BUSINESS ETHICS

(Please note that these notes are not comprehensive and therefore additional reading is recommended from diverse sources)

Books

Ethics and Mgmt by Hosmer

Business Ethics by Shekher

Business Ethics by Chakrobarthy (Oxford publication)

Syllabus

1. Evolution of thought of ethics in business
2. Culture & ethics
3. Overview of ethics value system, attitudes, beliefs and life patterns
4. Social, economical values & responsibilities
5. Trusteeship Management- Gandhian philosophy of wealth management
6. Ethics and Indian management
7. Basic framework of normative ethics
8. Ethics and decision making
9. Social responsibility of business - ethical aspects of corporate policy
10. Morality and rationality in formal organisation
11. Moral relations between individual and organisations
12. Relation between ethics and corporate excellence
13. Approaches for developing various orientate towards ethical business behaviour.

What is ethics?

Ethics means norms for the conduct of people in social groupings.

Ethics is derived from Greek Word "Ethos" which means culture – the prevalent behaviour in the society. Thus, it is a code of conduct which has social acceptance.

Ethics has often been misunderstood to be conforming to law. On the contrary, ethics is about voluntarily conforming to what is good/acceptable/desirable behaviour without the force of any legal/social obligation. The key word here is **VOLUNTARILY**. It is about choosing to do some thing that is not mandated by the law or not doing some thing that is permitted by the law but may cause harm to some one.

Ethics are not universal. Ethics are derived from social values. Word "Ethnicity" is a derived word from Ethics which means relating to a specific social group. Thus, a set of ethical values relate to certain group which may not completely match with other group. Ethics keep changing from place to place, group to group, country to country and time to time. What is considered ethical today may have been considered unethical a few centuries back. What is ethical in one religious group may be considered unethical in other group. So, ethics are time and space dependent. Ethics are what you have learnt from the society as right or wrong behaviour. Law of the land might change from time to time but ethics remain relatively constant over a fairly long period of time. Whatever is bound by the law, does not remain "ethics" any longer. An ethical practice today might be coded into a law tomorrow. That practice would loose the high ground of ethics from that moment because ethics is about "voluntarily conforming to a good behaviour".

Ethics almost always appear on the fringes of the law. It might often cross the boundaries either way by small margins. What it means is that some thing which is lawful could still be unethical and even vice versa. Ethics is what a true human being is expected to do in a certain situation without the binding of law. No breach of law is committed by a person who accosts and demands his outstanding loan from his debtor in front of marriage party of the debtor's daughter. But would any person support such an act? It would be termed outright unethical. *(He should consider himself lucky if does not get beaten up by some self appointed conscience keepers of the society).* Similarly, many consider Robin Hood to be perfectly ethical, though his acts were out rightly unlawful. It is widely accepted norm that ***any act which achieves greater good for greater number of people is ethical.*** Even a refusal to forego one's lawful right would be termed unethical if it is going to cause a disproportionate and catastrophic loss to other person.

Business is as old as human civilisation. Laws came into existence much much later. But code of ethics began to take roots when man began to live in groups. Laws are nothing but formal codification of ethics of the society. But laws are constrained by the infinite contingencies and subjectivities of the situations to codify every thing. Thus, ethics will continue to be there to guide the mankind on to the right path. Ramayana is believed to be the oldest treatise on code of ethics. Bhagwad Gita is similarly treated as most scholarly book on code of ethics.

Role of ethics in business has been a perpetual issue. It has been gaining importance in the recent times due to geographical spread, growing size of businesses and their ever growing capability to impact the lives of millions and millions of people. It has also been highlighted by the colossal scams in some businesses in recent times. The purpose of business is to earn profits. And almost every business tries to maximise its profits. But the question that arises here is how much profit and at what social and other costs? In a market place, beyond a certain point, one man's profit is at the cost of loss to some one else. Market forces generally are able to balance the amount of profit among all participants in a trade. But situations arise when there is concentration of power, legal or illegal, in certain pockets which can be exploited to usurp unduly large share of profit to great detriment of others. Any amount of law making can not cover every contingency. At such times, a good corporate citizen is expected to limit his greed and not indulge in irrational behaviour even though the existing laws may be helpless in curbing such practices. Sense of fair play should prevail.

Take the case of TCS IPO. The IPO was heavily oversubscribed at the upper band of offering. There was nothing stopping Tata management from charging maximum amount from its subscribers. Yet the management decided to charge Rs 50 less than it could have. It was a profit the company left voluntarily for its prospective shareholders to encash. On the other hand take the case of Allahabad Bank IPO. Share prices just before the IPO were manipulated to almost twice its earlier prices and then sold at the maximum offering despite share prices having fallen at the time of actual allotment. Allahabad Bank can not be nailed legally, but were they ethical?

Tatas have been at the forefront in establishing and financing various institutions of social and national relevance like Tata Institute of Fundamental Research, Tata Institute of Social Sciences, Tata Cancer Hospital, IISc and so on. Tatas have no legal commitment to invest such huge sums in these esteemed centres of social and national cause. And yet they do it out of corporate ethics of considering it as their pay back to society.

In the western world, oldest work on ethics is by **Aristotle**, a Greek philosopher and student of Plato, from 384 to 322 BC. And the latest work is by English philosopher George Edward **Moore** who wrote about 70 years ago.

Between these two extremes was the German philosopher **Emmanuel Kant** who lived in 18th Century. His idea of ethics was to think of an act and then trying to universalise it. (Each person committing that act). Check if it leads to any contradiction. If it leads to no contradiction, it is ethical. If it does, it is not. For example, if every poor person is allowed to steal wheat from rich person, a stage will eventually be reached when no rich would be left with any wheat to be stolen by remaining poor. This is a contradiction. Therefore, it is not ethical. But a reverse stipulation does not lead to a situation where some people would be left who could not exercise the option. Thus, not stealing is ethical.

Another closely related word is "Moral". The two are used almost as synonyms but there is subtle difference between the two. While ethics begin from the smallest issues, morality generally addresses issues of grave consequences.

As per Webster, ethics is the discipline that deals with that which is good or bad or with moral duty and obligation. It is branch of philosophy considered as normative science.

Thus, ethics is a system of values, relating to human conduct and motives.

Business ethics are not different from ethics in normal sense. It is ethics applied in conduct of business activity. According to Peter Drucker, "there neither is a separate ethics of business nor is one needed." What is ethical in other walks of life is ethical in business and vice versa. Yet, if a separate definition is needed for Business Ethics, then, "Controlling greed in the face of unrestricted profit opportunity is Business Ethics.

Many Pharmaceutical companies have been often accused of unethical behaviour. They have been accused of profiteering in the face of human suffering by charging exorbitant prices for their new formulations. But it is premature to make a judgement in absence of concrete data about their investments, risks and rewards, etc.

Law and Ethics

The law is a formal set of rules and standards that is associated with significant legitimate power and authority (to inflict punishment) in society. Ethics on the other hand, is far less formal – sometimes not even written down set of values – which are to be observed morally.

Simply stated – Law is obedience to the enforceable whereas ethics is obedience to unenforceable *(from Module from International Trade Centre).*

ETHICAL DILEMMAS

Ethical Dilemma

When all choices are deemed undesirable because of potentially negative ethical consequences, or more than one choice appear correct making it difficult to select the course of action.

Ethical dilemmas often arise when a person has responsibility towards more than one entity and they are on conflicting course. In the day to day situations, think of a man whose wife and mother are constantly on the war path. He is expected to take care of his mother who has given him birth, suffered unaccounted miseries and made innumerable sacrifices for years in bringing him up. But he also has responsibility towards his wife who has given up her entire clan of loved ones to be with him. Whose side does he take in this war? Either way, he is betraying one person. It is an ethical dilemma that he faces on daily basis.

A manager has responsibility towards his company, his boss, his mates, society, his family, and so on. Quite often he finds his boss asking him to give him cover for some goof-up he may have committed or asked to project some inflated figures to allow boss project a better image of the department which will enable him a promotion. Now, if he follows boss's orders, he is betraying his company. If he does not, he is betraying his boss. Similarly, the company may want him to do some thing which may be against larger interests of the society. Company may want him to spy on competitors. If he does so, he will be working against the society; and if he does not, then he is betraying the company. And when he betrays the company, he will have to either resign or be fired and then his wife and children may suffer as a consequence of his action. Which side should he take?

Take the most classical case of Jalianwala Bagh firing on 13 April 1919.

The order to fire on those peaceful, innocent, unarmed and un-warned gathering of Indian people was given by British General O'Dyer. He wanted to quell the rebellion against his government among the Indian masses through some exemplary punishment to people who had dared to defy ban on assembly of people in Amritsar. But the soldiers who actually fired the bullets were all Indians. Those Indian soldiers had responsibility towards their British masters and also towards their countrymen. Being in the military, where the philosophy is to " Do or die, but not to question why", should they have refused the orders of General Dyer which were against their country as well as humanity?

Or

What choice did the American Pilots, who dropped nuclear bombs on Hiroshima and Nagasaki, two cities of Japan, on 06 and 09 Aug 1945, have? They were fully aware of human costs of their actions in terms of deaths of lacs of innocent people. Should they have refused in the name of their responsibility to humanity?

Common Ethical Dilemmas for Business Managers

- Honesty in advertising and in communications with superiors, clients, and government.
- Problems relating to special gifts, entertainment, and kickbacks.
- Overlooking wrong doings of others

Criteria for Ethical Decision Making

- Utilitarian Approach
- Individualism Approach
- Moral-Rights Approach
- Justice Approach

***Utilitarian Approach* –** Moral behaviour that produces the greatest good for the greatest number.

***Individualism Approach* –** Acts are moral when they promote the individual's best long-term interests (e.g., the "golden rule"). This rule works on the principle that unethical approaches may lead to short term gains but harm the long term interest.

***Moral-Rights Approach* –** Behaviour that acknowledges that every human being has some fundamental rights (e.g., free consent, privacy, due process)

***Justice Approach* –** Standards of equity, fairness, and impartiality.

***Teleological Theory* –** Consequence Theory. It states that moral worth of an action/practice is determined solely by the consequences of action or practice. In simple words, ethicality of an action is determined solely by the results it produces.

***Deontological Approach* –** It is exact opposite of Teleological approach. It believes that Actions are not justified by their consequences. Factors other than good or bad outcomes determine the rightness or wrongness (ethicality) of actions or practices. It believes that value of action lies in motives. *(I personally endorse this view. We have all read the story of sparrow who decided not to fly south when winters came. How she was revived from frozen condition by warmth of cow dung and then how a cat pulled it out of cow dung, cleaned and ate it up. Morale of the story – Every guy who throws shit at you is not your enemy and every guy who pulls you out of shit is not your friend).*

Factors Affecting Ethical Choices

(a) ***For the Manager***

(i) Level or stage of moral development

(ii) Learned Ethics

(b) ***The Organization***

(i) Systems

(ii) Culture

Process of Moral Development

Moral values are not born characteristics but are acquired gradually over a period of time. A newly born child has no moral values. He learns them as he grows from his surroundings. Some are taught to him by his family and teachers, some he acquires from reading religious literature and some he learns by observing and feeling. This process can be broadly categorised into three distinct categories: -

1. ***Pre-Conventional Level –*** Person follows the dictates of law and good behaviour out of fear of punishment or expectation of reward. In the early stage of childhood, he is taught by mother, father and teachers to follow certain rules and he does that more out of fear of punishment or for promised reward. This is pre-ethical stage or preparation stage for ethics

2. ***Conventional Level –*** Person conforms to the behavioural standards to meet the expectations of peers and society to avoid ridicule and gain acceptance.

3. ***Post-Conventional (Principled) Level –*** Person develops a personal, internal set of standards and values which he is not willing to compromise even in the face of threat or personal loss. He sticks to these values for his own sake (About 20% of adults reach this stage fully or partially)

Guidelines for Dealing with Ethical Dilemmas

1. Do you think it is right ? *(Don't worry about legal status. Every thing legal is not ethical nor is every ethical decision legal. Ethics transcends legality).*
2. Is it beneficial? To whom? How much?
3. Is it harmful? To whom? How much?

(You should not be considering your own benefit/harm. You are out of this benefit/loss calculation. Ethics are profit/loss neutral as far as you are concerned. When in dilemma, it is about people around you)

Further Guidelines for Dealing with Ethical Dilemmas

1. Would you be willing to allow others to do to you what you are considering?
2. Would you like your family to know?
3. Would you like your decision printed in the newspaper?

4. Have you consulted others who are objective and knowledgeable?

Ethical Responsibilities

To be ethical, an organization should seek a higher standard than merely obeying the law:

- Act with equity, fairness, and impartiality
- Respect the rights of individuals
- Act for the common good

TRUSTEESHIP MANAGEMENT
Gandhian Philosophy of Wealth Management

(Courtesy - Article published in Eco Times- 02 Jul 02 by Piya Mukherjee, visiting faculty at JBIMS)

Trusteeship, as applicable to the corporate world, refers to the act of holding and managing resources on behalf of the stakeholders of the firm. "What's new about that", one may query. Given that the traditional take on wealth has almost always been tilted towards owners of corporations, this concept brings in an element of equity, by placing other stakeholders such as employees, customers and society on the same rung as large and small shareholders.

The idea is that all wealth, including human, financial and technological resources, belongs to society and the rewards accruing from their use must revert to society at large. The principles of trusteeship can be traced to the concept of collective endeavour and community living. Briefly, these are: Resources must be held and utilised for the benefit of society. Managers are the trustees of the stakeholders and must work towards optimising stakeholder value, *not merely maximising shareholder value*. The small investor has as much a say in decisions as the large investor.

Thus, the overall approach is towards the macro and the long-term perspective, rather than the short-term, micro perspective which is often geared exclusively to suit the shareholder and top management. At first sight, this seemingly idealistic concept invariably raises a few protests. "The owner/s must be rewarded for bearing risks and supplying expertise": Definitely. But the reward must be in proportion to the skills and expertise supplied. The increasing instances of ethical transgressions on the part of leaders and CEOs indicates the need for better balance in the risk-reward relationship. The Enron fiasco and the sale of shares worth over $70m by erstwhile chief Rebecca Mark, a few months before its bankruptcy, is a case in point. "Corporations exist for profits": They exist to fulfil the needs of society and in the process, generate profits. Moreover, even if profits were to be the only determinant of policies, trusteeship would still score over inequitable sharing of wealth, since better wealth management automatically leads to more lasting and stable equations with stakeholders. This, in turn, leads to higher profits, goodwill and trust. "Trusteeship might lead to a disincentive for efficiency and efforts": When individual and group efforts are correctly aligned with social needs, the possibility of de-motivation or deliberate inefficiency does not arise. Conviction in the utility of the concept, coupled with the commitment of top leadership, would ensure efficiency as well as effectiveness.

The Indian Perspective: The wisdom of the Vedas and Upanishads point towards holistic progress, not fragmented movement in which one section gains at a cost to others. Moreover, the cycle of give-and-take is explained at great length. The Arthashastra of Kautilya and The Kural of Tiruvalluvar both describe the role of the king as trustee, with respect to the citizens and the wealth of the land. In the last century, Swami Vivekananda taught that sustainable progress calls for progress for all members and components of society. Fragmented progress is temporary and often illusory. It is only when all elements of the environment are taken care of that an individual or organisation can hope to consistently succeed in its ventures.

The Gandhian Philosophy of Wealth Management is based on the principle that a wealthy man does not truly have the right to hoard wealth solely for the self; the only right he has is that to an honourable livelihood. In an article called, "Corporate Barbarism to Corporate Citizenship", carried in The Journal of Corporate Citizenship, eminent academician and author Dr SK Chakraborty of IIM Calcutta described the concept of "lok sangraha", oriented towards the common good. This is distinct from capitalistic economics, with its attendant social ecological and psychological woes.

Indian Corporate Leaders and Trusteeship: One of the most inspiring examples of corporate trusteeship, in recent times, comes from Infosys, particularly from its former CEO and current chief mentor, Narayana Murthy. His rationale for creating this company along with a small group of people (better sharing of wealth in society), the involvement of employees in the company's fortunes (through ESOPs) and his contentment with a mere 7% of company stock (he prefers it that way) reflect a deep-rooted commitment towards trusteeship. Other notable examples include the house of the Tatas with their corporatised initiatives for socio-corporate benefits; the "WIPRO Cares" Foundation, with a targeted corpus of Rs 100 crore for primary education; and the Birla foundation with its focus on socio-economic improvement in the lives of the people touched by the corporation. The possibility of feel-good exercises induced with an eye on the bottom-line cannot be ignored. Yet, corporate boardrooms are increasingly discovering a match between the long-term interests of the company and their willingness to expand focus to all categories of stakeholders. As the roles of wealthy CEOs and influential policy-makers continue to gain public scrutiny, the question that management must periodically ask themselves is: Does our existence lead to any benefits for society?

CODE OF ETHICS

These are statements of behavioural ideals, exhortations, or prohibitions common to a culture, religion, traditional profession, corporations and trade associations. Codes combine philosophical with admonitions to avoid certain illegal actions and espouse certain moral principles, especially those that elevate personal behaviour.

The Ten Commandments is the most well known code of ethics known worldwide. In addition, we have all heard of Code of ethics in the form of Hippocratic Oath that all the Doctors are supposed to take prior to being awarded permission to practice medicine.

Types of Codes of Ethics

***Principle-Based* –** Designed to enable the employee to make ethical decisions based on appropriate values e.g., "treat people fairly" or "don't be dishonest"

***Policy-Based* –** Guideline as to how to act in specific ethical dilemma situations (reducing the need for thinking)

(a) Conflicts of interest

(b) Disseminating proprietary information

(c) Receiving and giving political gifts

(d) Equal opportunities

Organizational Structures to Promote Ethics

(a) ***Ethical Ombudsman* –** Corporate conscience keeper is appointed who can be reported to for any ethical wrong doing by any employee in the company.

(b) ***Ethics Committee* –** Group appointed to monitor company ethics.

(c) ***Ethics Training Programs***

(d) ***Hot lines***- Employees can report questionable behaviour, possible fraud, waste, or abuse (i.e., Blow the Whistle") on those numbers.

ETHICAL ISSUES IN STRATEGIC MANAGEMENT

Introduction

Let us revise definition of "Ethics". Ethics is "voluntarily conforming to what is good/desirable behaviour without the force of any legal obligation or fear of loss or threat". The key word here is VOLUNTARILY. It is about choosing to do some thing that is not mandated by the law or not doing some thing that is permitted by the law because you believe it to be the right course of action. Never mind that what you consider right may not be right as per my code of values.

Ethics is choosing to follow the law even to your detriment when you could have avoided it. Buying a train ticket before boarding the train does not qualify for ethical highground, but buying the ticket and tearing it after completing the journey without getting caught is ethical conduct.

Ethics is following the SPIRIT of law even when you could have taken a convenient shelter under the LETTER of the law.

The purpose of business is to earn profits. And almost every business tries to maximise its profits. But the question that arises here is how much profit and at what social and other costs? In a market place, beyond a certain point, one man's profit is at the cost of loss to some one else. Market forces generally are able to balance the amount of profit among all participants in a trade. But situations arise when there is concentration of power, legal or illegal, in certain pockets, which can be exploited within the realm of letter of the law to generate unduly large share of profit to great detriment of others. Any amount of law making can not cover every contingency. At such times, a good corporate citizen is expected to limit his greed and not indulge in irrational behaviour even though the existing laws may be helpless in curbing such practices. Sense of fair play should prevail.

Now, we derive the definition of business ethics from above discussions; "Business Ethics is voluntary self denial of a legal profit opportunity in business in favour of a behavioural standard that has not been bounded by the law.

Case Study - I

Let us take a small case study of two companies who actions were in exact contrast to each other in two exactly similar situations at around the same time.

Aug 2004. Indian Stock Market was on fire. Every IPO/FPO was getting oversubscribed. And at such a time, Tata Consultancy Services (TCS) launches its IPO through book building route. Price Band was Rs 775 to 900. At the upper band of Rs 900, issue was oversubscribed by almost 5 times. And yet, the company *decided not to charge the maximum rate of Rs 900 per share. Company priced the shares at Rs 850 leaving Rs 50 on the table voluntarily for the investors. Referring to fixing the price at Rs 850 despite the oversubscription at Rs 900 per share, Tata said, 'We priced the issue at this level to provide attractive upside to investors once the scrip is listed on the exchanges. Share, immediately after listing, rose to Rs 1400 and since then has maintained that level despite a 1:1 bonus issue (effective price approx Rs 2,400).*

There was no statute in any law which could have forbidden the company management from charging full Rs 900 per share. And no one could have questioned even at a later date given the performance of the company. Yet, as verbalised by Mr Tata, company wanted to leave for its investors an attractive upside upon listing. And just to let you know as to what was the total sum that TCS had foregone by its decision – Rs 275 Cr.

Now contrast this with Allahabad Bank FPO.

April 2005. Allahabad Bank launched its second public issue at a price band of Rs 75 to Rs 82. On 25 Apr 2005, management fixed the allotment price at the maximum rate of Rs 82 per shares despite the fact that share price on that day had fallen to Rs 83 per share from a high a Rs 105 during the subscription period. Allahabad Bank Shares were trading at Rs 60 on 01 Dec 04 and had risen to Rs 105 during the subscription period. Even today, despite NSE index having risen from 1960 on 25 Apr 2005 to Approx 4000 today, share is still being quoted at Rs 77; Rs 5 below allotment price.

Even though there is enough circumstantial evidence of share price manipulation in the run up to the FPO, company can not be nailed legally. About ethical standards, lesser said the better.

(There is a possibility that Allahabad Bank management did not act unethically since, being a public sector bank, management had very little to gain from share price manipulations. However, realising that share price was on the downslide and almost touching the issue price levels, management should have prevailed upon the Lead Managers to the issue to reduce the allotment price. Thus, even though prima facie, it appears to be the act of stock market cartel of brokers, it is hard to give the bank management a clean chit).

Concentration of power to generate large profits comes from sound business strategy. Strategy is after all a business plan to develop sustainable competitive advantage. Deception/decoy is the most important element of any strategy. Deception can be against competitors, suppliers or customers. Many companies price their products in a manner that customers are fooled into believing that product is very cheap where as it could be much costlier. Or they market their product to the customers who the companies are fully aware that do not require it.

Case Study - II

There is nothing more precious in this world than your child's smile. Insurance Companies capitalise on this fact. They keep selling insurance policies to people in the name of their children. That poor father and mother eat a chapatti less every day and even deny their child a few things to be able to pay the insurance premium. But of what use will that insurance claim money be to that poor heartbroken father when that smile is not there? Every insurance company knows that the main purpose of life insurance is to replace lost income when a person dies. But the child has no income. So, what is the purpose of child's life insurance? Can we call this business strategy of insurance companies an ethical strategy? And if some here has a counter in mind that insurance provides a saving plan, let it be known that the yield on an insurance premium is less than half of a bank deposit. When the interest/yield is compounded over a 20 year period, which is the normal life insurance period, you are poorer by more than half of what you would have got if you were depositing the same insurance premium amount in a recurring deposit in the bank. And if tax saving is the purpose, then buy an additional policy for your self but not for child. But no insurance company will ever tell you this because it is much easier for them to convince a father in the name of child than in his own name.

Case Study – III

Unlike many other companies who offer free home loan insurance, HDFC charges approximately 7% of the loan amount as insurance charge. If you examine the issue minutely, you would realise that such insurance is hardly required by borrower. In case of unfortunate death of borrower, bank is the biggest sufferer since, given the state of Indian Judicial system, it is almost impossible to get the money from legal heirs despite the mortgage and all kinds of collateral securities. And they convince you to sponsor that insurance for their convenience in the name of convenience for your loved ones. Is it an ethical strategy?

Linking Strategy with Ethics

Ethical responsibilities of firm to Stakeholders –

- ✓ Owners/Shareholders - Expect good return on their investment
- ✓ Employees - Expect respect for their worth & devoting their energies to firm
- ✓ Customers - Expect reliable, safe product or service at fair prices
- ✓ Suppliers - Expect equitable relationship with firm
- ✓ Community - Expect businesses to be good citizens in their community

Thus, on the face of it, ethics and strategic management look like two banks of a river who can never meet. On one hand, you want to strategise your business to earn more profit (for shareholders sake), and on the other hand you want to surrender a legal opportunity to earn profit in the name of ethics (for other stakeholders sake). What a paradox! But such paradoxes are not impossible. There are many such paradoxes which exist in real life and a fine balancing act is required in such situations. Give the customer honest prices through efficiency in production and give the shareholder bumper profits through productivity and growth in business rather than rip-off pricing.

Honesty does not always mean bad business. Similarly, following business ethics does not always mean surrendering profits. Often a profit opportunity surrendered in the short run becomes the key to the bigger door of profits in the long run. Ethical practices in strategic management create a new resource called Social Capital through “Trust”; trust of society, trust of customers, trust of suppliers and so on. This capital manifest profits in terms of customer loyalty and increased sales, lesser requirement for marketing effort, higher leverage in dealings, lesser employees turnover, etc.

Strategic Management is the starting point for ethical conduct of a company. As brought out earlier, a company’s business plan, the products it plans to offer, its positioning, market segmentation, marketing strategy, promotion, pricing, capital structuring, etc are all decided at the strategy session. Deception and decoy being an integral part of the strategy, dilemma lies in deciding their extent.

The ethical challenge in companies is often triggered by financial problems. When financial problems occur, it is tempting to do business with people you might not normally choose to do business with or in ways that you might not normally use. It is very hard to consider ethical issues when a company is in trouble.

So, as a general rule, the best approach to avoiding temptation is try and make sure that the “strategic approach” of the company involves achieving early and fast success. Small wins not only provide feedback to guide a company, but also reinforce the strategic perspective of the company. The paradox surfaces here once again. Ethical approach is a slow path on the way to enduring success. Rarely does any one get spectacular success in the initial phase of business through ethical means. Probably, what this rule suggests is that achieve some early and fast success by may be not so ethical means and once you have feet firmly planted on the terra-firma of the business world, turn ethical.

Many empirical studies have proved that companies following ethical practices have generally gained in the long term. It is not to say that unethical companies have not gained ever. We have a few examples in our own country where a few most unethical companies have risen in corporate ladder to dizzying heights. But exceptions don’t make the rule.

Situations Promoting Unethical Behaviour

Let us now see the situations in which ethical issues are set aside in strategic management process: -

There are perhaps four basic situations:

1. ***One-Time Product Sale*** **-** The product sold is a one time sale and the life cycle of the product is such that it will be sold to many people before bad word of mouth kills the product. An example of this might be "Tourist traps" e.g. restaurants in tourist locations. There is always another new customer coming along. One could argue that when the stock market is high, issuing of an IPO is very similar to the sale of a one time product. Allahabad Bank IPO quoted in Case Study II is one such example.

2. ***Durable Goods*** **-** The quality of the product is poor, but does not show up for some time. During the period of adequate performance, people continue to buy. This tends to be an issue with durable products like consumer electronics, equipment, housing, etc.

3. ***Survival Instincts*** **-** A company when faced with basic survival issues due to competitive pressures of various kinds is most likely to set aside ethics.

4. ***Hubris/Greed*** **-** Perhaps the most remarkable examples of unethical behaviour are the situations where the senior management team is making remarkably high amounts of money and they go even further into excess. The Reliance example, wherein Mr Anil Ambani had spilled the beans about his brother Mr Mukesh Ambani siphoning off Rs 7000 Cr of investor money is one such example. Unfortunately, in a rotten political and legal system that we have, their financial clout never allowed this issue to get the prominence that it deserved. In US, Adelphia Communications (Founder John Rigas was found guilty of siphoning off USD 2.3 billion from company and has been jailed for 30 years) and Tyco International (whose CEO Dennis Kozlowski was found guilty of stealing over USD 150 million from the company), appear, to many, to fall into this category. By most people's standards, the senior executives involved in these cases seem to have been exceptionally well paid, and yet they crossed a line that seems to defy rationale explanation. Hubris is the only explanation.

And while taking decisions, an organization should base its decisions on two basic theories that enable an ethical approach to take strategic decisions. These are

- ✓ Stakeholders' theory,
- ✓ Loyalty and psychological contract and cultural relativism

Stakeholders Theory

Stakeholders Theory is a diametrically opposite view of Friedman's theory of 1970. Friedman thought that "social responsibility" was some kind of mask for socialism, and called it a "fundamentally subversive doctrine in a free society" and has said that "in such society, there is one and only one social responsibility of business --to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game"

In contrast Stakeholders Theory basically recognizes that the corporation has some duties in relation with groups other than stockholders (Freeman, 1997). However, the theory faces some significant problems, for example, it is difficult to say where the limits to each groups' claims are. Besides this, different groups are in different positions to defend their interests; therefore, balancing their claims seems to be a major difficulty.

Despite its problems, the stakeholders theory has helped to communicate the idea that big corporations are not allowed to ignore the present historic circumstances, because their actions have enormous impact on the entire society.

Loyalty and Psychological Contract

What is psychological contract? In a employer-employee context - The psychological contract is, in essence, the set of economic and normative ***expectations*** developed mutually between an employer and an employee when he or she enters the organization. This contract, which the participants ground in trust, is a nebulous concept. Psychological contract is the bed rock of ethics.

The gist of the psychological contract is as follows:

- ✓ The employee expects fair compensation for work performed.
- ✓ The employee expects respect and dignity from the employer.
- ✓ The employee expects consistent and just evaluations.
- ✓ The employee expects continual employment in exchange for meritorious job performance.
- ✓ The employer expects loyalty from the employee
- ✓ The employer expects employee to guard its business secrets which employee may be exposed to.
- ✓ The employer expects employee to work towards benefit of the company – A production worker who has no role in marketing of the product is expected to promote the company's products when the opportunity arises.

These tenets of psychological contracts have to be kept in mind during strategic planning. You might feel that down sizing of the organisation is the right strategic move to improve profitability and think nothing before issuing Pink Slips the next day to employees who have been with you for last 20 years. Rest assured that even those who escaped the pink slips will start looking for a new job from the next day. Even their loyalty is no more with you. They will ditch you when you need them most, during the boom in business they will walk up to your competitor for a small rise.

Epilogue

Even though, prima facie, business and ethics appear like two banks of a river which can never meet, ethics do play a strong role in business. Ethics may not yield positive results in short run, but they do pay handsomely in the long run. Capital of "Trust" created in the minds of consumer forms slowly but surely and pays rich dividends in the long run. The ease with which every stakeholder of Corus agreed to take over by Tata Steel as against the dirty political battle faced by Ispat Group of LN Mittal is proof enough of benefit of Business Ethics.

WHISTLE-BLOWING

(Contributed by - Ms Savli Mangle)

Definition:

Whistle blowing is the voluntary act of disclosure of malpractices in his/ her workplace by an insider at a level not generally expected of him.

A Whistleblower is a person who reveals wrongdoings within an organization to public or persons of authority.

(Please note that not every act of whistle blowing is an act of ethical conduct. On the contrary, a large number of whistle blowings are motivated by desire to draw revenge on boss or management. It is actually breach of psychological contract and a patently ***unethical*** *conduct).*

When can the whistle be blown?

Any insider may wave the red flag when he witnesses the following in the organization –

(a) Crime

(b) Corruption

(c) Civil offences (including negligence, breach of contract, etc)

(d) Harassment

(e) Injustice

(f) Danger to health and safety or environment

(g) Cover up of any of these

Whistleblower's Act

The whistle blowers act defines various terms relating to whistle blowing and lays down the legislative framework relating to this concept. Basically, the act mandates a company to establish a whistleblowers policy. The policy supports and protects the rights of a whistleblower

Many countries have enacted the Whistleblower's act, like – US has included the Whistle Blowers Act as part of Sarbanes Oxley Act.

What does a Whistle Blowers policy contain?

(a) A whistleblowers policy defines the scope of malpractices of an organization.

(b) It lays down the procedure to report such allegations.

(c) Policy establishes an independent investigation team who would investigates these claims. And

(d) Most importantly, it defines the roles, responsibilities and the rights of a whistleblower.

Roles, Rights and Responsibilities of Whistle Blowers

(a) A whistleblower must behave responsibly when he makes a claim under the policy. He should make his report in confidence to the extent of the limitations of the law and the policy. He must understand that his motive is irrelevant for the validity of the report and if it is found that there was an intentional filing of a false report – which is improper – he will be severely penalized depending upon the policy, facts of the matter and the final decision of the independent committee.

(b) All the employees of the company have a duty to cooperate with the investigations made thereon.

(c) The whistleblower's confidentiality is maintained. However, in a breach in this, in events wherein his identity to become known to select few is crucial, he will be informed of this citing the reasons for doing so. He also has a right to be protected from retaliation – this could be in the form of harassment, loss of job, humiliation etc.

Advantages of WB policy

The advantages of a whistle blowers policy are many.

(a) It acts as a very effective anti corruption tool as the insider has first hand fresh information and he is able to supply clinching evidence for pinning down the guilty.

(b) If done at early stages, it can help check corruption. By protecting the whistleblowers, corrupt and misbehavior in others can be deterred.

(c) It also helps to place honest ethical employees right in the centre of administration unlike situations where they are helpless spectators or are bullied into acceptance by their corrupt colleagues who dominate the show.

(d) Making whistle blowing official and acceptable would also obviate anonymous petitioning and unauthorized leaking of news to the media leading to the loss of reputation of the company.

(e) Very effective as anti- corruption tool as insider has first hand and fresh information, ensuring clinching evidence

(f) Can help check corruption if done at early stages

(g) Protecting Whistle Blowers may deter misbehavior by others

(h) Also helps in placing honest employees in centre of administration

(i) Making policy official and acceptable would obviate anonymous petitioning and unauthorized leaks to media

Problems in Whistle Blowing

(a) A 'squealer' disrupts trust, teamwork and open communication – creating fear & suspicion

(b) Expectation of loyalty from every employee – may face organizational ostracism

(c) WB discourages corruption – but can also discourage initiative, willingness to take bold decisions and encourage negativism, defensiveness

(d) Risk of WB used to blackmail colleagues or even bosses

(e) Most often than not, it is seen that the very few subordinates have the courage to blow the whistle on top officers. Ultimately, it is these big game hunters go scot-free and the poor small fish get caught and fried!

Balancing the Pros and Cons

It is now necessary to balance the pros and cons that we looked at.

(a) Legalization of whistle blowing could help in fanning out some problems. Like stated earlier, Whistle blowing does not have an unimpeachable moral basis and must be defined precisely and operationally.

(b) This brings us to examine whether whistle blowing is a right or a duty? Once immunity is given to an employee, does it not also mean that – in cases where the whistle is not blown when it should be – should it not be treated as connivance. Or what about cases where an employee is afraid to reveal a wrongdoing in fear that the wrongs he may have done in the past could come to light?

(c) There are many other support systems required to make a whistle blowing work effectively. And foremost among them is that Companies need to put in place a value system and a leadership that sets an example. Far too often employees are expected to be unethical in dealings outside the organization but absolutely clean inside. Such paradox does not work.

(d) The policy can be reviewed and changed as per experience. It could be started out as a pilot project in few sensitive departments and learn from experience before extending and modifying the policy. Internal whistle blowing that is approaching higher levels in ones own department could be looked into before allowing access directly to the committee.

Whistle Blowing in the Indian Context

(a) India does not have a Whistleblower's act.

(b) Law Ministry is working on a Whistle Blowers bill – for a while now!

(c) SEBI amended Clause 49 of Listing Agreement – listed companies to have a WB policy – but this is not mandatory!

(d) Companies like Infosys, Wipro, Tata Motors have a sound WB policy in place.

(e) Great need for WB policy especially for companies working in global environments

And finally, all that is needed for evil to prevail is for good men to do nothing!

ENRON SCANDAL

Enron, a large Houston-based energy company, long held the reputation as a great American innovator and was a stock market darling. However, the company fell apart publicly in 2001due to questionable managerial decisions,. Enron eventually was forced to lay off thousands of employees and to undergo the largest Chapter 11 bankruptcy in U.S. history. Meanwhile, in early 2002, the Securities and Exchange Commission and the U.S. Justice Department began conducting criminal investigations surrounding allegations of fraudulent financial reports and manipulation of energy markets.

Waist-deep in the scandal was Andersen, Enron's auditor. Andersen was indicted by the DOJ in March 2002 when it came to light that the firm had destroyed thousands of Enron documents and assisted the company in covering up losses and other dubious financial dealings. Three months later, a federal jury found the firm guilty of obstruction of justice.

Granted, Andersen's misdeeds lay with the accounting side of the firm, and with a small number of people working out of one office at that. In the court of public opinion though, the resulting stigma potentially could rub off on anyone even remotely associated with the scandal. Who is likely to be affected? There is of course Andersen, whose consulting arm, while not accused of any wrongdoing, garnered millions in fees from Enron. The Big Five firm's sea of troubles has been well documented and continues to make headlines even today. Then there is McKinsey, a long time Enron adviser and former employer of the now-notorious Jeffrey Skilling, the Enron executive primarily responsible for engineering many of the company's shady reporting practices.

Eggs of Whistle Blowers

Name	Company	Allegations	Personal Outcome	Company Outcome
David Chacon	Salomon Smith Barney	Improper IPO allotments	Left firm, filed lawsuit	Subject of congressional and NASD probes
Cynthia Cooper	WorldCom	Massive accounting fraud	Talking to U.S. Justice Department	Forced into bankruptcy
Roy Olofson	Global Crossing	Round-trip trades and improper accounting	Fired, filed lawsuit	Forced into bankruptcy
Barron Stone	Duke Energy	Improper accounting	Forced to change jobs at Duke	Awaiting results of an audit
Sherron Watkins	Enron	Massive accounting fraud	Testified to Congress	Forced into bankruptcy

ETHICS IN ADVERTISING

"Advertising is about as ethical as the American public. About as ethical as you and your neighbors. About as selfish as you and your acquaintances. It has about the same moral standards as the upper socioeconomic strata of society because it is created, approved and paid for by the upper echelons of modern U.S. society. I'll modify that to say that it is a little more ethical, a little more moral, than the upper economic strata of society. Why? Because advertising lives in a fish bowl. It is the most visible of all commercial practices. It has 200 million critics. And no business, no communications medium, no art form (or whatever you want to call advertising), no other enterprise has so many watchdogs."

Morris Hite, quoted in Adman: Morris Hite's Methods for Winning the Ad Game, *1988*

So, like common public, Advertising too has its ethical values. Advertising communications may be artfully presented facts with a dash of exaggeration and drama to make an impact but the same are subservient to ethical principles. In order to be consumer-oriented, an advertisement will have to be truthful and ethical. It should not mislead the consumers. If it so happens and word does get out, the credibility is lost and the communication becomes ineffective; rather futile.

Advertisement's truth should be viewed from the consumers' point of view, and not in the narrow legalistic frame in order to find a loophole and to get out after an irresponsible action.

Many times a clear line of demarcation between truth and lies is difficult to establish. But the advertisement is as much judged by its impact as by its acceptance by the consumers. What it promises must be there in the performance of products. Advertisements should not be indecent and obscene. As advertising is a social act, it must honour the traditional norms of social behaviour, and should not affront the moral senses of a society.

Gambling or to encourage gambling is against ethical code.

Endorsement of products by celebrities who are opinion leaders is also sometimes criticized for spreading falsehood. Especially, if the word gets out that the celebrity has endorsed without actual personal experience, it can have a very detrimental effect on consumers in an informed society like US. But in a society of Demi Gods worshippers like India, it is the best known secret. We have seen the Bollywood heartthrobs attributing the secret of their beauty to soaps they would never allow in their homes.

In order to enforce an ethical code, we in India now have Advertising Standards Council of India; ASCI. It is a non-profit organization set up by 43 founder members who are involved with advertising in one way or the other. It puts forward a regulating code. ASCI proposes to adjudicate on whether an advertisements is offensive and its decision will be binding on its members. It proposes to deal with government if there are any disputes.

Tell-tale Signs of Unethical Behaviour

By Language:

1. Everybody Else does it
2. If we don't do it, somebody else will
3. That is the way it has always been done
4. We will wait until the lawyers tell us it is wrong
5. It does not hurt anyone
6. The system is unfair
7. I was just following orders

By category

1. Taking things that don't belong to you
2. Saying things you know are not true
3. Giving or allowing false impression
4. Buying influence or engaging in conflict of interest
5. Hiding or mutilating information
6. Taking unfair advantage
7. Perpetrating interpersonal abuse
8. Permitting organization abuse
9. Violating rules
10. Condoning unethical actions
11. Balancing ethical dilemma

Q: Can Profitability & Morality co-exist?

Ans: Many believe that Business Ethics is an Oxymoron (self contradictory) Phrase. But, far from it, the answer to this question is an emphatic ***YES*** and let me justify this resounding YES.

Nobel Prize winner Friedman said, "There is one and only social responsibility of business and that is to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition ***without deception or fraud***"

This one statement says it all. There is no denying the fact that a business is no charity and exists to earn profit. But profits should come in an honest way. There should be no deception or fraud in the pursuit of profits. Honest product at honest prices. Profit Vs Honesty. A paradox?

There are many such paradoxes which exist in real life and a fine balancing act is required in such situations. Give the customer honest prices through efficiency in production and give the shareholder bumper profits through productivity and growth in business rather than rip-off pricing.

Honesty does not mean bad business. Adopting moral way of business does not mean surrendering profits. Often a profit opportunity surrendered in the short run becomes the key to the bigger door of profits in the long run. Moral practices in business create a new resource called Social Capital through "Trust"; trust of society, trust of customers, trust of suppliers and so on. This capital manifest profits in terms of customer loyalty and increased sales, lesser requirement for marketing effort, higher leverage in dealings, lesser employees turnover, etc.

We have a live example of co-existence of morality and profitability. Tata Sons, the most respected Industry House of India Inc, is a living example

Tatas have been known to be conducting their business with morality. They have been offering honest products at honest prices. Job in a Tata company is supposed to be as safe as Govt job. Rarely has any one ever been fired from a Tata company. Despite being the largest Indian corporate house for almost whole of the last century, hardly ever was it even suspected of any misdeed by the govt or the public or shareholders or employees and not even by competitors.

Tatas have been at the forefront in establishing and financing various institutions of social and national relevance like Tata Institute of Fundamental Research, Tata Institute of Social Sciences, Tata Cancer Hospital, Indian Institute of Sciences, Bangalore and so on. Steel City Jamshedpur is a story of corporate indulgence in social matters like none other. Each of the Tata company has a commitment to adopt a social cause.

Despite practicing Morality like probably no other company in India, profits of the company have constantly grown. Do we need any further justification that morality and profits can co-exist? Success of Infosys and Wipro further justify the foregoing.

Q: Discuss Morality in Advertising.

Ans. Anyone who has worked in business organizations learns that the specific challenges thrown up in the marketing area are amongst the most taxing.

Advertising is in effect attracting customers to buy your product by first informing of availability of the product and then promising them better value for their money. Should advertising make the promises that product is not capable of delivering? Or use means that are damaging to the society, like, indecent pictures or promoting harmful products among children, etc.

We have to admit that there is plenty of grey area in advertising. The distinction between *misrepresentation, or making claims which are false and surreptitiously exaggerated* (believable by the gullible public) and *transparent exaggeration* (which even idiots wont believe to be true) to make a commercial eye catching is too thin.

Let us see it with a live example. On one hand we have gigantically exaggerated claims, like Fevicol ads *(Exaggeration has been adopted as a theme by Fevicol. People travelling Fevicoled to sides of the bus, or egg not breaking by hammer because hen was feeding from a Fevicol can, etc)*, where exaggeration is transparent enough for every viewer to know that it is exaggeration for the sake of making the advertisement eye catching and driving the message home. No one is even remotely likely to believe the suggestions in the advertisement as true. On the other hand, we get exaggerated claims in the advertisement designed to be passed as truth. It is most common in personal care segment and services sector.

An advertisement suggests that drinking a special brand of Whisky will transport one into a fairyland of delights. The unspoken pre-supposition here of course is that the potential customer will be not only resistant but also sensible and reasonable in assessing the claims for various goods and services and will not take it all absolutely literally.

It is in such areas particularly that regulation and monitoring of advertisements have an important social function by protecting the vulnerable in the society from being exploited.

Another more ethically interesting sphere in which advertising needs to be scrutinized is the pressure on individuals to make particular choices. There are many health care and insurance companies who create a fear psychosis through their advertisement to sell their product to people who might not need them. Take the case of child life insurance plans and water purification machines. *(Child Insurance Plan has already been discussed in Ethics and Strategy Chapter).* People, in developing and under developed countries, generally develop fair amount of immunity to water borne diseases by virtue of being constantly exposed to less than pure water. Many doctors also advice against use of ultra pure water produced by machines like Aqua Guard. Medical science believes that regular use of ultra pure water kills or hampers development of auto immunity by the body and exposes the person to illness even with slightest impure water which is inevitable given that it is impossible to get ultra pure water every where. We have all heard how British, Australian and New Zealand teams suffer from gastric problems whenever they travel to Indian subcontinent despite taking all precautions.

Same is the case with breast milk supplements (tinned milk) being sold by pharma companies. Their advertisements push use of tinned milk against established wisdom of use of breast feed for infants.

In addition, there are plenty of wrong and false allurements and promises, like –

(a) Advertising unhealthy products (Cigarettes)

(b) Advertising to Children (Cola ads—injurious to a children's health in the long run, and

(c) Using Puffery in advertising (Free Dental Insurance if you buy Rs. 20 worth tooth paste. In reality, there are strings attached!

And finally there are cases of *omitting certain facts about the product or being economical with the truth* which is ethically wrong. But companies do it nevertheless. There have been cases of pharma companies pushing sales of certain drugs in poor countries even after their harmful effects were well documented and drugs had been banned in certain advanced countries.

Q: Why good managers make bad ethical decisions?

Ans. Managers at various levels have been found very frequently to be indulging in unethical practices. When questioned, they always have a reason for their conduct. Following are some of the reasons that are offered as explanation for their conduct –

(a) I have to satisfy the inspector from the electricity board to maintain adequate power supplies in times of recurrent shortage.

(b) I am obliged to entertain and enrich purchase manager of a high value customer to keep him from switching over to our competitor.

(c) I have to fiddle around with year-end inventories to show a higher profit figure to the board of directors.

(d) I have to produce fake securities and bills receivable to procure ready cash.

(e) I have to over-invoice import bills and under-invoice export bills to oblige overseas owners.

(f) I have to sign the transfer order of an officer to satisfy the higher-level boss.

(g) I have to arrange for cash payments to govt officials from tax departments to keep them from creating trouble for the company.

(h) I have to manipulate data when preparing the project report to meet the hurdle rate of financial institution.

These are invoked to circumvent the conflict between the instant, relative and enduring universal values (honesty, responsibility etc). This side-stepping is also an excuse at times to subvert personal ethics in favour of company goals, under the argument that personal values are inappropriate as standards for corporate decisions.

Primary reasons for bad decisions by good managers are as follows –

(a) ***No Co-relation between Managerial Ability and Ethics* –** There is actually nothing surprising about good managers taking bad ethical decisions because there is not much co-relation between two. Managerial ability is about planning, organising, developing/deploying/directing, co-ordinating and controlling a particular activity. Hardly do any of these functions require ethical input. On the contrary, control function when dealing with human element, often requires employment of cunning to extract best out of people in the short term.

(b) ***Greed*** is one of the prime reasons for managers taking bad ethical decisions. Material success is high on most managers' mind. Desire to achieve material success drives them towards unethical conduct.

(c) ***Short term focus*** is another reason. Ethical conduct is a sure but slow way to success. Managers lack patience and take short cut of unethical way to achieve quick material success. However, long term consequences of such unethical conduct are often disastrous.

(d) ***Inadequate moral development*** is another reason. Many managers during their development process don't get exposed to don't reach ***Post Conventional Level*** *(page 6)* of moral development and remain at Pre-conventional level where they are guided in their actions by rewards and punishments.

(e) ***Misplaced Loyalty* –** Many managers fall due to their misplaced. These are people who are perfectly ethical in their personal conduct. However, they indulge in all sort of unethical practices as managers. That is because they attach more loyalty to their company rather than society. They take bad decisions in order to benefit the company. They are ethical in their own right but not in popular sentiments of society who are at receiving end of their skewed loyalty. General O'Dyer was one such person.

(f) ***Peer pressure*** is another reason. A man living in an environment where unethical decisions are routine among peers, ethical conduct becomes a reason for ridicule and derision from the poor group.

(g) ***Company's Policies*** are next reason. Many companies give little importance to ethical issues in their business. Profit is their only God. In order to retain their livelihood in such companies, many desperate managers succumb to the pressure.

Q: Personal Values maketh the man, Discuss.

Ans. Values are part of the psychological traits of the person. Psychological traits are part inherited and part learned from the environment. Some values are learned automatically by observation and experiences from the surroundings while some values are instilled assiduously by the elders, teachers and society.

Both managers and academics have often debated whether Values/Ethics can be taught. A frequently stated view is that these are learned, *(whether from one's parents and teachers or from surroundings)*, and fully formed in early life, so that later efforts at teaching are really pointless. The final caveat, however, is that ethical conduct in business context can still be taught in the early stages of one's working life.

CORPORATE GOVERNANCE

Corporate Governance is acceptance by management to safeguard the rights of shareholders as true owner of the corporation and their role as trustees on behalf of the shareholders. Corporate Governance is all about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.

Corporate Governance emanates from business ethics. It is about conducting the business in an honest and transparent manner where by every stake holder, viz, owners, employees, shareholders, suppliers, customers, government, society and even competitors, gets its rightful share from the business and no single entity is able to corner disproportionate share of profits.

Voluntary adherence to honest business practices has been eroding over the years as evident by recent exposures. Enron/Arther Anderson, Worldcom and Zerox are rather famous examples, but there have been many in the recent past. Watergate scam of 80's in US had led to formation of what is now popularly called Cadbury' Committee. Some very large multinational banks have failed in the last decade. Failure of Bank of Credit and Commerce International in 1992 being the largest and most rattling one. The malpractices were so heinous and rampant that it earned the epithet of "Bank of Crooks and Criminals International".

But such happenings are not new. Only their scale has grown due to globalization. But such failures of seemingly healthy businesses brought into focus the need for corporate governance. It led to a feeling that many of the good business practices, hitherto left as ethical choice, need to be codified. And thus took the birth of concept of Corporate Governance.

In India the concept of Corporate Governance took its birth after the Stock Market scams of 90s first led by Harshad Mehta and later by Ketan Parikh. Securities and Exchange Board of India was formed in 1992 to check Irregularities and ensure smooth functioning of Stock Exchanges. However, even before it could get its act together, Harshad Mehta scam broke out. Even later, there were large scale scams involving Co-operative Banks, Finance companies, Plantation companies, large Stock broking houses and so on. Even Unit Trust of India was not spared of the irregularities. But while so many companies turned sick and small investors lost billions of their hard earned money, promoters continued to prosper nevertheless.

SEBI constituted a committee on corporate governance under the Chairmanship of Mr Kumar Mangalam Birla, a leading Industrialist and member of Board of SEBI.

Need for Corporate Governance

1. No information is given to investors regarding diversification, expansion, change in business, loss of business etc and instead used by promoters and top management for insider trading at the cost of small investors.

2. Many large companies are known to manipulate rules and even Govt Policies with the help of bureaucracy and political meddling.

3. If investors, FII and general public, put their money, they have every right to ask information about company.

Objective of Corporate Governance

The fundamental objective of Corporate Governance is the enhancement of shareholder's value, keeping in view the interest of other stake holders. This harmonises the need to strike a balance at all times between the need to enhance shareholder's wealth whilst not being too detrimental to the interests of other stakeholders in the company.

Factors Influencing Corporate Governance: Four factors which influence corporate governance: -

1. The ownership structure of company
2. Financial Structure
3. The structure of the company Board
4. The Legal, political and regulatory environment within which company operates.

How to Achieve Good Corporate Governance?

Since the voluntary compliance to sound corporate practices have failed in large measure, there is a need to codify the good practices as law. There is a need to institute checks and balances in the functioning of the Management and the Board. Thus, Kumar Mangalam Birla Committee was appointed by SEBI to make recommendations.

The committee made number of recommendation, some being for mandatory compliance *(Suffixed with "M" in following text)* and others being non mandatory *(suffixed with "V").*

Kumar Mangalam Birla Committee laid a great emphasis on Board of Directors for ensuring Corporate Governance. Even among the directors, it trusted independent directors to be the real watch dogs for ensuring corporate governance. Independence has been unambiguously defined in the report and following are the salient recommendations of Birla Committee:

1. ***Number of Non Executive Directors (M) –*** The Non-Executive Directors bring external and wider perspective and independence to the decision making.

Committee recommended that minimum 50% of the directors should be non-executive directors.

2. ***Increasing the Number of Independent Directors (M) –*** Even though non executive directors are expected to bring in better objectivity and independence in decision making, there is still ample room for bigotry since every non executive director is not an independent director (Nominee Directors are not independent directors). Therefore, it recommended following minimum numbers of independent directors in the board

   (a) In case Chairman of the Board of Directors is a Non Executive Director, one third of total Directors should be Independent Directors.

   (b) If Chairman is an Executive Director, half the Directors should be Independent Directors.

3. ***Attractive Financial Remuneration (V) –*** Committee recommended attractive financial remuneration to ensure that people of merit are attracted to take up the directorship of the companies.

4. ***Nominee Directors (M) –*** Nominee directors do not represent their own company but also the general stakeholders as well. They, thus, have same responsibility and accountability towards general shareholders as any other director. They are, therefore, prohibited from communicating material information to any department of parent company which they could use to play in stock market.

5. ***Audit Committee (M) –*** It should consist of at least 3 members and all non executive directors with majority being independent directors. The Chairman should be an Independent Director. The committee should meet at least thrice a year. Committee has powers to investigate any activity within its terms of reference.

6. ***Frequency of Board Meetings (M)*** – The Committee recommended that board meetings should be held at least four times in a year, with a maximum time gap of four months between any two meetings.

7. ***Limit on Number of Directorships (M) –*** The Committee recommended that a director should not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director.

8. **Transparency in Declaring Remuneration of all Directors (M).**

9. ***Accounting Standards and Financial Reporting (M) –***

   (a) ***Consolidation of Accounts of Subsidiaries*** – The companies should be required to give consolidated accounts in respect of all its subsidiaries in which they hold 51 % or more of the share capital.

(b) ***Segment Reporting*** – Financial reporting in respect of each product segment should be available to shareholders and the market to obtain a complete financial picture of the company.

(c) Disclosure and treatment of related party transactions

10. ***Disclosure of Interest by Directors (M)*** – The Committee recommended that disclosures must be made by the management to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

11. ***Report on Corporate Governance (M)*** – The Committee recommended that there should be a separate section on Corporate Governance in the Annual Reports of companies, with a detailed compliance report on Corporate Governance..

Unfortunately, there is more of lip service than real intent in this field. The industry, Company Law Board, SEBI and even Government have all been less than keen on achieving good corporate governance. Despite the reports on Corporate Governance being available with every implementation agency for over 10 years, little has been done to implement the recommendations. While there is talk of SEBI issuing a guideline increasing the number of independent directors, there is virtually no talk in any quarter on the suggestion to introduce a random appointment of auditor from a selected pool of auditors.

CLAUSE 49

The term 'Clause 49' refers to clause number 49 of the Listing Agreement between a company and the stock exchanges on which it is listed *(the Listing Agreement is identical for all Indian stock exchanges, including the NSE and BSE).*

This clause was inserted as late as 2000 consequent to the recommendations of the Kumar Mangalam Birla Committee on Corporate Governance constituted by the Securities Exchange Board of India (SEBI) in 1999. *(Was modified later wef 01.01.2006 on the basis of Narayan Murthy Committee Report)*

Clause 49, when it was first added, was intended to introduce some basic corporate governance practices in Indian companies and brought in a number of key changes in governance and disclosures (many of which we take for granted today). It specified the minimum number of independent directors required on the board of a company. The setting up of an Audit committee, and a Shareholders' Grievance committee, among others, were made mandatory as were the Management's Discussion and Analysis (MD&A) section and the Report on Corporate Governance in the Annual Report, and disclosures of fees paid to non-executive directors. A limit was placed on the number of committees that a director could serve on.

In late 2002, SEBI constituted the Narayan Murthy Committee to assess the adequacy of current corporate governance practices and to suggest improvements. Based on the recommendations of this committee, SEBI issued a modified Clause 49 on October 29, 2004 (the 'revised Clause 49') which came into operation on January 1, 2006.

What's new in Clause 49?

The revised Clause 49 has suitably pushed forward the original intent of protecting the interests of investors through enhanced governance practices and disclosures. Five broad themes predominate. The independence criteria for directors have been clarified. The roles and responsibilities of the board have been enhanced. The quality and quantity of disclosures have improved. The roles and responsibilities of the audit committee in all matters relating to internal controls and financial reporting have been consolidated, and the accountability of top management—specifically the CEO and CFO—has been enhanced.

INSIDER TRADING

(Courtesy Presentations by Ms Jaya Mishra's and Tejbir's Groups)

Definition

Insider Trading refers to the trading (buying as well as selling) of a company's speculative financial instruments like shares, bonds or stock options, by the insiders such as officers, directors, or major share holders (holding more than a specified percentage of the company's shares) or any individual who has access to privileged non-public information by virtue of his official duties. Such individuals include Govt Officials, auditors, etc.

Legal and Illegal Insider Trading

Insider trading based on material non-public information is considered to be fraudulent since the insiders are benefiting themselves from information availed in the course of their duty at the cost of shareholders. Such act is considered to be violation of the trust or the fiduciary duty towards the shareholders.

However, any insider trading which is not based on privileged non-public information is perfectly legal.

In common parlance, Insider Trading has a negative resonance and invariably refers to illegal trading only.

Example of Illegal Insider Trading

- The CEO sells holding of his stock in company before releasing news to the public that company is likely to lose a massive lawsuit or its supply contract with a major customer will not be renewed upon expiry next month.
- The CEO's son sells the company stock after learning from his dad about the imminent fall in share prices due to negative development in the company. However, in this case, it is not the CEO's son but CEO himself who is guilty of insider trading since he has **tipped** his son of non-public information.
- The Judge dealing with the lawsuit realizes that the company will lose the lawsuit and therefore sells the stock before the pronouncement of judgment.

However, catching insider trading is difficult without installing a software which can maintain database of holding of shares by insiders, track their trades and report any large transaction prior to large movement in stock prices. Even then, proving insider trading can be difficult, because traders often hide behind proxies. Most trading by promoters is actually never known and is therefore never reported or investigated. In some recent cases where trading was done in own name, offenders got away scot-free due to inability of prosecutors to establish the offence beyond doubt.

Laws on Inside Trading – United States

United States Stock Market is the single largest stock market as also one of the best regulated markets in the world. It has been actively pursuing against illegal insider trading. Like SEBI in India, Securities Exchange Commission is the regulatory body in US.

- SEC prohibits short-swing profits (from any purchases and sales within any six month period) made by corporate directors, officers, or stockholders owning more than 10% of a firm's shares.
- Stiff penalties for illegal Insider Trading which can be as high as three times the profit gained or the loss avoided from the illegal trading.

Laws on Inside Trading – India

- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, was amended on 22nd February, 2002 which mandates every company to frame a Code of Conduct for prevention of insider trading.
- Employees, including Directors, when in possession of any unpublished price sensitive information, as defined in the Regulations, pertaining to the Company, shall not:
  - Buy/sell securities of the Company, either on their own behalf or on behalf of any other person.
  - Communicate, counsel or procure any unpublished price sensitive information to / from any person
- The Designated Employees shall cover the following:
  - Directors, Executive and Non-Executive;
  - Managers at Levels 1 & 2, or its equivalent;
  - Employees in Finance and Secretarial functions located at the Corporate Headquarters; and
  - Such other employees as may be determined by the CMC from time to time.
- Designated Employees shall not buy / sell securities of the Company during Closure of the 'Trading Window', i.e. the period during which trading in the securities of the Company is prohibited
- Trading Window shall be closed during the following periods:
  - From 15th March up to twenty-four hours after the announcement of the annual financial results (and dividend, if any) to the Stock Exchanges.

- From 15th June up to twenty-four hours after the announcement of the first quarter financial results to the Stock Exchanges.

- From 15th September up to twenty-four hours after the announcement of the second quarter and half-yearly financial results to the Stock Exchanges.

- From 15th December up to twenty-four hours after the announcement of the third quarter financial results to the Stock Exchanges.

- From the date of circulation of the agenda for the meeting of the Board of Directors, in which any material, price sensitive and unpublished event, including public/rights/bonus issues, expansion plans, M&A plans, disposal of part or whole of undertaking, are proposed. The closure of the Trading Window for these events will be advised by the Compliance Officer appointed by the Board of Directors for the purpose of this code.

◆ Designated Employees shall make the following disclosures of shares and other securities held in the Company by them and their dependant family members, to the Compliance Officer –

  - Initial disclosure of number of shares and other securities held as on 31st March, 2002. This disclosure shall be made by 30th April, 2002.

  - Annual disclosure of number of shares and other securities held as on 31st March, including details of purchase / sale of shares and other securities during the financial year. This disclosure shall be made within 30 days from the close of each financial year.

  - Changes in shareholding, when such change exceeds 50,000 shares. This disclosure shall be made within 4 working days of such change.

◆ Disclosure shall also be made of the number of shares and other securities held, upon becoming a Designated Employee, at any point of time. This disclosure shall be made within 4 working days of becoming a Designated Employee.

Case Study – Samir Arora

Digital Global soft and HP ISO were planning a merger in 2003. Samir Arora was the head of equity investments in India for Alliance Mutual Fund. Samir was aware of the impending merger announcement and sold shares of Digital Global thereby saving the loss to his company.

Added to this before selling, he made statements of promising returns from the scrip. SEBI ruled Samir Arora guilty of insider trading. However, when Samir Arora appealed, SAT overruled SEBI on following grounds: -

(a) Samir could not have known the exchange ratio as it was given in sealed cover.

(b) .Further, Samir sold many other scrips along with Global Soft.

(c) Other research houses had downgraded Digital Soft and recommended sale.

(d) Mere fact that MD of Global Soft and Samir were good friends does not lead one to believe that Samir had all the inside information.

Despite all the circumstantial evidences, Samir Arora got scot-free because of legalities. There will not be many cases with better evidences than this case. If the law enforcement agencies are going to take such lenient view of the offences, this law will also become, as many other laws are, like a Pomeranian Dog *(which barks a lot but never bites and is used only as a decorative pet without any real use),* without any conviction to their credit.

CASE STUDIES

Case Study 1 – The Parable of the Dark Child of Narhi-La

The events of three weeks at far away Narhi-La had a deep significance for Chandra in understanding and resolving the ethical discord he was having with his organization for the past two years. He was the export manager of Mansukhani Sarkar & Co who were in the business of handlooms and handicrafts. They had exclusive boutiques in several urban centres in India and a few abroad and all making large profits. Their two directors, Mrs. Mansukhani and Mrs. Sarkar had close connections with politicians and were therefore able to garner a lot of government support for their company in the form of subsidies and other benefits. Whereas they projected themselves as great social workers, helping the preservation of ancient crafts and skills of the country, when it came to sharing profits with the primary producers, Chandra felt that they were harsh and unethical. Further, they operated through middlemen, who they knew took big cuts before paying the primary producers.

Mrs. Sarkar also has an embarrassing habit of lifting items she liked from the showroom of the middlemen and not ever paying for them. Some of them complained to Chandra, but did not pursue the matter as Mrs. Sarkar had powerful politician friends. Chandra often felt like resigning from his job. But his wife always dissuaded him. You cannot expect every person in the organization to have exemplary ethics. As long as they are doing good overall, you should turn a blind eye to their faults, she said. Chandra was not sure if she said so only to prevent him from taking any disastrous course which would hurt her and their children. It was however true that the company gave him considerable freedom to develop a network of artisans in the deserts of Kutch in Gujarat and in the poverty stricken Erode district of Tamil Nadu. Mrs. Sarkar was invaluable in getting contracts from abroad and the company was free with its finances and could support a large turnover with sufficient credit arrangements. Admittedly, this large number of artisans who manufactured for exports through Mansukhani & Sarkar were much better off than other artists of the area. A couple of them even managed a free trip abroad with government support and high profile publicity. Chandra was in the last stages of clinching a long term contract with an American Party. He had sent them samples and a quotation. Before he went abroad to negotiate with them, he thought he should undertake a Himalayan trek to spiritually recharge himself away from his mundane life at Mansukhani & Sarkar.

The trip had unexpected consequences. The group had a mixed crowd – geographers from Japan, a black American medical technician, a Norwegian journalist, Chandra and Dr. Gulati, a pediatrician from Delhi. They were to assemble at Tehridun at Uttarakhand, transported 350 km by jeep to Jyoti Math and then trek to Narhi-La 150 km away. After acclimatization at Narhi-La they had to go to the Chinese border.

Narhi-La had a scanty population of 30, mostly the aged. The able bodied had all gone to the plants. Five year old Lakhan was one of the few children whose parents had gone to the plants for work, leaving him in the care of his old grandmother. Unusually dark for a child from Narhi-La, he was held in reverence by the villagers as in their mythology the gods when they came to earth were dark. The team members became great friends with Lakhan.

The weeks trek along the border was spiritually elevating for all the members of the team. They reflected on the follies of humanity inflicting violence on each other. The spirit of the mountains seemed to help them in communicating with each other without words and without language.

Back at Narhi-La they were horrified to find Lakhan in Coma due to high fever. Lakhan's grandmother was wailing. The whole village was in panic. The team was rudely awakened from their spiritual euphoria to the realities of the world. It seemed the spiritual centre of their world was now in Narhi-La. Every one's first inclination was to see Lakhan through his difficult days and leave only after he was well. But each had second thoughts.

How could Dr. Gulati miss his sister-in-law's wedding? How could the Japanese miss the conference at Beijing?, where they hoped to present an important paper. How could the American leave his wife for so long, when she was battling with the task of looking after his old mother? Chandra had this most important meeting in New York which was the fruition of two years effort to get a good deal for his artisans. The Norwegian had little more time as he could mail his story a little later. But what could he do sitting there and watching the child die. Chandra found that everyone had devious ways of legitimizing their ethical stand of not wanting to go full length in their ethical duty. They were however willing to do their best within their self-imposed constraints.

The Japanese rummaged their rucksack and brought out some medicines luckily good enough for Dr. Gulati to revive the child. Dr. Gulati remembered he had a friend at Tehridun who was a good pediatrician. The Norwegian said his wait would be worthwhile if he could carry the child to Tehridun first on his back to Jyoti math and thereafter by motor transport. The American remembered he had noted the telephone number of a medical laboratory at Jyoti Math where some help may be available. Chandra would monitor the entire operations by telephone from New York and Bombay, and support it with Money. All the team members gave whatever money they could spare. Everyone seemed a little relieved but not entirely free from a feeling of guilt. But the plan worked.

Lakhan was nearly cured when the Norwegian left him at Tehridun in the care of the doctor. Chandra came back after a successful trip from the USA and organized the shipment. He then went to Tehridun, picked up Lakhan and dropped him back to Narhi-La. He felt the entire episode was a clear answer to his worries he had had with the ethics of Mansukhani & Sarkar.

WHAT DO YOU THINK WAS THE ANSWER WHICH CHANDRA FOUND IN THIS EPISODE?

Case Study 2 - The Portable Ultrasonograph

Never before has it happened in my life. We have failed in our public relations, bemoaned Virji Suratwala, Chairman, of Universal Electronics as he watched the small group headed by Dr. Arulnayagam (hereafter referred to as the doctor), fasting in front of his factory gates. Their banners proclaimed to the whole world that 'Universal Electronics are mercenary murderers of innocent babies'. As they caught a glimpse of his face, they roared lustily. The doctor was protesting against the latest Universal Electronics product, a much vaunted revolutionary technology in ultrasonography brought into the country in collaboration with a world famous American multinational. The product was a small sized portable ultra scan sonographic recorder small enough to be packed in a briefcase. The foetus tests would become much easier and could be carried out even at home. For a year the doctor had tried every other means to persuade Universal Electronics not to make this product. Picketing was his last desperate step to stop them.

The doctor felt that in India it could have only one effect. It would dramatically increase the number of female foeticides as it would be easier to determine the sex of the child. If it was a girl it would be aborted. For their complicity in this unethical outcome, he branded UE as the most unethical company in India. Paradoxically, both UE and the American multinational with whom they were collaborating prided themselves as being ultra ethical. Both the companies had won many international awards for ethical excellence. Ironically, the American company had also provided that the Indian company should distribute along with the machine a note by a known American doctor on the ethics of using the ultrascan machine. It said that the chances of a baby girl being mistaken for a baby boy were 7% in the first 20 weeks of pregnancy and therefore it would be unethical for parents with a history of haemophilia to abort a child identified as male just because the chances of males getting the disease were high. But the notes ignored that baby boys can never be mistaken for baby girls. It frivolously also added that one might as well wait for the baby to be born before deciding if the nursery walls should be colored pink or blue.

UE had been chosen after a long search for an ethically strong Indian Company. Virji still recalled the demeaning ethical examination he was put to by the foreign multinational. 'As if all Indians are crooks and all Americans are angels' he remarked. We have given up crores of rupees of profits because we refused to offer bribes and everyone knows that in this industry, bribery is most rampant he added. He was speaking the absolute truth. He had ensured that the induction program for his new recruits drilled them on ethics. The slightest fall in standards would mean the sack. For him unethicality only meant corruption. This perception of unethicality was also shared by the foreign collaborator.

Virji's legal advisors first disputed the doctor's statistics. But that was a fruitless approach. He was a well respected public health statistician. He could back his statistics to the hilt. Then the PR line harped on the woman's right to abort abnormal foetuses. The doctor then detailed case histories to show that in most of the decisions, the new portable instrument could be used secretively. The family seniors could overrule the mother. Social activists had little opportunity to intervene. Otherwise they could at least park themselves in front of the sonography clinics. The abortion usually pushed mothers to months of intense depression. UEs next line of defence was that the instrument did nothing more than make the currently used technology more efficient and cost effective. The machine could easily be moved into labour rooms in hospitals and used concurrently with the delivery of the child. If sonographs were right, portable sonographs too were right. The doctor countered this by saying that the new portable technology was like giving users a pistol with a silencer to kill a person and destroy evidence.

Lastly UE stated that the instrument was only a means of ascertaining the medical facts correctly and could have many other positive uses other than determining the sex of the child. It could detect foetal abnormalities. If used for criminal purposes, the perpetrators of the crime were both the mother and those who forced her or her doctor and not UE. They quoted the provisions of the prenatal diagnostic Techniques act 1994 under which communicating the sex of the foetus to the mother is an offence punishable with a three year sentence and the doctor concerned can be struck off the membership of the state medical council. The mother and the other family members can also be punished. All users of such machines had to be registered under the act. UE thought they had clinched the legal angle. The doctor had no patience for legal or ethical analysis. He said that he was not doing a right or wrong analysis, but a with or without analysis. With the instrument babies were killed. Virji's world was crumbling. His company's ethical image was being mercilessly shaken up. He was convinced that UE was not being unethical, but he doubted if others would look at it the same way. If only I had persuaded the doctor before his views had got hardened, everything would have been fine. It was a failure of my PR and not ethics he said and cursed his fate.

If he now went back on the project, UE would lose at least Rs.20 Crores.

IF YOU ARE IN THE POSITION OF VIRJI SURATWALA HOW WOULD YOU SOLVE THE PROBLEM?

Case Study – 3 The computer Whiz-Kid

Dr. P. Rajarathnam (hereafter called Rathnam – a name by which he was popularly known) had a wide variety of qualifications that included a doctorate in petroleum engineering and a master's degree in computer science. He was a well-known authority in the application of knowledge engineering in the field of petroleum refining. He was a professor at the University of Texico in Texas. In 1986, a team of high level executives from Colorado Petroleum Incorporated (CPI) an oil company in the Gulf, was on a study tour of the school of petroleum engineering at Texico. They were highly impressed with the work of Rathnam, particularly in the field of knowledge engineering applications to solve process problems associated with petroleum refineries. The sequel was a fantastic offer of appointment by CPI to Rathnam, which he accepted, little realizing the master plan of his new employers.

Rathnam was the chief executive engineer of their computer installations which were primarily used for geological analysis, planning drilling programmes and trouble shooting refinery problems. Soon after joining, he was introduced to Dr. S C Bose, the chief geologist, who became his close friend. They freely exchanged experiences over many hours of professional discussions. Bose was a true scientist who did not hold back any knowledge. Rathnam knew all about Bose's methods of investigation and developed an expert system that embodied this knowledge. The top management of CPI supported this project beyond the expectations of the two scientists.

The news that CPI had decided to give Bose the golden handshake was a terrible moral shock to Rathnam who had no difficulty in identifying the cause – the much regarded knowledge base of his own creation. Rathnam pleaded with the top management to change their minds. He reminded them that Bose was a heart patient and would find it impossible to another good job, and also that this action of theirs would result in many brilliant persons shying away from the company's employment. They did take him seriously. Much to their shock Rathnam resigned from his job.

As a permanent resident of the USA, Rathnam could have returned there after his stint with CPI. But he did not intend to return to Texico though he was welcome there .He had just turned 56 and he could have worked as professor for at least another 10 years. He chose to come back to India in spite of the offers from several Universities in the USA as he expected to be more comfortable with the ethical climate in India.

Rathnam had offers from several institutes of management in India. He decided to make his choice only after acquainting himself with each of them for a period of two to three days. He told them all that he would like to belong to the growing segment of early retirees who spent their time and expertise to serve the society at large and educational institutions are the best media he would prefer.

However Rathnam soon started showing signs of disapproval of the things happening in India. The Indian world seems to have changed from my student days and I see much petty dishonesty and a permissive ethical climate though not as ruthless as CPI but saddening nevertheless, he said. He was disturbed by three problems. There was large scale use of pirated software, this weighed on his conscience. Second, there was hardly any spirit of knowledge-sharing among computer professionals. Third, Indian systems had little protection for ensuring privacy of Information. Admittedly, this would require very high cost, but he felt that the price was worth paying.

In one of the institutes, he had heart-to-heart discussions with Professor Kulkarni who belonged to his generation. Rathnam was further bewildered by Kulkarni's views. Kulkarni felt that the ethics of piracy must also be seen in the light of the ethics in fair pricing by foreign software manufacturers. But it seemed that the Indian Copyright Act was now tightened and foreign manufacturers had posted representatives who could help police raids to capture evidences of Piracy. Greater liberalization had also provided greater opportunities for equable bargains by educational institutions. Some others felt that the Indian legal system was unequal to the task of regulating piracy as corruption could destroy all semblances of law and order.

As for the reluctance of many Indians to share their knowledge, he found most heads of institutions unable to do anything about it as computer personnel were in short supply with a high turnover. He had hoped that the Indian culture would have been able to reassure persons that organizations would not behave in the manner that CPI had with Dr. Bose after getting all his knowledge. But nowhere did he find such a relationship of trust.

Lastly he found most institutions unwilling to go all out to ensure privacy of information using foolproof systems, they attempted to ensure this only by a better code of ethics among computer professionals. But with shortage of personnel in the field, strict enforcement of this code was not always possible. Rathnam was wondering if he had indeed taken a wrong decision in returning to India, or whether he should now give up his earlier ambition of 'serving the society at large through educational institutions'. He could also go in for business to avoid all these hassles. Or maybe his entire rationalization had been a façade to cover his overwhelming self-righteousness and inability to view ethics as a means of larger good than the application of rigid codes of conduct.

1. ***IF YOU WERE RATHNAM WHAT WOULD YOU DO?***

2. ***DO YOU THINK PROFESSIONAL CODES FOR COMPUTER PROFESSIONAL NEED TO BE DIFFERENT IN THE USA AND INDIA?***

Issues in business

1. Can profitability and morality go together?
2. Do companies have conscious?
3. Sales representation & product launches – how ethical can it be?

   Morality and advertising – 3A's – Allurement, Advantage
4. How bureaucrat can shape the life of people
5. Personal value of ethics
6. Indian system, western system & comparison

   Bhakti – Devotion - mother taking care of child.

   Yukti – Path of skill relation between student and leader, "saam, daam dand, bhed"

   Mukti – Path of salvation Indirect method used by company
7. Business & business ethics