

ETHICS IN BUSINESS, INDUSTRY AND PUBLIC LIFE

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"Free Enterprise was born with man and shall survive as long as man survives".

— **A. D. Shroff**

1899-1965

Founder-President

Forum of Free Enterprise

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By

N. Vittal, I.A.S. (Retd.)*

I feel greatly honoured and privileged to have been called upon to deliver this year's Bhogilal Leherchand Memorial Lecture. Shri Bhogilal Leherchand was one of the towering giants of the Indian business scene and not only was he able to demonstrate his enterprising spirit and develop business but he also showed how this could be done in an ethical fashion. Shri Bhogilal Leherchand, due to family circumstances had to give up his studies at a very young age and engaged himself in business with his father in diamonds. The firm dealing in diamonds was named after him, M/s Bhogilal Leherchand, and in due course of time, he became the leading diamond merchant in Bombay, known for supplying quality diamonds. During his business activities he came in contact with leading businessmen and industrialists in Bombay, apart from his clientele amongst Maharajas and Nawabs. He was known for his integrity and his customers had implicit faith in him and he never failed them. As early as 1921, he had his own representatives stationed in Antwerp, Belgium, for purchase of diamonds. He always felt his shortcoming, viz., that of

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not having had a proper university education and realising the importance of education in life, he saw that his sons and daughters were very well educated.

Although diamond business was very successful, he always felt that it did not give enough opportunities for his entrepreneurial talent and of rendering service to the community at large by giving job opportunities. There was hardly any diamond cutting industry then as it is now. As such, he diversified into engineering, textile and petro-chemical business apart from starting trading activities in cotton. His diversified activities gave him satisfaction in as much as he was able to provide employment to thousands of people in the industries as well as in business, both directly and indirectly. He also believed in the necessity of keeping abreast of times and therefore the textile mill, with which he was connected for four decades as its Chairman, was one of the most modernised mills in Bombay at that time.

In these days when we are facing the problem of lack of morals and falling standards in every sector, recalling the achievements of giants like Bhogilal Leherchand is a source of inspiration. It is also an occasion for carrying on an exercise of introspection among ourselves to look at the issues of ethics in business, industry and public life today and what we can do on these issues.

Ethics according to the Concise Oxford Dictionary means "a set of principles of morals, science of morals, moral principles, rules of conduct, the whole field of moral science." The development of moral principles and codes of conduct is a process which is directly linked with the development of a society. Depending upon the conditions prevailing in a society what was considered moral and ethical at a given point of time may no longer be considered as moral and

ethical. In fact there is the school of thought which holds that the entire issue of morals is situational. Take for example an issue like telling the truth. Thiruvalluvar, one of the leading thinkers and seers of Tamilnadu wrote 2000 years ago in Thirukkural that some times telling a falsehood may be justified. *Poymayum vaymai idatha purai thirtha nannai payakkum enin*, he says. If ultimately good will come out, some times telling a falsehood may be justified. We have seen the same issue in the Bhagavad Gita where Yudhishtra has to face the issue of *narova kunjaro*. Perhaps this question of making a choice in conduct whether it is telling the truth or taking course of action which is generally prohibited is faced by all of us some time or other in life. But today, as we look at the issue of ethics in business, industry and public life, we have to be clear about the purpose of ethics, understand its dynamics and then finally see what we can do to move towards a society in which there will be better standards of ethics and moral principles in business, industry or public life.

Human society has evolved over thousands of years. At a time when the primitive life was "harsh, brutish and short", having an eye for an eye or tooth for a tooth and each unto himself might have prevailed, as the guiding principle. But as people came to live together as hunter gatherer societies, the functions got divided between men and women and rules of conduct evolved. Basically these rules were such that they contributed to the public good. The ten commandments for example are required to have a peaceful and orderly society. Moral principles like the prohibition of stealing or condemning adultery or encouraging the telling of truth are all designed to ensure that human beings are able to evolve into smooth healthy happy societies. A society in which there are high ethical standards is bound to be a happy society.

Unfortunately, human beings are not perfect. Hence ever since the ten commandments have been prescribed, there have been violations. So much so cynically today we can say that there is a 11th commandment. "You can violate all the ten commandments but thou shalt not be found out!" A practical person like Kautilya found that when it comes to the corrupt bureaucrats, they were like fish in water. One never knows when the fish is drinking water. Perhaps in every society, this problem has existed but when we look at history we can find that there have been times when the moral standards were high and there have been times when they had fallen to low levels. In Indian history, we think of the Gupta period as the period when perhaps the best moral standards were maintained. Definitely in today's context even if we compare the level of moral standards in our country when giants like Gandhi and Sardar Patel dominated politics and the current scenario, we find that there has been a distinct fall in moral or ethical standards. The question before us therefore is: How can we improve the system? We cannot produce great leaders like Mahatma Gandhi but can we have an alternative approach to tackle the issues of ethics in business, industry and public life?

As I see it, the first requirement is to bring about a change in the mind set. Today India is rated as the 9th most corrupt country in the world. It is true that this is based on perceptions of outsiders. But let us not forget that the real truth is only known by the seers, thinkers, rishis and munis. For most of us, our life is guided by perceptions. For us perception is reality. Only Adishankara can say *brahman satyam jagat mithyat*. Having been in this world, as practical people, what can we do to improve our standards of ethics in business, industry and public life?

The change of the mind set can be brought about by intelligent use of the media and public opinion. This has to be based on a practical consideration. For example in business, especially in the Indian context, a certain degree of corruption is considered as a necessity. A business man is a practical person and if he has to get things done, he may not mind so long as his work is done. The late Shri Baburao Patel is supposed to have said that we can eliminate corruption in our country by making one verbal change. What we call corruption can simply be called "service charges" or *savidha shulk*. If we think that corruption is nothing but a service charge, there are also experts who will justify this. We have inherited a system of scarcity made worse by the *neta babu lala raj* or the permit licence raj which has come up in the last fifty years after independence. So everything being scarce, then for the authority which has the discretion has to decide whom it should support. Corruption probably helps to make the choice. But, kleptocracy in the long run does not help.

If anyone had a doubt that we need not be very choosy about being very honest in our public life, a look at the currency crisis in Thailand and Indonesia today would help to clear the mind. I went to Thailand a few years ago and I was told that we had in India "dishonest corruption" whereas Thailand had "honest corruption". What they meant by honest corruption was that if a bribe was given, the work was done. If the work was not done, the bribe was returned. In India one may pay a bribe for getting a work done but the money will never be returned. We have seen that this sort of a casual approach to the issue of corruption has in turn led ultimately to the collapse of the economy.

Globalisation involves movement of four elements of the economy across borders. These are physical capital in terms

of plant and machinery, financial capital, labour and technology. While the movement of physical capital, labour and technology has been going on for thousands of years, the movement of financial capital is a recent phenomenon of less than two decades. This became possible because of the integration of the global market and the world becoming a global village. Today at the touch of a computer key or a click with the mouse, billions of dollars can be sent across borders. The mobility of the capital is because there is always a search for better returns. The emerging markets like Indonesia and Thailand were seen as attractive areas for investment. But the flow was such that ultimately it went into areas of speculative nature like real estate and then the bubble has burst. So, the perception that corruption might have been linked with also economic growth for some time is an illusion. In the long run, real economic development can come only if there is a better disciplined financial sector which means better business ethics.

“Honesty is the best policy”, is not merely an old adage but is also an operational reality today. I would therefore suggest that if we want to improve the ethics in business, industry and public life we should adopt a pragmatic approach. If we take a survey of the people of our country 10% of them are going to be Harishchandras and Mahatma Gandhis. 10% are going to be crooks whatever we do. 80% of the people decide their morals and ethical behaviour based on the system. As I see it our system encourages corruption by the following —

- (a) Scarcity of goods and services
- (b) Lack of transparency in decision making
- (c) Delay and red tape attracting speed money

- (d) Cushions of safety which have been created for the corrupt by our legal and administrative system on the very healthy principle that everybody is innocent till proved guilty. The procedures evolved and the delays that take place in bringing the guilty to book are so long and time consuming that many a time the corrupt escape.
- (e) Sense of tribalism, casteism or biradri, by which corrupt officials defend and protect each other.

It therefore follows logically that if we want to improve the level of ethics in business, industry or public life, we must tackle these factors of our systems. When I talk about the system, I am talking about the governmental system because as the Central Vigilance Commissioner (CVC) my jurisdiction is mainly restricted to the central government ministries, departments, organisations, banks, PSEs etc. We can take this sector as a model of what could be done in improving ethics because this sector influences substantially business and industry. It also has very close linkages with the public life which in our context life refers to our political democratic system.

We should look upon handling the issue of corruption or lack of ethics in the same way we look at the problem of malaria. One can deal with individual cases of corruption and punish the corrupt like dealing with individual victims of malaria. A much better solution is to see that the mosquitoes do not breed and therefore there is no malaria. In other words if we are able to go into the root causes of what creates corruption in our system we are likely to succeed.

The solutions for the five factors I mentioned above are obvious. If scarcity of goods and services are a problem,

our solution must be to see how those goods and services can be enhanced. When I was Chairman, Telecom Commission, I found that the Department of Telecommunication had also a lot of complaints about corruption. This is because the telephone services are not adequate. We therefore came up with a policy which threw open this sector also to competition and with more players coming, it should be possible to have ultimately the customer emerging as the decisive factor and to that extent the corruption can be reduced. It is true that the National Telecom Policy 94 has run into problems and right now we are examining an alternative model which will be basically carrying forward the reform process by encouraging real competition. The point here is that by reducing the scarcity element, we can strike at the root of corruption.

It is a fortunate development that thanks to the judgement of the Supreme Court in the Vineet Nariain case, the Central Vigilance Commission has been made into a statutory body. This has now provided the government an instrument with the necessary legal clout to at least make an effort to improve the system with a view to reduce corruption and improve the level of ethics. Under the provisions of the CVC Ordinance 1998, the functions and power of the Commission shall be to —

- (a) *exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act 1988;*
- (b) *inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a*

corporation established by or under any Central Act, Government Company, Society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act 1988;

- (c) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (3) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988;*
- (d) grant approval or otherwise for the conduct of investigation into allegations of corruption under the Prevention of Corruption Act 1978 against the persons mentioned in section 6A of the Delhi Special Police Establishment Act 1946 in accordance with the regulations made in this behalf.*
- (e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act 1988;*
- (f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act 1988;*
- (g) tender advice to the Central Government, corporations established by or under any Central Act, Government Companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;*
- (h) exercise superintendence over the vigilance administration of the various Ministries of the Central*

Government or corporations established by or under any Central Act, Government companies, societies, local authorities owned or controlled by that Government.

The persons referred to in clause (c) of sub-section (1) are as follows:

- (a) Group "A" Officers of the Central Government*
- (b) Such level officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf.*

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (c) of sub-section (1).

Using the powers under Section 8(1)(h) I have issued an order by which issues which are of a sensitive nature and where discretion are involved and which are likely to result in corruption like tenders, out of turn promotion, special dispensation etc. should be publicised by every office. So, increasing transparency by also enacting a Freedom of Information Act and using Information Technology to make accessible information to the common man are other steps that we can take to bring up the level of ethics in our system.

That brings me to the next cause of corruption, delay and red tape. Our red tape exists partly because our rules are all like cancer cells. They do not die. As a result, as was recently pointed out by the Committee under the Chairmanship of Shri Jain (in which Shri HD Shourie was

a member), we have plenty of laws, rules and regulations which have outlived their use but continue to clutter the statute book. If these were just cluttering the statute book there would be no problem. But then these become convenient tools for harassing people. I would therefore suggest that we should have as in the United States the sunset principle behind every rule and act we enact. No rule or act should be in perpetuity. It should have a life time of say five years or ten years at the end of which it will lapse, unless it is reviewed and decision consciously taken to extend it or modify the rules. We must, when we design systems, think of putting everything on autopilot. The whole system must be able to correct itself. In fact when the Harshad Mehta scam took place, the reply of the government was that it was because of systemic failure. What people conveniently forgot was that the system is not God given, it is man made. What about those who were responsible for designing the system? What action have to be taken to change the system?

As the CVC I think it is my responsibility to look at the system from the point of view of improving the ethics in the areas within the jurisdiction of the CVC. So, simplifying procedures and making procedures for example fixing time limits for reducing delay are methods by which improvements can come. Coming specifically to the issue of sanctioning prosecutions for example against the corrupt or conducting departmental inquiries, I have issued orders setting the time limits of 30 days in ordinary cases and 60 days for the presidential appointees.

I then come to the final issue of tribalism or biradri. The corrupt tend to flourish and are able to protect each other because of the financial clout they enjoy. After all even if a corrupt man is found out and punished, he still continues

to keep his ill gotten wealth. In this context I have been pleading that in this country, corruption flourishes because it is a low risk high profit business. If we are able to increase the risk, then it should be possible to reduce the corruption in the system. I find that the Chairman of the Law Commission, Justice Jeevan Reddy is also of the same view. The Law Commission has drafted a law called the Corrupt Public Servants (Forfeiture of Property) Act 1999, the main features of which are given below :

Corrupt Public Servants (Forfeiture of Property) Act 1999

- 1. As from the commencement of this act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.*
- 2. Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1) such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.*
- 3. Notwithstanding anything contained in this Act, a person holding any illegally acquired property in contravention of the provisions of sub-section (1) shall, on conviction by a criminal court, be also liable to punishment with imprisonment which shall be not less than seven years and which may extend to fourteen years.*

The provisions of this act shall apply to

(a) Every public servant

- (i) who has been found guilty of corruption in a disciplinary/departmental inquiry*

- (ii) who is holding or is in possession of properties which are disproportionate to his known means of income*
- (iii) who is found holding or in possession of properties whether in the course of a search, raid or survey by an authority or in any other manner whatsoever, for which he cannot furnish an acceptable explanation or which are disproportionate to his known means of income;*
- (b) every person who is a relative of the public servant referred to in clause (a)*
- (c) every associate of the public servant referred to in clause (a)*
- (d) any holder of any property which was at any time previously held by the public servant referred to in clause (a), unless such holder proves that he was a transferee in good faith for adequate consideration;*
- (e) any person who has deposited any amounts or other movable properties in any bank or any other concern outside the territory of India, or has acquired any properties outside the territory of India without the requisite permission of the appropriate authority in India*

Explanation - I: For the purpose of clause (b) of this subsection, "relative" in relation to a public servant means -

- (i) spouse of the public servant*
- (ii) brother or sister of the public servant*
- (iii) brother or sister of the spouse of the public servant*
- (iv) any lineal ascendant or descendant of the public servant*
- (v) any lineal ascendant or descendant of the spouse of the public servant*

- (vi) spouse of the person referred to in clause (ii), clause (iii), clause (iv) or clause (v)
- (vii) any lineal descendant of the person referred to in clause (ii) or clause (iii)

Explanation - 2: For purposes of clause (c) "associate" in relation to a public servant means -

- (i) any individual who had been or is residing in the residential premises (including outhouses) of such public servant
- (ii) any individual who had been or is managing the affairs or keeping the accounts of such public servant
- (iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act 1956, of which such public servant had been or is a member, partner or director
- (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at any time when such public servant had been or is a member, partner or director to such association, body, partnership firm or private company
- (v) any person who had been managing the affairs or keeping the accounts of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii)
- (vi) the trustee of any trust where -
 - (a) the trust has been created by such public servant, or
 - (b) the value of the assets contributed by such public servant (including the value of the assets, if any,

contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(i) where the competent authority, for reasons to be recorded in writing, considers that any properties of such public servant are held on his behalf by any other person, such other person.

Explanation - 3: For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this act.

If such an act is enacted by the government quickly, it should be possible to bring the culprits to book and make corruption in our country a high risk activity which automatically will ensure that there is less corruption. When we talk about business and industry, one sector which is vital for both is the banking sector. The CVC has looked into this and has taken initiatives to bring down the level in the banking sector.

What about public life? We are talking about political corruption. Fortunately the JMM Judgement of the Supreme Court has said that the Ministers and MPs are also public servants. Hence they come within the purview of the Prevention of Corruption Act. It should therefore be possible for the CVC to initiate action where there is justification.

The CBI is one instrument which is in a way under the superintendence of the CVC under the CVC Ordinance. But the CBI has its own problems of shortage of staff. I am trying to resolve this issue. After all there must be some

method by which the CVC is able to focus on at least important cases and our objective must be to focus action against the people at the highest levels because unless the people at the highest levels are brought to book, the common man in this country and the public at large are likely to take the view that our whole system is like the spider's web. The small and weak insects and flies may be caught but a real big bumble bee can just burst through the web. We do not want that to happen if we want to improve the level of ethics in our society. Initiatives have to be taken and system changes have to be brought in a number of areas if we have to succeed.

An occasion like this in honouring the memory of late Bhogilal Leherchand we come to focus our attention on evolving new solutions to old problems. After all we should follow the Rid Vedic dictum that we should keep our minds open for all ideas. *Aano bhadrah kritavo yantu vishwatah.* Let noble thoughts come to us from all sides. At the same time we have to also put it through the process of debate which was visualised by the Taitreya Upanishad. Let us come together, let us enjoy together, let our strengths come together, let our intellect shine, let there be no misunderstanding or hatred.

The views expressed in this booklet are not necessarily those of the Forum of Free Enterprise.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good".

— Eugene Black

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