it deals with difficult cases. Among the actions that might be taken to foster a code is to set out the conditions of reporting on particular ethical cases. What is needed, as a minimum is:

- A clear code of business ethics, printed and widely disseminated.
- An ethics committee set up to consider issues and have their debates conducted in a collegial spirit.
- Before any complaint of ethical breach is heard a complaint should be specific and accompanied by evidence.
- No financial disadvantage should accrue to a complainant unless the complaint was motivated by malice.
- Protection in the form of career preservation, except where clearly unjustified, should be provided.
- An ‘ethical informers’ (whistleblowers) support group.
- The use of an independent mediator, with relevant expertise.
- An appeals procedure.

Among the most efficient methods of inculcating ethical behaviour are at least one-day training programmes the using specific goals. Examples of such goals are to recognise ethical problems as such, to

have a plan of action to deal with such problems and to then be able to foresee when ethical issues might arise (with a view to prevention).

To this, we might add that we should commission seminars that involve, as well as instruct, the company employees. Some form of external appeal would be useful when the issues are not able to be resolved within the organisation. It might also be useful to make ethical issues a part of the annual reporting of the organisation, giving it just as much prominence as one does to financial accounting. Additionally, we might give intangible rewards for ethical behaviour. The most effective way of dealing with dissenting views is that of rational discussion. An obligation to provide a rational defence has a salutary effect on those who might otherwise misuse their position. Some whistleblowers may be moved by considerations that are less than morally pure, but we will never know unless they are heard.

FOSTERING ETHICS

Sensitising to Ethical Issues

There is much to be said for using all of the above techniques since each has a special merit. Where we give such a diversity of experience it is worth recalling that early learning is more effective than later learning. Sensitisation and experience early in a career set a pattern that may well be set for professional life.

Teaching may involve the professionals as well as other employees within an organisation. The involvement of all members of the organisation seems to be a precondition of an effective ethics policy. Among the points of involvement are those mentioned elsewhere in this work, dealing with ethical infrastructure. An internal committee, a formal code, a training programme, and regular reporting are indispensable. In particular, the regularity of these processes, such as reporting, gives ethics the recurring prominence that it deserves—a prominence of no less importance than that of periodic financial accounting.

Training for Ethical Awareness

Given that there is a commitment to ethics, a training programme seems mandatory. Whatever form ethical awareness training programmes take, their precise nature will vary from company to company. It is important that the following objectives are borne in mind:

- Promotion and support of the organisations' values and standards.
- Making managers more aware of the ethical dimensions of their business decisions and conduct.
- Refreshing of the staff in the organisation's ethical policies.
- Strengthening of the ability of the staff to apply the organisation's ethics.
- Providing a forum for managers to identify ethical issues and areas of vulnerability.

In order to maintain a high ethical profile the following might be considered; that managers:

- Behave ethically themselves.
- Screen potential employees.

- Implement ethics awareness training.
- Reinforce ethical behaviour.
- Create a structure to deal with ethical issues.

Encouraging Ethical Behaviour

This area of investment is concerned with investment in organisations that directly engage in ethically approved activities and/or products; or avoid such involvement. One of the difficulties here is the ambiguity about what constitutes ethical behaviour. For some it may be avoiding specific products (such as alcohol, or birth control measures); for others it may be environmental (such as woodchipping, or uranium mining); for yet others it may be to do with unfair practices (such as the use of child labour or military suppression of democracy). Among the issues one might consider as serious issues are:

- Environmental.
- Sustainable land use.
- Forestry control and woodchipping.
- Energy availability.
- Efficient use of resources.
- Weapons and militarism.
- Political tyranny.
- Employment conditions.
- Racist discrimination.

Additionally, the ethics of using animals in experiments is addressed by a number of bodies, such as animal welfare societies animal liberation societies and anti-vivisection groups (further details below).

There are investment funds aimed specifically at capturing the ethical investor market. The relative returns of such funds are variously reported. Overall they seem to fare well, although there are instances where they do not. The difficulty here is checking out the effect of management practices compared with the ethics of the process for any particular investment.

One of the problems, as previously mentioned, is that of defining what is ethical investment, exactly? Does it mean: Arms exports? Tobacco sales? The exploitation of labour? or what? One person's unethical investment may be another's highly moral investment. If one were to have an ethical investment service it would be helpful to have their criteria listed unambiguously. Such a service would, rightly, provide information of a wide range of issues that would help investors identify the appropriate funds, list their performance and provide a forum for debate on such corporate responsibility.

The Use of Rewards to Encourage Ethical Behaviour

One of the clearly demonstrated principles of psychology is that rewards are more effective than punishment. Rewards are reinforcers that clearly direct the person toward what is considered acceptable.

The difficulty with punishment is that it tells you what not to do; it does not focus on the behaviour that is desired, but only on some of the things that may not be desired. This is not to say that punishment is never effective; for example, personal boycotts are known to be a powerful technique for social control.

Among the precepts we might enjoin are those of 'Be easy to live with': 'Be co-operative'. 'Be loyal'. 'Have a warmth of relationship'. It is worth noting that the four maxims mentioned here reflect rewarding personal relationships.



Ethical Dilemma

You are an entrepreneur who plans to set up a service agency as a professional negotiator. The first case that presents is that of parents whose only child is dying of kidney failure and who might be saved by a kidney transplant. There are no biologically matched relatives who might donate. The parents have located a community that contains several members who are tissue matched to the sick child, one of whom has had a car accident. If that victim dies of his injuries he has agreed that a kidney may be taken free of charge for transplanting. The accident victim belongs to a community in which the cultural norms hold that each member of the family belongs to the family. Despite the donor's wishes the family insist that payment be made to the family if the kidney is taken. In the event of non-payment the kidney will remain in the body, or go elsewhere to another bidder.

Would you negotiate?

Would your view be different if the payment were to go to a charity of which you approved?

How many options do you have?

What is the principle at stake?

FORMAL TEACHING IN ETHICS

The 'Teachability' of Ethics

The 'teachability' of ethics is a vital issue. Among the more important lessons learnt from experimental psychology is that of how a moral stance might be modified. No matter that one may have an ethical position, that position can be dominated by social circumstances. A particularly striking illustration is that of a series of experiments done by Milgram. His study, conducted in the early 1970s, is now a classic report on forced obedience. The study was originally designed to demonstrate that people would resist orders to harm others where such orders clearly breached the principles of acceptable behaviour.

The experiment consisted of recruiting 'experimenters', who were asked to conduct a 'learning experiment'. When the subjects in the 'experiment' gave the 'wrong' answer, the 'experimenter' was asked to give shocks; these were of supposedly increasing severity as the experiment progressed. In fact,

no shocks were given, even though the experimenters thought that they were. The subjects gave mock but realistic cries of horror in response to the administration of the electric shock. The purpose behind this deception was to see if the experimenters would increase the shocks (in 15 volt increments-increasing to 450 volts).

A surprising finding from the study was that ordinary and decent people, about two-thirds of the sample, got caught up in the experiment and were prepared to give electric shocks that were seemingly lethal. This cautionary tale has implications for our understanding of defences at the Nuremberg trials, and, as mentioned earlier, the court martial on the My Lai massacre (the I-was-only-following-orders defence). Among other things it demonstrates the need to set in place a framework in which ethical behaviour is the norm.

Deviant social situations and solitary coercion create an atmosphere in which breaches of ethical norms seem enforceable and even acceptable. To use Milgram's words, 'Behaviour that is unthinkable in an individual who is acting on his own may be executed without hesitation when carried out under orders'. He concluded; 'The kind of character produced in ... a democratic society cannot be counted on to insulate its citizens from brutality and inhumane treatment at the direction of malevolent authority'.

Teaching Ethics

In the teaching of ethics, a variety of techniques is probably best, but that is only likely to work well if the staff are committed to the notion of ethics. To have staff involved in the development of an ethical programme is vital; the demonstrable commitment by management to an ethical code and its vigorous encouragement, is to be most highly commended.

As mentioned earlier in this work, among the justifications for teaching ethics is that of training to discriminate urgency from importance. The decision to disconnect a life support system is important, but not urgent; the decision to answer the phone is urgent but may not be important. To be exposed to such types of decisions in a non-threatening environment is valuable practice for later decision making under conditions where the luxury of no-practical-outcome may not be present.

There are effective and not-so-effective ways of teaching any subject. Lecturing, for instance, is very effective in getting across an overview of information, of providing a structured approach to the subject, and of exposing the audience to the enthusiasm of the practitioner. Lectures may be abstract and call for more concentration than most of us can muster; they may be intellectually demanding, and seem remote from real life.

Case studies, on the other hand, may seem too particular, or irrelevant to the form of industry or commerce in which the participants are engaged. A variety of techniques is probably best, but that is only likely to work well if staff and practitioners are committed to the notion of ethics.



Ethical Dilemma

In a public debate on business ethics a prominent politician berates business for its excesses, its litany of broken promises and for its giving India a bad name in business.

As a defender of business you point out to him that politicians give us adverse publicity. In the matter of broken promises, you aver, the emptiness of political promises is unbeatable.

Instead of berating business for bad ethics it is incumbent on politicians to set a good example, and not to sermonise. You hold that there are no grades of promise—all promises are core. In your part-time job as a speech-writer you unexpectedly receive a commission to write the politician's speech as rejoinder.

Being fair minded you take this as an excellent opportunity to give serious consideration to this issue and agree to take the commission.

What would you include in such a speech?

In the absence of articulated codes in business the individual is often left to his or her own devices, or to the guidance of managers. We know enough about the subject matter of ethics to set up codes, and to teach the subject. The nominated issues we ought to address in management education and business ethics are the following, which have been slightly re-worded from Mahony's list (1990) by the author:

- What is its purpose?
- Why are we doing it now?
- Is it proving successful?
- Is there any best way to teach the subject?
- Should there be a separate course in business ethics?
- Should it be compulsory?
- Who should teach it?
- What should it cover?

Syllabus Matters

Those planning a course in ethics may wish to use the 'Contents' of this (or other) books as a guide. It is recommended that any syllabus cover at least:

- the background to ethics;
- key issues (principles) in business ethics;
- international covenants and legal requirements;
- the relevant professional code;
- other relevant professional and public service codes; and
- how to identify and resolve ethical disputes.

Among the questions to be addressed in training are those listed below. These were taken from an original work (Eberlein, 1993), and recast:

- What do business people do that is ethical, and how can this be reinforced?
- What do business people do that is unethical, and how can this be corrected?
- What do business people believe about how they should behave, and is this a legitimate part of an ethics course?
- What is the 'ethical reasoning process' by which business decisions are made?
- Who should decide what is ethical?
- Is the distinction between value-based and rule-based ethics relevant here?

In posing these questions we should note that any ethics curriculum should consider simulated experience of ethics committees setting a committee charter, setting up a committee and writing 'judgements' or 'appreciations'. This 'hands-on' approach has been found to be invaluable in bringing home to beginners how important it is and how it is done in practice. The other significant merit is how interesting and engaging ethics is. Sensitising to the ambiguity of the ethical position is something found almost universally: it may be contentious, but it is never boring. Among the issues worth canvassing are:

- that ambiguity may permit more than one ethical solution;
- the existence of competing ethical values and principles;
- the informal professional norms and professional etiquette; and
- the need to consult widely (including the legal context).

OTHER METHODS OF TEACHING ETHICS

Using Videos

Here, an ethical vignette is shown from some appropriate source. The panel view the video clip, decide what is the issue, what relevant code or principle it breaches and what would be an appropriate outcome.

Casebooks

Casebooks are available from a number of sources. In this present work there are cases in the relevant chapter on identifying and resolving ethical issues. There are also cases scattered through the text.

Mentoring

Those with decades of business experience may, in their later years, feel that their careers are nearly over or that their paths to advancement are blocked. Their substantial experience is an asset that can be of benefit to others and to the organisation. Not only is their expertise of value, but so also their hopefully mellower and more ethical view of the world. In one's later years, the urge for profit seems less important, seeming to reverse the old dictum that if you are not a socialist at twenty you have no heart; if you are still a socialist at forty you have no brains.

The utilisation of the wider ethical view provides an admirable opportunity to use their enhanced understanding of ethical issues and to become mentors to their younger and less experienced colleagues.

This benefit to the organisation is complemented by the satisfaction that they receive in providing this altruistic service. Those contemplating retirement are less likely to be perceived as a threat to the less experienced and thus may be heeded more attentively. Such mentors may provide their service by way of being an adviser, friend, role model, supporter, intercessor, and/or confidant.

Ethics mentors may give their service to a variety of people, ranging from the neophyte to the experienced colleague who is too bound up in day-to-day problems. Such a mentoring role may be formal or informal. The formality brings it to general notice; the informality may make it work.

Case Studies

Case studies may act as a surrogate for the experiencing of ethical dilemmas, particularly for those with little business experience. This can be done by giving factual illustrations of potential and actual conflicts of value or of competing principles (e.g. loyalty and truthfulness). Among the most efficient methods of inculcating ethical behaviour are slightly extended training programmes using three specific goals, to:

- help attenders recognise the ethical component of a business decision;
- decide what to do about such ethical issues; and
- bear in mind preventive strategies.

Simulations

In order to teach ethics, various simulations may be used. Among those that the present writer has found to work well are: convening an 'ethics committee', that is, by taking an ethics case and convening the group as though it were a real ethics committee. There are occasions where role playing is appropriate; there are other occasions where people representing their own views is appropriate. Sometimes there is that time-honoured rhetorical technique of giving roles to those who find the views they are meant to represent distinctly uncongenial ones. This is a wonderful way of getting someone locked into an ethical position to appreciate the countervailing views.

Using the 'Hypotheticals'

Here, everyone is given a copy of the case to read. The panel, run by a strong chairman, is asked, individually in sequence, what it has to contribute to the problem. When the views have been gathered, new information that could have an impact on the conclusion likely to be drawn is added. It is, in other words, a kind of panel game in which the moderator solicits views, summarises, introduces new issues and concepts and generally guides the discussion.

The Use of Games

There are some 'ethics games' available, though surprisingly few. One example here is the KPMG Cards On The Table. This is essentially a board game in which there are two to four players. A problem is presented which is discussed and a standard scoring system used. It should be within the capability of management to devise games. For example, to provide a case for discussion, to have the Code and

Principles printed and to ask for views. The person managing the game could, at the end, ask for the judgements about the value of each of the participants and for an assessment of the value of the solution.

GAMBLING AS AN ENCOURAGEMENT TO ETHICAL BEHAVIOUR

There is another way of fostering ethical behaviour—that of using the human inclination to gamble (stronger in some cultures than others). This rather wayward idea is designed to be provocative and thus, in a discussion, could give rise to some interesting insights.

Speculating on possible results has led to a thriving betting industry: it must also be present in many business decisions. Drawing a line between an informed judgement and a less informed guess ('guesstimate') is impossible. Some business is like a lottery, with varying degrees of risk. Having a national ethical lottery might be one way of encouraging good business behaviour.

One could imagine (perhaps with difficulty) that a federal government had set up a Ministry of Surprises. The function of the ministry would be to use the desire to gamble as a means of encouragement to compliance with such issues as taxation. A person's, or a company tax file number could be entered in a lottery and the winner of the month would have his or her or its previous year's tax refunded, win a cruise, or dine with a prominent person.

Since tax returns are annual they could also be used to another good effect. The government could have a section at the end of each form, with the business tax return giving the right to nominate how 10 per cent of their paid tax is to be spent (fighter bombers, or disadvantaged children, or MPs' pensions, or overseas aid). An opportunity such as this would afford business people the chance to be regularly heard.

ASSESSING ETHICAL PERFORMANCE

Codes of Conduct

Those interested in particular codes of general relevance to all businesses will find a range of examples: companies and professional organisations have such codes. As such they should be readily available: were they not readily available one would have serious misgivings about their commitment to ethics. Imagine a government that said they planned to enact laws, but would make it impossible for the populace to find out what those laws are.

Measures of Ethical Performance

Ethical codes may be fostered by a number of devices which include:

- translation into behaviour (actually do ethical things in ethically ambiguous situations);
- provision of precise ethical learning goals to staff (master the company code by a certain date);
- showing how the achievement of ethical goals contributes to self-worth and company profile; and
- creation of new ways of judging ethical performance and the provision of appropriate non-tangible rewards (such as honourable mention).

This translation may be made concrete in some specific questions such as the following:

- Quantifying the number of ‘dirty deals’
- Listing technical breaches
- Reporting how many ‘sweeteners’ were given
- Enumerate the ways and prevalence of misled customers
- Breaches of union principles
- Breaches of occupational health and safety rules

Ethical Dilemma

An Indian author has a book published in which she criticises a prominent national religion. The fundamentalists in that religion hold that such views are blasphemy and that religion is above criticism. In a public statement, the major guild of writers asserts their members’ rights to publish views on all ideas; and that no idea (as distinct from private information) is above comment.

The fundamentalists make threats of violence against all who express views that are unfavourable to them. A group of civil liberty activists join the issue in support of the writers.

How is this escalating issue be averted so that it does not result in physical danger?

Is there a principle above such considerations?

The Ethical Audit

One particularly useful function in order to assess ethical performance would be to perform an ethical audit, canvassing such questions as perceptions of the value of an ethical code, degree of commitment to its implementation, what ethical issues are perceived to be important, and how an organisation is rated ethically.

There are various ways of doing this. Among them is the salient distinction of whether one looks at statements or at behaviour. A manufacturing organisation might have a policy on waste recycling, an instruction to employees and even provide waste recycling bins. The author has heard of one such case, which, when investigated carefully, turned out to be a sham. Although the bins were filled appropriately they were then taken to the ordinary rubbish tip: the bins were for show.

An ideal situation is one where there is appropriate instruction and logistics, backed by actual behaviour that reflects the intent of the instruction and infrastructure system, structure and strategy. A check on such probity would be the commission of an independent consultant to verify the actual situation and to report to the CEO with a view to inclusion in the Annual Report.

CORRUPTION INDEX

Transparency International's corruption index sets out criteria of corruption and the methodology used to derive the index numbers. There is a comprehensive account of how the index works and the results of the investigations. The score of 10 indicates least corruption. In the Global Corruption Index of Transparency International 2006 Report.¹

India ranked 70th out of 163 (score of 3.6). Finland was top (9.6): Haiti bottom (1.8). India shared its rank with several other countries—Brazil, China, Egypt, Ghana, Mexico, Peru, Saudi Arabia and Senegal. It will be remembered that these rankings are based on informed perceptions rather than external measurables. Notwithstanding, it is a concern that India should rank relatively so low with such a robust system of free print, electronic media and RTA acts, etc. This, in itself, is a project worthy of pursuit.

Self-Regulatory Schemes

It will be appreciated that the Code presented in this work is a suggested guide. This code, or any other, does not over-ride the law. Those wishing to find a self-regulatory scheme would be well advised to visit the relevant website. In a more general search, one might bear in mind the way in which search terms are used. For example, one might be interested in accountancy and thus could use the terms below in our search.

- Accountants
- Accountancy
- Practising
- Cost
- Chartered
- Certified
- Indian

Cognate words are the business or profession, and these include:

- Association
- College
- Company
- Corporation
- Institute
- National association
- National society
- Society.

One final word of caution in searching is that of spelling. Most word processing packages have their origin in the United States of America. Despite the manifold value that they provide, there is the problem

¹ www.transparency.org

of linguistic colonialism. It is not possible to delete American spelling. Even selecting (say) British English the file may revert to US English. The problem here is to ensure that words spelled differently are twice searched (organisation and organization, for example).

PARTICULAR ORGANISATIONS RELATING TO ETHICS

Centres for Ethics

A search of all of the business telephone books in India will yield companies with the word ‘ethics’ in their name. One is never sure if the companies are so small as to be non-effectual: some may include ethics in the title but that could be but a minor part of what they do. Further, there are organisations that deal with ethics but do not have ethics in the title; large accounting firms, and management consulting organisations, for example. Yet further, some university business schools provide a consulting service that includes ethics. Overall, the use of the word ‘ethics’ in the title is not a reliable guide.

Public Sector Ethics

There are many issues common to business and to public service; among such issues are loyalty to superiors when instructions are at variance with the law and what to do about whistleblowers. Those interested in the topic of public service ethics are recommended to refer Uhr’s book (1990) which canvassed three ideas. One is that the ‘Golden rule’ is less relevant to government than is the principle of constitutional democracy; the second is that the spirit of the administration should be in keeping with the notion of public accountability, rather than accountability to the government of the day. The third of Uhr’s propositions is that the standard of administrative responsibility is preferable to the dictates of private conscience. To rephrase Uhr’s argument, this seems to amount to a shift from shame to guilt; and a shift from religious morality to one of accountability.

Appointment to the public service is by merit. As such, merit ought to be demonstrable and thus the need for a merit protection review agency. The form that this may take could vary from place to place and the way that it is named and exercised still different. It would a serious indictment of any governmental agency not to have such protective measures in place.

Tax Office

This contentious governmental function is one that deserves special consideration. Taxation has always been a contentious issue; taking on various concerns, such as the amount of tax one should pay? Whether or not it should be progressive, how effective a recovery system should it have? Should there be criminal sanctions for breach? How intrusive may inquiries be? How is privacy to be protected? etc. Because taxation may be volatile in substance there is a need for constant updates, as most jurisdictions provide.

The national website of the Indian tax office (see Tax Office) has a host of information relevant to business: the site includes the kind of information that one would expect, plus such extras as FAQs, tutorials on taxation usage, tenders, recruitment, and Vision, Mission and Values, and the Charter.

Business Council of India

Business in India is very well connected to other business councils and operates many joint business councils designed to foster common business interests.²

ETHICS AND OTHER ORGANISATIONS

Cross-National Resource References

When consulting international references one would do well to be aware of the terminological issues. Here one may find several useful references. These include: an international resource book; (McHugh, 1988) a book on the ethics of international business; (Donaldson, 1989) a multilingual business dictionary, which lists such terms as 'Investment company', 'Flag of convenience', 'Flat rate', 'Wind up' and such like; (British Chamber of Commerce, 1978) another dictionary of international business terms; (Shim et al 1998) a work on accounting acronyms; (Morris, 1998) a dictionary of international finance; (Mahoney, 1997) and there is also available a directory of multinational corporations. (Directory of Multi-nationals, 1998)

Yellow Pages for Companies with 'Ethics' in the Title

The Yellow pages for India is online. It is, understandably, a very large data base, and thus one needs to look under the appropriate letter (e.g. G for games, D for dataprocessing, and S for sandalwood).³

European Business Ethics Network

EBEN is a pan-European business ethics network, with objectives of promoting value based management, the provision of information, promoting ethical leadership and increasing corporate awareness of social responsibility.⁴

CAUX Round Table

On the international moral dimension of global business, one of the most relevant organisations is the CAUX Round Table.⁵ That organisation is an international network of '... principled business leaders working to promote moral capitalism'. So efforts include that of sustainable growth, social responsibility, transparency, and free and fair trade.

Corporate Philanthropy

Corporate philanthropy in India has a long history. Ancient texts give moral force to the notion of charity and of civic responsibility. One form of philanthropy is that of aiding the poorest and most disadvantaged

² The website is <http://www.google.co.in/search?hl=en&q=indian+business+council+&meta=>

³ <http://www.indiayellowpages.com/alphabets/list.asp?YEAR=Games&cat=g>

⁴ See www.eben-net.org

⁵ <http://www.cauxroundtable.org/about.html>

section of society: an alternative form is to help the most gifted, thereby making them more effective contributors to a just society. Yet another form is that of helping organisations, including welfare societies and religious entities.

All of these forms are to be found in Indian society. In addition to Indians who contribute there are also overseas organisations whose foreign volunteers come to India to make their contributions of knowledge and skills. For further information on the range of this topic, and its Indian background see Corporate Philanthropy.⁶

Indian Stock Exchange

The National Stock Exchange of India has the website.⁷ That site has an excellent search engine that should provide most of the information needed by an investor or researcher.

Who's Who

There is more than one relevant Who's Who for India. There is, for example, one for government site with a pot pourri of information (such as the list of famous associates of Mahatma Gandhi, Prime Ministers of India, a list of Sanskrit scholars, and mathematicians of India, for example).⁸

If you wish to know something about an eminent person in general one obvious place to look is the Indian 'Who's Who' (see References). In addition to the conventional reference there is list of various types of Who's Who for different disciplines (e.g. chemistry) and for different interests (e.g. spies).

BIOLOGICAL MATTERS

Environmental Issues

These issues cover a unit of matters as diverse as agriculture, catchment and land management, conservation and environment, farm management, native flora, fisheries, minerals, petroleum, outdoor recreation, parks and forests and water resources. To this list we might add the disposal of toxic waste, including nuclear waste. India has a Ministry of forests and environment.⁹ On that website there is a host of information, including annual reports, a citizen's charter, fellowships and awards, tender information, and publications.

Animal Welfare

In the matter of ethics there is a lively set of organisations devoted to animal welfare.¹⁰ Such organisations do selfless work for animal causes. The relevant federal body is the The Animal Welfare Board of India,

⁶ <http://www.asianphilanthropy.org/countries/india/overview.html>

⁷ <http://www.nseindia.com>

⁸ <http://india.gov.in/govt/whoswho.php>:

⁹ <http://envfor.nic.in>

¹⁰ http://www.dogsindia.com/animal_welfare_org.htm

which is within the Ministry of Social Justice and Empowerment. There is also a website that is a quasi-advocate of vegetarianism which deals rationally with the issue of animal rights, particularly in relation to animals as food.¹¹

Indian Bioethics Centres

The premier body for bioethics in India is the Indian Council of Medical Research (ICMR). That body formulates, promotes, educates and co-ordinates matters of bioethics. Although not the only body it does lay emphasis upon research ethics, studies in genetics, drugs, and public health.¹²

INTERNATIONAL MATTERS

Accounting Standards

Accounting standards are national and, increasingly, international. The financial reporting that is done must conform to such standards: were they not to do so would leave the organisation vulnerable to justifiable complaints of incompetence at best, and criminal behaviour at worst. It is also worth recording that while there are excellent accounting standards for financial reporting there is still some way to go on standards for social and environmental reporting.

International Trade Agreements

In a world increasingly interdependent on international trade there has been a plethora of multinational trade agreements. The range from widely based 'Free trade agreements' to such particular bodies as the International Whaling Commission. In addition to free trade there is the inclusion of embargoes. Among them are ban on the export of dangerous and destructive goods, the supply of weapons to tyrannies and the prohibition of some goods (such as illegal hard drugs).

Some extremely difficult issues are implicated in this area of international trade. Among these are the requirements of conforming to the law of a country where that country has discriminatory racist views, or views on human rights and freedoms that are not in accordance with the UN Declaration of Human Rights. Most recently the most interesting development of international trade is that of carbon trading. With a nascent understanding of the importance of reducing carbon emissions comes the notion of containing that problem by ensuring that, overall, there is no increase in overall output.

Journals of Business Ethics

Among the journals that deal with business ethics are:

- Australian Journal of Professional and Applied Ethics
- Business Ethics Quarterly
- Business Ethics: A European Review

¹¹ See <http://www.petaindia.com/feat/f-whosVeg.asp>.

¹² The objectives of that body are given on the website http://www.icmr.nic.in/bioethics/cc_bioethics/index.html

- Ethics and Information Technology
- Journal of Agricultural and Environmental Ethics
- Journal of Business Ethics
- Journal of Mass Media Ethics
- Kennedy Institute of Ethics Journal
- Teaching Business Ethics

One also finds articles in overseas journals of direct interest to India. For example, Kimber & Lipton (2005), who note that the four countries selected (of which India is one) vary in their history and approach. The comparisons that they draw reflects upon the relationship of ethics to corporate governance. Those authors then went on to discuss the basis and merits of such differences.

This list does not include those that are probably in the domain of other areas. A more extensive list would include such publications as the Journal of Medical Ethics and Theoretical Medicine and Bioethics. This field of publication is a growing one, with new journals expected to appear. Further, some conventional business journals regularly publish articles on ethical issues. It is also worth noting that there are on-line journals of business ethics. Among such offerings are Corporate Conduct Quarterly and the, International Society of Business, Economics and Ethics. Clearly this changing literary landscape is readily updated using the conventional library search tools.

Ministry of Corporate Affairs

The federal government has a Ministry of Corporate Affairs and the issues they deal with are; acts, bills, rules, reporting, training notes and investor grievances.¹³

WHISTLEBLOWING

Whistleblowing has been defined as occurring when a present or former employee discloses information ‘which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, such as gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety’ (*US Whistleblower Protection Act 1989*).

A Bill was introduced into the Parliament in India in 2006, and is called ‘*The Whistleblowers (Protection in Public Interest Disclosures) Bill*. As at January 2007 that Bill had not yet become an Act. The Bill provided for protection from criminal or civil liability, department inquiry, harassment and discrimination of whistleblowers. To date it has not resulted in legislation.

There are, legislative aspects to this issue. Despite many moves to give formal legal protection there is no federal Act that directly covers whistleblowers. It is worth emphasising that the whistleblowers themselves may be as much in need of protection as those on whom the whistle is blown. It is recognised that it is hard to tell a genuine whistleblower from a psychopath, from a habitual complainer, or from someone with personal or malicious motives. Until the complaint is heard there is no way of even attempting to draw such a conclusion. Furthermore, whistleblowing may breach personal confidences, commercial or industrial secrets or involve the destruction of old loyalties.

¹³ <http://www.mca.gov.in>

This is a developing field and one in which we might expect more legislation. More recently, the trend has been to have organisations provide their own whistleblower guidelines. This has the merit of making organisations sensitive to ethical issues, and requiring them to address the problem. It has a downside in that such an approach does not give legislative protection. Among the protections that we might enshrine in legislation are those of civil and criminal indemnification, a form of protection from the contravention of secrecy enactments, of injunctions against reprisals, and absolute privilege defamation.

In the public sector, it is obvious that some form of secrecy is necessary when bodies, such as Cabinet, deliberate. Their deliberations should not be the subject of uninformed gossip. Their conclusions are highly relevant but the discussions may not be. For this reason, civil servants do have proper safeguards to secrecy.

Whistleblowing is an odd term to use in business. It refers to the referee pointing out a fault in a sports game. The term has come to mean reporting on ethical matters, and is of such wide currency that it is now the accepted term and even finding its way into the name of legislative Acts.

There is no doubt that those who blow the whistle suffer: mostly in the short-term; some in the long term. On the converse side there are those who blow the whistle and, perhaps years later, come to enhanced stature by virtue of their moral stance.

Whistleblowing might be regarded as the unsuccessful end of the ethical spectrum, on one side or the other. It is an action undertaken when there is an ethical failure. How to deal with ethical informers is always problematic. They may vary for the mentally imbalanced to the highly ethical informer who has tried every other means of redress. It is a critical test of values and may involve loyalty to the company versus loyalty to conscience and principles: loyalty to colleagues versus loyalty to long term corporate interests.

If whistleblowing is being considered then these self-imposed questions may be helpful:

- Do I understand that it is a dilemma? If I do then am I sure that it is an ethical rather than another sort of issue?
- Do I have the relevant information (facts, codes provision, etc.)?
- If it is an ethical problem do I want to do something about it? Is it justified in terms of importance? Is pursuing the issue likely to lead to a yet greater ethical harm?
- If it is an ethical problem, and I want to do something about it what is the minimum I can do that will have the desired outcome?
- If I want to do something about it, and I have been unable to resolve it using the organisational systems available to me, am I prepared to blow the whistle?
- If I decide to blow the whistle have I prepared my position properly?

Whistleblowing is, by its nature, one of the critical tests of loyalty. Those who decide to inform a breach of ethical principle put loyalty to principle ahead of seeming loyalty to the organisation and perhaps to some colleagues. To be concerned over a matter of ethics can be the mark of a person of principle; it can also be the mark of an informer, in the pejorative sense of that term. To be one or the other depends on the principles to which the informer adheres.

It is no accident that totalitarian regimes (read ‘bloody tyrannies’) foster informing for ‘state purposes’. The notion that one should inform the state on ‘subversive’ relatives is generally abhorrent—although there are some cases in which it is socially approved, child abuse for example. The notion that one should not inform on a violent criminal is also unacceptable.

In order to be a proper whistleblower for an ethical matter (as distinct from a criminal one) the conventional avenues of redress should have been exhausted or have some compelling reason not to have done so. Further, there must be a reasonable belief about the issue being of ethical concern.

This concern applies most strongly to public service, where loyalty to political masters and to those higher in the organisation, is encouraged. While there is merit in loyalty, it should not be taken to the extreme of being a principle used to protect corruption.

While the Constitution provides that legislatures may regulate both the recruiting and the conditions of employment for public servants, *The Public Services Bill of 2006* is designed to set the conditions of employment and deployment, which includes whistleblower protection. It will be noted that this application is for public servants and does not cover those in private employment. Those wishing to keep abreast of legislative Acts in India are recommended to the website listed in References (Legislation in India).

The notion that one should inform the state on ‘subversive’ relatives is generally abominated. With this in mind we need to understand that there are some obvious questions to be asked before committing to an informing position. Among such questions are:

- Do I have the relevant information (facts, codes provision, etc)?
- Do I understand that it is a dilemma?
- If it is am I sure that it is an ethical rather than another issue?
- Have I obtained sworn statements from important witnesses (which they then cannot deny)
- Have I addressed it properly, and considered the objective evidence?
- If I decide to blow the whistle have I prepared my position properly?
- If I want to do something about it, and I have been unable to resolve it using the organisational systems available to me, am I prepared to blow the whistle?
- If it is an ethical problem do I want to do something about it? Is it justified in terms of importance?
- If it is an ethical problem, and I want to do something about it what is the minimum I can do that will have the desired outcome?
- Is pursuing the issue likely to lead to a yet greater ethical harm?
- Is the problem really an important one?
- Have I photocopied such relevant documents as is possible (access may later be denied)
- Prepare a brief with exact detail of time, places, statements, issues, evidence, etc
- Talking it over with the family
- Talking it over with your legal adviser.

CONCLUDING REMARKS

It is clear from the foregoing that the issues evident in ethics may be fostered if active engagements are to happen at appropriate levels. It is a commonplace conclusion in ethics that if it gets incidental attention, that is no attention at all. What is advocated here is explicit and concentrated effort and attention so that

its full social and financial benefits may be realised. The resources outlined above are designed specifically to give support to the notion of fostering ethics: less formally it is a significant note that advocates of ethics are certainly not alone.

Summary of Chapter

The subject of this chapter is that of fostering ethics, in the broadest sense. Such fostering include formal teaching, encouraging and rewarding ethical behaviour, providing appropriate infrastructure support, mentoring and simulations and case studies.

Assessing ethical progress requires the provision of Key Performance Indicators, subscribing to ethics journals, attending conferences, and being most attentive to organisations which foster ethics and ethical standards.

As with most enterprises, the critical tests come at points of conflict and deeply problematic issues. In ethics this test is most commonly seen when Whistleblowing issues are raised. The issues of prior attempts to resolve the problem, risks to management and to individual employees, adverse publicity, the lowering of morale and the forms of encouragement and protection of whistleblowing behaviour are all critical here.

Thus it is seen that fostering has two aspects: one is the positive encouragement and enhancement of ethics; the other is how well ethical matters are dealt with in critical determining situations.

Multiple Choice Questions

Select the best answer from the options given.

1. An ethical infrastructure should contain
 - A a mission statement ☐
 - B a formalised Code ☐
 - C a list of sanctions ☐
 - D a compliance officer ☐
2. Training in ethics may be fostered by
 - A never using sanctions ☐
 - B always using sanctions ☐
 - C rewarding ethical behaviour ☐
 - D suppressing reporting of ethical breaches ☐
3. Required annual reporting on ethics progress should
 - A assist in concentrating attention to ethics matters ☐
 - B ensure that ethics is firmly on the corporate agenda ☐
 - C trivialise ethics ☐
 - D an imposition that is not in company interests ☐

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4. Which of the following are significant aids to fostering ethics?
- A mentoring ☐
 - B games ☐
 - C neither A nor B ☐
 - D both A and B ☐
5. The rules of meetings are important for
- A corporate governance ☐
 - B wider understanding of formal processes ☐
 - C to manipulate people ☐
 - D to ensure fair hearings ☐
6. Ethical performance may be measured by
- A reputation ☐
 - B ethical climate audits ☐
 - C psychophysical scaling ☐
 - D all of the above ☐
7. The Corruption Index is available on
- A the TI website ☐
 - B via telephone ☐
 - C via mail ☐
 - D from local government ☐
8. Taxation law means that ethics is
- A irrelevant ☐
 - B inapplicable ☐
 - C applicable ☐
 - D incorporated ☐
9. Whistleblowing is a term that is best defined as
- A reporting ethical transgressions ☐
 - B actions by nuisance people ☐
 - C illegal or criminal actions ☐
 - D breaches of good manners ☐
10. The Ministry of Corporate Affairs provides
- A relevant Acts ☐
 - B protection for investors ☐
 - C both of the above ☐
 - D neither of the above ☐

For Discussion

1. Nominate at least four entities that should be in place as a corporate ethical infrastructure.
2. How can one tell if a whistleblower is a trouble-maker as distinct from being a person with a genuine moral concern?
3. If you plan to use ethical training programmes consider where they might best be applied, to which staff, when, how; and whether or not such programmes should be mandatory to attend.
4. The Board of your company has decided to commission outside experts to conduct a corporate climate audit and you have been asked to be a respondent. Do you have any concerns about answering honestly?
5. In order to make sure that every stakeholder for your corporation knows that you are an ethically committed organisation it is proposed that ethics be dealt with in each annual report. It is proposed that such annual reporting be obligatory and that it should have explicit sub-headings. The basis of this argument is that the company would be too embarrassed not to do something as it would be a blank section under the heading. For example, 'Who comprises the Ethic Committee? How often did they meet? Who was in attendance? Where are the minutes of meetings available? How many cases did they decide? Were there any modifications to the Code? What do you think of that proposal?
6. A multi-national organisation from a developed country proposes to re-locate its manufacturing arm to a Third World country as labour is cheap and safety standards lower, and thus less expensive. Adverse publicity has resulted from this leaked information. What are the company's options?

9

CHAPTER

Principles and Cases

KEY PRINCIPLES OF ETHICS

Ethical principles stem from consideration of principles at two levels; serious issues (such as equitability) and routine matters (such as the conditions of avoidance of conflict of interest when making commercial decisions). There are also procedural principles for ensuring that the stated ends are achieved (eg. making precise any allegations of ethical impropriety).

Among the main substantive principles are truth, dignity, equitability, prudence, honesty, openness, goodwill and the prevention and alleviation of suffering. All of these have the implication of reliability. Not only must there be agreed principles but they must be exercised in a consistent manner. As one of the author's confidant so aptly put it, 'I would rather deal with a consistent villain than a capricious saint'.

PREAMBLE

In order to make it easier for a practitioner there are sets of primary and secondary principles to be followed. These key principles apply to ethical situations that might arise in any area of business. This chapter narrates ethical cases exemplifying the principles set out below.

One of the significant substrates of ethics is its constancy. It is impossible to be both capricious and ethical. Although constancy is not the same as ethics, it is an essential element. In other words, constancy is a necessary but not sufficient condition for ethical behaviour. In the days of sea voyages tea clippers used to carry tea from India and erstwhile Ceylon to Britain. A premium was placed on the speed with which the cargo could be transported as the new tea crop was highly valued. In a relevant instance a wool clipper ship — appropriately called the *Lightning* — averaged 17 knots from England to Australia. That is 408 nautical miles per day, or 460 statute miles per day, and maintaining that speed while going half-way round the world, all without a fuel bill.

The serious drawback is that this analysis relates to a speed record, not an average. It is the very consistency of modern ships, of known speed, known turnaround time, and known arrival dates, that

makes them so commercially appealing. That valued *constancy* is one thing: to that we must add the values to which we constantly adhere. A suggested set of those values are now outlined.

PRIMARY PRINCIPLES OUTLINED

For those with a penchant for mnemonics, as is the author, there is a convenient device. The principles have been arranged to read as though ethics is illuminating. The acronym is DEPHOGS:

- D = Dignity
- E = Equitability or Equity
- P = Prudence
- H = Honesty
- O = Openness
- G = Goodwill
- S = Suffering (prevention and alleviation)

Main principles are those that express the highest level of generality of standards, and act as the first reference point. They represent the topmost aspirational level of ethical behaviour. The principles suggested here are not the only ones to which one might subscribe; indeed, some professions may prefer a modified form. If one were to wait for an end to the debate on which principles should be included, one may have to wait till eternity. This proposed set is presented as a working set and subject to modification.

It is worth emphasising that the above list is not definitive. The list consists of principles that, in the authors' opinion, give the best coverage for the fewest number of principles. In emphasising such a list two important points need to be noted. One is that no principle can operate in isolation; all principles are interrelated though distinguishable, further in the authors' experience, no case seen by them has involved a single principle only. The cases presented below are illustrations, not paradigm instances of cases of one principle only.

Dignity

Among the most important principles of ethics is that of treating each individual as an end rather than as a means to an end. However, while in employment people are used as a means to an end. What is asserted here is that where there is a conflict between the issue of treating people as a means to an end, and of treating them as ends in themselves, the latter principle should prevail. We see customers as a means of making a living. In positions where the interests of the customer are in conflict with a greater profit we should treat the interests of the customer as paramount. It is for such reasons that we have product recalls, safety legislation and offices of fair trading. Courtesy is a significant component of dignity. As mentioned earlier, the way in which we commonly behave seems so appropriate that we are inclined to believe it to be morally correct. 'Good manners', whatever they may be, become prescriptive rather than just desirable.

An example of both bad manners and unethical behaviour would be for a professional to betray trust. Perhaps the main point here is to note that courtesy is an essential part of treating people with dignity.



Ethics-in-Action

It is a special occasion (a significant birthday) and you take your partner to a French restaurant that advertises a speciality of steaks. You order two steaks, well-done. They are served rare, so you send them back. When they are returned they are cooked a bit more, but still not good enough.

You send for the manager to complain. She does not accept that the customer is always right. Despite your protest against the cooking she asserts that the restaurant's reputation for 'good' food is crucial. You refuse to be drawn into any controversy about food tastes and insist that you will not pay unless you get what you ordered. You resent being patronised by self-appointed 'experts' on gastronomy.

The manager also points out that the French have a reputation to maintain, to which the rejoinder is given that if the steaks were to be sent to Mururoa Atoll to be cooked by radiation they would be well-done. In response the manager refers to the glory that was France (where is the foreign Bizet or Balzac, Ravel or Renoir, etc, etc?), and that 'ignorant sub-continentals' would not know a properly done steak if it were so labelled in copperplate.

The rejoinder notes that French intelligence is a contradiction in terms (e.g. the terrorist sinking of the M V Rainbow Warrior in Auckland harbour, and the polluting of the Pacific with their atomic tests on the Mururoa atoll). Being a devotee of European history you note that the French have lost every battle from Agincourt to Diem Bien Phu, and the British have rescued them from periodic thrashing by the Germans on more than one occasion, and so on, and so on. This trade in trans-cultural insults adds nothing to the ambience of the evening.

In order not to spoil the evening irretrievably you then agree to accept the steaks, with the suggestion that you may try to eat them by dousing them with tomato sauce. The request for tomato sauce is refused.

On further request from you, the manager still declines to cook the steaks further, and insists that you must pay for what you have received. You flatly decline. She calls the police. You assert that the restaurant has broken its contract and that the manager is arrogantly trying to 'educate' you — and you find that offensive.

You leave the restaurant without paying, but do leave them with the name and address of your solicitor.

One would also ask if there was some health reason for the customer to ask for the steak well-done or, may be for reasons of culture or religion. This begs the question as to whether or not customers have any obligation to reveal their reasons to a restaurateur. Perhaps the explanation given (health, religious, cultural, aesthetic preference) might form part of the request.

This case involves preserving the dignity of customer, and restaurateur, and is a prime example of bad customer relations. It certainly offends the dignity of both sides, and is not outcome oriented. A discreet word, away from the table, would have been much better. When positions become entrenched they escalate almost immediately to higher levels of difficulty.

Equitability

The word 'equitability' is chosen here rather than the word 'equity' as the latter has the meaning of shareholding in the commercial sense. Equitability, on the other hand, involves even-handedness. The essence of ethical values is that involving the equitability of relationships. We admire even-handedness in delivery of judgement, and highly value the principle of equitable dealing. The power held by strong commercial enterprises is moderated by the need for courtesy and dignity toward clients as it is an essential part of professional work.

Most legal systems do the same. As the state has more power than the individual we contain that power by presuming innocence of wrongdoing until the contrary is proved. We cannot be tried twice for the same offence (double jeopardy); we may not be subject to the arbitrary deprivation of our liberty; and we require police to be accountable to a minister and to Parliament, and so on (at least in principle if not always in practice).

The dissonance of relationships is the basis of 'unethical' behaviour. The misuse of power imbalances a relationship. For example, a dominating relative who wants the right to sign cheques of family owned companies, without being accountable, would be misusing power. Interdependence demands the equality of obligations, and it makes no difference whether the obligations occur in a commercial, governmental or professional context. One cannot have a situation in which one side has all the rights and the other all the duties.

The balance in relationship may involve various sorts of equities, which include background, knowledge and assertiveness. One might imagine an accountant and a solicitor entering into a contract. Both are well qualified professionals, and both understand the need for advice from other professionals. One gaining at the expense of the other is seen as a matter of acumen rather than ethics. There are two principles here. One is the equality of interlocutaries; the other is the equality of information. Our sense of ethics seems to require that we have a sense of equitability of both before we agree that a decision is an ethical one. Ideally, a fair judgement should be between well informed equals; it is the absence of that equitability that arouses our concern.

The notion of ethics is linked with the notion of the limits of boundaries, and what it means when they are violated. In view of the power disparity between business and the stakeholder the boundaries need to be most clearly designated. Where such boundaries are transgressed there are significant negative consequences for the stakeholder, and the business. Among the forms of redress called for is that of healing rather than revenge.

As mentioned elsewhere in this book, the notion of conflict of interest is where a reward or belief (real or perceived) is likely to compromise the objectivity of commercial judgement. It is the institution of this inequity, in the conflict of interest, which offends our sense of moral propriety.

A more sophisticated analysis of this principle involves distributive justice. There are at least three aspects to this view. One is that everyone gets equal shares (simple equitability); the second is that people get shares according to their contribution (commercial equitability); the third is that people get shares according to need (the socialist model). In commerce, shares according to contribution, is the dominant mode. In practice other aspects may be evident. For example, corporate philanthropy may use the model of greatest need.



Ethics-in-Action

A certain state government has decided to hold a car race around an area that is residential, with an excellent garden and park setting. The locals form an action group to prevent such a race. It is difficult to argue against the government plans since they will not reveal what the plans are.

They hold that, as a democratically elected government, they have the right to act by keeping government plans secret (if you don't like it, throw us out at the next election); further, the government argues that such plans require commercial secrecy (a point that the protesters dispute).

In the case described above, where does equity lie? What principles should govern the disclosure of government plans? There is a balance to be struck between the local versus general community concern. Additionally the right of use of parkland, the rights of local residents, pollution, the economics of the enterprise and the rights of elected governments to make decisions. One of the considerations is that the principle of equitability may be breached here. In particular, one would be concerned that the relevant legislature passed an Act that prevented aggrieved local residents from taking legal action against intrusions by not giving the affected electorate a direct say. Do governments have the right to make commercial-in-confidence contracts when they are elected to govern?

Prudence

Prudence requires business people to exercise a degree of judgement that makes the situation no worse, but rather improve the circumstances. In medicine there is a concept called 'iatrogenesis'. This word means physician-caused illness. It does not necessarily mean that the physician caused the illness personally or intentionally. Imagine a child with an illness requiring hospitalisation. The child is placed in an environment which is infected and is exposed to a situation in which the risks are enhanced. It is for such situations that the ethical precept of prudence is required.

In business terms one could imagine a case in which a company troubleshooter visits many foreign countries. She is asked to keep a watch for any information of potential benefit to India. Having agreed to that she is asked to extend that watch to commercial secrets; some time later she is asked to extend it to particular commercial secrets derived from foreign company funded research (i.e. industrial espionage).

At what point is it prudent for the troubleshooter to refuse? Such a decision would, among other things, be dictated by prudence — personal, corporate, and national. There must come a point where the harm outweighs the good that might be done. Prudence tells us to return to the status quo if there is any doubt. Someone chairing a meeting has a casting vote to be exercised when there is a tie on a motion put to vote. The convention is that the chairman will cast the vote in a cautious and prudent manner, thus an innovative motion with a tied vote will have the chairman commonly cast the vote to retain the status quo, and defeat the motion.



Ethical Dilemma

An organisation manufactures toys, and enjoys a deservedly good reputation in the marketplace. One of their products has been found to cause a very minor childhood ailment, from which the children quickly recover. Management noted this and immediately discontinued production with recall of stock from their retail outlets.

They do not issue a general notice as they believe that there would be an adverse reaction on the part of parents, who would magnify the issue out of proportion, perhaps seeing imaginary ailments in their children.

One of the senior employees does not agree with that policy and believes that the public has a right to know. Further, she states her intention of blowing the whistle by going to the media unless something more active and concrete is done. The whistleblowers' committee of the company considers the issue and concurs with the management's point of view.

The whistleblower is still dissatisfied and holds that the whistleblowers' committee is a tool of the management. A meeting of management, the whistleblowers' committee and union representatives is called, at which the whistleblower is invited to make a presentation of her concerns.

In this case what more would one need to know in order to form a balanced judgement?

The relevant prudent principle in this case is 'do-no-harm'. It is inevitable that, at least, harm will occur. Is the harm to be minimised overall, or is it to be exercised in favour of those more likely to be immediately affected. How will this fit with the company mission statement about being open and honest and of protecting consumers? Whatever our decision it will be based, *inter alia*, on the consideration of prudence.

Honesty

The issues of honesty and openness are not always easy to distinguish. Such distinction as there is has honesty as straightforwardness and truthfulness. Its antonyms are lying, cheating, and stealing. The concept of integrity is essentially linked to that of honesty. The term is cognate with that of being of a whole—of being integrated. To have integrity is to have a consistency of honesty that transcends particular instances. Being honest in one situation is generalised to all situations so that a person of integrity does not wear the hat of honesty in one forum and the hat of dishonesty in another. The attributes one would expect of a person of integrity are those of being honest (not deceitful) and consistency of such behaviour.

Honesty is a quality that we attribute to people rather than situations. It is a quality that we (and the Oxford English Dictionary) associate with 'uprightness'. It is a generic term, which has two attributes intertwined. One is consistency of behaviour; the other is that of the behaviour conforming to key ethical principles. While consistency itself is not an ethical principle, it is what is called in philosophy a 'necessary but not sufficient condition'. Caprice and ethical behaviour are inconsistent concepts. The addition of key principles to consistency is what makes for honesty.

The competing issues in this case are being honest to one's professional opinions and trying to act in one's own best interests. Exactly what those 'best interests' are is really problematic. Here we may ask if the author is honest in protecting his own best interests, or devious in looking for an exploitative opportunity.



Ethics-in-Action

The national stock exchange has initiated a scheme of venture capital in which the proposers of the company have to undergo various examinations—including a criminal records check and an audit of the finances of the proposed company. To ensure that the proposers are fit and proper people the stock exchange requires a psychological report on each principal applicant.

Knowing that the professional psychologist has a primary duty to protect the client's interests it was put to the psychologist that, no matter what was found, it would not be disclosed as that would be a breach of professional confidence.

Instead of agreeing to pay the psychologist's bill that company proposed that the psychologist be given shares in the enterprise, thereby making them a party to an enterprise in which their interests are wholehearted.

Can you see anything ethically wrong with this proposal?

Openness

The essence of openness is that things should be as they purport to be, and not concealed in some casuistical manner. This principle is to be honoured in general, but not necessarily in every particular instance. A business person might form an opinion that a contracting party is dealing or making a treaty while in a vulnerable emotional state, and requires support and encouragement. If the contracting party were to be open about this it makes them, at once, both more vulnerable and less open. More so as advantage might be taken; alternatively the disclosure invites consideration.

Openness is the quality of candour. Honesty is strictly being what you purport to be; openness is not concealing that which should be revealed. Even when it is not possible to reveal, as in commercial considerations, there is openness about the reason for non-disclosure. Insofar as we may make a distinction, the two cases of honesty and openness, respectively, make that distinction.

The caution here is that too ready a concealment may generate an attitude of paternalism ('I know best how safe genetically modified organisms are'). Paternalism, whether in the public service or the private sector, carries social dangers. It might also be noted that it is at variance with the notion of helping to develop autonomy. The advice here is to be open and honest unless there is a compelling reason not to do so.

The converse side of the openness coin is that of privacy. This is so fundamental a point that every code of ethics enshrines it. In essence, the guide is that every person, and every organisation, has the right to personal privacy, save for special circumstances (e.g. where required by law).

The Organisation for Economic Co-operation and Development (OECD), brings together countries sharing the principles of market economy, pluralist democracy and respect for human rights. The original members of the OECD were the countries of Europe and North America. Next came Japan, Australia,

New Zealand and Finland. Just recently, Mexico, the Czech Republic, Hungary, Poland and Korea have joined (India became a Member of the Development Centre in 2001).

What is important about this organisation is that it has set out principles relevant to ethical dealing as a precondition of some trade. Thus in dealing with an issue such as privacy the OECD has considered the introduction of new technologies and the impact that they might have. The wider usage of computers to store information, its collation and its ready retrieval make it ideal for misuse. Trading in data is one of the less welcome aspects of this development.

The OECD produced a set of governing rules on privacy in 1980. These principles are expressed as Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. They are derived from Part II of an annexure under the general heading of Basic Principles of National Application. There are eight principles covering the areas of collection limitation, data quality, specified purpose, use limitation, security safeguards, openness, individual participation and accountability. This work is about privacy in human rights, in a wide context, and of international and historical bases. The coverage is pan-European, American, Asian and Australasian. This is so fundamental a point that every code of ethics enshrines it. In essence, the guide is that every person and every organisation, has the right to personal privacy, save for special circumstances (eg where required by law). It is a cautionary tale that where there is a lack of openness it is likely that the issue will rebound. The issue centres on the suppression of the real reasons for the degradation of services. Finding something later that should have been revealed earlier leads to the lingering doubt that 'there was probably something else I didn't know'.



Ethics-in-Action

You are negotiating with business associate to form a joint venture. Earlier in your career you travelled a lot. Among the places you visited was a country with a very repressive and undemocratic government. While you were there you contacted local groups and talked professionally and privately to many of the stakeholders.

Just before you left you were the subject of a politically motivated accusation of commercial dishonesty. That accusation was totally without foundation, but you were required to leave the country. It is extremely unlikely that your prospective partner would ever find out.

You have to balance that risk against the suspicion that would always linger if you were to tell. What would you do?

Goodwill

Goodwill prevents many problems, helps to resolve those that do arise, and has commercial value. Even the tax office recognises that goodwill is a saleable commodity when a business is being sold. In a caring business the existence, and the perceived existence of goodwill, are critical to successful trading. The use of casuistry to circumvent generous intentions, the over-commitment to commercialism and too strong a reliance on legal practices all act to circumvent best practice and generosity of spirit. The operation of commercial enterprises in contexts in which the absence of goodwill is obvious makes trading both more technically difficult and less effective.

An essential aspect of goodwill is that of altruism. To be concerned for others, to be philanthropic and to be concerned with the greater good rather than being selfish, are all generators of goodwill. Commercial success may flow from selfless behaviour but that is not the main reason for its being advocated here; altruism and generosity of spirit are worthy in their own right.

In Plato's Republic there is a reference to Gyges, who possessed a ring. When the collet of the ring was turned inward he was no longer visible to others, who behaved as if he were not there. With such a knowledge one would wonder about the social restraints we exert on our own behaviour since it is the visibility of our actions that often determines them. Would the presence of a policeman influence our behaviour? Goodwill is to love one's neighbour — if not as one's self, at least to a significant degree. It is precisely this point that is the basis of the contribution to business ethics by the organisation called Transparency International.



Ethical Dilemma

You are an executive in a large pharmaceutical company. Your board has been suggested that it would generate goodwill if you were to send recently outdated medicines to Third World countries. Your technical experts assert that you would need to ensure that although they were out of date according to local law the medicines would still be beneficial. Further, they advised that you would need an assurance that the medicines would be stored at appropriate temperatures, and administered by trained staff.

Your board thinks that this idea has some merit but would like it done through a reputed agency such as the Red Cross. No payment may be taken as that may lead to charges that you were exploiting the misfortunes of others or commercial gain.

This seems to be the consensual view, until someone points out that you are treating Third World citizens in a way in which you would not treat yourself. Goodwill here is being purchased at an ethical price.

How would you balance the claim of treating Third World countries in a way that we would not be treated, as against the benefit that the recipients of the medicine would enjoy?

Does the principle underlying this action, whereby the situation is being improved, become a justification for donating the outdated medicines?

It may be noted from this case how ethical decisions are always tempered by technical ones. The debate about treating others as we would not treat ourselves is complemented by the countervailing view that if we did it properly we would improve the situation in the Third World country. By this latter argument it may be ethical to do such things if it helps, no matter how small.

Suffering

Although the principles outlined so far indirectly accommodate the problem of suffering, it is thought useful to address the concept directly. The principles of equity and goodwill do address this issue, but

only indirectly; this last principle does it directly. Suffering here is taken to mean suffering caused to any sentient being. It is not that we necessarily eschew suffering at all costs. Thus a surgeon causes suffering, but with consent, for a higher good, and with a view to alleviating suffering in the long term.

The suffering mentioned here has no mitigating reasons. This consequentialist view, that pain and suffering should be prevented and alleviated, should be seen in the light of other principles, such as acting with goodwill, acting with consent, acting to reduce pain and suffering, and bearing in mind the best interests of the organism to whom or which suffering is caused. Imagine that a particular culture abhors cruelty to animals, particularly to bovines. Consider the following case.



Ethics-in-Action

At the time of the Barcelona Olympics a business entrepreneur invested a considerable sum of money and time in a business plan to make bullfighting legal in India. It was hoped that the telecasting of bullfights would develop aficionados in India. This entrepreneur had not observed that bullfights was hardly ever mentioned in the Olympics coverage. Notwithstanding the commonly expressed view in India that ritual 'fighting' (or bull baiting) and slaughter in public were not appropriate, the entrepreneur believed that public attitudes, and Indian law, could be changed — to greater profit. In the event the bid failed and the entrepreneur lost a great deal of money.

Apart from the legal issues, what are the ethical dimensions of this enterprise?

If the practice is culturally appropriate in Spain and Latin America, does that make it acceptable to pursue the same arguments in India?

If we feel strongly against the idea, should we campaign to have it stopped in the countries of origin?

If the introduction of bullfighting in India were to be thought to generate significant revenue, would that be sufficient to support its introduction?

Would the revenue considerations, in concert with other arguments, be sufficient to justify a campaign to change public attitudes?

Which arguments, if any, would justify a campaign to change public attitudes to sport involving suffering?

This unlikely case study draws our attention to the responsibility we bear in the context of non-human organisms. It is also cautionary in that it reflects on a 'sport' approved in a few cultures. It is in such cases that we see the potential collision between ethics on the one hand, and culture and profit on the other.

If the owner of a fighting cock in Orissa has his animal run over by a vehicle then should the owner of the vehicle be obliged to compensate for the possibility of the income that the cock would have generated. Is this a parallel case?

Ethical Principles and Decision Making

Key principles in ethics (or ethical ‘canons’ as they are sometimes called) are the first reference points in resolving ethical questions (eg in considering custody of a child the judge will have the interest of the child as paramount).



Ethical Dilemma

You tender for a building contract. Knowing that one of your competitors is devious you invite him into your office for a chat about business in general. You ‘engineer’ a crisis knowing that while you are out of the room your competitor will look at what is on your desk. You have left a dummy tender there, quoting a much higher figure than you really tendered. Your competitor uses this sneak information to guide his tender. You later tender for a lower sum, and get the job.

Does your competitor have a legitimate ethical complaint?

Here is a case that considers the question of whether or not two wrongs make a right. It is complicated by the double deception and by which principles such a case ought to be judged. Where principles are in conflict one principle alone is not enough. To be open and honest alone is insufficient. Hitler was open and honest about his desire to dominate the world. Dignity is not enough on its own. Being treated with respect, while being unjustly imprisoned, is not morally appropriate.

Where principles seem to be in conflict, the one most relevant to the case will take precedence. Even within one principle there may be a conflict about its application. We might value the principle of loyalty very highly, but find the priority of its application more problematic, as in a situation where an employee has responsibility to his or her own professional code and a loyalty to the code of the employer. Here one has to decide which is the primary loyalty.

On the conflict between principles there is a good illustration in the field of medicine. Here, the dual aims are to preserve life and to alleviate suffering — aims that may sometimes appear to be in conflict. A needed appendicectomy on an otherwise healthy child, even with only minimum anaesthesia available, invokes the preservation-of-life principle. An aged person who is terminally ill and in great pain may require an alleviation of suffering more than the preservation of a short and painful prospective life.

Where there is more than one principle, there is potential for conflict. One solution to the problem is to arrange the key principles in hierarchical order (eg privacy ranks lower than openness). Commercial considerations outweighs the need to inform all shareholders about new product developments and the research that underlies them.

Another solution is to use professional judgement, taking into account the circumstances of the case; for example, a scientist working for the defence industry sees a violation of the industry’s professional code of ethics on the issue of not having taken consent of research participants, but cannot complain because to do so would involve revealing secrets of national importance. Another distinct possibility is that the research should be abandoned on the grounds of its being improper, and not ethically sanctioned.

The authors' preference is not to view differently each of the principles but to consider each case against all of the principles and decide which one is the most relevant to the case under consideration. Put another way, we might say that one can be an absolutist about the principles but a relativist in their application. In applying the principles these precepts may be a helpful guide:

- Protection from harm.
- Respect the dignity of all persons.
- Be open and honest except in exceptional cases where privacy and silence are clearly ethically preferable.
- Act to preserve the equitability of relationships.

In adopting proper procedures one is mindful of the old precept about justice not only being done, but being seen to be done. The key here is transparency and communication. We might emphasise that any process that is either Byzantine or misinformative will have a denigrating effect on the reputation of business. It is the lack of processes, clearly and regularly communicated to all parties in a complaint, that are among the most frequent sources of discontent. There is an illustrative case on the use of these principles.



Ethics-in-Action

A management consultant was asked to help find a prospective employee for a specified job. The commissioning manager said, but did not write, that he wanted a male. When the consultant pointed out that such a specification was illegal under national legislation, the manager asked the consultant if he 'didn't like getting work from this particular company'. The clear inference was that unless he subscribed to the manager's specifications there would be no future work.

Here the consultant perceived that he would not be in a position to influence the manager any further on this case. He then told the manager that he could not act against the law, and it was possible that there could be an outstanding female applicant. Whatever took place, the final choice would be the manager's.

The consultant said that he would agree to all other conditions if the manager would agree to advertise in a manner consistent with the law. The manager agreed and an appointment was duly made. On the next occasion, having won the point about advertisements being consistent with the law, the consultant then gained an incremental minor point on another issue. Subsequent commissions gained concessions about the choice of tests for personnel selection.

The long term effect of these incremental improvements amounted over time to a substantial change in ethical attitude on the part of the manager/client.

If one were to look at the short-term picture, the solution was not perfect; in the long term the gains were much more obvious. This incremental educative function may produce circumstances in which a particular case may not seem to have been handled perfectly. With a long-time perspective the gains are more obvious. The aim of solutions is to improve the situation, not to be perfect. Further, the solution should be remedial rather than punitive. That is not to say punishment has no place in the process; it is to say that punishment is a residual option rather than an option of first choice. One condemns the behaviour, not the person doing it (love the sinner, but hate the sin).

Further Principles of Case Resolution

The use of 'intuition' in decision-making is to be mistrusted without other bases of judgement. To help make such judgements more objective these considerations are proposed :

- Judgements should be made in good spirit, and with a view to improving the situation rather than being punitive.
- Resolutions of cases need not be dramatic, although they may need to be seen as good examples of some ethical improvement (as in the case outlined above).
- Proper procedures should have been followed in coming to a decision, including arm's-length adjudication, fairness to all parties and the need for evidence.
- Constant reference should be made to the relevant key issues, and to the part of the code that has allegedly been breached.
- A decision should be made on what is an acceptable risk.
- A policy of defensiveness rather than attack should be followed. In social situations of any kind initial aggressive behaviour is not only disagreeable but often counterproductive.

Whatever is learned from each case should be considered by the ethics committee to see whether or not there is anything contained in that experience that might lead to a modification or extension of the substantive issues of the code. This consideration might be extended to the recommended procedures used in investigations. For example, advertising that is pejorative of competitors' products may be regarded lowly. Statements of fact (such as 'the breakdown rate for this car is less than the industry standard of ...') are perfectly alright. From such instances we might decide to modify the principle governing comparative advertising, in much the same way that professions are reconsidering blanket bans on advertising their professional services.



Case Study: Medications to Third World Countries

A previously mentioned case is worthy of analysis: that case involves the issues surrounding the supply of surplus medicines to Third World countries. The case is that you are an executive in a large international pharmaceutical company. It has been put to you that it would be an act of generosity and of good reputation, if recently outdated pharmaceutical products were to be donated to Third World countries. The idea is superficially appealing, but you think further on it.

Among the first issues are; what does 'outdated' mean. Does it mean that it is no longer legal to use them in the country of origin? Does it also mean that they are ineffective after the expiry date? Does it mean that they are dangerous if used after the specified date? Such questions relate to technical issues, and thus need technical answers. Among such questions are:

- Are the medications safe after the specified date?
- If they are safe, what is the real expiry date?

Following that there are questions of safe usage. Suppose that they need refrigeration, and that they need expert medical advice before administration. Clearly, it would harm the donating company in reputation if they were to be misused. As such one would not donate.

Being a generous minded company it might wish to make a contribution. Suppose that the specified date means that the medications would still be effective provided they were to be used within one year of the specified date. One would then want an assurance that they would be transported, stored and used according to approved guidelines.

One could then imagine the company, understandably, wanting to protect its reputation. To that end the company might wish to donate the medications to a third reputable organisation, such as the Red Cross, Red Crescent or World Vision, with stipulations about its use. That ploy will put the company at arm's length, and go a long way to protecting its reputation.

What we now have is a set of technical questions that need to be answered before going on to the ethics of donation. With the wish to make a constructive contribution to world health, the company needs to be mindful of its own interest. Clearly here is a case wherein the answers to technical questions are crucial to making an ethical donation.

Another issue here is the one in which the donation might seem to be patronising (you will not use them, but these hand-me-down medication are alright for lesser beings). A response to that is the legal issue of their not being legally usable in the country of origin. The question here is whether or not legal barriers in another make the position legal and ethically tenable. What may be of more importance here is the principle of improvement.

If one comes across a poorly clothed beggar one might give him or her old clothing — and that is not patronising. There is no obligation to give designer clothing or latest fashion wear or any other Western excess. One must bear in mind the ascription to others of our values. The critical question here is 'is the donation safe and does it leave the situation improved?' Important here is the set of values by which one judges. The values espoused by the recipient is a most serious consideration. To have some request for clothes to keep warm in winter is not the same as giving clothes to those for whom their state of dress is of concerns.

To summarise the questions seem to be:

- Is the donation safe?
- Does the donation lead to an improved situation?
- Is it made in a spirit of goodwill?
- Is it consistent with the values of the recipient?

This seems to be the consensual view until someone points out that you are treating Third World citizens in a way in which you would not treat yourself. The principle that seems breached is that of dignity. Goodwill here is being purchased at an ethical price. The balance to be struck is that of treating Third World countries citizens in a way that prosperous countries would not be treated, as against the benefit that the recipients of the medicine would enjoy?

The overall view might be that it is a worthy effort provided the medications are safe to use, are transported safely, stored safely, are not an illegally acquired donation to a corrupt regime which might sell them for personal profit and that the medications are administered by medically qualified staff. Although such actions may be done with the best of intentions we do need to recognise that events eventually get out of control of qualified staff.

This case is an interesting one in that it starts with an intention to do good work, invokes the principles of Prudence and Dignity, requires technical advice before proceeding to a decision and concludes that

such a donation, if properly protected, and done in a spirit of goodwill is worthy. That it might be seen to be patronising is of less importance than the conclusions that it could save lives and alleviate some suffering: and that the donation leaves the overall situation improved, makes it a worthy enterprise.



Case Study: Copyright of Yoga

Suppose it were to be reported that a yoga practitioner in a certain foreign country was to patent yoga exercises. The basis for this claim might be that the particular mix of position is unique. One might suspect that the action is motivated owing to greed rather than the protection of intellectual property, but that may not be so. What India gave the world might now be subject to copyright and royalty payment. Among the issues are:

- Should the Indian government require of the would-be patenter, a share of royalties for supplying the original exercises and poses?
- Should the Indian government use diplomatic pressure to stop the widespread patenting of a technique that owes its origin to India?
- What would be the position if the courts of a foreign country were to try to intrude into Indian sovereignty?
- Which of the seven principles would be breached by such an action?
- What impact would the filing of a patent for intellectual property have on the reputation of India?
- Does such attempts at patenting depreciate the reputation of yoga teachers everywhere?
- If this attempt to patent were to succeed then would it have implications for other famous Indian products, such as turmeric, curry, basmati rice, images of Ganesh, Benares brassware, charwallahs and Bollywood style films?
- Is the ownership of knowledge viewed by typical Indians as something that is universal rather than particular and protected?
- What is the proposed reach of the law? Is it intended to be the beginning of a takeover of yoga?

In resolving this issue one would be alert to the ethical and ethnic dimensions of this problem. This ethical dimension is to determine whether or not it breaches agreed basic ethical precepts. Those seven suggested principles do include ones that are relevant. Among the ones that seem to be breached are those of:

Equity

India gave yoga to the world. The world should appear to give something back. The principle of reciprocity seems to be breached.

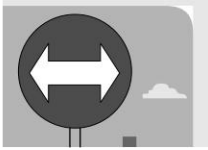
Goodwill

Bearing in mind the goodwill the action of trying to patent what was previously free seems to be in conflict.

In addition to the seemingly ethical breaches there is, too, the question of the wider application of the law. To use the domestic law of one country to subvert the use of a gift to the world is contrary to legal intent. Every country has the right to determine its own legal reach, and the seeming intrusion into the legal affairs of another is something to be viewed with caution.

In favour of the proponent of the new 'intellectual property' we might say that they could have spent some time perfecting the combination of techniques and exercises. What is essential here is that, at

most, the law should provide limited coverage: the combination of techniques used should be within the ambit of the clinics owned or agreed by the 'patent holder'. To use the law to prevent the wider dissemination of valuable developments within yoga is contrary to the spirit of the centuries of development and gifting by Indian practitioners.



Case Study: Bank Takeover

Once upon a time, in a remote country called Ultima Thule, there was a friendly new bank that loved its customers and smiled on them so that they were twice blessed — their money was safe and the 'good fairy manners' protected them. This pleasing state of affairs angered a big Ogre Bank, who treated people as ends

in themselves and was sore afraid.

It came to pass that the Ogre Bank knew for certain that this odious comparison would result in loss of market share and so they made an offer that not even a fairy could refuse. Thus the Ogre Bank took over the Fairy Bank, and proceeded to turn it into an Ogre Bank. The customers were made to wait in long queues while the tellers talked about football and politicians (and other similarly trivia).

Further, to make sure that the customers 'knew their place', a policy of intrusions into privacy was instituted. Users of the bank, who had been loyal customers for many years, were asked why they wanted to send money somewhere, and such intrusive questions as 'where did this cheque come from?'

The HR Department even tried a policy of training tellers to talk in loud voices so that customers' banking privacy was invaded. A private consultant (and ex-professional snoop) found out that the object of the exercise was to deter a significant number of customers from ever wanting to come into the branches; 'use the ATMs, put deposits in the box' they were constantly told.

The Ogre Bank wanted its customers to give them their money for use solely by their senior executive and for shareholder dividends.

Suppose the Ogre Bank had a code of conduct that held, amongst other things, that customer information would be kept confidential unless disclosure was required by law. Further, suppose that legal compulsion was not the only exclusion, but would also include such entities as credit agencies, other financial institutions, and both in the public interest, and in the bank's interest.

Plainly, ethics apart, legal compulsions will always prevail: a commitment to the rule of law is not substantially contentious. The second part, that of other finance-related agencies, is rather more contentious. Not only is this an extension beyond law, but one would, at the least, require access to one's own details for checking. It is possible, and even probable that errors will creep in and remain uncorrected thereby damaging a reputation. The third part, that of being in the bank's interest, is highly controversial. Here one might draw a parallel. Suppose, in a medical context the interests of a medical practice outranked the particular interests of a patient, one would have scant respect for such an attitude.

In this educative example about a bank there could be a lack of transparency. The issue centres on the suppression of the real reasons for the lowering of services. In the bank's interest is subordinated to customer interest. We could ask here how we would feel if the Ogre Bank were open in its policy of trying to drive customers away from personal service in the branches. Good relationships are based on several important issues. Among these is the doctrine of 'no-surprises'. If the Ogre Bank had behaved visibly badly, as in the above fable, there would always have been the lingering doubt that 'there was probably something else I didn't know'.

The ethical principles that seem to be breached by this fable are those of Dignity (treating customers in a discourteous way); Equity (the bank has more power than the customer and could be seen to abuse that power); Honesty and Openness (not telling the real reason for the policy); Goodwill (totally lacking).

Commentary

These three cases, each having a different brief, are intended to be illustrative of the kinds of issues that beset ethical decision making. Deciding on ethical matters always involves a judgement call: in other words, the human evaluation of issues and their relative merits are never absent from such judgements. Where there is an ethical dilemma the proper way to assess them is to follow the sequence laid down elsewhere in this work. The allegations or seeming breach clearly expressed, reference to agreed principles, reference to a relevant code of conduct, evidence and hearing and seeing both sides of the problem are indispensable procedures.

FURTHER CASES FOR CONSIDERATION

Case studies are an excellent way of understanding the governance issues that might arise. They bring a practicality to dealing, and also illustrate the principle invoked. Additionally, one may refer to the Proposed Code given in this work. One of the concerns about case studies is that it may raise an important point of principle, but that may not be the only point. Cases come as complex real-life illustrations and often involve more than one principle. The point here is to bear in mind that in most cases there are several issues at work. We do need to remind ourselves that ethical decisions often have extended consequences and while we cannot foresee all of those consequences we are cautious about behaving according to our agreed values so that our decisions are backed by reason and goodwill.

Another concern here is that governance decisions are complex and have several aspects which have multiple choices. The outcomes may be mixed, and the consequences uncertain. It is this ambiguity and complexity that make it important to have governance issues dealt with dispassionately. There is a myth about corporate governance that such issues are only organisational. On reflection it will be seen that governance decisions made by people will ultimately reflect on their proposers and supporters. There is no iron curtain between personal and corporate decisions that differentiate the decision makers from their approach, attitude, and decisions.

Governance for SMEs may be for proprietorship businesses, for small professional enterprises, for family businesses or for enterprises with turnover in millions of dollars. It is hard to write a set of guidelines that accommodate this diversity, but there are sufficient commonalities which can provide guidelines and illustrations. Case studies have the limitation of not telling us the prevalence of a particular problem, but that does not matter so much since the prevalence is of less importance than the principle at issue. There might be high incidence of a particular problem, but that problem may be minor. It is, in other words, the principle that matters.



Case Study I

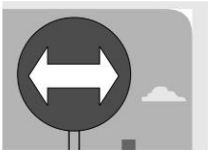
You are a shareholder in a small but profitable organisation. At the AGM you ask a question about the director's fees. The chairperson of the meeting declines to tell the shareholders of the directors or senior management remuneration details on the grounds that these are confidential. Further, the chairperson notes that as the company is highly profitable so whatever payments or share options are given they are well merited. A further question on severance packages is also asked. The basis here is that if a senior person in the

organisation is not performing well then they might be asked to leave. In that event a generous severance package is a reward for underperforming. At this you become disturbed as transparency and honesty seem to be absent. One might hold that disclosure is always required except where it breaches intellectual property, personal privacy or national security. What is disturbing is the claim that privacy of income over-rides the owners need-to-know.

- By what right does the chairperson decline to not only answer your question but also decide to rule your query as improper?
- Is the concern of the shareholders on the matter of costs a legitimate one or should it be left to management and the directors to decide.
- If your concern is so deep then what recourse is available to you to get an answer to the questions that you regard as justifiably pressing?

It is clear that a flat refusal to answer questions about organisational costs is likely to create mistrust and disharmony. It could lead to a loss of faith in directors and management, and has a significant potential for creating divisions. At a formal level one could challenge the chair by proposing a motion of no-confidence in the chair — and then see how the votes stack up. A better solution would be to make sure that the next agenda carries a general question about what information must be revealed on request. The point about severance packages is a serious one as it does have the potential to provide rewards for incompetence.

Once those principles are in place then it is easier to refer to them to resolve future instances. Here the social and organisational skills are the ones that will probably win. Anyone wishing to challenge a decision of the chair ought to be well informed about their legal rights, even if they do not quote them (walk softly and carry a big stick).



Case Study II

In a recent expansion programme you recruited a new partner for your organisation. During the selection process you use referees and the services of a management consultant. The newly appointed partner seems to fit in well enough. Later, however, you discover that a rejected applicant has drawn your attention to a seeming miscarriage of justice. In the selection process the successful applicant was supported by an excellent reference written by a relative, but the family connection was not mentioned. Of course you do not know how the rejected aspirant might have fitted in but you are concerned about the possible injustice and of the reputational damage that might occur if it were known.

Here the issues are those of justice and equity. The questions that arise are:

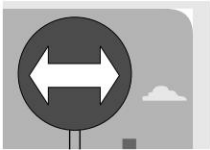
- How would you have dealt with the selection had you known that the referee was a close relative?
- Now that the appointment has been made would you do anything that might have an adverse impact on the appointed partner?
- How would you deal with the aggrieved party? Do you owe them any form of redressal?
- What overall action would you take?

There are two aspects to this dilemma: one is to deal with the situation; the other is to ensure that it never happens again. Given this experience, one could imagine having a policy of being informed about any personal connections between applicant and referee and that information would be taken into account in all future appointments.

- What principles have been breached?
- By whom?
- What is a good solution to the current problem?
- What is a good solution for prevention of a recurrence?

Among the things that might be done are an admission to the complainant that you were not kept fully informed and, to the extent that you omitted to inquire further, you apologise. That apology needs to be worded in such a way as to not imply an admission of guilt but, rather, a matter of regret. Having missed out on an appointment the unsuccessful applicant might be offered some kind of support—if one can do so with honesty.

For example, if the unsuccessful applicant was worthy of being appointed, but not appointed, you could suggest being a referee for other applications that he might make, saying that you were impressed with his qualities, and found him impressive even though he lost out in the competitive round. Readers will note the acknowledgement of the problem, the restitutive nature of the response and the practical offer of help. One might even give them some consultancy work, if that is appropriate. We need to recognise that there is the occasional opportunist who might exploit the situation, or whose attitude is vengeful. Such people are rarer rather than common, and the manager needs to make that assessment.



Case Study III

Your organisation supplies a valuable service. The principles of governance are clear about the way you operate and it gives approval for the payment of secret commissions. You have an excellent prospect of a lucrative contract, but your agent advises that it is very unlikely that it would be awarded if you did not arrange an 'inducement' of

about 3 per cent of the contract to the relevant person responsible for awarding contracts. Such a sum would need to be paid in such a way as to indemnify the recipient. The contract would be written according to the law of the country where the contract is to be completed. You talk to your agent who notes that:

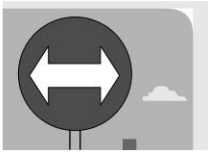
- The law of the country where the contract is to be filled is silent on the matter of secret commissions and therefore no law would be broken.
- It is customary in the country in question to pay secret commissions, and is tacitly acknowledged.
- Legality and morality not being same where does the balance lie here?
- What would be the consequences if you were to accept the contract, pay the secret commission and then have it known publicly?
- What would be the economic consequences of accepting or not accepting that contract? And are the economic consequences the most important consideration here?

The aim here is to behave according to the best principles of corporate governance. That means that the long-term interests of your organisation are paramount. If offering secret commissions is contrary to directed practice then a breach of the guidelines is not in your best interests. That it is tacitly accepted elsewhere is not a good enough reason to breach best practice.

Having said that, one might remember that the world is never quite black and white. While you may not offer a secret commission there are other forms of persuasion that might be useful. For example, you might offer a scholarship open to someone from the awarding organisation to study in a place of their choice. On completion of the contract you might offer to donate the equipment to a designated entity.

You might offer to make some village wells in a designated place, and do so in the name of the awarding entity. You might bid for the contract on the clear understanding that no secret commission will be paid, but that highly favourable publicity would be given to the contract controller for their honesty. You might say that you are not bidding for that contract but would be interested in others under conditions to be discussed and resolved.

- How do these options appeal?
- Are they equally appealing ethically?
- Do they provide a useful basis for negotiation?



Case Study IV

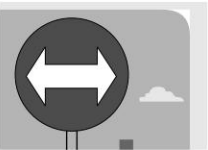
Your organisational policy (as a small manufacturing organisation) is to keep the labour force working amicably. It turns out that you have employees who are predominantly from a particular culture and with a common religion. They put it to you that there is real merit in the notion that all the employees should be from the same background. That would promote harmony, make the workplace safer as they are fluent in their common language and can thus follow instructions more easily, their holidays would all coincide and their common religion would prevent sectarian disputes. You promise to think about the suggestion and tell in also to co-owners of your business. Among the questions that arise here are:

- Is that action by a small private organisation consistent with non-discriminatory law?
- If it is consistent with the law what are the long term benefits for your organisation?
- Is there a potentially significant downside if you were to adopt that proposal?

Suppose now that you decide to reject the proposal, and tell the employees so. Their response is to have one of the representatives of the group inform that your rejection of the proposal has hurt them deeply. It implies mistrust, a spurning of an offer that could be advantageous to the organisation, and a hint that the rejection might provoke them to do physical damage to your organisation. You are not quite sure if this is a physical threat or not, but it is disturbing.

Clearly the first step is to find out from you legal adviser whether or not the proposal is contrary to the law. If it is then there is no dilemma as you will not break the law. If, as a small organisation, you are free to 'choose' whom you like as employees you have the problem of loss of control. No matter what the benefits, the organisation would be that much less 'belonging' to you and your partners and, as such, have your agenda set by others. If you accede to one request what might the next one be?

Do the drawbacks make it unattractive?



Case Study V

In your organisational meetings in which governance issues are resolved you would like them to be run according to the standard procedures for the conduct of meetings. You argue that the advantages are, that observing the rules makes the meetings more efficient, reduces ambiguity and disharmony, puts the organisation in a legally defensible position and creates a proper record of events and decisions.

One of your co-directors argues the opposite. That formality in meetings is counter-productive, that 'excessive' formality chokes creativity, too slavish a procedural orientation stifles vigorous debate, and is far too pretentious for a small organisation. Here some of the questions are:

- What degree of formality is desirable?
- What does the law require?
- How to effect a compromise that is acceptable to both sides?

A dilemma here is whether or not to convene a formal discussion to resolve the issue of formal meetings. If it is a highly formal meeting then the point of formality has been conceded and puts the proponent of less formal meetings in a weaker position: if it is informal then the reverse applies. Once the minimum legal requirements for meetings and the recording of decisions is decided then a compromise is possible.

Rather than gather to decide how to have a meeting it might be better to have those of opposing views meet informally to work out what they are prepared to concede. For example, having formal motions moved and votes counted in a precise manner one could do what is done in, common practice. The meeting discusses the motion and chairperson gets the sense of the meeting and asks if there is general agreement. If there is then it is recorded and the meeting moves on.

The procedure, in other words, is one of consensus. If there is a heated dispute then that is the time to be formal so that it may be resolved in a proper fashion. Here the compromise outcome might be that there are motions to discuss, and it is to be done freely. If there is consensus then it is agreed and the meeting moves on. Formal procedures are only to be used where it is the rational and formal way to resolve differing views.

It will be seen from the above illustrations that there are several points of consideration when dealing with cases. One is to establish the agreed rules and principles of corporate governance; another is, what is the legal position with which we must all comply; the third is what social skills and approaches are needed to come to fair and proper conclusions; fourth is the issue of what creative solutions are there to governance dilemmas. All of this sounds like a daunting set of considerations, but basically are issues to be overcome in a way forward that is constructive, complying and overall beneficial.

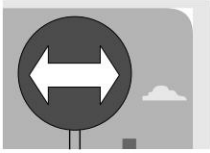


Case Study VI

A property developer advertises a property worth Rs 130 lakhs with the attraction of an agreement for the developer to pay for the first six months of the mortgaged amount. An applicant had the developer put that offer in writing, and then took the offer to his bank and raised a one-year mortgage (principal and interest).

The developer was then asked to pay half of the mortgage who objected on the grounds that it is like selling the property for about half the price. The buyer held that the contract was clear and in writing. Nowhere did it mention that the mortgage had to be a 25-year one.

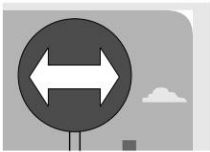
Was the buyer's action ethical?



Case Study VII

You have negotiated a contract to provide goods and services to another country. After the five-year contract has been running for a year your contractors approach you with a view to changing the contract. They hold that circumstances have changed, and that the contract is no longer viable. You point out that it was discussed and agreed at the outset. The counter claim is that it is traditional in their culture to renegotiate contracts. When contracts are signed it is understood that they are always up for reappraisal. You point out that you could not consider renegotiation since to do so would be to the detriment, and even the viability, of your company. They insist on redefining the contract.

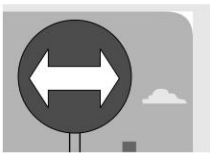
- Who is right?
- What would you need to know before proceeding?
- What options do you have?
- What is the ethical position?



Case Study VIII

A professional advertises that he is an expert in a particular field. When questioned it transpires that he does not have the relevant graduate qualification to make such a claim, nor is he recognised by the state registration board as a specialist practitioner. In reply he notes that he has been working in that specialist field for over ten years, and has a number of satisfied clients.

Is there anything wrong in his claim to specialist knowledge?



Case Study IX

Two owners of a business agree that all cheques over Rs.10,000 require print signatures. They alternate as managing director. While one of the owners is away the other director, then MD, cancels that order with the bank and asks the bank to recognise all cheques with only one signature. Although the passive partner is not informed of this change, the bank complies.

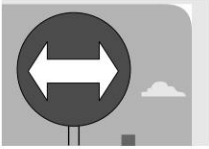
- Are there any conditions under which it would be proper for the co-owner to so act?
- Under what conditions would it be proper for the bank to comply with the request to honour single signature cheques where there had been an agreement for bring signatures?



Case Study X

You are the purchasing officer for a company. One of the companies from which you buy goods gives you a year end gift of fine quality blankets. He knows that you are not permitted to accept such a gift.

What would be an appropriate response on your part?



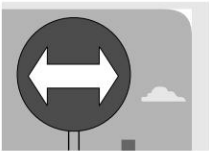
Case Study XI

A young couple contracted to build a house. The only way that it could be worked out financially was for the couple to put a caravan on the back of the large block of land, and live in it while the house was being built. The local council forbade the use of residential caravans on site. A 'creative' solution proposed by the builder was that the caravan be turned into a boat by the use of floats. A small temporary lake was to be made on the block and the caravan floated on it. As there was nothing prohibiting living on boats on the block the law was satisfied.

What are the issues with respect to:

- the council
- the builder
- the neighbours
- the environment
- the owners?

Are there any other interested parties?



Case Study XII

An accountant had a client who was a successful business woman. The client and accountant got on so well that the client asked the accountant to become part of the business. One of the contributions that the accountant would make would be the preparation of the annual financial report. The accountant helped to prepare the client's personal tax return. While agreeing to be part of the business the accountant continued to be the company accountant.

Is there an ethical issue here?



Case Study XIII

An accountant prepared a tax return for a client and calculated the return to be about \$2,000. When the refund cheque came it was made out for Rs. 10,000.

What should the accountant do?

Where does the accountant's first loyalty lie?

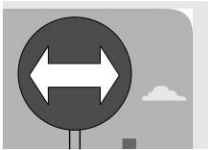


Case Study XIV

A professional performed a service for a client. The client did not pay within the specified thirty days, and let the debt go on for over a year. Every time the professional approached the client he was turned back with some lame excuse. Becoming increasingly exasperated he took to making telephone calls, none of which had any effect.

Finally he called on the client, who, while standing at the front door, again tried to turn him away. The professional was incensed and insisted on immediate payment (which the client refused) on which the professional then swore at the client. The client was upset and made a complaint to the appropriate professional body. In defence the professional denied that he swore. In response to that, a relative submitted an affidavit stating that she was in the house and heard the altercation and the words used. The professional then alleged that the relative was an interested party, whose evidence was of no worth.

What are the issues here?



Case Study XV

A practising professional is required to accumulate sixty professional development points over a three-year period. He does not get the required number although he has attended sufficient courses to accumulate them. The issue is that some of the points were gained in courses which were conducted by experts from outside the profession, but skilled in their own field. The argument to have the points recognised is that the skills from other professionals are crucial to successful practice.

Is this a reasonable case?

What, if any, are the ethical issues?



Case Study XVI

A company director has to make a decision about importing products for his company to sell. The best deal is that of importing from Myanmar — a repressive military regime. It is put to him by the board that such a deal would be economic encouragement to a self-styled government that had arrested a democratically elected leader. Others on the board emphasise their responsibility to their shareholders to maximise profit.

This argument may be extrapolated to the sale of arms, or of nuclear weapons technology, to any dictatorship.

This argument eventually develops into a reconsideration of the company's mission statement, and its degree of commitment to its various stakeholders (such as the investors, purchasers and the community).

How would you rewrite that mission statement?

Where do the various levels of responsibility lie?



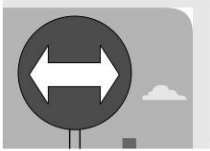
Case Study XVII

A member of a professional association has committed a technical breach of the relevant code of professional conduct. The offence is that of not remembering to file a confidential letter in a secure place before closing the office for the night.

Having heard the case the relevant ethics committee decided that the appropriate penalty was demotion from Fellow to Member. Being very senior and a Fellow of the professional society, she is concerned that the offence for which she is technically guilty, has carried too harsh a penalty.

Devise a hierarchy of penalties (criminal sanctions, expulsion, suspension, fine, etc) that would be commensurate to the offences.

How would you then set up the criteria as to which level of penalty should apply?

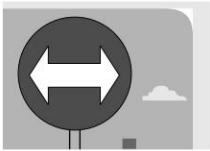


Case Study XVIII

There is a foreign made product, silicone breast implants, fitted to some Indian women following breast cancer. In a log of claims, the overseas company agrees to settle the claims, but plans to pay women who are citizens of that country more than is to be paid to overseas claimants.

Can you think of any ethical justification for this decision?

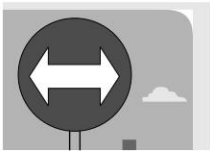
Can you think of any non-ethical considerations that might apply?



Case Study XIX

The real estate company of your state has changed the practice of the agency paying for advertising the sale of your family home. Hence previously, the agent paid the advertising costs now the vendor is asked to pay. There has been no change in the commission rate.

Does this change breach any ethical precepts?



Case Study XX

A drug company has been 'accused' of biased post-market trials and of untoward entertainment of registered medical practitioners. In their defence the company has proffered two arguments:

- (a) That post-market trials are an essential part of research monitoring, and that epidemiological studies are a respected method of assessment.
- (b) That the 'entertainment' is in proper support of professional medical activity.

How does one assess these two arguments in light of the AMA Code?

COMMENTARY ON RESOLVING CASES

In order to facilitate the resolution of cases these exercises need to be read in conjunction with the relevant sections of this book that deal with suggesting solutions. It would also be of help if the exercises were to be done using the proposed Code supplied in this book. Such an approach makes case resolutions much closer to real life situations, and an excellent training for those whose job description may involve them in recognising and resolving such dilemmas. Do remember one final point: two wrongs do not make a right, but one does establish the innocence of one party by pointing to the guilt of another.

WEB BASED CASES

There are many cases to be found on the web. Three examples are:

- Kentucky Fried Chicken
<http://www.icmrindia.org/casestudies/catalogue/Business%20Ethics/BECG044.htm>
- Tax Fraud
<http://www.financialexpress.com/news/Tax-frauds-cost-govt-Rs-900-crore/238451/>
- Call centre worker and credit card fraud
<http://www.smh.com.au/news/security/indian-call-centre-worker-held-over-credit-card-fraud/2006/09/04/1157222050381.html>

Using a conventional websearch engine will yield myriad such cases.

Summary of Chapter

This chapter is one of cases. It mentions the principles by which case issues are discussed; settled cases in which the pertinent considerations are given and solutions suggested. There is a commentary on resolving cases, some Indian cases and guides to further cases. Overall this chapter provides material and insight, into how one might see practical cases and how one might go about handling such cases towards solutions.

Multiple Choice Questions

Select the best answer from the given options.

1. A code of ethics should contain:

A the key principles of ethics	[]
B only the Code of Conduct	[]
C a mission statement	[]
D a list of sanctions	[]
2. An example of equity is:

A maximum wages	[]
B engaging the right staff	[]
C revealing professional confidences	[]
D the doctrine of the separation of powers	[]
3. Goodwill is valuable because it:

A is a tradeable commodity	[]
B fosters morale	[]
C neither of the above	[]
D both A and B	[]

4. Animal suffering is not the province of business because:
 - A business is only there to make money ☐
 - B suffering is only in the province of law ☐
 - C the opening statement is false ☐
 - D a Board has determined so ☐
5. The converse of privacy is:
 - A prudence ☐
 - B suffering ☐
 - C open-ness ☐
 - D due diligence ☐
6. Do no harm is the prime principle of which set of ethics:
 - A business ☐
 - B medicine ☐
 - C law ☐
 - D tai chi ☐
7. Risk assessment is critical to:
 - A business ☐
 - B ethics ☐
 - C both of the above ☐
 - D neither of the above ☐
8. The role of individuals in ethics is:
 - A an important general consideration ☐
 - B irrelevant ☐
 - C only important in management ☐
 - D applicable only to Boards ☐
9. An ethical infrastructure must contain:
 - A a code of conduct ☐
 - B a large committee ☐
 - C criminal provisions ☐
 - D reports to the civil courts ☐
10. Moral training is derived from:
 - A religion ☐
 - B parents ☐
 - C schools ☐
 - D combinations of sources ☐

10

CHAPTER

Corporate Social Responsibility

INTRODUCTION

The universal question ‘What is the bottom line’ not only refers to profit but also clearly implies that it is a prime criterion. It was not always thus: the key performance indicators for companies have, and should, include other criteria. Such indicators are now captured in the acronym CSR—corporate social responsibility—and now clearly imply that commerce and industry have obligations that transcend the financial aspect. Environmental issues, and social consequences, are now recognised to be equally matters of prime importance.

Corporations play pivotal roles in every sphere of public life: controlling and managing basic resources like water, energy, health care, education, prisons, social security; recently, even fighting war for profit. As observed lately, even during world recession consumer driven economies continue to grow leaps and bounds. Hence corporations also scour the earth for more resources to extract, convert and sell. The so called regulators are powerless since many multinational corporations (MNCs) are larger than nation-states. For cynics corporations have forged strategic alliances with bodies such as local and international non-governmental organisations (NGOs), UN Bodies and societies who previously posed some challenges to MNCs.

Further, while MNCs boast about their CSR initiatives, they have also mastered the art of evading tax. While the exact sums involved remain something of a mystery, it is clear that financial havens attract capital far disproportionate to the size of their levels of economic activity. Tax havens account for only 1.2 per cent of world population and three per cent of world GDP, but a staggering 26 per cent of assets and 31 per cent of profits of American multinationals (OXFAM 2006).

Facts about CSR can be restrictive, since CSR is still voluntary, interpreted differently by different companies, has no common indicator to measure performance and reporting is skewed and exaggerated (Econtext 2006; Ethical Investment Research Association 2007; Oxfam Great Britain 2003; Vold 2007; Watson 2007).

Pervasive corporate attention to CSR has not been entirely voluntary. Many companies responded to it only when caught by surprise due to public responses to issues they had not previously thought were

part of their business responsibilities. Nike, for example, faced an extensive consumer boycott after the *New York Times* and other media outlets reported abusive labour practices at some of its Indonesian suppliers in the early 1990s. Shell Oil's decision to sink the *Brent Spar*, an obsolete oil rig, in the North Sea led to Greenpeace protests in 1995 and to international headlines. Pharmaceutical companies discovered that they were expected to respond to the AIDS pandemic in Africa even though it was far removed from their primary responsibilities, product lines and markets. Nowadays fast-food and ready to eat food companies are being held responsible for obesity and poor nutrition. Activist organisations and civil societies of all kinds, both with the rightist and the leftist learnings have grown much more aggressive and effective in bringing public pressure to bear on corporations for becoming sensitive to environ-socio issues. Activists may target the most visible or successful global companies merely to draw attention to an issue, even if those corporations actually have had little impact on the problem at hand. Nestlé, for example, the world's largest purveyor of bottled water, has become a major target in the global debate about access to fresh water, despite the fact that Nestlé's bottled water sales consume just 0.0008 per cent of the world's fresh water supply. The inefficiency of agricultural irrigation, which uses 70 per cent of the world's supply annually, is a far more pressing issue, but it does not offer an equally convenient MNC/ TNC to target (Porter & Kramer 2006).

MAPPING THE TERRAIN

Since the turn of the century a number of surveys exploring the nature and understanding of corporate social responsibility have been conducted in India. These surveys have sought to provide domestic data, colour and flavour to a field that has been marked by North. American or Euro-centric data or polls that have been broadly Universalist in coverage.

Internationally there has been no dearth of survey data. For example, in 2000, the Millennium Poll on CSR (Enviroic International 2001) revealed that people focussed on corporate citizenship rather than financial performance alone in forming their impression of a company. Earlier in 1997, a survey of 2,100 MBA graduates noted that 42 per cent of them would not work for an employer that was not socially responsible. In fact, 50 per cent responded that they would rather accept a lower salary and work for a more reputed firm.

More recently a survey by McKinsey & Company (Wikipedia 2007) focussing mostly on developed countries, notes that institutional investors are prepared to pay a premium (greater than 20 per cent) for shares of companies demonstrating good corporate governance. The fact that good business can also translate into more profitable business is borne out by financial measures such as the Dow Jones Sustainability Group Indexes (DJSI). This index has outperformed the more traditional Dow Jones Group Index by a margin of 36 per cent over a five-year period suggesting that profits and principles can be compatible (Chemical Market Reporter 2006).

In India, CSR advocates and academics alike have striven to understand how these trends have been reflected in domestic corporate philosophy and practice, including the perceptions of other stakeholders. This chapter provides an overview of CSR directions, practices and understanding in a global and national context. Corporate Responsibilities is prominently part of the national conversation currently which is drawing ever more voices into the debate on business and its relationship to society.

Personal Social Responsibility (PSR)

Corporation is not brick and mortar; rather, it is an outcome of human interactions and activities. Human approach and attitude is of paramount importance to CSR. Social responsibility taken into personal domain is being referred to as PSR. A socially responsible person strives to make positive difference to the surrounding which includes community, environment and wealth creation and so on. One can act in a manner that may create a positive difference to the lives of others; one can refrain from acting in a manner that may be perilous to others such as a socially responsible person would refrain from rash driving to obviate accidents. However, it would be utterly irresponsible if he were to see an accident victim and does not stop, which does happen in India, and elsewhere.

A socially responsible person must also act constructively in order to make a positive impact on others' lives. It is this sense of social responsibility that has given rise to a new breed of socially conscious employees. They are termed 'whistleblowers', and are concerned about their employer's actions which might harm the public at large. It is this sense of social responsibility that has given rise to the social reformers of their time and place. It is this sense of social responsibility that has given humanity its leaders since times immemorial.

Warren Buffet giving us \$50+ billions to Bill & Melissa Gates Foundation, is an act of PSR. There are many foundations set up by successful people like Mr. Azim Premji and Mr. Narayan Murthy which are examples of positive PSR. Positive social responsibility is like the philosopher's stone that could transform an ordinary unsung individual into a great personality. History corroborates that almost all of those who have left their footprints on the sands of time were marked either by the extraordinary permit of positive social responsibility or its extraordinary absence. All philosophical, moral, ethical and theological doctrines have heavily emphasised personal social responsibility — walk before you talk — practice should precede preaching.

Corporate Social Responsibility (CSR)

Corporations were originally conceived as 'Public Trusts' whose mandate was to further rational interests and advance the common good. However, modern 'for profit corporations' are alleged to have unleashed 'global monoculture' and represent the institutional principles of laissez faire capitalism which has a global theology without morality. Unquestionably, corporations are the most pervasive and dominant institutions now like the monarchy and the church of yester years.

In market parlance, corporate refers to organised and systematic business; social means everything to do with people and the environment they live in and responsibility is the accountability between the two. Thus, Corporate Social Responsibility (CSR) should be the main bloodline of the business world, as it is being currently projected. CSR is a concept that organisations, especially (but not only) corporations have an obligation to consider in the interests of all stakeholders.

The World Business Council for Sustainable Development, which brings together 180 international companies like GM, Coca Cola, 3M, DuPont, Sony, and so forth, having shared commitment to CSR, defines it as the 'continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local communities and the society at large' (Wikipedia 2008).

What Social Responsibility Means

Social responsibility means being responsible to people, for the actions of people and for the actions that affect people directly or indirectly. It also means being responsible to the immediate environment and the world at large. Organisations throughout the world are being held responsible for their actions as they have the enormous capacity to influence their shareholders and stakeholders as well as their socio-economic, political and natural environments they exist within. However, it should be kept in mind that to be responsible doesn't necessarily mean to be intentional. A corporate may unintentionally damage the environment and yet it would be held responsible for such acts. The focus here is on two dimensions of social responsibility viz. personal social responsibility (PSR) and corporate social responsibility (CSR).

Decoding Social Responsibility

Social responsibility presupposes a quid pro quo relationship with society. Since entities like states, governments, corporations, organisations and individuals exist and operate in society, it is their obligation to be responsible towards society either by acting in a responsible manner (positive responsibility) or refraining from irresponsible acts (negative responsibility). With great power comes greater responsibility — the social responsibility of an entity grows with its capacity to influence the society. If this premise is accepted, then an organisation needs to be much more socially responsible than an individual.

CSR, as we see it, requires a fundamental paradigm shift in the way business is being carried out currently. Formally observance of laws and adhering to regulatory standards may not have been sufficient to the claim of 'positive' CSR, which every organisation is anyway supposed to do. A 'CSR-striving' business house would love to set standards for others to follow in every aspect of its process, procedures and strategies. The proposed CSR framework requires businesses to be responsible towards their employees, customers, environment, other businesses and other stakeholders. Let us have a closer look at each of the elements mentioned in the diagram separately; however, it should be kept in mind that these elements would be applicable for different businesses *mutatis mutandis*.

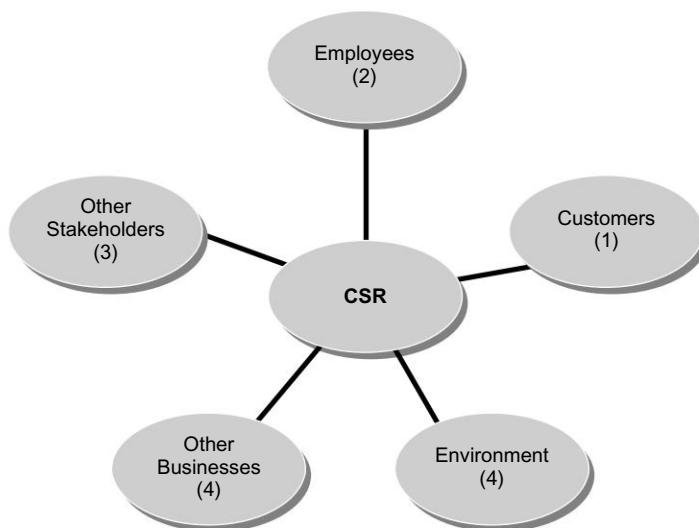


Figure 10.1 CSR Framework Diagram

Benefits of CSR

Increasingly organisations like Infosys, the Tata Group of companies, The Body Shop, Starbucks etc. do make visible efforts to differentiate them from the rest on ethical pursuits. Socially responsible corporations are more likely to add that elusive 'X Factor' to their brands to get much needed competitive advantage for sustained organic growth.

Companies that are well known for their socially responsible behaviour are likely to have a more receptive regulatory environment. Regulatory bodies are more likely to take a considerate position for a company with extensive CSR activities than for company that is not known for it. Most of the advantages discussed above are hard to get discharging the negative CSR obligations. This also makes a case for being engaged in positive CSR activities by assimilating it in the very culture of the organisation.

The greatest perceived benefit of practising CSR and investing in social initiatives was seen as enhanced corporate image, goodwill and reputation. Many also felt it was integral to the company's mission statement and core values and raised employee morale and esteem. With regard to CSR policy, 80 per cent reported having a written policy covering issues such as health and safety, energy, accountability, governance and community development. While workplace issues such as training, anti-smoking, stress management, pay and benefits were noted to be of importance few companies actually reflect this in their formal infrastructure.

CSR can be a great way to attract qualified people and retain them. Measures like community volunteering are a great way to channel the emotional and social needs of the employees for the greater good of society. It helps in brand building also. In a study conducted in EU countries in the year 1999 (Yeldar 2004), 87 per cent of the employees said that they would increase their loyalty to the company if it is found socially responsible. An online survey conducted on MBA students by Net Impact (Christensen *et al.* 2007), a non-profit student leadership group having 130 chapters in four continents showed that 79 per cent of all respondents would prefer joining a socially responsible company. 89 per cent of respondents agreed that business decision should factor their social and environmental impacts. Interestingly 78 per cent respondents opined that CSR should be incorporated into core business courses.

Eco-friendly Branding

A corporate entity that wants to differentiate its brand on the basis of eco-friendly material will have to go about researching such possibilities on its own. It may be costly to research but it would be well worth the effort if it is strategic. Alternatively, corporations in similar businesses should come together to form a network to pool and share resources for researching and developing eco-friendly materials. Such a network can also be established with governments. Despite all talks about competition, the way to grow still passes through collaboration. Such arrangement would also facilitate wider acceptance of such protocols as the Kyoto and the Montréal. We hope that enlightened corporates would take note of our suggestions to explore such possibilities.

Eco-friendly production also involves looking for methods to make efficient use of natural resources and energy. Recycling wastes and finding out their commercially viable usage should be the focus of research for a CSR-aware corporate.

Barriers to CSR

Respondents noted that one of the key barriers to improved business practice was the government with its unclear policies, bureaucracy, poor monitoring, complicated tax systems and poor infrastructure. The Tata Group and information technology companies like Infosys and Wipro were mentioned as the most admired companies. Media reports on the survey highlighted the fact that the companies mentioned did not have a human rights policy in place.

Later in 2001 the organisation TERI, formerly known as the Tata Energy Research Institute, conducted a poll and produced a report called 'Altered Images: the 2001 state of corporate responsibility in India poll' (Kumar, Murphy & Viraal 2001). It traces the history of CSR in India and suggests that four models exist in the country today. (1) The 'ethical' model, suggested by Mahatma Gandhi, where companies voluntarily committed to public welfare and participated in nation building. (2) The 'statist' model following India's independence propounded by Prime Minister Jawaharlal Nehru, which calls for state ownership and legal requirements to promote CSR. (3) The 'liberal' model identified by Milton Friedman as CSR being limited to private owners or shareholders: and, finally, (4) The 'stakeholder' model championed by R Edward Freeman, which calls for companies to respond to all stakeholders' needs (Impact 2006).

Altered Images conducted a survey of workers, company executives and the public in the four metropolitan cities. Some of the main findings were:

- Environmental pollution was regarded with great concern by all groups.
- The main expectation of the companies by the public was that they provide good quality products at low prices, treat employees well without discrimination, protect the environment, help bridge the gap between the rich and the poor and help in social and economic development.
- Expectations differed across regions.

Further, it appeared that companies believed non-governmental organisations (NGOs) to be the most trustworthy to work with. Employees and the public at large believed more in the media and in religious groups. The national government, however, was not rated highly. Similarly, companies were not trusted to report fairly on their performance and external verification was valued. Surprisingly, given global attention to the issue, child labour was not seen as an issue by company executives or workers. Instead, workers noted gender discrimination as a cause for concern.

Critics of CSR

Critics of CSR would be right if we equate CSR with occasional benevolence, charities and with philanthropies. A corporation could earn substantial profits in most unethical ways and pass a portion of it to the society in the form of charities. However, the externalities of its operations which society bears is enormous. Enron is known to produce excellent CSR reports annually on their initiatives before it crashed. Companies like British American Tobacco (BAT) are accused of ulterior motives in producing their CSR reports. The attempt to promote company reputation by such gimmicks is not CSR; it is much more fundamental. We should advocate the much needed shift of CSR from the public relations periphery to the strategic core of management. CSR requires striking a balance between stakeholders' needs and the company's desire for expansive growth and profit without orienting it in favour of one or the other. Business houses should aim at sustainability not substantiality.

DEALING WITH OTHER CSR AWARE CORPORATES

If large multinational corporations come together to invoke a common policy of doing business with socially responsible organisations in a transparent manner within or outside their home countries, then this problem can be tackled to a significant extent. Probably standards like ISO 26000 are going to be a great help in identifying responsible businesses across the globe.

Ethical Dilemma

It is clear that **networking** is of unmeasurable value. The Chinese concept of Guanxi gives that principle explicit recognition. One has connections and a fairly clear idea of the moral worth of those colleagues: knowing those colleagues saves time and worry.

What is difficult here is that some worthy persons may not be well connected, and thus lose out on being part of a larger social framework. Further, it may adversely discriminate against 'outsiders', as may the 'old boy network'.

What is the answer to that concern?

A PROPOSED FRAMEWORK FOR CSR

Mere cosmetic changes can hardly make any corporation a socially responsible corporation. It requires a fundamental shift in the way the business is conceived and implemented. We propose a framework for CSR to achieve that end. While going through the framework, it should be kept in mind that we are advocating a balance between the stakeholders' needs and the corporate need for growth and profits. We are not in favour of sacrificing one for the sake of the other.

Employees Capacity for Influence

An employee's capacity to affect the society negatively in his/her personal capacity is restricted, but his/her organisation's immense potential to inflict damage, intentionally or unintentionally, is substantial. Hence questions are always being raised in every sphere 'would it not be ethical for the employee to blow the whistle to alert the organisation about such actions'?

If an employee knows that the brake control systems of a particular batch of cars may have problems, would it not be more ethical to alert the concerned authorities within the organisation about this? If he/she just keeps silent and waits for the organisation to recall the entire batch of cars after they have taken their toll on some hapless victims, may not be truly ethical behaviour. Would it not be a commendable fulfilment of PSR obligations to let the public know about such defects should the organisation deliberately neglect such whistles?

If we accept the relevance of positive social responsibility for the person while denying it for the corporation, then we enter into a situation where personal obligations may anytime find themselves at variance with corporate obligations. Certainly this kind of situation cannot be conducive for creating a High Performance Organisation (HPO). If we are not convinced about the need to become an HPO, we still need to act in the best interests of the company reputation—arguably the most important company asset. CSR is perceived as a great way to enhance company reputation; of course we are talking about positive CSR here.

The Environment

A CSR-aware corporation has to take care of the way it impacts its immediate and not so immediate environments directly or indirectly. Corporations should strive to change their ‘Bill of Material’ in a way that eco-friendly materials should get a chance as far as is practicable. It is not possible to replace all materials in all industries with eco-friendly alternatives now, but it is an ideal towards which corporates should move.

Surveys

Much useful insight is to be obtained from survey data. Examples of such surveys are given below.

UN Volunteers

A survey conducted in 2002 by United Nations Volunteers/ New Academy of Business of 50 companies and 30 NGOs on perceptions of CSR in India indicated that the adoption of CSR in India is ‘very low to moderate’. According to the survey, all companies believed in fulfilling CSR and cited a commitment to social initiatives. For an overwhelming majority, CSR meant one of two things: corporate community involvement and improved business-community relations (84 per cent), or being a responsible caring company (80 per cent) (UNDP 2002).

The survey (CSR Europe 2002) found that in a majority of companies, the implementation of CSR Practice is done either through corporate foundations or trusts or directly by the company itself. Communities targeted tend to be in close proximity to the location of the company. Further, there appears to be no established way of setting CSR initiative budgets. Some companies budget project CSR expense as a developmental cost in advance, while others allocate it on a need basis and/or planned expenses. Very few, however, incorporate the CSR expense into their annual budgets and even fewer maintain separate budget allocations for CSR activities. Most of the companies surveyed tended to favour partnering with NGOs and other organisations in project implementation.

EXAMPLES OF CSR INITIATIVES IN INDIA

An analysis of briefs on CSR of companies operating in India is given below. It can be observed that CSR initiatives of domestic companies and MNCs operating in India, have an ethnocentric approach. However, one could enumerate discernable differences in the approach of Indian Companies and MNCs operating within India (ABB Annual Statement 2007; ABN AMRO CSR Report 2007; Aditya Birla Centre for Community Initiatives and Rural Development Centre 2007; Ballarpur Industries Limited

(BILT) 2007; Infosys Foundation 2007; Intel India Centre for Economic Empowerment of Intellectually Challenged (CEEIC) 2007).

1. ABN AMRO BANK NV

CSR Interface

Service provider—as a full service commercial bank

CSR Affiliations

ABN AMRO participates in various sustainability organisations and initiatives:

- World Business Council for Sustainable Development (WBCSD)
- Equator Principles
- The International Chamber of Commerce (ICC)
- Wolfs berg Principles
- Carbon Disclosure Project (CDP)
- Climate Leadership Index (CLI)
- Sanctuary Magazine

CSR Policies

CSR Statement/Guidelines

ABN AMRO is implementing its Corporate Values and Business Principles since 1998 and 2001 respectively. Its Corporate Values and Business Principles express what the bank stands for and encapsulate their approach to business. While these are not rigid or legal obligations, they are a guide in strengthening organisational performance and reputation in a dynamic environment. Each business unit translates its values and principles into specific objectives, strategies and programmes that reflect the cultures and markets in which it operates.

CSR Practice (External)

Social/Community/Charitable Contributions

ABN AMRO is into a working relationship with SUPPORT for nearly five years. Direct contributions from ABN AMRO India are approximately Rs 2.0 million (USD\$43,597) per year (a joint effort reflecting contributions from individual employee's and the business entity). Additional contributions from the Netherlands unit in 2003 totalled EUR 4,600 (USD\$5,602).

<i>Year</i>	<i>Project</i>	<i>Location</i>
Since 2004	Purchase of land and construction of a building to house street children affected by AIDS and drug abuse with NGO SUPPORT	Mumbai

2. ADITYA BIRLA GROUP

CSR Interface/Responsibility

CSR and sustainable development are part of the Group's core values. Being a member of the Global Compact, the Aditya Birla Group (ABG) espouses its nine principles. The Group has a stated Environment Policy and a Social Vision, which embrace these principles and are binding in its operations.

CSR Affiliations

ABG has membership or association with the following bodies since 1998 and thereafter:

- UN Global Compact
- CII-UNDP social principles
- Responsible Care
- Population First
- CII
- FICCI
- Akanksha
- UNFPA
- SIFSA
- Care India
- Habitat for Humanity International

CSR Practice (External)

Social/community/Charitable contributions

The Group has identified five focus areas for its social activities:

- Health Care, inclusive of mother and child care
- Education
- Self-reliance through the engine of sustainable livelihood, also encompassing agricultural and water-shed development and women; empowerment processes;
- Infrastructure Support
- Espousing social causes

The social work of the Group is spread over 3,700 villages in India reaching out to two million people.

Infrastructure Development

<i>Year</i>	<i>Project</i>	<i>Location</i>
Ongoing	India Vikas Yojna	UP, Bihar, MP, Rajasthan, Tamil Nadu, Karnataka, West Bengal
Ongoing	Local Panchayat — schools, community buildings, watershed structures — like dams, wells	UP, Bihar, MP, Rajasthan, Tamil Nadu, Karnataka, West Bengal
Since 2002	Habitat for Humanity International	UP

3. INFOSYS TECHNOLOGIES LIMITED

CSR Practice (External)

Started in 1996, the Infosys Foundation works to improve the condition of senior citizens, economically disadvantaged gifted students, the handicapped and the destitute. The Foundation functions under a board of trustees and undertakes projects in various parts of India. Infosys currently commits up to 1.5 per cent of PAT towards this end.

Community Initiatives

Education

- Instituted scholarships for Ph.D scholars at 13 prestigious institutions in India
- Train-the-Trainer programmer: train computer science faculty at engineering colleges about the latest trends in the IT industry
- Catch-them-Young Programmer: identifies bright high-school students for short-duration courses in programming fundamentals.
- Computers@Classrooms programme: donate used PCs to schools along with software donated by Microsoft
- Rural Reach programmer: increase awareness of computers among children in the semi-urban areas.
- Set up the Infosys Science Centre at Hosur Village in Karnataka (southern India)

Rural Poor and Underprivileged

- Orphanages in Pune and Kalahandi, Orissa
- Shelters for the cyclone-affected in Orissa
- Distribution of sewing machines to destitute people in Bangalore, Gulbarga and Belgaum
- Rehabilitation of Devdasi women and the homeless
- Built hospitals, donated hospital equipment and ambulance, and provided medical aid to patients of leprosy, heart disease, kidney failure and head injuries.

4. BALLARPUR INDUSTRIES LIMITED (BILT)

CSR Policies

BILT has a statement of CSR policy that includes a process or formal management system for developing, adopting, implementing and monitoring Corporate Social and Environmental Responsibility. Implemented since 2001, there is a full-fledged department that facilitates site specific interventions as well as employee volunteer programme at the corporate office level.

CSR Practice (External)

Social/Community/Charitable Contributions

<i>Issue</i>	<i>Supporting since</i>
Community Empowerment through mobilisation and organisation	2001
Community based health care (Preventive and Curative)	2001
Access to primary education and continuing education	2000
Natural Resources Management	1994
Livelihood Enhancement—Skill training, capacity building, networking etc.	2002

There is no pre-fixed percentage or amount to be expended every year, but it depends on the need and relevance of the intervention. The involvement has been there throughout, but the financial and non-financial contributions increases or decreases based on the annual plans which are prepared with the primary stakeholders.

5. BRITISH GAS (BG) INDIA

CSR Interface/Responsibility

The company sees itself as an active participant and facilitator of sustainable development and the BG Group Statement of Business Principles and supporting Group Policies form the foundation for corporate responsibility within BG Group and BG India.

In India the company's objective is to be:

- A socially responsible corporate
- The preferred partner of choice in an industry largely dominated by state-owned enterprises
- A long-term partner of local communities
- A trusted organisation for all stakeholders

CSR Affiliations

BG Group, BG India's parent company, is a member of:

- FTSE4 Good Index
- Dow Jones Sustainability Index
- International Petroleum Industry Environment Conservation Association (IPIECA)

BG Group is a signatory to the:

- UN Global Compact and a member of the UK Global Compact steering committee
- Extractive Industries Transparency Initiative (EITI)
- Business Exchange on AIDS and Infectious Diseases (BEAD)

BG Group endorses:

- UN Declaration of Human Rights

BG Group is a member of:

- Business Leaders for Human Rights
- World Business Council for Sustainable Development (WBCSD)
- Board of Corporate Responsibility Group
- London Benchmarking Group

CSR Policies

BG Group's Statement of Business Principles and Policies define the company's philosophy and underpin Corporate Responsibility practice throughout the organisation since 1998. At BG India, the company seeks to conduct its business in accordance with a set of corporate values and ethical principles outlined in the guidelines, which employees must endorse.

CSR Practice (External)

Social/Community/Charitable Contributions

BG India's community development activities engage local communities at all levels and are in line with issues of government mandate. The strategy revolves around three thematic areas: education (supporting since 1997), environment (supporting since 2002), energy (supporting since 2002) and health (supporting since 2001)

Infrastructure Development

<i>Since Year</i>	<i>Project</i>	<i>Location</i>
2003	Earthquake rehabilitation girls hostel in partnership with district authorities and Gujarat State Disaster Management Agency	Dumra, Kutch, Gujarat
2003	Telugu Bhagshala, in partnership with the Brihan Mumbai Municipal Corporation (BMC)	Madh Island, Mumbai
2003	Nature Information Centre, Borivali National Park, Mumbai, in partnership with Maharashtra Forest Department	Mumbai

6. INTEL INDIA

CSR Affiliations

- Sustainability for several years
- CSR Europe since 2001
- BSR from 2004
- UN Global Compact
- ILO Conventions
- OECD Guideline

Intel has been recognised several times

2003: Secretary of State's Award for Corporate Excellence (US Government)

2005: Skoch Challengers Award for Best Social Impact

2004: Skoch Challengers Award for Best Social Impact

2004: Best Employers in India (8th Place) Hewitt Associates and CNBC TV 18

2004: Great Place to work (8th Place) Business World

Intel India is advisor to Governments in bringing about a regulatory environment conducive to growth of Industry and to assist in enhanced national competitiveness. It involves collaborations on policy issues, technology areas, education, promotion of IT usage and reaching IT to underserved communities.

CSR Policies

Intel has a statement of policy that includes a formal management system for developing, adopting, implementing and monitoring CSR. At Intel, Corporate Responsibility means doing what is right: Respecting people and the world around us. It's their way of doing business. Their Guiding Principles include: Operate with integrity and transparency; strengthen their communities; and Improve people's live through technology. Regular mandatory training programmes are conducted to educate and refresh the need for strict adherence to Intel's Corporate Business Principles and the Code of Conduct. Investments have been made in systems, processes and people to ensure quality and transparent financial reporting.

CSR Practices (External)

'The Intel Innovation in Education' initiative aims to help students develop higher-level thinking skills that provide them the foundation to successfully participate in a knowledge-based economy. Following are key programmes implemented under this initiative:

- Intel Teach the Future: aimed to increase the effective and innovative use of technology in teaching and learning.
- Intel Science Talent Discovery Fair (ISTDF) : Aims to promote and celebrate success in teaching and learning science, mathematics and engineering.
- Academic Relations: Aims to accelerate the advancement of university curricula and research in strategic technology areas.
- Intel Computer Clubhouse: Aims to demonstrate how technology can stimulate learning, all-round awareness and enthusiasm among school drop-outs to rejoin mainstream education.
- Community Relations Programme (in partnership with local collector office and NGOs): Aims to make a difference in the community they live and work in. Some of the programmes are —Tsunami Village Development Programme in Arkaduthurai, Nagapattinam; Solid Waste Management Project in Annasandrapalya (Bangalore); Volunteer Matching Grant Program; Intel's flagship employee volunteer program, 'Intel for a Better Bannerghatta' campaign to raise awareness for litter and plastic free parks.

7. TATA SONS

CSR Interface/Responsibility

TATA Group is classified as a service provider, offering technical, operational, research services to beneficiaries and key stakeholders.

About 35 major Tata companies the critical mass of the TATA group have integrated CSR in the business process by way of the minimum programme. The management of these companies took certain concrete steps to consciously develop a strategy and officially recognize this on par with all other duties of employees.

CSR Policies

The TATA Guidelines on Community Development were formally released in 2000. The Tata Index for Sustainable Human Development was released in 2003 to help TATA Companies measure their social performance and put down a scale on human achievements, in terms of the community built, the innovations aimed at, possibilities created for replication and scaling up of impact.

CSR Practice (External)

Complete details of various community development activities are provided in various documents supplied with (the Resource Guide) questionnaire, in particular the 'TCCI Report 1999–2001', 'Tatas in the Environment 2002' and 'Tata Volunteering Report-2003'.

Health, Education, Water Management, Vocational training and computer education and Women and child are issues supported by the TATA Group. However, there is no priority accorded in terms of importance.

Annual financial contribution of Tata companies to the above social issues has increased from Rs67 crores (US\$14.6 million) in 1997–98 to Rs. 136 crores (US\$29.6 million) in 1999–2000.

8. ABB LTD

CSR Interface/Responsibility

ABB is a global leader in Power and Automation technologies that enable utility and industry customers to improve performance while lowering environmental impact.

CSR Policies

ABB's three basic business principles: Responsibility, Respect and Determination are reflected in their Environmental, Social, Health and Safety and Business ethics policies that guide their sustainability performance. In ABB, sustainability is not an add-on, it is intrinsic to the way they do business. Their objective is to add value to the communities they operate in by:

- Contributing to the economy through promoting business, creating jobs, paying taxes and creating good investment opportunities
- Optimise the use of natural resources, minimise waste and reduce environmental impact over complete life cycles
- Offering eco-efficient products to customers that save energy and are safe to use
- Favouring and motivating suppliers who have sustainability policies and systems
- Joining initiatives that foster economic, environmental, social and educational development

CSR Affiliations

ABB is associated with UN Global Compact.

CSR Practice (External)

Elementary Education

ABB supports Elementary Education since 2000. Following the development goals of India and the MDGs, ABB believes that education levels in the country have a direct effect on, almost all, quality of life indicators, be it health or income levels. The initiative to universalising elementary education is implemented through ABB India Foundation. The Foundation recognises that it needs to focus its interventions in order to make a demonstrable contribution and hence focuses its programmes in areas where the company has a significant presence.

Product/Service

All ABB products are environment friendly and designed after accounting for the sustainability performance over its complete life cycle. ABB take up rural electrification projects that provide Access to Electricity to rural areas.

9. TATA STEEL

CSR Interface/Responsibility

Tata Steel relates itself to CSR as a service provider.

CSR Affiliations

Tata Steel is a signatory or member of

- United Nations Global Compact
- Global Reporting Initiative
- CII-UNDP
- Global Business Coalition for HIV/AIDS
- CII SDCA National Committee
- STOP TB India Business Alliance
- SA 8000
- The Mining Geological and Metallurgical Institute of India

CSR Policies

Founder and Group Chairman first articulated Tata Steel's explicit CSR policy in 1904. It was later formalised as various policies from 1980 onwards. It is monitored and enforced through the Tata Business Excellence Model.

The company claims to have linked compensation of the board members and senior management to sustainability performance.

CSR Practice (External)

Social/Community/Charitable Contributions

Tata Steel's top five community development projects in terms of priority:

<i>Issue</i>	<i>Supporting since</i>
Integrated Rural Development	1979
Reproductive Health Services	1957
Education and vocational training for marginalised communities (tribal communities)	1980
HIV / AIDS prevention	1990
Sports Training	1990
Relief During natural calamities	1974 (details attached)

Infrastructure Development

<i>Year</i>	<i>Project</i>	<i>Location</i>
1995 onwards	Rural Road (300 km approx) School (312 assisted, 171 early child education centres) Irrigation projects, check dams (86 LI Projects 190 water harvesting structures) Houses after natural calamities	Bihar, Jharkhand, Orissa, Gujarat, Tsunami Victims etc

An affirmative corporate social agenda moves from mitigating or at least minimising social, environmental and economic externalities to reinforcing corporate strategy through social advancement.

PROFIT AND SUSTAINABILITY

One of the issues is that of getting involved in community activities to increase business. Corporates, like Microsoft, are often accused of ulterior business motives as far as their educational initiatives are concerned. Such issues would not arise in the first place if CSR could be differentiated from charity and philanthropy. It is unethical to indulge in charity for unstated business gains, but it cannot be unethical if a corporate does that with stated business objectives. The poor quality of high school graduates in USA is increasing the cost of training for companies that hire them. Such being the case, if they invest in improving the quality of education, they are likely to get a long term benefit with enhanced loyalty of those who will be benefited by such a move (Porter & Kramer 2006).

The 'Campus Connect' programme of Infosys in India is an attempt to enhance the quality of engineering education and consequently the applicant pool. Such initiatives cannot be branded as unethical even if they are explicitly designed to benefit the business. These are the examples of a typical win-win situation for both the society and the company. While not advocating that each corporate should do it separately, a network of corporates and governments with pooled resources can achieve such objectives far more efficiently and effectively.

Many multinationals have raised their voice to provide Bangalore, the so called 'Silicon Valley' of India, with a better infrastructure. It is in their best interests to ensure a better infrastructure for the city, but it will also help all citizens. A CSR-aware corporation need not indulge in selfless service to discharge its social responsibilities. It can be far more effective if such motives are strategically aligned to increase corporate reputation and profits in the long run.

Ethical Research and Development (R & D)

Some pharmaceutical corporations have made countries like India their favourite guinea pig. It is not because India offers excellent research facilities but because it is yet to develop stringent rules and regulation that exist in countries, such as the USA. A CSR-aware corporate would not look for exploiting loopholes in the existing regulations to foster its business interests; rather it would go for developing its own standards of research based on sound ethical principles.

Since the concept of CSR is closely linked with the concept of sustainability, the short-term financial gains are unlikely to motivate businesses to take up CSR seriously. Usually the benefits are more perceptible in the long run.

Economic Value Advancement

Academic studies conducted by Harvard University have indicated that well meaning and practical CSR practices have a direct impact on the bottom-line of the company (Porter & Kramer 2006). Community friendly companies do receive support and encouragement from various stakeholders which results in economic wealth advancement. One of the best examples is Bendigo Bank of Australia which has over 100 branches in participation with the community which has resulted in 84 per cent growth in its business unheard of in the banking industry.

Various indices like Dow Jones Group Sustainability Index, Morley Fund Management Sustainability Index, FTSE4 Good Index etc. analyse CSR activities of various companies. With the concept of Socially Responsible Investment (SRI) fast catching up, the chances for companies with sound CSR practices to access capital are getting increasingly brighter.

Reduced waste production and water usage, recycling materials and increased energy efficiency often over-compensate the initial investment made to make the process socially responsible. Dow Chemicals is set to reduce the production of 26 toxic chemicals; thereby, saving 5.4 million Euros per annum (Wikipedia 2007).

Labour Standards

While excessive regulation can be a disincentive to go forward, a laissez-faire situation may become a disincentive to ensure even minimum standards to further short-term interests of the corporate. Probably a good mix of legal and voluntary standards would work better to ensure at least core labour standards as specified by International Labour Organisation's Declaration on Fundamental Principles and Rights at Work (1998) (Wikipedia 2007). It will be great if an international consensus on doing business only with organisations ensuring core labour standards is reached. Clearly this makes government a very important player in ensuring a CSR-friendly environment. Often the foreign direct investors in developing countries seek a protected environment with all rights and no obligations. Such desires can hardly be just and regulations favouring them are likely to make matters worse. Labour and business cannot be seen as rivals; no organisation can sustain itself by exploiting its own work-force.

Customers

A CSR-aware corporation would care for its customers in every way possible. Advancements in the field of Information and Communication Technologies have made it possible to closely involve customers

in the business. Interactive marketing is making it possible for corporates to closely involve customers in developing new products. It should go beyond merely asking their opinions via impersonal surveys.

It is important for modern corporates to factor customers' sensitivities while delivering products and services. A CSR-aware corporate would definitely respect its customers in terms of their culture, ethics, tastes and preferences. Countries like India, in comparison to many modern countries (here we say modern, since many traditional Oriental countries have embraced western culture), with strong sensibilities to explicit sex in public, are facing an interesting argument from film-makers — 'We make such films because customers want them. If customers don't prefer them, then we will be forced to stop making such films for want of business.' The fallacy of such an argument may not be obvious but a closer look would make it clear to anyone.



Ethical Dilemma

During a 'war' in which one country invaded another, and took 'enemy' prisoners, such prisoners were subject to harsh interrogative techniques. Among the techniques was that of putting 'prisoners' into metal boxes and leaving them to sweat in the sun.

The nation that invaded called for tenders for the sweat boxes, and awarded the contract to a company that delivered well-made boxes, on time, and for a reasonable price.

How many moral dimensions are there to this incident?

Murders and lootings have gone on in society since time immemorial. Should law facilitate them because there are some who want them? Should we provide for everything that someone wants? Should corporates supply nuclear weapons to terrorists because their demand is increasing in that market? Ethics and responsibility are there because we have a certain degree of freedom to choose our actions. Just catering to customers' preferences would not make a corporation CSR-aware; it is also important to assess its impact on the society at large. A corporate need not assume the role of a moral police for the society, but it must make its own sensibilities clear as far as its own actions are concerned.

Supply Chain

The challenge for modern multinationals is to ensure a socially responsible supply chain. The era of virtual organisations is seeing a tremendous wave of outsourcing of business processes; corporates are making profits on the outsourced products and services. Such business relations can be termed 'responsible' only if the businesses are partners in responsibility and not just in profits. Nike's experiences show that monitoring business partners may not help much in ensuring responsible business behaviour.

Risk

Risk refers to the quantified probabilities of events. For a company, portfolio of risks could include — reputation, ethics, e-business, health, safety and environment risks, which are beyond financial and insurable hazards.

Company reputation, its most precious and hard earned asset, could be marred by socially irresponsible behaviour. Reports of its involvement in an 'oil-scandal' seriously damaged the well-crafted image of the oil-majors like BP and Shell. Such situations cannot be obviated by a superficial CSR culture as Shell and BP had at that time. If all the business processes are moulded in a socially responsible manner, only then can the possibilities of risking the hard earned reputation be minimised (Rebecca 2007).

A CSR Europe/MORI study (2000) indicated that 70 per cent of European consumers take into consideration a company's commitment to CSR. One out of every five respondents showed the willingness to pay more for a product manufactured by a socially responsible company. One in six respondents frequently decided against buying a product because of the company's reputation.

Philosophical Basis of CSR

Unlike PSR, CSR has not been the focus of philosophical, moral, ethical and theological deliberations traditionally. Consequently, the behaviour of a corporation is still largely the subject of law which, of course, is more prohibitory in nature. A corporation can fulfil its negative social responsibility by formulating laws for all its functions and operations. For some of the most vocal critics of the concept of CSR, as Nobel Laureate Milton Friedman argued, it is enough for a corporate to fulfil its negative social responsibility. He argues that the social responsibility of business is to increase its profits; that social responsibility can only be for individuals and not for businesses as such. The January 22, 2005 issue of *The Economist* included the proclamation that 'The proper business of business is business. No apology required. It also added that for most conventionally organised public companies—which means almost all of the big ones—CSR is little more than a cosmetic treatment'.

The concurrent focus on various dimensions of CSR which is holistic and inclusive are discussed here.

Human Factors

Any institution is just not bricks and mortar but also a corporation. Every corporation must have human soul which is an extremely difficult task. Every corporation has to evolve a dynamic framework to nurture, preserve and promote its most important asset which is human capital. Work place safety, gender sensitivity, diversity, equity, equality, fairness, grievance redressal etc must be in place for a corporation to be called as responsible.

Ethical Investment

On the issue of ethical investment there are differing views. For some, investment that is unethical might be arms manufacture and dealing, for others it might be an aversion to tobacco, for still other it might be brothels, and for yet others it might be the exploitation of children. Unless the criteria are specified one cannot say what ethical investment is.

Cooperation

Behind the deadly play of the hunter and the hunted in the jungle goes the magnificent drama of cooperation with nature. These are the times of intense competition and the winners are likely to be those who, apart from having other sources of competitive advantage, also have access to some kind of business network.

A CSR-aware organisation would strive for developing a strong network of businesses that may create a win-win situation. Even the competing companies can find out certain areas of collaboration which may strengthen their positions in market without diluting their competitive advantage.

Sustainability

Often sustainability is considered to be at the core of the concept of CSR. In the simplest terms, one can define sustainability as the way of fulfilling the needs of the present without compromising those of the future. One of the greatest values that organisations add to individuals is to survive them. They are not limited to the time-span of their founders. The attitude of a 100 metre runner can take only one 100 metres: it requires a different kind of attitude to survive a 26 mile marathon. Sustainability apparently comes as the only way to fulfil such objectives.

It is the attitude of optimising business processes to get a sustained growth and profit over the years. It is too precious to be subordinated to the quest for growth and profit. Monsanto's attempts to commercialise the 'Terminator Seeds' or promoting the use of Posilac injection for cows are excellent examples of subordinating the greater good of society for the insatiable hunger for profits in a 'lawful' way and with impunity (Achbar & Abbot 2005). The issue of doing things the right or doing the right things remains the core issue; hence CSR sometimes demands adopting an ethical rather than a legal stance.

Customer Satisfaction

Customer satisfaction is negative CSR, which just fulfils the neutral corporate responsibility towards them. A CSR-aware corporate would strive for positively delighting its customers by its conduct, product and services.

A CSR-aware corporate would not stop at pleasing its customers, it would strive to empower them. Empowerment may have different meaning in different contexts. Probably for the customers in developed countries, it may mean providing a choice in as many aspect of customers' decision as possible. For other countries, it may also mean building up the purchasing power of customers. Project Shakti of Hindustan Lever Limited, the Indian subsidiary of Unilever is an example of such a move.

Religion and Business

The idea that business is more than mere profit has gained recent currency. This movement has an ally in the idea of religion being a part of the industrial / commercial scene. Amongst its manifestations overseas is that of industrial chaplains, who recently gained currency in the USA. There are 'Rent a chaplain' companies, and at least two seminaries are offering degrees in corporate chaplaincy. In reporting this phenomenon, *The Economist* noted that a giant meat processing corporation uses 128 chaplains to '... minister 85,000 employees. The CEO is also reported to employ an ordained minister to help him resolve ethical dilemmas' (*The Economist* 2007).

There are two issues here: one is the appropriateness of using religious professionals rather than those trained in the behavioural sciences: the second issue is that of mixing religion with business. It is not suggested that this second point is a bad thing — as it would in mixing politics and religion (separation of church and state), but it does give rise to consideration of why qualified professionals are not employed.



Ethical Dilemma

A company proposes that its employees be given fifteen minutes at the start of each working day to attend a religious ceremony. Those who do not wish to attend are required to perform extra duties during time.

Objections have been raised that it is undue pressure to conform to **religion in the workplace**, and might also constitute a breach of the notion of a secular state.

What is your view?

In *The Economist* (25th August 2007) issue there is a discussion of evangelicals in America, titled 'The bond between God and power' and 'Praying for gain' which states that there is a significant incursion of religion into the corporate world: as such it poses a distinct set of ethical problems that need to be addressed. While it is not argued that it is all one-sided, it does raise the conventional concern about the concentration of power in the hands of a particular group with a committed ideological agenda.

It is worth noting that different countries have different attitudes to the role of religion in business. In Britain, for example, The British Institute for Business Ethics started as a religious based organisation and moved to a more secular stance in later development. One of the point noted is that, in travels in Britain, there was not an antipathy to ethics/religion in business. That point is certainly not true in Australia where there is noted aversion to religionists promoting ethics: it is seen as 'preaching'.

At the strictly corporate level some companies (e.g. Sanitarium Health Food Company) for interest have a religious origin and base and thus it is perfectly understandable that they should start their work day with a prayer for healing employees. For ordinary companies one waits for serious complaints from outraged secular employees. To that one might add the outrage that may come from relevant professional bodies whose expertise has been sidelined.

The Reality

Stakeholders

Corporates can divide their worlds into two parts: present stakeholders and prospective stakeholders. In a way, the entire society is a stakeholder in business. Socially responsible investments apart, there are still other ways in which corporates can cater to the needs of other stakeholders. Further, the 'reach' of stakeholders needs explication. For example, a stakeholder may be a customer, an employee, a contractor, a financier or an organisation.

Tax Avoidance

Corporations may be boasting about their social responsibility like never before, but their financial contribution to society in the form of taxes has plummeted (Oxfam Great Britain 2003; Vold 2007)

- 1/3 of business in the UK do not pay any corporation tax, making the 'tax gap' between what they should pay and what they do around \$93bn per year.

- Half of all world trade passes through tax havens so that corporations can avoid paying tax. At least \$11 trillion of assets are held offshore, over a third of the world's annual GDP
- Revenue losses to developing countries from corporation tax avoidance are at least \$ 50bn , around the same what they receive in annual aid flows'

Profits and Pay

Corporate profits in 2006 and 2007 were the highest on record. Pay for top executives in May 2007 was around double what they earned 10 years ago (French & Bowers 2007; Vold 2007).

- CEOs of large US companies make as much money in a day as an average US worker makes in a year
- The top 20 private equity and hedge fund managers pocketed an average \$657.5 million each in 2006
- Average pay for directors of Britain's top companies rose 37 per cent in 2006. Salaries of workers rose 3.3 per cent

However, voluntary CSR strategy has not silenced dissent and demand for doing more for the community: CSR is now the most debated, sought-after enigmatic issue. The human face that CSR applies to capitalism has different facets during the course of the day. But, by and large, CSR is at best a gloss on capitalism, not the deep systemic reform that its champions deem desirable. Capitalism may not need the fundamental reform that many CSR advocates wish for. If CSR really were altering the bones behind the face of capitalism—removing its teeth and reducing its bite—that would be bad: not just for the owners of capital, who collect the company's profits. However, as that survey argued, it is true for society at large. The notion that CSR be undertaken as a cosmetic exercise rather than a serious surgery 'to fix what doesn't need fixing' is a doubtful proposition. (Survey 2005, p3). Such arguments may not hold much water, should it be possible to show that interests of society are not radically different from those of businesses.

A corporate entity can focus on responsible aspects towards its own employees: these may be done by such means as: enriching experiences at work. This includes recruitment. As far as practicable, a corporate should go for a recruitment process that provides the potential candidates with a realistic picture of the job life. Recruitment tools like Realistic Job Previews (RJP) and Job Compatibility Questionnaires (JCQ) are an excellent way to ensure that the corporate largely gets those qualified candidates who have made a well-informed choice to join. Employees who feel cheated after joining are not in the best interests of the company.


No corporate entity can be called socially responsible if it fails to provide its employees with living wages on an equitable basis. The fruits of globalisation are disproportionately reaching the employees. The workers' share in the US economy in terms of salary and wages declined by 2.5 per cent from 2000 to 2005. In the same period, it declined by 3.1 per cent in Germany and 3 per cent in Japan (Wikipedia 2008). A CSR-striving corporation would not be a part of such trends. It would ensure that employers as well as employees get proportionate benefits of the economic pursuits of the company.

Work-life Balance

CSR-aware corporates should strive to create a work-life balance for their employees so that sacrificing personal lives may not become a pre-condition for a successful professional life. Employees with serious

work-life imbalance are likely to be highly stressed and unhappy with their situation. A CSR - aware corporation cannot afford to waste its employees.

Responsibility and ethics presuppose 'choice', the freedom to decide between different possible courses of action. Corporates that foster a culture of micro-entrepreneurship are more likely to move towards the ideal of CSR as it provides that 'choice' to employees.



Ethics-in-Action


There is an old saying that **'the customer is always right'**. One can imagine circumstances in which a customer is wrong. It might be that he/she is wrong because they are never able to be satisfied and are litigious: it may be that the customer demands a product or service that is at odds with common decency.

Write a principle that identifies the circumstances in which customers may be wrong.

Social Responsibility of Corporations

Social responsibility seems to be a moralistic term which may not have any meaning for a pragmatic corporate, and yet it is the talk of the day in the post-Enron world. It is an appealing idea, no doubt, but is it worth pursuing by a business? Such doubts presuppose that interests of society and business are at variance with each other. Of course, it is a complex issue but let us make an attempt to understand the whole concept of social responsibility along with its personal and corporate ramifications.

The corporation could be defined as a legal entity with unlimited life, limited liability (financial) and divisibility of ownership. However, for our purpose let us say corporate means organised business, social means anything to do with general citizenry and responsibility means the accountability between the two. Corporations are pervasive and invincible and sometimes wield power that is a challenge to Governments.



Ethics-in-Action

Because of global warming the heavily populated delta lands are likely to become uninhabitable. The proposal has been made that the Bangladeshis living there be relocated to higher ground in India. One of the **conditions of their immigration**, so it is proposed, is that the immigrants be contracted to Indian companies for ten years under conditions set by Indian Parliament.

This complex and contentious issue has many dimensions. Suggest at least three, and propose how they might be resolved.

New Breed of Organisations

We are seeing the emergence of a new breed of organisations that can tackle the ever increasing competition in the global business environment — the high performance organisations (HPO). HPOs are intentionally designed to bring out the best in employees to produce sustainable organisational results. An increasingly large number of companies in the Fortune 500 list are HPOs today. HPOs are increasingly attracting attention of researchers worldwide. They demand that the workforce must be strategically aligned with the goals and objectives of the organisation. If the argument is accepted that a person could have social responsibilities but a business might not, then we would face a piquant situation.

Responding to the Emergent Needs

This may be one area which may not be profitable for the corporate significantly, but still must evoke response from a CSR - aware corporate. A CSR-aware corporate would not shirk from participating in disaster mitigation efforts in the face of a tsunami or a earthquake just because it wouldn't earn profits for doing so. Helping society in issues of pressing concern would be an excellent way to win employee admiration and create a good name in society. A CSR-aware corporate may also offer to help governments and UN organisations in achieving some of the Millennium Development Goals. Again it would be wise if it is done in the form of a network so that a single corporate may not be forced to drain out shareholders' hard earned money. CSR is a matter of intelligent, and perhaps partially, an emotional decision. It should benefit the corporate and the society alike and only then can it be sustainable.

Self Actualising Corporate Culture

A self-actualising culture that provides employees with adequate freedom to develop and to contribute is something that creates a win-win situation for both employees and the corporate. A corporate will move towards CSR if it is able to create a culture that helps to bring the best out of every employee. It is not uncommon to find out corporates which have faced embarrassing situations due to their employees who resorted to unethical means to meet or beat their performance targets. Having a culture that is based on sound ethical practices would ensure that the 'do good' thing gets engrained in the way employees work. Employee voice, and a sound and transparent grievance redress mechanism, are musts in order to ensure the continued trust of employees in the company. Similarly, a CSR-aware corporate would actively take interest in managing and developing the careers of the employees. If an employee understands that his/her employability increases substantially by remaining associated with the company, then his/her loyalty towards the organisation is also likely to increase. Thus a CSR - aware corporate is likely to face lesser employee turnover problems. The SAS Corporation is an example in this case with almost negligible turnover rates.

Employee self service intranet are great ways to enhance the company-employee interaction. Leading corporations like Microsoft are using it with great results. They can be profitably used for handling employee queries, developing strategic competencies, developing careers and planning earnings. A high level of interaction between employees and the business is a mandatory requirement to be a CSR-aware corporate.

Networking Businesses and CSR

Businesses operate with their network of suppliers and client industries. A CSR-aware corporation would be careful about the way it conducts business with such networks. A corporation can establish

best practices for CSR for itself and yet continue to do business with other corporations having dubious credentials in being socially responsible; this can hardly be referred to as a CSR-aware business practice.

Reporting

The number of companies reporting on their Corporate Responsibility activities has shot up in recent years, which at least demonstrates its growth in popularity as a PR tool (Worth 2007).

- 20 per cent of companies with global supply chains have a supply chain labour standard policy
- 94 per cent of company executives believe the development of a Corporate Responsibility strategy supply can deliver real business benefits
- Over 90 per cent of companies in Europe and Japan with standards policies high environmental impacts labour for managing them, compared with 75 per cent in Australia and New Zealand/Aotearoa and 15 per cent in the rest of Asia.
- 80 per cent of Japanese companies publish Corporate Responsibility reports, compared with 71 per cent of British, 32 per cent of US, 23 per cent of Australian and 18 per cent of South African companies
- Around 155 of funds invested in Europe have some kind of 'Socially Responsible Investment' (SRI) criteria. It's around 10 per cent in the United States, where resolutions on social and environmental issues brought by shareholders at AGMs have increased 495 over the last 10 years. In Australia 'responsible investment' grew 56 per cent in 2006.

Readers will recognise the use of what is now called 'Triple Bottom Line Reporting'. That concept gives due recognition to the three essential elements of business: financial, social and environmental. Clearly, business operates within a social framework, and owes much to the community that allows it to operate and flourish. Such support carries appropriate responsibilities. The notion that business can behave like robber-barons is no longer acceptable—hence the wider recognition of the value implications.

In July 2001, the Centre for Social Markets (CSM) published one of the earliest surveys entitled 'Corporate Social Responsibility: Perceptions of Indian Business'. It described what companies understood to mean by CSR and what they thought were the main considerations in being socially and environmentally sustainable (Wikipedia 2007).

Confederation of Indian Industry

In 2002, another survey, this time under the joint patronage of the Confederation of Indian Industry (CII), United Nations Development Programme (UNDP), British Council and Pricewaterhouse Coopers (PWC), the CSR Survey 2002 India, (UNDP 2002) noted some improved trends and concluded that:

- Social responsibility is not the exclusive domain of the government and 'passive philanthropy' alone no longer constitutes CSR.
- The majority of respondents ranked ethical conduct, including compliance and transparency of business and nation building, amongst the definitions closest to their perceptions of CSR.
- Business ethics, compliance with regulatory requirements and consistency in value-delivery were three of the most important factors impacting the social reputation of a corporation.
- A desire to be a good corporate citizen and improved brand image were the drivers for CSR.

- The CSR performance of the corporation, by major stakeholders, was that the employees as per 75 per cent of the respondents, the customers as per 66 per cent of respondents, local community as per 60 per cent of respondents and the regulatory bodies as per 63 per cent.
- 81 per cent of respondents had defined ethics requirements, 76 per cent environmental requirements, 72 per cent all regulatory compliance requirements, and 76 per cent had clearly defined health and safety requirements in their corporate policies.
- Most of the companies surveyed included social responsibility in the corporate strategy, and its conceptualisation and deployment in most cases was at the highest level in the organisation.
- The top four influences on CSR Strategy were: the management, Board and employees, shareholders and local communities.
- CSR was perceived as a mechanism to proactively approach and address the significant regulatory requirements. The absence of a clear linkage between CSR and financial success was identified as the principal barrier to CSR. Lack of mechanisms to measure, monitor, evaluate and report on the impact of CSR initiatives were also seen as major barriers.
- More than 90 per cent of the respondents believed that investors would demand greater transparency in disclosure of financial and non- financial information. More than 90 per cent and 63 per cent of the respondents expected to be more transparent in reporting financial and non- financial information respectively.

In 2003, Partners in Change (PiC) conducted its third survey on CSR in India in partnership with the research group IMRB (Arora & Puranik 2004). The survey captured the views of 536 companies, with annual turnover exceeding Rs 25 billion across the country. The 2003 Survey also included the views of other key stakeholders such as government, media, NGOs and other civil society organisations (CSOs). The survey concluded that for the majority of companies (64 per cent), the main CSR driver was philanthropy, followed by image building (42 per cent), employee morale and ethics (30 per cent each). It also found that only one out of five PSUs (public sector units), and very few MNCs (21 per cent) and Indian companies (14 per cent) have a CSR policy document (Deo 2004).

These are found largely among business sectors such as infrastructure, finance, food & beverages, pharmaceutical and chemical Industries. At present, corporate activities tend to be focussed on health education and natural disaster relief. In addition, these social development activities are targeted at groups such as the weaker sections of society, company employees, children, rural communities, disaster-affected people, and the diseased (sic)'.

Ethical Dilemma

Suppose that India were to initiate an expedition to plant the **Indian flag at the South Pole**, purely for prestige. Suppose further that the expedition would be an overland one using dog-drawn sledges. The plan is to use the dogs to get there: on the return journey, and with a lighter load, some of the dogs are to be slaughtered to feed the remaining dogs. What are the moral dimensions to this contemplated action?

CONCLUDING REMARKS

CSR is not a matter of a department within a corporate; it is the way of corporate life. Our framework attempts to put CSR in everything a corporate does and that is the sure way to sustainability, both for the business and the society. CSR pursued in the suggested manner would usher a corporate social renaissance, which will not only restore the image of business in the post-Enron world, but will also pave the way for 'responsible profits'.

Summary of Chapter

This chapter deals with the balance of corporate responsibility. The former view, that corporations are devoted entirely to profit, has now been substantially modified. The notion that corporations also have social and environmental obligations seems to be widely accepted now. The expression that captures that obligation is triple bottom line reporting. The very act of reporting ensures that the issue is kept in the forefront of corporate consciousness. This chapter gives wider expression to that concern, and illustrates the point with many examples, mainly from India.

For Discussion

1. In what way does corporate social responsibility differ from triple bottom line reporting?
2. What role does personal social responsibility play in CSR?
3. How can one tell if a company is engaging in CSR with sincere motives or just doing it as part of an overall strategic plan?
4. Do motives for engaging in CSR really matter? Is the fact of engagement enough?
5. Triple bottom line reporting sets three criteria. Suppose one criterion is at variance with another so that one should prevail. Which one should it be?
6. Sustainable development has several aspects. They include financial survival and profit, concern for an environment conducive to continued commerce and to social sustainability. This consideration has profound political implications. Is it proper for companies to lobby the legislature on these matters?

Multiple Choice Questions

Select the best answer from the options given.

1. A term of similar meaning to CSR is:
A TBL ☐
B MoI ☐
C ISX ☐
D UNWWRA ☐
2. Eco friendly is a term that has a similar meaning as:
A green ☐
B purple ☐

- C climate change ☐
- D carbon footprint ☐
- 3. Sustainability refers to:
 - A sustaining a business as a viable long-term enterprise ☐
 - B conducting an enterprise with minimal resource depletion ☐
 - C sustaining a steadily increasing market share ☐
 - D making sure that supplies are imported regularly ☐
- 4. The customer is always right is a principle consistent with:
 - A ethics ☐
 - B sustainability ☐
 - C moral collusion ☐
 - D none of the above ☐
- 5. Genetically modified seeds:
 - A never stray from their plots ☐
 - B belong to all, as do natural seeds ☐
 - C are copyright to the developers ☐
 - D belong to whoever the law determines ☐
- 6. Religion:
 - A plays a vital role in business ☐
 - B has no role to play in business ☐
 - C has some role to play in business ☐
 - D is purely a personal matter ☐
- 7. Volunteering:
 - A is a form of corporate philanthropy ☐
 - B is not involved in corporate philanthropy ☐
 - C may only be done personally ☐
 - D is only done through organisations ☐
- 8. Immigration:
 - A also imports different value standards ☐
 - B interferes with business ☐
 - C depletes natural resources ☐
 - D is a form of flattery ☐
- 9. Using networking is also known as:
 - A finding the right person ☐
 - B Guanxi ☐
 - C selective advertising in newspapers ☐
 - D employing all media resources ☐

11

CHAPTER

A Proposed Code of Business Ethics

This chapter provides a suggested Code of Conduct for business in India. The importance of such a Code rests upon several compelling reasons. One is that a Code is important in that it provides an agreed frame of value-reference, thereby informing all stakeholders of the values that underlie all of their commercial functioning. As such it gives much needed stability to industrial and commercial interactions.

A second reason is that it provides to all employees a set of standards that reduce uncertainty and provide an understood set of standards that concern all of their employment actions. Further, such an agreed set of standards is most likely to be a significant factor in both recruiting and retaining excellent staff.

A third, and equally compelling reason for such a Code is that it informs the wider commercial, and consumer community of those standards, and thereby contributes to a good reputation. This has the consequence of an enhanced reputation with the ability to easily raise, for example, venture capital. It also informs consumers that values are taken seriously. From this flows repeat business without the extra cost of advertising. The old principle of it being easier and cheaper to keep a customer than find a new one is most apposite here.

It may be appreciated that this is an advisory Code. Businesses and organisations may wish to develop their own Code, or add or modify this one. If it serves such a purpose the others would be both pleased and complimented.

CODE OF CONDUCT FOR BUSINESS IN INDIA

Account Rigging

Every account rendered in business should accurately reflect the purpose of payment for the goods or services specified.

No note of indebtedness should be raised used or settled, unless it is open and honest.

Accounting Procedures

Conventional accounting procedures shall be used to maintain the financial probity of the organisation.

Accounts (prompt payment of)

See 'Bills'.

Accuracy of Statements by Sales Staff

What is stated by salespersons should be consistent with what is formally written about the goods or services.

Sales staff should not make misleading statements, nor suppress relevant cautions, in order to influence buying behaviour.

Advertising

See 'Public statements'.

Advertising (see also Disparagement)

Advertising shall not use disparagement in order to promote its own product.

Affirmative Action (see also Discrimination)

Where it is evident that an imbalance of selection has occurred the organisation should institute procedures designed to redress that imbalance.

Animal Experimentation

Activity that involves the use of animals for experimental purposes should follow national guidelines.

Non-humans shall be treated in such a manner as to minimise suffering.

The use of animals for tests on non-essentials (e.g. cosmetics) shall be unethical.

Anonymity of Contractors

Customers and clients have a right to remain anonymous unless there is a legal duty to disclose their identity.

Anti-competitive Behaviour (see also Poaching)

No contract shall be entered into which has the clear intent of being anti-competitive unless there is a compelling argument to the contrary, or unless sanctioned by law.

Anti-social Behaviour

No form of commerce that clearly fosters anti-social behaviour should be used.

Appointments (see also Recruitment)

Creating jobs for which customer tipping is the only form of payment is unethical.

See also Bribery

Arms Trade

Organisations that deal with arms should avoid fostering the production and distribution of arms to non-democratic regimes.

Producers and dealers in arms should take whatever steps are possible to ensure that their products are used for legitimate purposes only.

Arms should be kept out of the reach of criminals and mentally disturbed persons.

Beliefs or Faith (Duress upon)

No employer shall require employees or potential employees to subscribe to a particular religious faith, political viewpoint, or other ideology in order to secure or retain a job.

Biohazards (Action Issues)

Industries that have biohazardous by-products should:

- move to least-polluting techniques of industry;
- support research on environmental issues;
- become energy efficient;
- send waste for recycling;
- use recycled wastes;
- use least polluting cars for company fleets, and minimise car use;
- avoid ozone-depleting substances;
- use biodegradable materials where appropriate and possible;
- forbid smoking on company premises and in company cars;
- reduce toxic wastes as far as possible;
- exercise prudence in disposing of toxic waste.

Biohazards (Policy Issues)

Biohazards may be defined as those risks to the living environment that have an impact on our capacity to survive in the long term.

Examples of biohazards are pollutants that degrade the atmosphere, chemical products that are disease causing and products that are mutagenic. This contentious area has suggested guidelines rather than prescriptions. In order to diminish the harmful effects of biohazards the following principles are recommended:

- Have a written policy on biohazards.
- Set out environmental objectives in the company manual.

- Exchange information, and discuss the issues with responsible groups of environmentally concerned people.
- Try to assess the environmental impact of products.
- Set targets for reducing adverse environmental impact.
- Prepare a statement on environmental issues as they affect the company, and provide this statement with the Annual Report.
- Follow government guidelines.
- Have an external audit of the organisation's performance in biohazards.
- Set employee training programmes in place to alert employees to the salient issues.

Blaming

The use of blame is to be avoided wherever possible.

The acceptance of personal responsibility is to be taken wherever reasonable and possible.

Bottom Line

See 'Profit'

Bribery for Jobs

Employees should never require that jobs be bought.

The appointment to jobs shall not depend on secret commissions, promise of payment to the employer or any other form of secret inducement.

Caste (see Discrimination)

Competition

All commercial competition should be fair, open and honest.

Computer-based information

The following are unethical:

- Introducing information into computers without the owner's permission.
- Taking information from computers without the owner's consent.
- Introducing viruses into computer systems.
- Modifying computer-based programmes or information for personal gain, and without an owner's consent.

Conflict of Interest (see also Gifts and Personal Gain)

A conflict of interest occurs when a relationship, an event, or material consideration compromises the objectivity of commercial judgement.

If there is a potential (personal or family member or friend) conflict of interest that might influence a commercial or business transaction or interest, it should be formally declared in writing to the appropriate person(s).

Where declarations of interest are made, some written record should be retained. Examples of declared interest are: directorships, a large shareholding, promise of future employment and the employment of a close relative or friend in a position of influence in an organisation that may be given business or awarded contracts by the company.

Conflicts of interest may be avoided by:

- clarifying when the individual is speaking in his capacity as a private citizen or as an employee;
- not using privileged information for personal gain;
- not having a financial interest in competitive or supplying organisations;
- not having situations that give rise to speculation as to motives;
- declaring any possible conflict of interest before the contract is agreed.

Consultants

Industry and commerce have a right to know:

- a consultant's formal qualifications;
- where those qualifications were obtained;
- details of state registration to practise as a professional;
- the amount of experience;
- specialist qualifications.

Contract Breaking or Evasion

Where a contract is drawn between two or more parties, and one of the parties breaks all or some of the agreement, that shall not be a justification for any of the other parties breaking any of these ethical requirements.

Where a contract has been broken in such a manner, the ethical issue involved should be discussed as a matter of urgency. The use of a skilled intermediary is recommended.

Contract Maintenance

Where a contract to provide goods or services has been finalised, the agreement should be honoured even if in so doing the provider were to incur a loss.

This principle shall not be a deterrent to the proper renegotiation or amendment of a contract.

Copying Software

It is unethical to copy software without appropriate legal authorisation. This restriction does not apply to software in the public domain.

Copyright and Patent Evasion or Breach

Every effort should be made to respect intellectual property in all its forms.

The use of duplicity to avoid paying royalties is unethical.

Courtesy

While maintaining the absolute right to engage in any lawful transaction, and to discuss any topic (social, religious, political, etc.), business people should do so within a framework of sensitivity and tact.

Credit Privacy (and Information Challenge)

A credit provider should notify an individual that personal information might be disclosed to any other credit reporting agency.

Credit

Credit reporting agencies should retain information only where it is relevant to credit worthiness.

Credit reporting agencies should not maintain information that relates to religious or political beliefs or sexual preference.

It is unethical to keep credit information that is inaccurate, incomplete or misleading.

Creditworthiness should be used only for assessing applications for credit, assessing guarantor status, preventing financial default or where authorised by law.

Where a credit provider refuses an application, every assistance should be given to the applicant who wishes to challenge the information on which the decision was based. This includes giving the applicant the relevant information and its source.

Criticising Competitors

Executives and advertisers in commerce and industry should avoid mentioning competitors where the comparison is an odious one. It is preferred that the merit of one's own services or products be stated in a non-comparative way.

Cruelty to Animals for Luxury Goods

The exploitation, painful use and slaughter of animals for non-essential purposes is to be firmly avoided.

Currency (of Reference)

Where sums are quoted in a currency using a unit that is common to more than one country the precise designation shall be given. e.g. NZ\$

Data Matching

Data matching on individuals, unless legally sanctioned or permitted by the person(s) is unethical.

Deceptive Information (Including Statistics)

The use of deceptive information, either as direct statements, implications or the suppression of relevant information is to be shunned.

Dignity and Worth

All business transactions should be conducted in a manner consistent with human dignity and worth.

Where there is a problem the counselling and attempted resolution shall be done constructively rather than destructively.

Directors (Special Precepts)

- Directors and managers should have sufficient stature and security of tenure to disagree without fear of reprisal.
- Each director should be of such a stature and independence that he can hold the position of trust for the shareholders.
- Non-executive directors are not employees and should bring special qualifications, experience, expertise and an independent perspective to the board.
- The directors' benefits should be set out explicitly.
- The audit procedures of an organisation should be set out clearly for the directors to consider.
- Directors have a duty to conserve the financial and commercial secrets of the company.
- Directors have a duty to inform the appropriate authorities of any impropriety.
- Directors have a duty to declare any conflict of interest. If necessary, directors should absent themselves from the boardroom when such items are discussed.
- Directors have a responsibility to the community, consumers, employees, shareholders, carriers and suppliers.

Disaster Management Plans

The speed and humanity of the response is a significant determinant of a company's reputation. In order to keep faith with the public a company at risk might consider the following:

- Institute procedures that minimise the prospect of a disaster.
- If a disaster occurs, an immediate plan should be put into operation to minimise the detrimental effects.
- Have someone nominated as the responsible person to handle the disaster and appoint a spokesperson to deal with the media.
- Make a humane restitutional response to any disasters that might occur.

- Ensure that the company reputation is preserved by having these appropriate policies made known to the public.

Discrimination

It is unethical to discriminate against employees on the grounds of ethnic origin, religion, race, marital status or caste.

It is unethical to discriminate against employees on the grounds of sex, save where there is some over-riding but non-denigratory consideration (as in the acting profession, for example).

Dishonesty other than related to money

The concept of dishonesty is not confined to money matters. Its extended use covers situations in which the principles of honesty openness and goodwill are violated.

Dismissal

No employee should be arbitrarily dismissed.

Where an employee is to be dismissed on grounds of incompetence or lack of conscientiousness it should only be after due warning and attempts to rectify his or her behaviour.

If the dismissal is motivated by economic issues then the need for staff reductions should be explained and acceptable solutions sought (e.g. early retirement, changing to part time, job sharing and voluntary leaving).

Disparagement

Disparagement is to be avoided

Donations

Corporate donations (particularly political ones) should be fully disclosed to all interested parties.

Employer's Time

The use of employer's time, for personal benefit, is a form of theft. Such use, unless agreed by the employer, is unethical.

The waste of an employer's time is unethical, as in cyberloafing.

Endangering Species

Industry and commerce should take every effort to preserve biodiversity and to prevent the extinction of endangered species.

Errors (Admission of)

Where an error has been made, it should be recognised and rectified.

This admission or apology should be worded in such a way as to express remorse and offer restitution. At the same time the wording should be such as to protect the maker of the error from a legal liability.

Expenses (Claiming Unspent)

It is unethical to claim expenses that have not been incurred.

Exploitation

The exploitation of the disadvantaged (children, minority groups, the intellectually underprivileged, the disabled, those of low education, etc.) is unethical.

Falsifying Figures

Under no circumstances is it ethical to falsify figures.

Financial Advice

Financial advisers should be duly qualified, registered or recognised by a state. The adviser should be a member of a reputable national body, to which the adviser owes allegiance and whose code of professional conduct he or she is obliged to follow.

The experience of the financial adviser should be conveyed to the client.

The adviser should be covered by professional indemnity insurance (not only is the insurance important but the process of acquiring it is a further independent check on the adviser).

An adviser should give full and free information about any benefits that might flow from the advice that they give, that he or she receives as a result of recommendations.

Financial Circumstances (Personal)

When organisations recruit or promote, employers are under no ethical compulsion to consider the personal financial circumstances of the employee or potential employee.

Foul Language

Foul language is never justified. Where human frailty produces it, an apology to the target person shall be given.

This reference to human frailty shall not be taken as a common justification, bearing in mind the distinction between an irresistible impulse and an unresisted impulse.

Free Quotation for Goods or Services

Where a free quotation for goods or services is given, and the quotation is not accepted then it shall be an ethical requirement to advise the potential supplier (the source of the quote) of the decision.

Gifts (Advice on Handling)

Gifts of a costly nature (of a value not more than 1/10 of 1 per cent of annual gross salary) should not be given or received if they are connected to someone with whom one has a commercial relationship. (The acceptance of minor tokens, calendars or diaries is acceptable.)

Offers which exceed the prescribed bounds should be politely but firmly declined.

Unsolicited gifts delivered should be returned to the sender or donated to a worthy charity, with an appropriately worded letter: the action should be reported to a superior.

The superior may decide whether the gift is to be accepted or donated elsewhere (such as a museum or a charity).

Any approaches from contractors, suppliers or traders seeking preferential treatment in consideration of any offers of benefits or hospitality should be firmly declined and the circumstances reported to a superior, professional society or other relevant authority.

Business entertainment may be on a reciprocal basis and on a scale consistent with what you would be authorised to arrange when host.

If there is the slightest doubt about accepting any offer of benefit or hospitality that has been clearly recognised as a potential conflict of interest then expert guidance should be sought.

The guiding principle here is the possibility that one's commercial or professional objectivity should not be compromised.

Gifts (see also Bribes)

No employee or any member of his or her immediate family should accept gifts from or give gifts to anyone in a business relationship.

Gratuities or gifts of money, or any consideration of significant value that could be perceived as having been offered because of the business relationship or to gain a business advantage is unethical.

Gossip

Gossip and unsubstantiated rumours should be avoided.

This ethical restriction shall be applied to both derogatory rumours and to information that breaches personal privacy.

Harm (do no)

Be mindful of the harmful consequences of actions in human, animal and environmental terms. The Hippocratic notion 'Do no harm' shall be the first rule of ethics.

It is unethical to provide, or continue to provide, goods or services known to be harmful.

Harm (Goods or Services Intended to)

Goods designed to harm should not be produced unless such goods (such as arms) are clearly within the law.

Goods (such as kitchen knives, or alcoholic products) that have some other clear purpose are exempt from this precept, as are arms for defence purposes.

Harmful Products (Investing in)

Where a business person or organisation invests in a business that clearly provides goods or services that are in breach of this proposed code, they shall draw those breaches to the attention of the offending organisation and shall take such action as is appropriate to minimise any harmful effects.

Health-care Providers (Company)

Company health-care specialists and psychologists are employed as impartial advisers and their actions are governed at all times by their code of professional ethics rather than any company code.

High-pressure Sales

The use of high-pressure sales techniques for either goods or services is unethical.

Industrial Espionage

The use of clandestine operations to secure commercial information is unethical.

This stricture shall not apply to gathering information in the public domain.

The principles of openness and honesty shall apply.

Information

General information about organisations should be freely available except where:

- it betrays a promise;
- is embarrassing to an individual not guilty of any ethical breach;
- would breach commercial or industrial privacy; or
- might result in the loss of intellectual property.

Information (Business Versus Personal)

Any decision on the use of personal information for valid business purposes should be weighed against an individual's right to privacy.

Information about an Organisation

Confidential information about business is the property of a company. Only those people with a business 'need to know' should have access to confidential information, and such information should not be disclosed to anyone within or outside the company without appropriate authority, unless required by law.

Information acquired during the course of work should not be disclosed outside the organisation. Information about customers and suppliers or about any organisational individual must not be misused.

Unless clearly understood, information gained in the course of employment, that could be used to the employer's detriment, should not be used either outside the confines of that employment, or in future employment with another organisation.

Information about Employees

Personal information about employees must only be collected, used and retained where it is required for business or legal reasons and should only be available to those with a clear business 'need to know'.

Any such information should be treated with the utmost confidentiality.

Information Security

Information shall be kept under secure conditions and available only to those with an agreed and legitimate right of access to it.

Insider Trading

Insider trading is unethical. This principle is extended to any situation in which restricted information is used for personal or commercial advantage.

Intellectual Property

Intellectual property is at least as valuable as physical property, and should be treated likewise. Such property shall include (but not restricted to):

- patents;
- inventions;
- industrial and commercial processes;
- creative works;
- intellectual works;
- ideas of commercial value;
- written works;
- knowledge of markets.

The development and marketability of trademarks, logos and trade names is valuable intellectual (and emotional) property.

The proper use and protection of this property is an important aspect of company viability. An improper use of trademarks and the invention of misleading names or logos for a product, is unethical.

Intimidation

No form of undue intimidation, duress or other improper pressures, is to be used in business.

Job Advertisements

All job advertisements should be genuine and not fabricated to fulfil some other purpose.

The principle that jobs should be open to all competitors shall not be applied to family businesses, but in such cases the situation should be made clear to all concerned.

Job Selection Criteria

Where an organisation is not a family one, the use of other than the best objective selection criteria for job performance is unethical.

Labelling

Labelling of products should be accurate and sufficiently comprehensive so as to be a useful guide to consumers.

Language of Commerce

The forced use of language other than the agreed language of commerce is socially divisive and fraught with the possibility of misunderstanding. Social cohesion is fostered by, inter alia, a common means of communication.

The primary language of commerce should be agreed between contracting parties, and it is unethical to use any argument that subverts this principle.

This principle does not require that no other language be used in addition, but asserts that the agreed language is the reference language.

This principle shall not prevent those of alien tongue from engaging in commerce using their own common language.

The principle of language of reference shall mean that in case of dispute the language of reference is to be used in resolution of the dispute.

The public, employees, suppliers and consumers have a right to information in plain language.

Such information shall be free of undue technicalities and obfuscations; and shall be, as far as possible, in plain prose.

Law (Dealing with)

It is not the function of a code of business conduct to change the law. Rather, it is to fill gaps in the law, and to express the business values of the national society in particular and generous spirited humanity in general.

It shall be unethical to act or advise in any way that produces a contravention of state or federal law.

If the law is seen to be inadequate or mistaken or outdated or ambiguous the proper legally sanctioned procedures should be followed to have the law amended.

It is not the primary function of this code to press for changes to the law, although ethical arguments may well be the basis for legitimate pressure to amend the law.

It is unethical to use threats of litigation, involving either costly cases or public embarrassment, as a means of gaining commercial advantage.

The use of legal tactics to delay resolution of ethical dilemmas is unethical.

Misrepresentation

No statement, explicit or implicit, should misrepresent the nature of goods or services involved in any sort of commerce.

Misrepresentation shall include statements asserted, statements implied and the suppression of critical information.

Monopoly

Except where sanctioned by law it is unethical to be a monopoly supplier of either goods or services.

Nepotism

Nepotism is to be avoided, save in special and explicitly stated circumstances, in family businesses, for example.

The guiding principle is that employment described in job advertisements should be what it purports to be.

Personal Gain

No employees should be involved in activity for personal gain that, for any reason, is in conflict with the business interest of organisations for which they work.

No work shall be solicited or performed by employees or consultants that could be in competition with the organisations with which they are engaged.

Unless authorised by a director or a principal, no outside work should be performed or business or clients be solicited during company time or on company premises.

Company owned equipment, materials, resources or inside information should not be used for outside work without appropriate authorisation.

Personal Information

(see also personnel information and Information about Employees)

Personal information should not be collected without good ethical reason.

Personal information collected for one purpose should not be used for another (except for research under certain specified conditions, such as with the owner's consent or as required by law).

Data trade and trafficking in personal information, except as permitted by law, is unethical.

Personal Violence

Personal violence in the pursuit of business ends is unethical.

Personnel Selection Information

No confidential information gained in personnel work and selection information may be disclosed to any other without the consent of the person who is the subject of that information.

No psychological test data used for one purpose or job selection shall be used for another job application, or other purpose.

Plagiarism is Unethical**Poaching Customers**

Poaching customers, clients and employees by means other than by fair and open competition is unethical.

Pollution (see also Biohazards)

Industry and commerce should attempt to devise and use least-polluting strategies in the exercise of their business.

Praise

When giving feedback of any kind the use of positive statements, of praise and encouragement are to be preferred to negative and punitive approaches.

Prevention

In order to prevent breaches of ethics the following principles are proposed:

- Senior management to set a good example.
- Training programmes in ethical behaviour in business to be provided.
- Seminars on business ethics to be commissioned.
- One of the staff selection criteria to be ethical commitment.
- Rewards for ethical commitment to be provided.
- An ethical audit to be part of annual reporting (institutionalised reporting).

Pricing in Advance of Increased Costs

Where a price rise has been announced the goods or stock bought at the lesser price shall be the basis of the selling price. Only when the more expensive goods or stock are traded shall the price increase apply.

Privacy (Customer)

Customers' privacy and confidences shall be maintained except where there is an over-riding legal obligation to reveal.

Privacy (Recognising Employee Privacy)

The recognition of employee personal privacy is an ethical imperative.

Privacy: General Principles

Every person has the right to personal privacy, save where divulgence is required by law. The Organisation for Economic Cooperation and Development has comprehensive policy documents on privacy issues.*

Private Inquiry Agents

Investigations by private inquiry agents shall only be used defensively (not offensively).

Where such defensive information is collected it shall be used only for that purpose and shall be adequately protected against use for any other purpose.

Clandestine surveillance, wire tapping, bugging, and any other means of eavesdropping, except as sanctioned by law, is unethical.

Profit

Profit-making organisations are mindful of their obligations to maximise their profits. This motive to maximise profit should not be at the expense of keeping to the principles of ethical behaviour.

Prompt Payment

Where a bill or invoice is presented, unless it is agreed otherwise, it should be paid within 30 days. The failure to pay bills on time amounts to deprivation of capital sums due and is unethical.

Property (see also Intellectual Property)

An organisation's property is more than physical plant and equipment or product, and includes technologies and concepts, ideas and recipes, business and product plans as well as general information about the business.

Misappropriation of the company's property in any form is unethical.

Prospectuses (see Public Statements)

Prospectuses and information sheets should contain factually accurate statements.

Prospectuses and information sheets should not suppress important relevant information.

Where possibly disadvantageous information needs to be asserted, it should have prominence equal to that of the advantageous material (no small print).

Provisional Allowances in Contracts

Where provisional allowances are made in contracts the upper and lower limits shall be defined.

Public Statements (see also Advertising)

Public statements about an organisation should only be made by those authorised to do so.

*(see www.oecd.org).

Advertisements emanating from an organisation shall be authorised only by those empowered to do so. Someone known to be connected with an organisation, but speaking as a private individual, should make this point clear.

When making a public statement in which conflict of interest may be an issue, such a conflict of interest should be declared.

Where possibly corporate disadvantageous information needs to be asserted, it should have prominence equal to that of the advantageous material (no small print).

Quality of Goods and Services

Manufacturers shall strive to provide excellence in goods. This principle shall extend to after-sales service.

Where the goods or services provided are in need of remedy such remedy shall be conducted with efficiency, despatch and courtesy.

Racist Regimes

Although it may be necessary to deal with foreign regimes that are racist and sexist, those who do deal should take effort to minimise any harm and should try to modify those racist and sexist views held by other states and entities.

Recalls

(see Withdrawal of harmful goods or services; also Quality of Goods and Services)

Recruitment

(see also Appointments and Bribery)

Redundancies and Relocation

Relocation of employees within an organisation, and geographical relocation, shall be discussed with the employees concerned.

Any available options should be outlined to the staff concerned.

Redundancies of employees within an organisation should be discussed with the employees concerned. Such discussions should outline the reasons for the proposal and the options available.

Reliable Products (see also Safe Products)

Reliability of products shall be one of the main concerns of manufacturers.

Sabotage

Defined as malicious injury to people, tools or work is unethical.

Safe Practices

It is difficult to be exact about 'harm'. Clearly a product that is unsafe or does not do what it purports to do is unethical. The difficulty arises with products that do exactly what they purport to do, but the purpose is harmful (eg bullets or napalm).

The guiding principle here is that if the public expects a particular product to perform in a certain way, that performance should not be attended by harm not clearly notified.

Harm should not be a by-product of the main function of any goods or services.

Safety Standards

Where the ethical precepts of and safety standards of one country or culture are different the safer standard shall prevail.

In addition to following legislation on occupational health and safety, employers shall be mindful of the intent of such legislation. If an action or inaction is foreseen to result in harm, no matter what the legislation holds, not to undertake preventive action shall be unethical.

Secret Commissions

(see also Bribes and Gifts)

It is unethical to take secret commissions or to solicit or receive compromising gifts.

This includes such diverse practices as secret commissions for real estate agents, tour operators taking tourists to places where the operator's commission is given (and not disclosed to the tourists), and secret commissions made in the expectation of business.

Selling Names and Addresses

Selling names and addresses without the permission of the persons concerned is unethical.

Sexual Favours

Except where that is the explicit purpose of a business (as in brothels) the use of sex for business purposes is unethical.

Shareholders (Right to Information)

Shareholders have the right to know executive remuneration, severance packages, information about the directors' achievements, salary and perquisites.

Smoking and Employment

Being a smoker should not be a bar to employment, but if there are good reasons for preferring a non-smoker it is not unethical to make such a discrimination.

Taking the Credit (see also Plagiarism)

It is unethical to take improper credit for work done, benefits and achievements.

Taxes and Imposts (Removal of)

Where a state government or the Federal Government, reduces or removes a tax or impost on goods or services, such saving shall be immediately passed on in full to the consumer.

Tipping

An obligation to tip is unethical.

Creating jobs for which customer tipping is the only form of payment is unethical.

This precept shall not invalidate the notion of a reward for exceptional service in the hospitality industry, but tipping is to be generally discouraged.

The imposition of a service charge by managerial fiat is unethical.

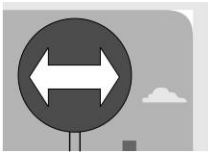
Vulnerable Customers and Traders

It is unethical to commercially target the vulnerable.

Withdrawal of Harmful Goods or Services

Where it comes to the attention of providers of goods or services that the products are harmful, the goods or services should be withdrawn from sale and/or recalled.

Cases



Case One: The East India Company

There is the Dutch East India Company and The Honourable East India Company — very close contemporaries. It was the Dutch and the British who viewed the political and economic benefits of dominating India (and other lands).

The Dutch company was established in 1602 when the Netherlands granted a temporary monopoly for the carrying out of colonial activities in Asia. According to the Wikipedia, that company paid an annual dividend of 18 per cent for nearly 200 years — an astonishing piece of commercial exploitation, it becoming bankrupt and dissolved in 1800. During the Company's time of enterprise it had claims on the southern part of India, parts of Sri Lanka, areas of what is now Indonesia, part of Cape Province in South Africa and parts of the north east coast of South America. For a country the size of the Netherlands the dominance is politically and logistically astonishing. Spices, being one of the highly profitable imports, was necessary to make European food more palatable. The current skills in culinary preparation, with the help artificial flavouring, refrigeration and the like, has now made it more efficient.

The Honourable East India Company (a.k.a. the British East India Company) was granted the Royal Charter by Elizabeth the First in 1600, and became only the second joint stock company (the Dutch company being the first). What was particularly interesting here was the conversion from simple commercialism to the widening of its powers, giving it auxiliary political and military powers. That extension continued until the Company was dissolved in 1858 (subsequent to the rebellion of 1857).

The East India Company became the basis for the later creation of the British Raj, was given an exemption from the payment of customs duties in Bengal and the victory of Sir Clive at the Battle of Plessey cemented its military power. The extension of that enterprise eventually resulted in the acquisition of British Malaya, Hong Kong and Singapore, as British colonies.

Among the Company's other activities were its implication in piracy, the development of tea plantations in India and the administration of the captive Napoleon on St. Helena — a truly chequered history. Some of their bureaucratic procedures and structures still survive in the Indian civil service.

What is particularly interesting here is the number of issues raised by the East India Company. The issues set out below are each worthy of consideration in their own right. One might, for example, take the issue of political dominion and poses the question as to what right one country has to dominate another, to negotiate deals with the rulers of various parts of the country, to deny the selection of a government by popular mandate, by abrogating to oneself the right of a monarch to be called the 'Empress' of a country that never invited them, and so forth.

For each such issue there is a wealth of material to be obtained. To make such a discussion well informed, readers are recommended to refer to the various references readily available. Perhaps the quickest route is through the various websites, which may be reached by using one of the conventional web-search engines. It is recommended that consideration be given to aspects of the East India Company. Among the issues to be considered are the following:

- Political dominion
- The opium trade
- The spice trades
- Piracy
- Commercial monopolies
- The invention and use of joint stock activities
- The export of profit from the generating country to another country
- A commercial enterprise involved in military rule
- The subversion of local residents to employment and spoils of the intruders
- The imposition of foreign values
- Famine consequences of certain commercial activity
- Fighting for foreign territory (e.g. the British against the Portuguese, the Dutch, and the French)

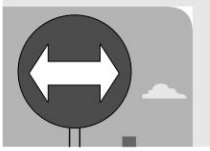
The closest parallel to the East India Company that the authors know is that of the Hudson's Bay Trading Company. Cultural rights have been eroded in many respects by historical multinational corporations. Such corporations have not always been democratically responsible to any appreciable degree. *The East India Company* was an organisation important enough to have its own military forces: *The Hudson's Bay Trading Company* is 200 years older than Canada, is one of the oldest surviving trading companies in the world and once covered territory from Labrador to the Pacific and from the Arctic to Oregon.

Perhaps the nearest modern equivalent is the joint state-commercial enterprise idea used in Japan wherein there are close joint enterprises—the *Kaizetsu*. Under that concept businesses work to buy each others stock in order to prevent their going public and, thereby, being subject to market volatility. One of the consequences is that it allows companies to spend time and resources on research and development programmes and thus become long-term oriented. It is said that such liaisons are one of the several bases upon which the successful Japanese commercialism is founded.

The interesting question here is that of the extent to which it should be concerned about the history of such organisations, rather than what we should do now to use them to best effect.

QUESTIONS

- How should we regard the historical aspects of the East India Company, giving a balanced view that assesses the merit and drawbacks of that Company as an organisation?
- In a web search for information on the East India Company what new facts did you find that might help you frame the wider question of the contributions and drawbacks of organisations, particularly the East India Company.
- What are the parallels to be drawn from the East India Company and the Hudson's Bay Trading Company?
- Nominate some of the processes introduced by the East India Company that have endured in India. Compare and contrast the positive and negative aspects of those contributions.
- To what extent did the commercial and non-commercial aspects of the East India Company mesh harmoniously?



Case Two: The Glass Ceiling

The concept of a glass ceiling refers to a height limit that seems transparent, but is a real barrier. The original context of this idea is that of the promotion of women to senior positions.

There are different approaches that may be used to determine its veracity, but they may yield different results. One way of looking at the problem is a count of the percentage of women in senior positions. The count may be low, but that may not be a good indicator of a glass ceiling since the quality of the applicants may vary, with women being less qualified or less experienced. If this were so the proportion of women should increase as they work their way to more senior positions.

Another indicator could be that of not identifying the sex of applicants before appointment, using some blind assessment technique. Yet another indicator of whether or not adverse discrimination is present is that of using certain agreed performance indicators to assess their value to the enterprise (again using some kind of blind assessment, done by an independent arbiter). There is no certainty that such investigations would yield a complete answer, but one would have to conclude that the results would shed some light onto the processes, and give an indication of whether or not the proposition of a glass ceiling is a tenable one.

In relation to this one would need to consider what the law says about equal opportunity; in relation to both this and to other groups perceived to be adversely discriminated. To this end some data from formal hearings that have determined cases would be helpful.

Critics of the glass ceiling might also hold that the only way that a woman can penetrate the glass ceiling is to use different wiles to convince male colleagues of their contribution. Among the suggested ruses are those of dressing with allure, being 'approachable', and not appearing to be a dominating person. This latter point is often taken to mean that if a man seems dominant it is perceived by others as being masterful: the same behaviour exhibited by women is more likely to be construed as 'pushy' and domineering.

We do have to note that there is substantial iconic value in having a highly competent woman in a position of authority. It demonstrates, above all else, that the simple fact of being a woman is no bar to competence, respect and achievement. Indeed the prominence of women Prime Ministers in Sri Lanka, India, Britain and Israel, for example, are each ample demonstration of that point.* The website gives examples dating from 1945.

One of the vexing points here is that of cultural variations. It is obvious that there are not only substantial variations, but there may be ones on which the adversely discriminated might think to be acceptable and even preferable. At extremes there are examples of women in some countries adversely discriminated by (say) not being allowed to drive a car, go out in public without a male relative, or being barred from attending conventional universities.

Following this is the problem of the import of such cultural ways into another culture and then being at odds with the host country values. A striking instance is that of wearing a veil that covers the face. In Western societies, and many others, there is a convention that the face is exposed in social interaction — indeed it is hard to see how such interaction could take place without facial responses. Further, a concealed

*<http://www.terra.es/personal2/monolith/00women3.htm>

face in (say) a bank might be taken as a security risk. It is not uncommon for banks to require motor cycle riders to remove their helmets before entering.

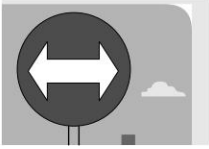
There are some occupations that seem not to attract, intentionally or otherwise, females: notable among such is the military. Anecdotal comments suggest that women are regarded as nurturant rather than aggressive, that they are reluctant to maim or kill, that they lack the physique for military operations, or that they have a background at odds with the military mind.

It is interesting to observe that there has been a test case in a Western country in which a woman co-pilot aspired to become a aircraft captain. The case was fought on the grounds that women were ill-suited by temperament to pilot aircraft, the barrister putting one argument, amongst others, that women were prone to mood swings. The counter argument was that if mood swings were pertinent then that quality, not that of being a woman, was a relevant criterion on which captains should be selected. Eventually the case was won, and the woman promoted to captain. Once that glass ceiling barrier was broken it opened the way to a set of standards by which women were no longer excluded on the basis of gender.

From this it follows that glass ceilings have a strong cultural component, to which we might add dress form, social conventions, touch taboos, and perceived male-female physical differences. We do have to conclude that if there may be a glass ceiling, it operates differentially in different countries (easier in India than Arab countries, for example), and operates differently in different professions (more readily in academic positions than in the military).

Among the questions that one might pose are:

- If there is a glass ceiling, how is its existence to be determined objectively?
- If there is a glass ceiling how may it be removed?
- Would reverse discrimination be morally justified or would that be unfair to men?



Case Three: Discrimination on Health Grounds

Ram Singh was an area supervisor of a company that manufactured furniture. He was diagnosed with HIV in 2001 and chose to inform the company manager. The manager was concerned over a number of issues related to this case. One was the possibility of his infecting others in the workforce (although the manager did not specify how such transmission might take place). He was also concerned that some transference of the virus might be conveyed to the products and thereby to customers — thus having a severely adverse effect upon company viability.

The Chairman of the Board was of a more sedate temperament and thought that the manager was over-reacting. To complicate this still further the worker's union was concerned to protect the supervisor from unjustifiable discrimination. The supervisor's job was at stake, the family at financial risk, and the morale depletion would have an adverse effect on all other work forces — who would feel particularly vulnerable if the supervisor's employment were to be terminated.

At the end of a series of meetings and petitions someone thought to check what the law might say about adverse discrimination on health grounds, on the breach of medical privacy and on the comparative rights of employers and employees. It was clear that the company would operate only within the law, but that still left space for discretion.

The moral dilemma posed here is that of weighing individual rights, human privacy and dignity, personal risk and commercial viability. This judgement also is to be placed in a time frame: What should happen now? What would the position be in a year's time if nothing were done? What would be the position in five years time if nothing were done? Clearly, whatever judgement is made will have a long-term time element. Indeed, moral and ethical judgements have the time frame as an essential element: ethics is for the long haul—not for immediate expediency.

What is given above is a clear case of the need for precise technical information. How, exactly, is the virus transmitted? Is it likely to transmit to fellow workers? To managers? To infect the company products? What is the actuarial risk of contamination? Can it be insured against happening? What is the human effect on company morale if the sufferer were to be dismissed? Would the company be legally liable in a plaint of adverse discrimination.

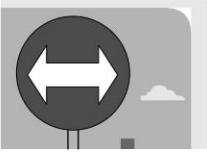
When such questions are addressed there is also the need to ensure that the answers to such questions are conveyed clearly not only to employees but to all stakeholders. The facts are important, but so too are the perceptions surrounding not only the facts but also the beliefs of those likely to be affected. To this end stage one is need for information: stage two requires that the information be used in a proper fashion, and that all stakeholders are brought into the information loop.

In addition to moral, legal and morale issues there is also the problem of long-term viability of the business. These financial considerations should form part of the overall business plan. This is an excellent instance of the interplay of financial, legal, moral and reputational matters. Such an interplay of factors is one that is commonplace in the business world and one that requires informed judgement.

For a good working exercise collect the legal, medical and other related information. Convene a simulated ethics committee. Make an informed decision. Write a report justifying the division.

The following is a set of questions worth addressing.

- What does the law say about discrimination on health grounds?
- What is the actual medical risk of an HIV infected employee continuing in his employed role?
- What would be the likely consequences to all the other employees if the supervisor were to have his employment terminated?
- Is there a risk that the supervisor could have an adverse physical effect upon the furniture being manufactured?
- Are there any other moral considerations that need to be taken into account in determining this case?
- Does the company have any moral obligation toward to employee?
- Is it an insurable risk?
- If it is concluded, on reasonable grounds, that there is a risk, what is the nature of that risk, does it warrant outright dismissal? Is there a creative solution to a perceived risk? Could the employee be moved to a non-risk position?



Case Four: Trade in Human Organs

An entrepreneur in a certain country conceives of a business that is designed to avoid waste and is committed to recycling. One of the first actions is to contact an undertaker with a view to purchasing spectacles from the deceased with a view to setting up a shop that sells such recycled goods. The undertaker saw no problem with that idea and entered into an arrangement to sell the goods, they being of no further use to the former owner.

That was such a successful venture that the entrepreneur extended the idea and suggested to the undertaker that artificial dentures would be a good next venture. With some misgivings the undertaker agreed, but with the proviso that they were properly sterilised first. Among the reservations by the undertaker here was the notion of who is the owner? Should the relatives be consulted? How were the proceeds to be divided? Having solved that problem satisfactorily the entrepreneur found business so good that he wished to extend it further.

The next stage was seen as a rather personal form of recycling, that of body organs. Where a corpse had an undamaged and potentially useful, organ that too might be harvested. Here the problems become more complicated. The recycling of organs needs much more technical knowledge than is available to the average undertaker. Among the technical problems are those of tissue typing, of preservation and prompt use, of the setting up of a register and of financial compensation and to whom. Add to this is the problem of whose permission is needed.

If this venture is successfully exploited with a proper setup is then the demand could well increase. Suppose that the entrepreneur is so successful that he wanted to extend the supply and, ideally, have fresh organs from young healthy cadavers. Being a lateral thinker he contacted prison authorities who might have a supply of those executed. At least, he argued, they were not put to death in vain. If the prison authorities agreed and appropriate rules were framed, then the pressure might be on the system to ensure a steady supply and thus affect the rate at which prisoners were condemned to death.

One of the interesting ideas that the entrepreneur had was a prisoner who was not condemned to death might agree to the removal of a non-vital removal (say, one kidney) in return for a commutation of sentence and thus save the state the cost of further imprisonment as well as providing the prisoner with funds to start a new life.

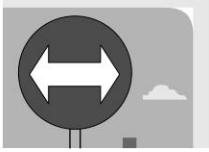
Suppose, instead of a prison situation there is a hospital one. In a hospital there are always those who are very ill and in need of a transplant. For organ removal one needs to be certain that the donor is really dead before removal and dead from natural causes rather than being 'helped' along the way because of an urgent need for the organ. The criteria of 'death' then becomes a crucial one. A patient might be physically surviving, put be brain dead. Could one harvest an organ from a brain dead patient, which would involve ignoring other vital signs?

In this case one can see the escalation of a comparatively small moral issue into one which has very wide ramifications. This engaging case has some further aspects: one is the moral position of starting with simple items from the dead and escalates into a problem involving some very complex issues. Put in interrogative form here are some of the issues and questions for solution.

- Is the selling of spectacles from cadavers morally correct provided permission is given?
- Does that same point apply to full dentures?

- Is the purchase of organs from executed prisoners morally justifiable?
- Is the purchase of an organ supposedly removed, not illegally, correct?
- Who are the appropriate persons or authorities to give permission for organ harvesting?
- If it leads to a trade in organs is there a moral dimension well beyond the business world?
- What should the criterion be for the declaration being 'dead'?
- What is our opinion of an entrepreneur who believes in recycling for the benefit of the living?

Write an essay on the topic of organ donation.



Case Five: The Whistleblower

In *The Hindu* in 2004 a case of a whistleblower being murdered in 2003 was reported. The case was that of a young engineer who declined to follow the command of the local construction mafia (Satyendra Dubey). Such adversity in the face of honesty is a demonstration of both remarkable courage and remarkable honesty. This closes in on the point of the experiences and treatment of whistleblowers. From the authors' experience all whistleblowers suffer in the short term many in the long term and some who have no future term at all.

Whistleblower legislation, like other forms of enlightened legislation, are less common or appreciated in developing countries, although many developed countries have had these for some time. In India, an Act to protect whistleblowers is being pressed by civil society groups who understand the value of it for reducing corruption and cronyism to foster clean governance. The point is to provide official protection to those who aspire to expose corruption. Despite several attempts to enact a Whistleblower Protection Act they seem to founder rather readily. Whistleblowers have the onus on them to provide evidence and argument, convince the relevant authorities and then hope that those to whom they complain are not part of the corruption. Satyendra Dubey, a man of relative obscurity, is now a national martyr and hero. His stand against corruption epitomises the struggle of the honest against a corrupt hierarchy. It is such cases that underline the need for a Whistleblower Protection Act. Even with such an Act there is marginal protection: without it the danger is extreme.

Imagine now a new case of a similar type. An employee of a state government is a professional civil engineer. He discovers that there are documented examples of false billing being used by bridge makers where they indent for labour that are never employed. This false claim for labour is deep rooted as he discovered. When he approached his supervisor about the matter the supervisor offered to give him a cut. The engineer declined and said that he would report the matter to the appropriate senior person in the state bureaucracy. He was told of the dire consequences to him and his family if he did. Further, the supervisor said to the engineer that he, the engineer, was governed by the Official Secrets Act and could not reveal.

Plainly the first item of information 'I know where you live - etc' was a threat that was significant. Further, the engineer thought that the Official Secrets Act was used more as a threat than as an item of legal information: for that reason he looked up the exact wording of the Act and found that it was ambiguous. Clearly the engineer needed informed professional advice, which he then sought. The advice was not to challenge the Official Secrets threat as he would probably lose. Being dejected he talked to his wife, who made enquiries and found out that the lawyer whose advice was sought had acted for the supervisor who made the threat.

One of the precepts of law is that of confidentiality of client information which needed to be applied. The engineer was now in a quandary as to the probity of the lawyer and the accuracy of the advice that had been given. He then thought to look at any whistleblower legislation to see if that would be of help. The main item he discovered on the net was a Bill introduced by Rajya Sabha in 2006. That Bill was called '*The whistleblower (protection in public interest disclosures Bill 2006*'. In that Bill he discovered section 8 that nominated that the provisions of '... the Official Secrets Act of 1923 or any agreement or service conduct shall not be applicable to whistleblowers in relations to public interest disclosures'.

One could reasonably expect that employees would owe loyalty and confidentiality to employers, but not at the expense of condoning corruption. The proposed Bill covering a wide range of forms of corruption, was proposed to be pan India and of immediate application. When the engineer searched for the Act that should have ensued from the Bill he was unable to find it on the Indian legislation website. He searched under 'The', and 'Whistleblower', and '2006' and '2007'—without success.

In the absence of the protection of such an Act, and bearing in mind the murder of Satyandra Dubey and the constant and harsh insulting harassment of S K Nagarwal it is clear that something should be done. The difficulty for the engineer is the knowledge that heavy duress and even physical violence, would be meted out, that he had a family and was totally dependent on his professional income. It has been suggested that there are certain actions that a potential whistleblower should take before blowing the whistle. Among such advice is:

- Make quite sure that you have a real cause for complaint, and not just a misunderstanding
- Talk the matter over with your family before taking any action
- If anyone offers to help, get their sworn affidavits immediately as they then cannot back out of the statements
- Photocopy documents and evidence before blowing the whistle, it will not be allowed afterwards.
- Talk to a lawyer, s/he is bound to maintain confidentiality and act as a good, independent and experienced sounding board.
- Be aware of what legal protections you have, and any breach of law that might be committed.

Given that advice we could now enquire of the engineer if had done any of those things. Thus, in an attempt to find a solution to the whistleblowing problems what we may ask:

- Which, if any, of these things did he do?
- At what point would the family man be justified in leaving the issue alone?
- How could he find totally disinterested uncorrupt legal advice?
- Are there any other forums to which the engineer might appeal, apart from the bureaucracy?
- Look at the Rajya Sabha proposed Bill and give it a critical scrutiny. Can you think of any amendments that you might suggest?

Answers to Multiple Choice Questions

Chapter 1

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|------|------|------|------|-------|
| 1. A | 2. D | 3. C | 4. D | 5. D |
| 6. A | 7. C | 8. B | 9. D | 10. A |

Chapter 2

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|------|------|------|------|-------|
| 1. B | 2. C | 3. A | 4. B | 5. B |
| 6. B | 7. D | 8. C | 9. C | 10. B |

Chapter 3

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|------|------|------|------|-------|
| 1. A | 2. B | 3. B | 4. A | 5. D |
| 6. C | 7. A | 8. B | 9. A | 10. A |

Chapter 4

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|------|------|------|------|-------|
| 1. D | 2. B | 3. A | 4. B | 5. A |
| 6. C | 7. A | 8. A | 9. C | 10. A |

Chapter 5

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|------|------|------|------|-------|
| 1. B | 2. A | 3. A | 4. B | 5. C |
| 6. A | 7. B | 8. C | 9. A | 10. D |

Chapter 6

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|------|------|------|------|-------|
| 1. A | 2. C | 3. A | 4. B | 5. B |
| 6. C | 7. A | 8. A | 9. D | 10. B |

Chapter 7

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|------|------|------|------|-------|
| 1. A | 2. A | 3. A | 4. D | 5. B |
| 6. D | 7. D | 8. C | 9. A | 10. A |

Chapter 8

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|------|------|------|------|-------|
| 1. B | 2. C | 3. B | 4. D | 5. D |
| 6. D | 7. A | 8. C | 9. A | 10. C |

Chapter 9

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|------|------|------|------|-------|
| 1. A | 2. D | 3. D | 4. C | 5. C |
| 6. B | 7. C | 8. A | 9. A | 10. D |

Chapter 10

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|------|------|------|------|------|
| 1. A | 2. A | 3. B | 4. D | 5. D |
| 6. C | 7. A | 8. A | 9. B | |

References and Searches

Users of this work should be aware that this is a consolidated list of print works and of websites. The consolidated list should make it easier to use as it circumvents the problem of being concerned about missing a reference from another list. Where websites are listed, titles of articles are given: where the website address is a general site that is obvious from the listed site address.

Readers who wish to become more self-sufficient are recommended to use their own search powers, using some of the general search engines: among them are

www.altavista.com

www.askjeeves.com

www.google.co.in

www.google.co.uk

www.google.com

www.scholar.google.com

www.webcrawler.com

www.yahoo.com

It will be noted that www.scholar.google.com is a more academic website than are the others in that it connects to more scholarly sources and to peer reviewed articles. That site is international: the other Google sites are the American one (google.com); the Indian one (google.co.in), and the British one (google.co.uk).

When searching websites the use of Boolean logic can be helpful. The basis of such searches is that of inclusion and exclusion; thus one might be interested in the sub-Continent but not (say) Bangladesh, and that to be cross tabulated with case law and with Supreme Court judgements. How large a return is given for the research will determine how many terms are included. Your local librarian should be able to help with formulating Boolean search terms. Readers who wish for a readily available account might consult the Wikipedia at http://en.wikipedia.org/wiki/Boolean_logic

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