



# NEWSLETTER

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## Message from the CEO

*In this edition of our newsletter, we share with you ways to promote the culture of integrity in the corporate houses. It has been seen, when the economic parameters get tight there is a strong temptation to focus on survival. Corruption and bribery becomes a tempting way to obtain contracts and revenue. This does not mean that corruption is less of a problem when growth or prosperity is back. In bad times, people get desperate, in good times they get greedy. The cultural problem is the poor attention given to non-financial criteria in times of duress as well as in times of growth.*

*Promoting a culture of integrity means developing a program which will encompass all the company's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.*

*Equally important is adequate whistle blowing procedures in corporations. Substantial evidence shows, though, that most whistleblowers leave their corporations a couple years after they blew the whistle. There was no corporate culture of integrity to help them keep their jobs with decent career perspectives. The Whistleblower Protection Act was passed by the Government of India in 2011. It can be further strengthened, legal counsel, says Anand Dayal.*

**Anupama Jha**  
CEO

## How Corporate Enterprises Establish an Ethical Culture

-Bharat Wakhlu, *General Secretary, Foundation for Restoration of National Values*

For thousands of years, progressive human civilizations around the world have relied on trade and commerce to advance their economic goals. To facilitate trade the Romans and the Mauryans created structures that enabled groups of merchants and craftsmen to function with the blessings and support of their reigning monarchs. Modern corporations emerged from these early beginnings. Companies as we know them now, emerged from these structures and Royal Charters in Britain, the Netherlands, and elsewhere, over the past 400 years.

Ever since the concept of corporate organizations was formalized by Royal Charter, companies served primarily as vehicles for nations with imperialistic intentions, aiding the advancement of the military and economic might of countries to which the corporation's ownership was linked. Politicians and Business founders such as Peter Stuyvesant (1612-1672), Robert Clive of India (1725-1774) and Cecil Rhodes (1853-1902) actually combined their political heft and economic clout to further the objectives of their respective Empires. They waged wars and captured resources and territories without let or hindrance. It was the exploits of such political-entrepreneurs as Stuyvesant, Clive and Rhodes that gave a fillip to corporate entities becoming instruments of exploitation and the suppression of the rights of people, even as they pursued profits and power.

This tendency continued well into the 20<sup>th</sup> century. As imperial ambitions forged nations with relatively permanent borders, most business organizations operating in these regions focused avidly on the achievement of their financial goals. Not much emphasis was ever placed on *how* the financial surpluses would be made by companies. The Managements of such firms, as also their *shareholders*, were not inclined to delve too deeply into the *factors* that led to the making of financial surpluses. In fact, even the governments of the nation where such companies were incorporated, and where their directors lived, paid little heed to the governance of these entities. Apart from the fact that a blind eye was turned – by the corporate managements and most in their respective governments - to the exploitation of resources and the suppression of human rights, even issues such as product safety and quality, or the longevity and reliability of products, were matters that few enterprises would take up unless they were forced to do so by law.

Fortunately, with the advances that have been made in the establishment of universal rights-based laws, and the understanding that corporate entities need to be regulated, companies are changing for the better. The Managements of firms globally, realize that they will need to uphold the larger interests of all stakeholders, as well as the communities that may be impacted by their functioning, for them to have a *social license* to function. Accordingly, therefore, even the environment is treated as a stakeholder. In this day and age, these steps alone ensure that companies have social legitimacy to function, and be compliant with the increasingly stringent requirements of the law.

In the light of these rapid changes that are taking place in the regulatory eco-system around the world, today's businesses understand that they need to establish a culture of ethical decision-making at all levels within their organizations, for long-term effectiveness.

### **What is an Ethical Culture?**

An ethical culture in the context of a business enterprise is a consistent pattern of decision-making – at all levels in the organization, from the Boardroom to the shop-floor - that is based on fulfilling the Social, Environmental and Governance Responsibilities of the enterprise. What this implies is that the enterprise will function in a way that even as it is pursuing its economic goals, it will do so in a way that takes into account, and endeavour to eliminate or at least mitigate, any adverse impacts of all its actions and attendant “externalities”, on the stakeholders of the business.

Many have the impression that an Ethical business organization only focuses on denouncing and avoiding bribery, not indulging in financial wrong-doing, and meeting its fiduciary obligations to its shareholders, while ensuring the payment of taxes to the authorities. This is obviously a part of the larger set of pledges and guarantees that businesses make with their key shareholders and the regulators. Yet, these are only a partial list. A full set of responsibilities covering all stakeholders would form the basis of a sound and robust ethical culture.

### **Establishing an Ethical Culture**

Businesses do not become ethical, or progressive, or comply with their Social, Environmental or Governance responsibilities on their own. They have to be *steered* in that direction. The process of steering the organization in the right, ethical direction and then creating the internal structures and mechanisms that support the consistent movement forward in the chosen direction is the result of the following, six (06) management interventions. These actions, when taken together and consistently applied within the organization, ensure that an Ethical culture is created, and the organization moves ahead unwaveringly on the chosen path.

**1. Setting the tone at the top:** Leaders at the level of the Board determine the tone at the top of the enterprise. Firms that are progressive and ethical are so because the Upper Management wants the firm to be that way. They know and understand that issues related to the Social, Environmental and Governance Responsibilities cannot be delegated and have to be articulated at their level. They also understand that for the longevity of the enterprise, they would need to have social, political and legal legitimacy, and that would not be possible if their businesses is not intrinsically 'Life affirming'. They appreciate that the goods and services they produce and deliver, must enhance the Quality of Life of all, and not deprive anyone of their legitimate rights.

Accordingly, they communicate the Intent of the Enterprise (in the form of Vision and Mission documents, as well as Ethical Policy Statements) and place a high degree of emphasis on adherence to, and compliance with the articulated principles and policies, at all times.

**2. Deploying Policy by Aligning Processes and Decisions with Intent:** Policies and Statements of Intent, which are issued by Upper Management, are then deployed

within the organization. Thereby, the structure, the systems and processes of the enterprise, are oriented and aligned with the direction that the organization has chosen. This also implies that the goals of the various functions in the organization, as well as the Key Result Areas (KRAs) and Key Process Indicators (KPIs) are determined in harmony with the Policies, Decision Rules, and functional Policies and Procedures are written and communicated widely, so that all understand the manner in which the enterprise wishes to function, and the way in which decisions will be taken.

**3. Training of Employees Consistently:** The creation of an ethical culture in any organization requires more than just a one-time communication of Organizational Policy or Intent. All employees – new and old – need to be regularly trained in the overall Intent and Policy of the organization, as well as their own specific functional Rules and Policies, which govern their work. Training is an essential component of ensuring that there is widespread understanding of the key elements of the manner in which the enterprise has to be run, and decisions-taken. Training is also linked to the growth of employees to higher and more responsible positions in the enterprise.

**4. Resolving Discrepant Situations or Decisions:** It is normal in large organizations that may have multiple locations and facilities, to encounter situations that may fall outside of the situations that are covered by the written rules and procedures. In such situations the rules clearly specify the *manner* in which discrepant situations or decisions would need to be flagged and then resolved; as also who the persons responsible would be for providing clarifications. This assures all decision-makers that they have access to organizational resources to help them in case they encounter a tricky situation. These could also be situations such as a senior executive from a customer firm asking for a bribe, or spelling out illegal or inappropriate conditions for a large order to be received.

**5. Monitoring Performance and Compliance:** When the senior leaders of an organization 'Walk the Talk', and follow the stated policies and rules consistently, they send out a powerful message across the organization that encourages compliance. Accordingly, when the Board of Directors, while monitoring matters of concern to the business, spends time on the performance of the various divisions of the enterprise against the policies and rules- and the extent of compliance - it ensures that all other business heads take a cue and follow a similar pattern of performance monitoring. Furthermore, this also demonstrates the importance that is placed on the ethical conduct of business.

**6: Taking Corrective Action:** The process of creating a lasting Ethical Culture is completed when there is in place a system of regularly improving the speed, and the pace at which the appropriate decisions are taken, that support the Policies of the enterprise. Corrective action also ensures that issues related to conflicts of interest, the improper behaviour of employees or systemic lapses in the organization are corrected, so as to prevent a recurrence of errors.

## News and Events

□ A meeting of 'Friends' of FRNV was organized on **5th August, 2016** to listen to various ideas and suggestions from those like-minded people who have been connected with the organization since a long time. Each 'Friend' who has been associated with FRNV expressed their view and willingness to contribute to the cause of FRNV.

□ The Karnataka Chapter of FRNV was inaugurated at Bangalore by FRNV President, Dr. E. Sreedharan on **August 13, 2016**. The event was attended by citizens of Bangalore from various walks of life. General Secretary of FRNV Sri Bharat Wakhlu and CEO Ms. Anupama Jha attended the event. Sri V. Vishwanath is the head of Karnataka Chapter.

□ The 8th AGM of FRNV was held on **August 20, 2016**. President Dr. E. Sreedharan, General Secretary Sri Bharat Wakhlu, Treasurer Sri Prem Arora, Joint Secretary Sri Ashwani Kumar and others were present on the occasion. General Secretary Sri Bharat Wakhlu gave an overview of major activities that happened in the last financial year. The general body approved major decisions taken during the last one year by the governing body. The treasurer presented the financial report on the occasion.

□ **Deputy Chair, Rajya Sabha**, in a response to FRNV letter on Parliament Disruption has said that it is the collective responsibility of all stake holders to ensure unobstructive functioning of the Parliament.



## India Enacts Weak Whistleblower Law

-Anand S. Dayal, JD cum laude Cornell,  
Legal Counsel, Admitted in USA (NY, DC) and India  
Koura & Co. Advocates, New Delhi

The Whistleblower Protection Act, 2011 has several loopholes. This article describes key features of the Whistleblower Act as compared to internationally expected norms. The Act falls short in several key aspects.

### Scope of Protected Disclosure

Three categories of disclosure are protected—first, offenses or attempts under the Prevention of Corruption Act, 1988, which include inter alia acceptance by a public servant of a bribe or having assets disproportionate to legitimate sources of income; second, willful misuse of power or discretion resulting in loss to the government or wrongful gain to another; third, attempt or commission of a criminal offense by a public servant. Note that disclosures of misconduct on the part of the higher judiciary are excluded, as the definition of “public servant” excludes a supreme court or high court judge. Note also that the scope of protected disclosure does

not include disclosure about malfeasance such as waste, neglect or dereliction of duty or misconduct that is not willful.

The Act protects a complainant against being “victimized”. Protection however is not sua sponte—in order to obtain redress the person being victimized must file an application with the relevant competent authority. The burden then shifts to the public authority (typically the employer) to prove that the person is not being victimized. Although victimizing the complainant is prohibited, it is not in and of itself an express offense under the Act.

### Anonymous Complaints Will Not Be Accepted

Under the Whistleblower Act however, a complaint cannot be filed anonymously. The Act expressly states that no action will be taken if a disclosure does not indicate the identity of the complainant. This is a serious shortcoming in the Act. While the whistleblower cannot remain anonymous, the receiving competent authority is required to conceal the identity of the complainant. Certain exception may apply. Thus the complainant must entirely rely on the competent authority as regards protecting his or her identity. By contrast, under US laws that provide for monetary rewards, the complainant can remain anonymous even while seeking a reward, so long as the complainant acts through legal counsel.

The first aim of any whistleblower law is to prevent the person making the disclosure from being victimized, dismissed or treated unfairly in any other way for having revealed the information. The most effective way of protecting whistleblowers is to maintain uncompromising confidentiality regarding their identity and the content of their disclosures. People are often aware of misconduct but are frightened to report it. They will only come forward if they are assured the strictest protection against retaliation, and not revealing their identity is a critical safeguard.

### Whistleblower Laws Becoming Ubiquitous

Laws requiring the use of a whistleblower mechanism are becoming common. The UN Convention Against Corruption, which India signed long ago but ratified only in 2011, requires each state (signatory country) to incorporate into its domestic legal system appropriate measures to protect persons who report corruption in good faith and on reasonable grounds. Besides Indian domestic law, companies in India accessing US capital markets are subject to the US Securities and Exchange Commission’s whistleblower provisions under the Dodd-Frank Act, which provide for a bounty (cash reward) to be paid to the whistleblower.

In addition to “external” whistleblower laws, companies in India are required to have similar internal reporting mechanisms. The Companies Act, 2013 which came into effect in 2014 requires companies to establish a “vigilance mechanism” to report genuine concerns and provide for “adequate safeguards against victimization” of people who report misconduct. Certain exceptions may apply.

### No Second Level Escalation of Complaint

Under the Whistleblower Act, the “competent authority” is charged with accepting and acting on complaints and safeguarding the complainant against retaliation. No specific entity is the competent authority; rather various entities (including the Prime Minister, Central or State Vigilance

Commission and the jurisdictional High Court) are the competent authority depending on the status of the person against whose misconduct the complaint is made. Accordingly, the competent authority is an amorphous category of a wide range of governmental authorities.

The Whistleblower Act provides only for a single level of competent authority to whom complaints can be made, with no mechanism to escalate to a second higher level if the complainant wants to. The global consensus is that whistleblower laws should provide for at least two levels of institutions. The first level should be comprised of entities such as an independent ombudsman within the organization for which the whistleblower works, or if the whistleblower is a public servant, he or she should be enabled to report to an

anti-corruption agency or an auditor general. In addition, whistleblowers should be allowed to turn to a second level of authority if needed, such as designated members of the legislature, the government or the media.

### ***Active Enforcement is Essential***

The main purpose of whistleblower laws is to provide protection for insiders who report cases of malfeasance, corruption or other abuse of authority. Potential whistleblowers will be affected not by the mere existence of a law, but by plausible assurance that they will actually be protected from consequences that may range from minor harassment to murder. For the Whistleblower Act to be effective, it is therefore essential that it be actively enforced and administered, and that this is readily apparent.

## ***Musings from Our Friends and Members***

### ***How To Inculcate Values In Today's Education System***

***- S. Sitaraman, Friend, FRNV***

We all know that EDUCATION without CHARACTER is a national waste. Hence we must start our uphill task from the primary school stage when the young minds are better poised to accept and assimilate noble qualities and positive virtues, soaked in moral standards. Some suggestions are given below:

1. Only those who possess good character, with devotion and dedication should be chosen as Teachers who are going to shape, train and transform the young minds. To attract right people to work as teachers, remuneration should be made attractive. Teachers must be given pride of place in our society and should be accorded honour, respect, and prestige.
2. In the syllabus, Moral science should be given maximum emphasis and students scoring high marks in this subject should be rewarded and honoured.
3. Inspiring stories from our epics and also from Bible, Granth sahib etc should be part of the compulsory study.
4. Just as winning in games and sports are attractive, competitions be held in games that promote values in public life and community living.
5. Anecdotes about the importance of human values be given priority in the classroom sessions by teachers.
6. Promotions to higher class be made conditional on students scoring a minimum cut off marks- 70 % and above.
7. Guest lectures by noble scholars and selfless Swamiji's be arranged once in a month to ignite the young minds to elevate themselves to higher echelons in life.
8. Nepotism, favoritism, and all such malpractices be condemned and discouraged publicly and those who try to indulge should be summarily dismissed and punished.
9. The message should go strong that in education character is the primary consideration and only those who pass this test can hope for promotion, increments, awards etc.
10. Every school must form a Board of Advisers who will be persons of integrity, honesty, and sincerity to help and assist the youth to reach high levels in society .

How do we translate the above laudable suggestions into

practical acceptance by the persons concerned? Let us consider the following suggestions –

1. Negative and destructive traits such as greed, jealousy, avarice, cunningness, hatred, vendetta, be shown in their true colours to the youngsters in classrooms, playgrounds, extracurricular activities so that they themselves develop an aversion and disinclination towards such evil tendencies.
2. Life sketches of Mahatma Gandhi, Raja Haris Chandra, Swami Vivekananda and many more *mahapurush* avatars in India be portrayed through the internet, CDs, DVDs and other forms of print and digital media.
3. Actual instances of people showing human values be highlighted by teachers while taking lessons.
4. BEST AWARD for students demonstrating exemplary behaviour be instituted in schools and colleges so that this will serve as a positive catalyst and as a strong incentive.
5. Jobs be made easily available to those who excel with human values.

There is a saying:

*If WEALTH is lost, something is lost.  
If HEALTH is lost, most of life is lost.  
But if CHARACTER is lost then  
EVERYTHING is lost.*

The time has come to restore to original glory best qualities like kindness towards others including animals and birds/insects, mercy, caring and concern for others who are weak, tolerance of views not in agreement with ours, respect for women and children/senior citizens, helping nature, attitude of LIVE and LET LIVE, approaching any issue with a WIN-WIN attitude and Subscribing to the golden rule of I AM OK-YOU ARE OK- all these will elevate our stature to Himalayan heights!

***Dear readers,***

***FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at [shilpi@valuefoundation.in](mailto:shilpi@valuefoundation.in) .***