ETHICS IN PUBLIC ADMINISTRATION

Previous Year Questions from This Topic

Ques. What does ethics seek to promote in human life? Why is it all the more important in Public Administration? (150 words, 10 marks) **(2014)**

Ques. Public servants are likely to confront with the issues of "Conflict of Interest". What do you understand by the term "Conflict of Interest" and how does it manifest in the decision making by public servants? If faced with the conflict-of-interest situation how would you resolve it? Explain with the help of examples. (150 words, 10 marks) **(2015)**

Ques. "Max Weber said that it is not wise to apply to public administration the sort of moral and ethical norms we apply to matters of personal conscience. It is important to realize that the state bureaucracy might possess its own independent bureaucratic morality." Critically analyse this statement. (150 words, 10 marks) **(2016)**

Ques. Conflict of interest in the public sector arises when (a) official duties, (b) public interest, and (c) personal interest are taking priority one above the other. How can this conflict in administration be resolved? Describe with an example. (150 words, 10 marks) **(2017)**

Public administration consists of all those operations having for their purpose the fulfilment or enforcement of public policy.

It includes military as well as civils affairs, as much of the work of courts and all the special fields of government activity-police, education, health, construction of public works, conservation, social security, and many others.

BASIC CHARACTERISTICS OF PUBLIC ADMINISTRATION:

- It is non-political public bureaucracy operating in political system;
- It deals with the ends of the State, the sovereign will, the public interests and laws;
- It is concerned with policy-making as well as policy execution;
- It covers all three branches of the government, although it tends to be concentrated in the executive branch;
- It provides regulatory and service functions to the people in order to attain good life;
- It differs significantly from private administration, especially in its emphasis on the public with respect to means and ends.

PRINCIPLES DIFFERENTIATING PUBLIC ADMINISTRATION FROM PRIVATE ADMINISTRATION

Administration occurs in both public and private institutional settings. While public administration is concerned with government administration, private administration is concerned with administration of private business organisation.

Following four principles that differentiate public from private administration:

Principle of uniformity	Common and uniform laws and regulation
Principle of external financial control	Legislative body control government revenues and expenditure
Principle of ministerial responsibility	Accountable to its political masters and through them to people
Principle of marginal return	Main objective of business venture is profit; however, the objectives of public administration cannot be measured in money terms.

NEED OF ETHICS IN PUBLIC ADMINISTRATION

Public administration in India has been largely focused on political, legal and financial domains only, but the ethical dimension is equally important, which can be understood from the following points:

- **Public resource utilisation:** Efficient and effective resource utilisation without corruption in India is important because of resource deficit and ethics make a public administrator accountable to his/her actions.
- **Social Justice:** Ethical public administration is important to achieve the goal of social justice as envisaged under Article 38 and other DPSPs of our Constitution. It ensures equality and equity for vulnerable sections of the society.
- **Resolve dilemma:** Public administration is becoming complex day-by-day and this creates frequent dilemma for public administrators. Ethics ensures public good is given priority and resolves ethical and value conflicts and dilemma.
- **Decision making:** Public administrators take key decisions and when those decisions are based on objectivity, fairness, justice and above the personal interest, they yield required results for the society.
- **Public trust**: Ethical public administration creates confidence and trust in the of the people towards the competence, fairness, honesty, impartiality and sincerity of the public services.
- **Social capital:** Ethical public administration ensures credibility in the eyes of the people and ensures civil society cooperation and thus building social capital of the country.
- **Sarvodaya/antyodaya:** Ethical public administration brings empathy, compassion for poor and vulnerable sections of the society leading to better understanding of societal problems and thus finding their solutions.
    - **Example:** Implementation of Bonded Labour Abolition Act by IAS officer S. Shankaran.

STATUS AND PROBLEMS OF ETHICS IN INDIAN PUBLIC ADMINISTRATION

PROVISIONS FOR INCULCATING ETHICS IN INDIAN ADMINISTRATION

- **Central Services Conduct Rules, 1964:** The rules provide for do's and don'ts for civil servants and requires them to maintain absolute integrity, devotion to duty and political neutrality while discharging their duties.
- **All India Service Conduct Rules, 1968:** These rules provide that the officials of IAS, IPS and IFoS should maintain high ethical standards, integrity and honesty, political neutrality, promote principle of merit, fairness and impartiality in the discharge of duties along with accountability and transparency.
- **Code of ethics, 1997:** It was first initiative to introduce code of ethics for public servants in India aiming for better governance in India. However, it was not issued for public servants.
- **Draft Public Service Bill, 2007:** It was drafted by Department of Personnel and envisaged moral behaviour from the civil servants and enumerated certain values among public servants:
    - Patriotism and upholding national pride;
    - Allegiance to the Constitution and the law of the nation;
    - Objectivity, impartiality, honesty, diligence, courtesy and transparency;
    - Maintain absolute integrity.

ETHICAL ISSUES IN INDIAN ADMINISTRATION

- **Misuse of discretionary powers:** Discretionary powers are misused for personal gains and extend favouritism in the administration and public welfare is largely disregarded.
- **Undue importance to rules and regulations:** Indian administration gives undue importance to compliance of rules and regulations, which leads to excessive red-tapism and disregard of the justice, fairness etc. and more focus on accountability rather than responsibility in the administration.

- **Poor reward and punishment mechanism:** Reward and punishment is determined by <u>favouritism</u> and <u>political nexus</u> disregarding <u>merit</u> in the administration.
- **Lack of communication:** Indian administration is characterised by <u>closed communication</u> and <u>limited public contact</u>. Rigid <u>hierarchy</u> within the organisations further hinder communication.
- **Negligence:** A public official either does not perform his professional responsibilities or performs them in a delinquent manner, causing damage to the state or community. This is mostly because of the lack of interest that one has in one's duties and responsibilities.
- **Corruption:** <u>Bribery</u> and <u>corruption</u> are seen as <u>reward for performance of obligatory work</u> and considered as <u>necessary evil greasing the wheels</u> of the government departments.
    - o **Example:** India has been ranked <u>85th</u> in <u>Corruption Perception Index, 2021</u>.
- **Evasive tendency:** There is <u>lack of initiatives</u> on the part of administrators <u>facing a difficult situation</u> and the problem is evaded by passing the <u>task</u> from <u>one department to another</u>.

> **Observations of Second Administrative Reforms Commission with respect to Ethical Issues in Indian Administration:**
> - <u>Corruption</u> is a matter of concern particularly at the cutting-edge levels of bureaucracy.
> - Perceptible lack of <u>commitment</u> in public servants towards redressal of citizens' grievance
> - <u>Red-tapism</u> and unnecessary complex procedures add to hardship of citizens.
> - Government servants are rarely held to <u>account</u> and complaints to higher authorities usually go unheeded
> - Attitude of many public functionaries is one of <u>arrogance and indifference</u>
> - Frequent <u>transfer</u> of officers reduces their effectiveness and also dilutes their accountability

- **Patronage:** Political patronage plays an important role in <u>appointment of administrators</u>, especially at the <u>higher levels</u>.
    - o **Example:** <u>Post-retirement assignments</u> to senior officials to <u>Regulatory and other bodies</u> is largely done on the basis of political patronage.
- **Excessive Security:** <u>Article 311</u> of the Constitution provides excessive security to public servants and this reduces the <u>enforcement of accountability</u>.
- **Ill-conceived goals:** When incentives are given for achievement of any goal but they promote a <u>negative behaviour</u>.
    - o **Example:** The <u>Bank Manager of Utkala Grameen Bank in Odisha</u> insisted on <u>physical verification</u> of a <u>100-year-old lady</u> for withdrawal of money from Jan Dhan Account.
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- **Nepotism**- The practice of nepotism (the appointment of relations and/or friends to public positions, thereby ignoring the merit principle), may lead to the downgrading of the quality of the public service.
- **Lack of compassion**: Indifference towards the feelings or the convenience of individuals and by an obsession with the binding and inflexible authority of departmental decisions, precedents, arrangements or forms, regardless of how badly or with what injustice they work in individual cases.
- **Overvaluing outcomes:** It is about giving more importance to the <u>end result and not to the process</u>.
    - o **Example:** Certifying a <u>drug developed</u> by a <u>drug company</u>, even if it has used <u>unethical means</u>.
- **Lobbying:** Various pressure groups convey <u>huge political capital</u> and they lobby for their <u>interest</u>. Sometimes these demands <u>may not be beneficial in long-term</u> but due to political pressure government/administrators have to fulfil their demands.
    - o **Example:** Various political parties have given into the demands of <u>loan waivers</u>.

PROBLEMS OF ETHICS IN INDIAN ADMINISTRATION

- **Lack of ethical literacy**: It refers to <u>inability</u> to <u>understand the ethical issues</u> that are involved in any situation and the decision is entirely <u>based on the rule-books</u>. This <u>limits the understanding</u> of the situation where <u>cultural</u>, <u>social</u>, <u>environmental</u> etc. factors play major roles.
- **Secrecy:** In spite of <u>RTI Act, 2005</u>, there is greater secrecy in the Indian administration and even the information sought under RTI Act is denied on the context of <u>official secrecy</u>.
- **Societal pressures**: <u>Irrational and unreasonable demands</u> are made upon the officers by families, relatives, peers and other close ones.
- **Political superiority**: Bureaucrats are <u>accountable</u> to their <u>political masters</u> and they have to abide by their <u>decisions</u>, even if they are <u>not economically sound</u> but based on the <u>political exigencies</u> and <u>short-term goals.</u>
- **Lack of grievance redressal mechanism:** There is lack of <u>organisation of public opinion</u> regarding <u>administrative deficiencies</u>, which is compounded by <u>lack of awareness</u> among people about their <u>rights and entitlements</u> and <u>grievance redressal mechanism</u> against officials.
- **Information leaks:** Sometimes officials have not been able to hold on to the <u>sensitive information</u> such as <u>pending tax increase</u>, <u>cost-cutting of staff</u> etc. and this information is leaked into the public domain.
- **Lack of whistleblower protection:** Although Whistleblower Protection Act, 2014 is present there is victimisation of whistleblowers and no penalty against any public servant victimising the complainant.
- **Lack of knowledge of rights:** There is also lack of knowledge of rights among public, mainly due to <u>complexity of administration</u> and also due to <u>insular attitude from officials</u>.

ETHICAL DILEMMA IN GOVERNMENT AND PRIVATE INSTITUTIONS

> **Previous Year Questions from This Topic**
> **Ques.** Explain the process of resolving ethical dilemmas in Public Administration. (150 words, 10 marks) **(2018)**

- **Dilemma** refers to a situation in which a problem is <u>offering two solutions</u>, <u>neither</u> of which is <u>practically acceptable</u>.
- **Ethical dilemma** refers to a situation that necessitates a <u>choice</u> between <u>competing set of principles neither of which is absolutely ethical</u>.
    - **Example:** A civil servant is approached by an old person, who is eligible under the public distribution system but do not have required documents.

<u>Three essential conditions</u> for a situation to be ethical dilemma:

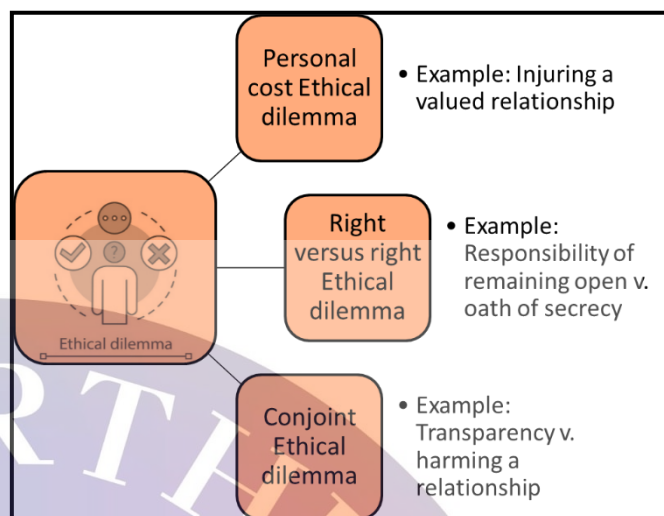### ETHICAL DILEMMA IN GOVERNMENT
Public servants in India have to work under <u>different sets of conditions</u> such as <u>resource crunch</u>, <u>political leadership</u>, different <u>societal values</u> etc. and under such situations they face multiple ethical dilemmas. These dilemmas include are caused by the following **relationships of Civil Servants**:

- Civil Servants and Political Office holders;
- Civil Servants and Citizens; and
- Intra – Civil Service (Ministries, Departments and Agencies, that make up the Country's or State's Civil Service).
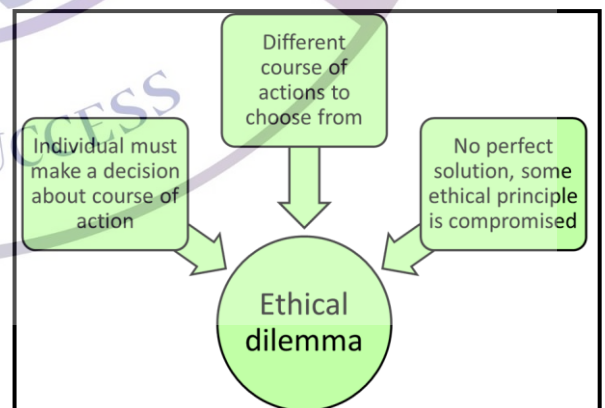
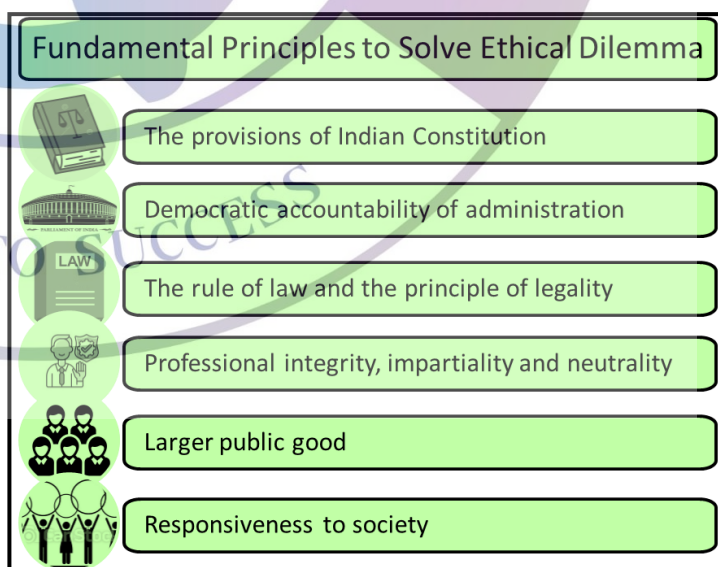### ETHICAL DILEMMAS FACED BY PUBLIC SERVANTS ARE:

- **Conflict of interest**: It is a situation involving conflict between private interest and public interest when individual is at a position of power and trust.
  - **Example:** Arun Jaitley did not handle vodafone case because he had conflict of interest as he was advisor to vodafone earlier.
- Conflict between personal values and values of public administration.
  - **Example:** A public servant might be against the use of Aadhar because of high regard for right to privacy, but might have to use it for public distribution system.
- Conflict between professional ethics and unjustified demand by superiors.
  - **Example:** A Public servant might be against loan waivers but because of orders of seniors will have to abide by the order.
- Various aspects of code of conduct, such as motivation versus not accepting rewards for performance of duty.
  - **Example:** A Public servant might be of the opinion that small gifts act as a motivation to perform his/her duty but that is against code of conduct.
- Professional commitment versus public welfare
  - **Example:** A public servant denying government entitlements to a destitute due to lack of documentary proofs.

RESOLVING ETHICAL DILEMMA IN GOVERNMENT:

Ethical dilemma can be solved by keeping following key aspects in mind:
- **Prioritising public interest:** Public servants should keep their self-interest secondary and keep public interest priority while taking any decision or action.
- **Comprehensive evaluation:** An ethical dilemma should be resolved by considering all the options and taking decision that gives 'maximum welfare to maximum people'.
- **Value neutrality:** Public servants should avoid biasedness while facing ethical dilemma and take decisions like a neutral refree.
- **Fusion**: fusion of individual, organisational and social goals mitigate ethical dilemma as a suitable option leads to all goals.
- **The rule of law and the principle of legality:** The rule of law is central and universal to politics and society. Respect and obedience to the principle of legitimacy is an important requirement to exercise authority. Law establishes the minimum standard for ethics. It helps in decision making while there is Ethical dilemaa.

Fundamental Principles to Solve Ethical Dilemma
- The provisions of Indian Constitution
- Democratic accountability of administration
- The rule of law and the principle of legality
- Professional integrity, impartiality and neutrality
- Larger public good
- Responsiveness to society

ETHICAL CONCERNS IN PRIVATE INSTITUTIONS

Business ethics applies to all aspects of a business conduct and is relevant for conduct of individuals and entire organisation. Although fundamentals remain same, it varies from organisation to organisation. Individuals of an organisation might find themselves in a conflicting situation.

Example: An honest salesman might have to sell a defective medical product which might affect the patient's health.

It gives rise to ethical concerns in a private organisation:

- **Conflict of interest:** It arises when an individual is involved in multiple interests.
    - **Example:** BCCI Ethics officer served a notice on Conflict of interest to Rupa Gurunath as she is President of Tamil Nadu Cricket Association as well as Director of India Cements Ltd. the parent company of Chennai Super Kings.
- **Insider trading and manipulation of share prices**: Excessive competition in the market often forces people for unethical practices. It is also when personal interests take precedence over the organizational and the share-holders interest. Companies poach such employee for insider information. This may have debilitating results.
- **Nepotism, favouritism:** Nepotism and favouritism is generally seen in employment and appointments in an organisation where caste, clan or other identities overtake merit. This is also seen in the positions of board of directors.
- **Integrity of audit process:** Companies sometimes manipulate their business accounts in order to show good financial health and maintain good credit ratings in the market and this is not brought to public by audit processes.
    - **Example:** Yes Bank scandal which highlighted the directors' inability to unravel deviations.
- **Monopolistic tendencies:** Companies often indulge in monopolistic tendencies in order to kill the competition in the market.
    - **Example:** Price war in the telecom sector.
- **Lobbying with the government for favourable policies**: Lobbying in some countries is ethical. In India there is no law which defines Lobbying. Defence contracts are often heated topics for the lobbying angles involved in the same. Lobbying in a regulated manner is often recommended by experts.
- **Cartelisation and manipulation of market:** Private business enterprises usually involve in cartelisation in order to displace new entrants in the market or to earn higher profits.
    - **Example:** Manipulation of prices by Arhartiyas in APMCs, tax evasion, insider trading etc.

LAWS, RULES, REGULATIONS AND CONSCIENCE AS SOURCE OF ETHICAL GUIDANCE

LAWS, RULES AND REGULATIONS AS SOURCE OF ETHICAL GUIDANCE

- **Laws** are usually based on an ethical framework and aim to bring social order while controlling the immoral and unethical behaviour of individuals in the society.
- **Rules** are elaborated framework that are usually framed with an aim to bring simplification, facilitation, convenience etc. in the order to guide the behaviour of individual or organisations.
    - **Example:** Information Technology Act, 2000 is a law and Information Technology Intermediary Guidelines Rules 2021 are framed to give effect to the law.

DIFFERENCE BETWEEN LAWS AND RULES:

Laws and rules may seem like overlapping terms, but there are some differences on which distinction can be made between the two:

Parameter	Rules	Law

|		
Objective	Rules usually focus on <u>individual good</u>	Law seeks to increase <u>public good</u> and serve <u>public interests</u>
Framing	Rules can be <u>set by individuals</u>, or by organisations	Laws are enacted <u>only</u> by those in exercise of sovereignty or government
Flexibility and violation	Rules are more <u>flexible</u> and have <u>lighter consequences</u> when <u>broken</u>	Laws are <u>inflexible</u> and carry stiff <u>penalties</u> including <u>imprisonment</u> and, in some cases, death

HOW LAWS, RULES AND REGULATIONS ARE SOURCE OF ETHICAL GUIDANCE

- **Regulating discretionary powers:** Public servants have discretionary powers for <u>governance</u>, and that can be used for <u>personal benefit</u>. Laws, rules and regulations regulate this power by laying specific 'dos and don'ts' for use of that power.
    - **Example:** Central Civil Services Conduct Rules, 1964 provides dos and don'ts for civil servant to prevent misuse of discretionary powers.
- **Commanding action and inaction:** Laws, rules and regulations act as <u>positive and negative enabler</u> and <u>encourage</u> or <u>prohibit</u> action.
    - **Example:** <u>Prevention of Corruption Act</u> prevents <u>corruption</u> and <u>Mahatma Gandhi National Rural Employment Guarantee Act</u> enables <u>social audit</u>.
- **Fostering social justice:** Laws, rules and regulations foster social justice by providing <u>modern human rights</u>, such as <u>equality</u>, <u>liberty</u> etc.
    - **Example:** <u>Prevention of Civil Rights Act 1955</u> prohibit <u>untouchability</u>.
- **Human rights protection:** Laws, rules and regulations <u>encourage empathy</u> towards needy and thus promotes <u>human rights protection</u>.
    - **Example:** <u>Motor Vehicle Amendment Act, 2019</u> provides for <u>good Samaritan</u> and protects them against <u>civil or criminal actions</u>.

LIMITATIONS OF LAWS, RULES AND REGULATIONS ARE SOURCE OF ETHICAL GUIDANCE

- **Lack of enforcement:** Laws, rules and regulations demand <u>official machinery</u> for their enforcement, lack of which might lead to <u>unethical behaviour by individuals</u> or <u>organisations</u>.
    - **Example:** There are laws <u>preventing crimes</u> in the society, but still crimes are prevalent in the society.
- **Evasive tendency:** Enactment of laws, rules and regulations may <u>not translate into ethical behaviour</u> from <u>individuals or organisations</u> because of tendency of <u>non-compliance</u>.
    - **Example:** <u>People avoiding fines</u> under <u>Motor Vehicle Amendment Act</u> by carrying their <u>vehicle by hand</u>.
- **Finding loopholes:** Laws, rules and regulations might <u>not be able to envisage every possible scenario</u> and therefore people might find loopholes in them.
    - **Example:** <u>Tax evasion</u> by finding loopholes in Income Tax Act.
- **Negative perception:** Some laws, rules and regulations might have <u>negative perception</u> among those who are obliged to perform under them.
    - **Example:** <u>Corporate Social Responsibility</u> is perceived as <u>additional tax</u> by some corporates.
- **Lack of social maturity:** Laws, rules and regulations might have good intention but society might not be mature enough to accept them.
    - **Example:** <u>Opposition to Triple Talaq law</u> by some sections of <u>Muslim society</u>, opposition to the <u>Supreme Court verdict</u> in <u>Sabrimala case</u> by some sections of <u>Hindu society</u>.
- **Cultural evils:** Laws, rules and regulations cannot always provide protection against social evils.

o **Example:** In spite of legal provisions for protection of women but still rapes/dowry cases are witnessed in literate society like Kerala.
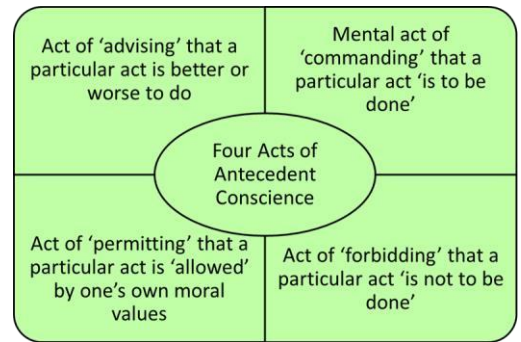
Conclusion

- Hence, laws, rules and regulations are <u>external sources</u> for ethics. However, an <u>ethical society</u> can be made by <u>ethical conscience</u>.

Act of 'advising' that a particular act is better or worse to do

Mental act of 'commanding' that a particular act 'is to be done'

Four Acts of Antecedent Conscience

Act of 'permitting' that a particular act is 'allowed' by one's own moral values

Act of 'forbidding' that a particular act 'is not to be done'

CONSCIENCE AS SOURCE OF ETHICAL GUIDANCE

- **Conscience** refers to <u>subjective awareness</u> of a person's <u>moral sense of right and wrong</u> which acts as a <u>guide to a person's behaviour</u>. It is <u>practical judgment</u> on particular, concrete human actions.

Difference between Conscience and Law:

Law	Conscience
Law applies <u>principles of morality</u> <u>outside human beings</u>	Conscience acts <u>within human beings</u> and checks the <u>morality of human actions.</u>
Law states a <u>general rule</u>	Conscience provides <u>practical rule for specific action</u> and <u>applies law and rules to that specific action.</u>

An analogy can be created that <u>conscience to law</u> what <u>paint is to a brush</u>.

Antecedent conscience and Consequent conscience:

- **Antecedent conscience** is that which acts as a <u>guide to future actions</u>, prompting to <u>do them or avoid them</u>. E.g. A person stops at red signal because of prospective remorse. In ethics, antecedent conscience which is guide to our future actions is <u>more important</u>.
- **Consequent conscience** is that which is acting as a <u>judge of our past actions</u> and acts as a <u>source of our self-approval or remorse</u> of the past actions. E.g. A person jumps red signal and then feels guilty.

HOW CONSCIENCE IS A SOURCE OF ETHICAL GUIDANCE?

Conscience is <u>linked with morality</u> and comes into picture when dealing with <u>practical situations</u>. It acts as a source of ethical guidance in following manner:

- **Resolving ethical dilemma:** Conscience helps in taking <u>correct decisions</u> based on our <u>ethical and moral principles</u> and thus helps in <u>resolving ethical dilemma</u>.
- **Avoiding conflict of interest:** Conscience <u>reminds</u> of one's <u>inherent moral values</u> and helps us avoid conflict of interest.
  - **Example:** A person known for professionalism would prefer professional values when faced with a conflict of interest vis-à-vis his/her relatives.
- **Guilt consciousness:** An individual who might have <u>done something wrong feels pain or guilt</u> emanating from his/her conscience.
  - **Example:** A <u>biker breaking traffic rules</u> might feel <u>guilt</u> after sometime because of his/her <u>conscience</u> and might not break traffic rule next time.
- **Repulsive behaviour against unethical act**: A person might show <u>lower motivation and involvement</u> in a situation in which is <u>against his/her conscience</u> and thus he/she will be inclined to take ethically correct path.

- o **Example:** A police officer might lack motivation to do lathicharge on a peaceful protest if that is against his/her conscience.

IS CONSCIENCE AN ABSOLUTE GUIDE TO ETHICAL BEHAVIOUR? NO

CRISIS OF CONSCIENCE:

Quote: "The human voice can never reach the distance that is covered by the still small voice of conscience." Mahatma Gandhi

Crisis of conscience is a situation when conscience fails to provide moral guidance to an individual in any specific situation. Individuals lose the ability to get guidance from his moral sense about what is right and what is wrong.

- o **Example:** If a police officer is administering a peaceful protest and suddenly asked to resort to strict measures irrespective of the nature of protest. This makes the situation ambiguous and the officer is faced with crisis of conscience as his/her moral sense cannot guide him/her about right and wrong actions.
- o **During Covid-19**, Crisis of Conscience situation emerged. Doctors were in dilemma of what to do with patients needing critical care. During the peak of the COVID-19 pandemic, there were more critical patients than existing capacity of the hospital. Doctors had to choose whom to save and whom to let die.
- o **During recent Anti- Encroachment drive, Muncipality officials have been ordered to forcefully evict illegal shelters constructed by squatters on government land. The official observes that the occupants are poor people who have small infants to take care of. In such case the official has to choose between his/her conscience of giving them time to vacate or follow government order and perform his duty.**
- o **Kevin Carter, a photojournalist**, committed suicide due to repentance and grief for feeling he has done something ethically wrong. He was covering famine-ridden Africa, where he was not allowed to touch anyone for professional purposes. Subsequently, the journalist could not help a child from dying. Despite his photographs rattling the morals of the world, he suffered from a crisis of conscience. The guilt of inability to save the child compelled him to attempt suicide soon after returning from Africa.
- **Wrong training of conscience:** Conscience develops with good habits but following wrong habits provides wrong training to conscience and it does not provide us moral guidance.
  - o **Example:** A person who has always lied will not be guided by his/her conscience to tell the truth.
- **Impact of morals/cultures:** Conscience also depends on the morals/cultures of the place and time.
  - o **Example:** A person's conscience towards his behaviour towards females would not provide ethical guidance if he has been brought up in a patriarchal environment.
- **Impact of societal pressure**: Conscience can be overtaken by societal or professional pressure.
  - o **Example:** People do not agree for inter-caste/inter-religion marriage for their children under societal pressure, even if they want to agree.

ACCOUNTABILITY AND ETHICAL GOVERNANCE

ACCOUNTABILITY

Accountability of public officials refers to the <u>mechanism</u> by which their <u>actions and decisions</u> are <u>scrutinised</u> to ensure <u>fulfilment</u> of their <u>duties</u>, <u>obligations</u> and <u>job roles</u>.

Accountability includes—

- **Answerability** refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight.
- **Enforcement** suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour. As such, different institutions of accountability might be responsible for either or both of these stages.

WHY IS IT NEEDED?

- It **prevents the public services from turning into tyrant** as they are held answerable to their deeds and mis-deeds.
- **Avoids conflict of interests**-Setting accountability clearly demarcates area of one's actions where he or she is required to act.
- The first and last beneficiary of public service is public, as the public services are required to **act in interest of public and they are answerable for their actions**.
- **Promotes justice, equality, and egalitarianism** because public servants are required to realize these constitutional ideals and at the same time, they are answerable for their actions.
- It **brings legitimacy to public services**- Accountability promotes the loyalty to service as actions are carefully calculated and keeps a check on arbitrary and ill-conceived actions and policies

METHOD TO ENSURE ACCOUNTABILITY:

- **Capacity building of Stakeholders** to question the public officials about their discharging of official duties. For example, the concept of Social Audit under MGNREGA. Also, effective implementation of laws like Prevention of Corruption Act should be ensured.
- **By promoting transparency**, through effective implementation of RTI in full earnest, especially the pro-active disclosure, then public officials would be more careful to function strictly according to the spirit of the law and constitution. Secondly, it would educate the people about their rights, entitlements and how to question their fulfilment.
- The **independence and effective role of judiciary** is crucial for upholding the rule of law in India, thus various steps like Memorandum of Procedure, e-courts among other should be promoted.
- The final expression of accountability in a democracy is through the **medium of periodic elections** which is an instrument for punishing and rewarding the Government of the day, and therefore, serves as an ultimate instrument of accountability. The electoral reforms and democratic maturity of people is the ultimate bulwark of accountability.

INSTITUTIONS AND MECHANISMS THAT PROMOTE ACCOUNTABILITY

Outside the State: Vertical	**Within the State: Horizontal**

▪ To the People through elections
▪ Through RTI Act to Citizens
▪ Citizen' Oversight Committees
▪ Civil Society/ Watchdog bodies
▪ Media
▪ Service Delivery Surveys
▪ Citizen's Charters
▪ Integrity Pacts
▪ Citizen Report Cards
▪ Through Whistle Blower Act
	➤ External (Outside the Executive) - Parliament, Judiciary, Lokayukta, CAG, CVC
	➤ Internal (Within the Executive)
	   ❖ Superior officers-
	   ❖ Rewards/Punishments
	   ❖ Disciplinary Procedures
	   ❖ Performances Management System
	➤ CBI/Police/Vigilance
	➤ Internal Audit
	➤ Grievances Redressal Mechanisms (Prevention Of Corruption Act, Official Secrets Act)
	➤ E- Governance mechanisms (Pragati, NeGP etc.)

TYPES OF ACCOUNTABILITY:

- **Horizontal accountability:** It is the capacity of state institutions to check exploitations by other public agencies and branches of the government.

External (Outside the Executive)	Parliament, Judiciary, Lokpal, Comptroller and Auditor General, Central Vigilance Commission
Internal (Within the Executive)	• Superior Officers: Reward and Punishment, disciplinary procedures, Performance management system • Internal audit • Grievance redressal mechanism

- **Vertical accountability:** These are the means through which standards of good governance are enforced by the citizens, mass media and civil society on the bureaucrats. Parliament is also an important forum for vertical accountability.

- **Political accountability:** It refers to the accountability that is established in the form of individual ministerial responsibility.

- **Social accountability:** It is society driven horizontal accountability that relies on civic engagement and ordinary citizens and civil society organisation participate directly or indirectly to enforce accountability of officials.

SIGNIFICANCE OF ACCOUNTABILITY IN GOVERNANCE:

- **Democratic governance:** Accountability ensures democratic governance in the country where officials are directly or indirectly responsible to the people and not only to their superiors only.

- **Public trust:** Accountability ensures officials are made answerable for their actions for any wrongdoing. This improves public trust, confidence, cooperation and coordination in the government performance.

- **Clarity:** Accountability also requires clear specification of tasks to be performed, time frame for the task and also financial and other resources available at disposal, against which an official is held accountable. This improves governance.

- **Administrative irregularities:** Accountability prevents administrative irregularities and improper implementation of government policies and programmes and thus help improve governance.

- **Remedial measures:** Accountability ensures that officials are held liable for any wrongdoing and remedial action can be taken.

- **Transparency:** Accountability ensures that officials take decisions more transparently in order to reduce absolute accountability. This makes citizens stakeholders in governance.

- **Feedback mechanism:** Accountability also generates feedback mechanism that ensures that the feedback from beneficiaries reach the decision-makers.

RESPONSIBILITY:

It means accountability to oneself, i.e. when the accountability turns inward. It is a moral concept, where a person feels the answerable to oneself for all his actions, even if it is not covered by any law.

It is more enduring than accountability, because it is based on ethical reasoning, and the person would always do the right thing, even if nobody is there to watch his action, as he holds himself answerable to oneself. Here the person takes ownership of one's actions and decisions.

DIFFERENCE BETWEEN ACCOUNTABILITY AND RESPONSIBILITY:

Authority : Power given to a person to act and make decisions within boundaries

Responsibilty: Carrying out the specific delegated tasks

Accountability: Being liable for actions and decisions

- Responsibility refers to being in-charge of certain duties which are expected to be performed by virtue of being in a certain post/position. Accountability is one step ahead. It includes answerability, i.e. being liable for the outcomes achieved due to performance of the duty. Therefore, accountability can be held on to a person only after the task is done.

- For e.g. – A judge is responsible for delivering a judgment, but is not accountable if the outcomes are not as expected. A DM is both responsible as well as accountable for ensuring compliance with RTE in her district.

- In individualistic terms, responsibility can also refer to what one expects of oneself or the others. To be morally responsible for something, is to be worthy of particular kind of reaction, such as praise or blame in pursuance of the act.

- For e.g. helping a destitute is a responsibility of the affluent and empathetic. However, they cannot be held accountable for not helping them. They can be condemned, if one wishes so.

Basis	Authority	Responsibility	Accountability
Meaning	Right to command.	Obligation to perform an assigned task.	Answerability for outcome of the assigned task.
Delegation	Can be delegated.	Cannot be entirely delegated.	Cannot be delegated at all.
Origin	Arises from formal position .	Arises from delegated authority.	Arises from responsibility.
Flow	Flows downward from superior to subordinate.	Flows upward from subordinate to superior.	Flows upward from subordinate to superior

GOVERNANCE, GOOD GOVERNANCE AND ETHICAL GOVERNANCE

Previous Year Question from This Topic

Ques. What do you understand by the terms 'governance', 'good governance' and 'ethical governance'? (150 words, 10 marks) **(2016)**

According to UNDP, **Governance** is the exercise of political, economic and administrative authority to manage a country's affairs.

According to <u>World Bank</u>, **Good Governance** refers to the <u>manner</u> in which <u>power is exercised</u> in the management of a <u>country's economic and social resources</u> for <u>development</u>.

Eight Principles of Good Governance by United Nations:
- **Participation:** People should be able to <u>voice their opinion</u> and become part of <u>governance</u>, including men and women, vulnerable sections of society etc.
- **Follow Rule of Law:** <u>Impartial enforcement</u> of legal framework and full <u>protection to human rights</u>, particularly those of <u>minorities</u> and <u>vulnerable sections</u>.
- **Consensus oriented:** It requires <u>mediation of different interests</u> to meet the best interests of a community.
- **Transparent:** It means <u>enough information</u> is provided to public in <u>easily understandable form</u>.
- **Responsive:** It means redressal of <u>citizen grievances</u>, <u>citizen orientation</u>, <u>timely delivery of services</u> etc.
- **Effective and Efficient:** It means that processes and institutions result into <u>optimum utilisation of resources</u> at their disposal.
- **Equitable and inclusive:** It ensures that different sections feel that they <u>have stake</u> in it and are not excluded from <u>main stream</u>.
- **Accountable:** It <u>acknowledges and assumes</u> responsibility for <u>actions</u>, <u>products</u>, <u>decisions</u> and <u>policies</u>.

Ethical governance is <u>formulating</u>, <u>implementing</u> and <u>complying</u> with the policies, rules, laws and orders in an organisation in such a manner that it does <u>not merely</u> concentrate on <u>administrative efficiency</u> but uphold universal values such as <u>truth</u>, <u>honesty</u>, <u>integrity</u>, <u>dedication to duty</u> etc.
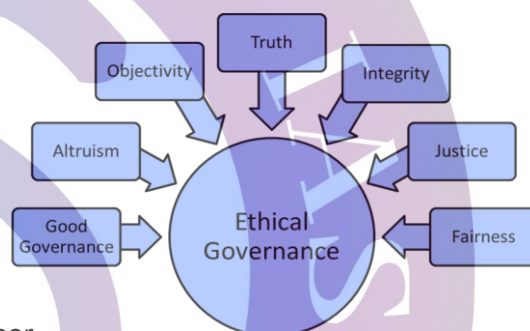
IMPORTANCE OF ETHICAL GOVERNANCE:
India is a country with resource crunch and large number of poor people. Therefore, ethical governance becomes important for ensuring:
- **Social Justice:** <u>Constitution of India</u> envisages <u>social justice</u> for the people of India and ethical governance ensures that <u>inequalities</u> are reduced in the society.
- **Confidence of public:** Ethical governance based on <u>truth</u> ensures <u>transparency</u> in the governance and ensures that <u>people's trust</u> is upheld along with <u>cooperation and coordination</u> from the public.
    - **Example:** <u>Right to Information Act, 2005</u> uphold <u>transparency</u> in the governance of the country.
- **Upholding basic human rights:** Ethical governance based on <u>altruism</u> and <u>welfare</u> ensures that citizens are given <u>basic human rights</u> that they are entitled.
    - **Example:** <u>National Food Security Act</u> ensures that poor section of the society gets their <u>right to food</u>.
- **Upholding universal value system:** Ethical governance based on <u>objectivity</u> and <u>fairness</u> absorbs the pressure of <u>nepotism</u> and <u>extending favours</u> in the governance, appointment etc.
- **Efficiency:** Ethical governance based on <u>integrity</u> would ensure that the <u>public money</u> is spent for the purpose that it is laid out for and thus reduces the <u>chances of corruption</u> in the governance.
- **Compassion:** Ethical governance based on <u>compassion</u> would ensure that <u>poor and vulnerable sections</u> and their necessities are given especial importance in the governance.
    - **Example:** <u>Affordable rental housing scheme</u> by government ensures <u>housing for migrant workers</u> at affordable cost.

Challenges to Ethical Governance:
- Excessive security under Article 311
- Ill-conceived goals promoting negative behaviour
- Overvaluing outcomes and not the process
- Giving into political pressure for short-term benefits

Conclusion: Ethical governance is a continuing process, starting with the administration and extending to all citizens. With transparency and unwavering ethics, people will seek to earn the trust of those they partner with, forge lasting service relationships and strengthen business over the long term.

ETHICAL ISSUES IN INTERNATIONAL RELATIONS AND FUNDING

- **International Ethics** is the set of standards, universal values that guide, govern the behaviours and actions of the countries in their international affairs.
  - **Example:** Basic human rights are the set of principles that are protected by most of the countries.

SIGNIFICANCE OF INTERNATIONAL ETHICS
"Injustice anywhere is threat to justice everywhere "– Dr. Martin Luther King Jr.

Due to globalisation, physical borders have been relegated to back in international affairs and ethics plays following roles in international relations:
- **Responsibility:** Ethics ensure that the rich and developed countries contribute to the development of Least Developed Countries and thus make them responsible for human development in these countries as well.
  - **Example:** Paris Climate Change Agreement and Common, But Differential Responsibilities in mitigating climate change.
- **Humanitarian ethics:** Ethics ensures that newer developments in the field of science, defence and security and cooperation of countries in these areas do not hamper human rights.
  - **Example:** Countries putting restrictions on end use of weapons through MTCR, Australia Group, Nuclear Suppliers Group.
- **Compassion:** Ethics brings compassion in international relations and countries express solidarity in difficult times with each other.
  - **Example:** Countries cooperating in COVAX Programme for COVID-19 vaccination in poor countries.
- **Peace and harmony:** Ethics ensures that global affairs are conducted in such a manner that peace and harmony is promoted in the world along with equality among nations.

- o **Example:** <u>United Nations</u> was established for maintenance of peace in the world.
- **Legitimacy:** Ethics provides legitimacy to countries and it can also <u>withdraw legitimacy</u> from the countries.
  - o **Example:** <u>Taliban in Afghanistan</u> is lacking international legitimacy due to <u>violation of human rights</u>.
- **Human rights protection:** Ethics ensures that countries work towards human rights protection and not in their <u>narrow national interests</u> only.
  - o **Example:** Countries cooperating in tackling <u>refugee crisis</u>.
- **Solution to global problems:** Ethics ensures that countries cooperate in tackling global problems and do not look for short-term goals for their own interest.
  - o **Example:** Countries cooperating on <u>terrorism</u>.
- **Business ethics:** Ethics also ensures <u>multinational companies</u> pay their <u>due share of taxes</u> in the countries of their operation and do not park their profit in <u>tax havens</u>.
  - o **Example:** <u>Global Minimum Tax deal</u>, <u>Base Erosion and Profit Shifting</u>.
- **Racism:** Ethics ensures that countries work towards <u>eliminating racism</u> in their policies.
  - o **Example:** <u>South Africa</u> was forced to end <u>apartheid</u>.

ETHICAL CONCERNS IN INTERNATIONAL RELATIONS
- **Lack of responsibility and equity:** Although climate change is a global phenomena and <u>developed countries</u> are <u>responsible</u> for climate change, but the <u>impact</u> of climate change would be on <u>developing and Least Developed Countries</u>.
  - o **Example:** Developed countries are <u>not</u> willing to take <u>responsibility</u> for climate change and are against <u>common but differentiated responsibility.</u>
- **Global poverty:** While people in richer countries enjoy a <u>lavish lifestyle</u>, people in poorer countries lack even the basic human rights.
  - o **Example:** While there is considerable <u>hunger in African countries</u>, richer countries are known for <u>food wastages</u>.
- **Apathy towards third world:** In difficult times countries look for their self-interest rather than on the global interest.
  - o **Example:** Russia's attack on Ukrain and China's aggression towards Taiwan for self-strategic interest are disturbing supply chain. As a result, There are increase in price of commodities like Crude oil.
- **Terrorism:** Terrorism is a <u>challenge for humanity</u>, especially in the age of <u>social media</u> but countries around the world have <u>not</u> been able to agree on <u>basic definition of terrorism</u>.
  - o **Example:** <u>Comprehensive convention on counter-terrorism</u> proposed by India has been pending in United Nations since 1996.
- **Lack of accountability:** Global organisations have not been able to ensure accountability of powerful countries.
  - o **Example:** <u>Chinese expansionism</u> and refusing to abide by the <u>award of Permanent Court of Arbitration</u> on <u>South China dispute</u>.
- **Selfishness:** Countries have often looked to work for their <u>parochial selfish interests</u> and not the global community.
  - o **Example:** Controlled production of crude oil by the OPEC countries, for higher market price of Crude oil, Lack of Consesus on Patent Waiver for Covid -19 vaccines
- **Lack of universal standards:** Countries have often tended to protect their national interest and have moved away from universal standards in working towards this.
  - o **Example:** China supporting Pakistan in United Nations listing of Masood Azhar
- **Racism:** Although global institutions have been working to end racism but that is still prevalent.
  - o **Example:** George Floyd case in USA, Megan Merkel's child issue.

- **Weakening global institutions:** The global institutions still reflect the second world war era and therefore have been weakening due to absence of reforms along with present realities.
    - **Example:** WHO was criticised over the issue of tackling of COVID-19 in the initial period.

International funding refers to the aid given by richer and advanced countries to poorer countries for developmental, security and other purposes. However, this aid presents following ethical issues:

- **Subverting sovereignty of nations:** While giving funding to the recipient countries donor agencies put several conditions that are best decided by the people and governments of the countries.
    - **Example:** IMF conditions on loans given to India during 1991 financial crisis.
- **Exploiting compulsion:** Countries often exploit the compulsion of the recipient countries to further their own interest.
    - **Example:** China's debt-trap diplomacy exploits infrastructure requirements of poorer countries.
- **Funding to NGOs:** Countries provide funding to NGOs to further their own interests.
    - **Example:** Greenpeace protesting in India against Nuclear Powerplants.
- **Clinical trials:** Pharma countries often conduct clinical trials in poorer countries and provide funding to recipient countries for this, which is violation of human rights.
- **Neo-colonialism:** Countries use their market-tactics and funding to promote neo-colonialism in the recipient countries with the setting up of factories and creating dependence of them.
    - **Example:** Multinational companies are alleged for promotion of western culture.
- **Terror financing:** Many times, international funding has been channelised for terror funding and also black money has been round tripped in the host country.

MEASURES AT GLOBAL LEVEL TO DEAL ETHICAL ISSUES AT INTERNATIONAL LEVEL –

Issues	Global Efforts
Issues of Human Rights Violation – - **Political interventions** frequently lead to Human Rights Violations. - **Terrorism**: States use Terrorism as a tool of foreign policy and indulge in human rights violation. (eg: Pakistan (supporting LeT, JeM), Iran (supporting Hezbollah)). - **Refugee Issue**: European nations are closing their borders to refugees fleeing war-torn areas.	- **Universal Declaration of Human Rights (UDHR):** The 30 rights and freedoms include civil and political rights, like the right to life, liberty, free speech and privacy and economic, social and cultural rights, like the right to social security, health and education, etc - **Human Rights Council and the Office of the High Commissioner for Human Rights (OHCHR)** - **Amnesty International:** An international organisation of volunteers who campaign for human rights. This organisation brings out independent reports on the violation of human rights all over the world. - **Efforts of Countries** like India and Bangladesh to provide shelters and aids for Rohingya Refugees. - **Humanitarian approaches** extended by the world to reduce hardship in Afganisthan related to food shortages and other essential items**.** - **United Nations Peace Keeping Army** are sent to establish Peace and harmony in the conflict zone.
Climate Change - **International Equity Concerns:** Countries that are least responsible for climate change and have the least	**Efforts:** - **Commitment to strong climate action** including the promotion of sustainable lifestyles based on mindful consumption and reduction of waste.

economic capacity to fight the effects of climate change are the most affected ones. <u>For example Marshall Islands.</u> • **Issue of Common but Differentiated Responsibilities:** There are issues in defining and differentiating the responsibilities between present and future generations as well as developed and developing countries. • <u>Climate Sceptics don't consider climate change to be real.</u>	• **Financial tools adopted such as –** <u>Polluter Pay Principle, Carbon Tax, Energy Saving Certificates, green Bonds etc</u> • **Mission Innovation:** It is a global initiative of 22 countries and EU to accelerate global clean energy innovation. Participating countries have committed to double their governments' clean energy R&D investments over 5 years. • **Decoupling economic** growth from greenhouse gas emissions**.** • **Glasgo Climate Summit** and Major countries disclosed their target of becoming Carbon Neutral. Ex, India will become carbon neutral by 2070. • **Clean Development Mechanism (CDM**)- It refers to a market mechanism for achieving GHG emissions reduction under the Kyoto protocol. It allows an industrialized/developed country with an emission-reduction target under the **Kyoto Protocol** to implement an emission-reduction project in any of those developing countries and earn tradable **Certified Emission Reduction (CER)** credits, each equivalent to one ton of CO2. • Proposal made for **Climate finance and Climate Finance Delivery Plan** at the Glasgow summit. • Focus on source of Renewable Energy and Establishment of international institutions. Ex. **International Solar Alliance**. • Increasing **Green Cover** to create more **Carbon sinks**.
<u>**Global commons**</u> are defined as those parts of the planet that fall outside national jurisdictions and to which all nations have access. • Zoonotic diseases like Covid-19 • Overfishing • Accumulation of plastic waste ❖ Accumulation of Space debris	• **Panel set up by WHO** to monitor Zoonotic diseases • International Cooperation for the **development of Vaccines** • Framework for **patent waiver on medicines, vaccines and other Medical devices related** to Zoonotic diseases such as Covid-19
IPRs (Intellectual Property Rights) • The developed countries are depriving the poor countries of accessing the new technologies (even life-saving drugs) by the restrictive clauses of IPRs. • It is essential to determine whether it is justifiable for a country to defend its IPRs on commercial grounds, or it should share technology for the greater interest of humanity.	• **Guidelines set up by WTO** regarding enforcement of IPRs • Invoking of **Compulsory Licencing clauses** in the case of emergency

Conclusion:

International ethics is a set of universal values that governs the actions and behaviours of nation-states. In International Relations, the state is called an Actor. Hence, all decisions should protect and further the national interests of the State (Machiavellian Ethics) but it should also be seen as ethical.
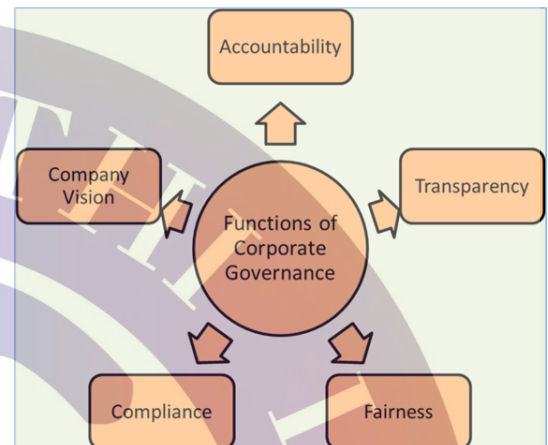
According to Cadbury Committee, the corporate governance is the "system by which companies are directed and controlled."

It as a set of systems, processes and principles which ensure that a company is governed in the best interest of all stakeholders. It is about promoting corporate fairness, transparency and accountability.

IMPORTANCE OF CORPORATE GOVERNANCE:
Good corporate governance benefits not only the company but also the environment around it in the following way:

- **Premium:** Well governed companies across the world command a premium of anywhere between 10 to 40 percent more than their not so well governed counterparts.
- **Foreign investment:** Good corporate practices based on transparency and sound business principles attract foreign investment, which is much more liberalised now.
- **Cover up weaknesses of country's corporate laws:** A good firm-level governance often makes up for weaknesses in a country's corporate laws or the enforcement of such laws as such organisations uphold the values such as integrity, fairness, honesty, transparency etc.
- **Regulate risks and opportunities for corruption:** Often scandals and fraud within a company become more likely where directors and senior management do not have to comply with a formal governance code.
- **Corporate sustainability:** Corporates that are run in the best interests of all the stakeholders enjoy the trust and confidence in the organisation and provide a long-term sustainability.
- **Curbing nepotism:** Good corporate practices curb nepotism and favouritism while valuing merit in appointments.
- **Internal checks and balances:** Good corporate practices better internal checks and balances to curb mismanagement, conflict of interests, and misuse of company resources.

ISSUES OF CORPORATE GOVERNANCE IN INDIA:
- **Collusion:** Companies sometimes indulge in collusion with auditors to mislead the investors, regulators, board and other stakeholders.
  - **Example:** Satyam scandal, DHFL Case etc.
- **Huge risks:** In some cases, the owners of the companies have taken huge risks in their private capacity and were unable to pay.

- o **Example**: V. Siddhartha in case of Café Coffee Day.
- **Promoter-led Board:** It is seen that Board is chaired by promoters and this makes the board to serve at the wish and command of the promoter-chairman.
  - o **Example:** Naresh Goyal in case of Jet Airways.
- **Lack of oversight:** Although <u>statutory changes</u> have been made, but <u>enforcement mechanism</u> has not followed with these changes which leads to poor oversight.
- **Favouritism:** Often lending institutions favour their <u>closed ones to give loans</u>, while overlooking professional values such as integrity.
  - o **Example:** ICICI Bank, Chanda Kochar case.
- **Lack of independence:** Independent directors are not given free hand in their working and are pressurised by other members of the board towards particular decision.
  - o **Example:** Tata-Mistry case.
- **Crony capitalism:** It is also an issue where closed ones receive mutually advantageous treatment.
  - o **Example:** <u>Captive coal block allocation</u> in Coal scams in early 2010s.
- **Credit rating issues:** Credit ratings agencies provide credit ratings to companies but they themselves suffer from conflict of interest from non-rating business, lack of information availability etc.
  - o **Example:** Recent IL&FS crisis

EXISTING MEASURES TO ENSURE ETHICAL CORPORATE GOVERNANCE IN INDIA

- **Companies Act, 2013:** It regulates <u>incorporation</u>, <u>formulation</u> and <u>functioning</u> of companies in India. It makes comprehensive provisions to <u>govern all listed</u> and <u>unlisted</u> companies in India. It <u>empowers shareholders</u> and highlights <u>higher values for corporate governance</u>.
- **The Securities Contracts (Regulation) Act, 1956:** The Act aims to <u>prevent undesirable transactions</u> in securities by <u>regulating the business dealings</u>.
- **Competition Commission of India:** CCI was established to promote and sustain <u>competition culture</u> and inspire businesses to be <u>fair</u>, <u>competitive</u> and <u>innovative</u>. It aims to curb <u>monopolistic tendencies</u> in the working of the market.
- **National Company Law Tribunal:** Established under Companies Act, 2013, it deals with the <u>corporate disputes</u> of civil nature. It is also the adjudicating authority under the <u>Insolvency and Bankruptcy Code</u>.
- **Accounting standards issued by the Institute of Chartered Accountants of India:** These standards bring much needed <u>structure to the</u> financial <u>reporting</u> and mandates <u>disclosure of accounting policies</u>, cash-flow statements, <u>construction contracts</u>, <u>borrowing cost</u>, <u>related-party disclosures</u> etc.
  - **Securities and Exchange Board of India (SEBI) Guidelines**: SEBI is a regulatory authority having jurisdiction over listed companies and which issues regulations, rules and guidelines to companies to ensure protection of investors.
  - **Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI)**: ICAI is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information.
  - **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI):** ICSI is an autonomous body, which issues secretarial standards in terms of the provisions of the New Companies Act

COMMITTEES RELATED TO CORPORATE GOVERNANCE IN INDIA:

KUMAR MANGALAM BIRLA COMMITTEE REPORT (2000):

- <u>Mandatory recommendations</u> for listed companies with paid up share capital of 3 crore and above
  - o Composition of <u>Board of directors</u> to be optimum of <u>executive and non-executive</u> directors
  - o <u>Audit committee</u> should contain 3 independent directors

- o Setting up of remuneration committee
- o At least 4 meetings of Board in a year
- o Sharing of information with shareholders in regards to investment

NARESH CHANDRA COMMITTEE RECOMMENDATIONS (2002):

- The committee presented its report on Corporate Governance and Audit in November 2002. It covered auditor-company relationship, rotation of statutory audit firms/partners, procedure for appointment of auditors and determination of audit fees, true and fair statement of financial affairs of companies. Following recommendations given by the Committee on Corporate Governance in their report --
- **Prohibited non-audit services**- The committee recommended certain services like valuation service, internal audit etc, that the audit firm shall not provide to any of their audit clients.
- **Compulsory rotation of auditors**- Audit partners and not less than Fifty percent of the team members must be rotated every five years.
- **Auditor's annual certification of independence**- Before agreeing on the terms of the audit engagement, the audit firm is required to submit a certificate of independence to the Audit Committee or Board of Directors (BoD) of such company, as the case may be.
- **Disqualification for audit assignments**- The committee recommended certain disqualification for audit assignments which prohibits the audit firm, the partners, or their direct relatives to Financially benefit directly from the client; Receive loans and/or guarantee from or on behalf of the audit client; etc.
- **Appointment of auditors-** For audit committees to have a larger role in audit procedures, the audit committee shall have the first power to appoint an auditor.

NARAYAN MURTHI COMMITTEE RECOMMENDATIONS (2002):

- It focused on responsibilities of audit committee, quality of financial disclosure, requiring boards to assess and disclose business risks in the company's annual reports. The key mandatory recommendations focus on –
  - **Strengthening the responsibilities of audit committees** - At least one member should be 'financially knowledgeable' and at least one member should have accounting or related financial management proficiency.
  - **Quality of financial disclosures**: Improving the quality of financial disclosures, including those related to related party transactions.
  - **Proceeds from initial public offerings**: Companies raising money through an IPO should disclose to the Audit Committee, the uses / applications of funds by major category like capital expenditure, sales and marketing, working capital, etc
  - **Requiring corporate executive boards** to assess and disclose business risks in the annual reports of companies.
  - **The position of nominee directors**: Nominee of the Government on public sector companies shall be similarly elected and shall be subject to the same responsibilities and liabilities as other directors
  - **Improved disclosures relating** to compensation paid to non-executive directors.

UDAY KOTAK COMMITTEE RECOMMENDATIONS:

- Separation of office of chairperson and CEO/MD of top 500 listed companies
- Capping the maximum number of directorships for a person to eight
- At least half of board members to be independent directors in listed companies
- Mandate minimum qualification for independent directors and disclose their relevant skills.
- SEBI should have powers to grant immunity to whistle-blowers

- Public sector companies should be governed by listing regulations, not by the nodal ministries.
- Enhanced disclosure such as full disclosure of utilisation of funds, disclosure of auditor credentials, audit fee etc.

CORPORATE SOCIAL RESPONSIBILITY

According to World Business Council for Sustainable Development, Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Provision of Corporate Social Responsibility under Companies Act, 2013:

- Section 135 of the Companies Act, 2013 which contains CSR provisions is applicable to companies
    1. With an annual turnover of INR 1,000 crore and more, or
    2. A net worth of INR 500 crore and more, or
    3. A net profit of five crore INR and more.
- The Act mandates companies to spend at least 2% of their average net profit in the previous three years on CSR activities.

> **Activities that can be taken up as CSR:**
> - Promotion of Education
> - Eradication of extreme hunger and poverty
> - Gender equity and women empowerment
> - Reducing child mortality and improving maternal health
> - Combating HIV-AIDS, malaria and other diseases
> - Environment sustainability
> - Social Business projects
> - Employment enhancing vocational skills
> - Research across various fields such as science, technology, medicine.
> - Incubators funded by the Centre or State or any state-owned companies.

SIGNIFICANCE FOR CORPORATE SOCIAL RESPONSIBILITY:

- **Moral appeal:** It appeals to companies to be good citizens on the lines of Gandhiji's Trusteeship principle.
- **Satisfaction:** This proposes that companies should not only look to satisfy their shareholders but other stakeholders who are directly or indirectly in the affairs and environment of company.
- **Public image:** Companies that under CSR activities tend to enjoy brand value and good public image. E.g. TATA Group of companies.
- **License to companies:** CSR provides companies to gain the trust of local communities and ensures that the resources are also allocated for the development of local communities.
- **Profitability:** CSR activities increases profitability of the company as ethical conduct exerts a growing influence on purchasing decisions of the customers.
- **Competitive advantage** - Businesses that show how they are more socially responsible than their competitors tend to stand out.
- **Boosts employee morale** - CSR practices have a significant impact on employee morale, as it reinforces his confidence on Company's empathy.
- **Consumers are socially conscious** - Many consumers actively seek out companies that support charitable causes. Therefore, CSR attracts customers.

ISSUES WITH CORPORATE SOCIAL RESPONSIBILITY

- **Lack of implementation:** There is <u>very little strategic thinking and innovation</u> in implementation of CSR. The larger goal of CSR is not understood, companies view it as <u>only a charitable endeavour</u>.
- **Lack of robust policy:** There is lack of <u>long-term robust CSR policy</u> which leads to failure in giving definitive direction to CSR spending.
- **Ease of implementation:** Many CSR efforts are mainly driven by <u>company's operational perspective</u> and <u>ease of implementation</u>. E.g. Combating diseases and education account for 44% of total CSR expenditure.
- **Duplication of activities:** Duplication of activities by different corporate houses which results in <u>competitive approach</u> rather than <u>collaborative approach</u>.
- **Viewed as additional corporate tax:** The CSR law is often viewed as a 2% tax, albeit spent by the firms rather than given to the government
- **Skewed pattern of expenditure:** Around <u>65% of CSR fund</u> is utilised for <u>education and health only</u> while eradication of hunger, rural development etc. receive very low expenditure.

> **Companies (CSR Policy) Amendment Rules, 2021:**
> - Following activities have been excluded from CSR:
>   - Activities undertaken in normal course of business excluded from CSR activities;
>   - Activities undertaken outside India;
>   - Contribution to political parties;
>   - Activities benefitting employees of company;
>   - Activities supported by the company on sponsorship basis;
>   - Activities carried to fulfil statutory obligation.
> - Engagement of external organization for design, evaluation permitted;
> - Companies have to formulate an annual action plan and submit to Board of the company
> - Companies to ensure administrative overhead not to exceed 5% of total CSR expenditure;
> - Surplus cannot be utilized for other purposes
> - Companies with CSR obligation of more than 10 crore 3 financial years to hire Independent agency to conduct impact assessment
> - Mandatory disclosure of CSR projects on the website

Way forward:
- **Annual awards:** Annual awards for <u>incentivizing companies to take up CSR activities</u> be set up – one each for the two categories of companies, <u>large</u> and <u>small</u>, as recommended by Anil Baijal Committee.
- **Accountability:** Companies should ensure that their CSR activities have <u>clear objectives and monitorable targets</u>, which are <u>diligently and stringently monitored</u>.
- **Collaboration:** Companies should engage with <u>local NGOs</u> for understanding ground situation and also utilise their expertise in that field.
- **Greater awareness:** Greater awareness should be created, especially at <u>Gram Sabha level</u> to ensure that they get their <u>due share of social development</u> in the <u>company profits</u>.
- **Injeti Srinivas Committee recommendations:**
  - Make CSR expenditure <u>tax deductible</u>.
  - Allowing companies to carry forward unspent fund for three to five years.
  - Aligning Schedule 7 of Companies Act, 2013 with the Sustainable Development Goals
  - Balancing local area preferences with national priorities
  - Introducing impact assessment studies for CSR obligation of 5 crore or more
  - Registration of implementation agencies on MCA Portal.
  - Developing a CSR exchange portal to connect contributors, beneficiaries and agencies
  - Allowing CSR in social benefit bonds,
  - Promoting social impact companies