

## MODULE 4-RESPONSIBILITIES AND RIGHTS

### COLLEGIALITY AND LOYALTY

#### 1 Collegiality

Collegiality is the tendency to support and cooperate with the colleagues. It is a virtue essential for the team work to be effective. This consists of various aspects such as:

1. *Respect to the ideas and work of others:* This results in support and co-operation with one's colleagues. One gets back the support and cooperation in return, and this is mutually beneficial.
2. *Commitment to moral principles:* Commitment is towards moral decisions, actions, goals of the organisation and values of the profession.
3. *Connectedness:* It means the shared commitment and mutual understanding. It ensures the absence of egoism and paves way for progress for both.

#### 2 Loyalty

Loyalty is exhibited in two senses, namely,

##### 1. Agency Loyalty

It is an obligation to fulfill his/her contractual duties to the employer. The duties are specific actions one is assigned, and in general cooperating with others in the organization. It consists of several obligations to employers. But, for the engineers, the paramount obligation is still "the safety, health, and welfare of the public"

##### 2. Attitude Loyalty (or Identification loyalty)

It is concerned with the attitudes, emotions, and a sense of personal identity. It includes willingness to meet moral duties, with attachment, conviction, and trust with employer. The attitude loyalty is more a virtue than an obligation. This type of loyalty is all right when the organizations work for productivity or development of community. Working together in falsification of records or serious harm to the public, does not merit loyalty. Further, with frequent takeovers or merger resulting in large-scale layoff, employees find it difficult to maintain attitude-loyalty.

### Authority

Decisions can be taken by a few people, but putting into action requires larger participation from different groups of people, such as operation, purchase, sales, accounts, maintenance, finance etc. In effectively-and efficiently-transferring decisions to actions, the authority comes into play a great role. Otherwise the individual discretions may ruin the activities. Further the authority fixes the personal responsibility and accountability uniquely on each person. This is necessary to ensure progress in action.

#### Institutional Authority

It is the authority exercised within the organization. It is the right given to the employees to exercise power, to complete the task and force them to achieve their goals. Duties such as resource allocation, policy dissemination, recommendation, supervision, issue orders (empower) or directions on subordinates are vested to institutional authority, e.g., Line Managers and Project Managers have the institutional duty to make sure that the products/projects are completed successfully. The characteristics features of institutional authority are that they allocate money and other resources and have liberty in execution.

**Expert Authority**

On the other hand, the Expert Authority is (a) the possession of special knowledge, skills and competence to perform a job thoroughly (expertise), (b) the advice on jobs, and (c) is a staff function. It is also known as 'authority of leadership'. These experts direct others in effective manner, e.g., advisers, experts, and consultants are engaged in an organization for a specific term.

**COLLECTIVE BARGAINING**

It is the bargain by the trade union for improving the economic interests of the worker members. The process includes negotiation, threatening verbally, and declaration of 'strike'. It is impossible to endorse fully the collective bargaining of unions or to condemn. There exist always conflicting views between the professionalism and unionism.

**A. Faithful Agent or Trustee?**

Professional societies such as NSPE and IEI refuse to accept the 'collective coercive action' of unionism, holding the principles of professional integrity as right, e.g., as per NSPE code III, i.e., engineers shall not promote their own interest at the expense of the dignity and integrity of the profession. The

engineers are said to exhibit a higher standard than self-interest; and they are expected to perform an ethical duty to their employer as faithful agent or trustee. The actions of unions are usually against the interests of the employers and they use coercion and force against the employers. These actions are interpreted as unprofessional and disloyal. But in certain cases, the safety of the workers had been ignored for a long period or the employees were under-paid for years. Can we still hold the action as unethical?

It can be concluded from this discussion, that

- (a) The duty of the employee to one's employer does not mean sacrifice of monetary self-interests, and
- (b) trustee or faithful agent means executing the assigned tasks and safeguarding the property. It does not nullify the right to negotiate for safe and hygienic working conditions, and economic benefits collectively.
- (c) The codes insist that the paramount obligation is to the society, as compared to their employers. The duty to the employers is also limited by considerations such as workers safety, and the right to disobey illegal or unethical activities. After all the employees are also parts of the society, and
- (d) Can collective and coercive action be resorted, when all other efforts have failed?

### **B. Service to the Public?**

The service to the public is of foremost importance. But the unions promote the interests of a few members only. The public welfare should not suffer because of their actions. Imagine a situation when all the teachers, medical practitioners, and ambulance drivers go on strike. Will this not cause damage to the public safety and health?

Collective bargaining by engineers through union or association or forums may act within limits set by the concern for the public welfare. Professional societies can play a great role in the promotion and establishment of principles and practices towards fair employment and exploitation. But they can not function as collective bargaining agents.

The collective bargaining can not be judged as unethical, unless we study the cases individually and decide. The collective bargaining is acceptable per se, but the means should be constructive, persuasive, firm based on mutual understanding, and not destructive, disruptive, and not harming the persons or property.

### **C. Assessment on Unionism**

The moral assessment on Unions is a complex process. A careful consideration of all relevant moral facts are to be inquired into and judged. It can not be generalized, because of the divergent views on unionism, as shown in Table. 4.1.

**Table. 4.1** Pro- and anti-views on unionism

<i>For unionism</i>	<i>Against unionism</i>
<ol style="list-style-type: none"> <li>1. Unions have been useful in improving the standard of living and economic benefits of the workers. Even non-union members leading to inflationary condition are able to get those benefits.</li> <li>2. Unions have obtained greater participation in organization, by participative management. Union members are appointed as Directors in the Board and credited to act as bridge between the employers and employees.</li> <li>3. Unions have contributed to the job security, and protection against arbitrary treatment to the employees.</li> <li>4. They are able to put resistance to unethical orders and support to ethical actions</li> <li>5. They have provided for effective grievance redressal mechanism for employees.</li> <li>6. They act to safeguard against the possible political interference, exploitation, and alienation in the company affairs.</li> </ol>	<ol style="list-style-type: none"> <li>1. Unions have lead to disturb the economy of state by salaries, and increase salaries and expenses, leading to inflationary conditions.</li> <li>2. Instead of being cooperative, they act in negative and destructive ways, causing loss of man-days. Opinions of the individual worker is suppressed and used as pawns.</li> <li>3. Unions encourage mediocrity, and act in favor of seniority-based promotion. Merit-based promotion and awards for personal achievement are disregarded</li> <li>4. Unions thrive on prolonged unrest, dissatisfied, and tense relations between workers and management.</li> <li>5. They cause pigeon-holing of employee in narrow job classifications to which the salary scales are attached.</li> </ol>

**CONFIDENTIALITY**

Confidentiality means keeping the information on the employer and clients, as secrets. It is one of the important aspects of team work.

**Justification for Confidentiality**

Confidentiality can be justified by various *ethical theories*. According to Rights-based theory, rights of the stakeholders, right to the intellectual property of the company are protected by this practice. Based on Duty theory, employees and employers have duty to keep up mutual trust. The Utilitarian theory holds good, only when confidentiality produce most good to most people. Act utilitarian theory focuses on each situation, when the employer decides on some matters as confidential.

Further, the following *moral principles* also justify the concept of 'confidentiality':

**1. Respect for Autonomy**

It means respecting the freedom and self-determination of individuals and organizations to identify their legitimate control over the personal information of themselves. In the absence of this, they can not keep their privacy and protect their self-interest.



## **2. Respect for Promises**

This means giving respect for the promises made between the employers and employees. Employees should not disclose the promises given to the employers. This information may be considered as sensitive by the employer. But promises do not establish complete obligations.

## **3. Trustworthiness**

Maintaining confidentiality by lawyers, accountants, and attorneys are necessary to develop confidence and welfare of the individuals and the organizations. It does not mean however that these professionals collude with them unethically.

## **4. Respect for Public Welfare**

This moral consideration is important in identifying relationships in professional transactions, for the benefit of public welfare, e.g., if the medical practitioners keep confidentiality on the problems of patients, patients develop confidence and trust in them, they feel free to reveal their problems and personal information, without being shy. This is likely to increase their chances of being cured. Similarly, a company keeping confidentiality about its products gets economic benefits of competitiveness. Besides, the public are also benefited from a healthy competition. An attorney keeping the data on clients confidential, provide safety and welfare of the clients as well as the public.

## **Types of Confidential Information**

On the basis of *acquisition (possession)*, the confidential information are divided into two types, as follows:

### **1. Privileged Information**

It is information that is available and accessed, by virtue of a privilege, i.e., privilege of being employed on that assignment. The security check is also insisted during exit from the work place against the leakage of this type of information. An engineer working on defense project may know that the missile he has developed is to be tested against the terrorists across the border.

### **2. Proprietary Information**

It is the information *owned* by the organization. It refers to the knowledge and procedures established by and in the organization. Some internal communication in an organization is marked as 'proprietary'. It is protected legally by the organization from use by others, including the employees. The trade secret is proprietary information that has not been made public. A limited legal protection is available for this proprietary information by common law, which prevents employees from disclosing it to outsiders. The *quality manual* is another example for proprietary information.

On the basis of *severity* of risk from breach, the confidential information is divided as:

1. **Obvious information:** It refers to data, information, and test results on the products yet to be released, or designs, formulae, and technical processes of the products. The risk or loss from the breach is large and may threaten the survival.
2. **Information of lesser confidentiality:** This relates the business information such as the number of employees working on projects, the identity of vendors or suppliers, customers, marketing strategies, yield of manufacture, cost of manufacture, substitution of materials etc. The risk

or loss involved is relatively less. In competitive business situations, this information also plays a vital role.

## **More on Confidentiality**

### **A. Is Switching Job Ethical?**

When persons change jobs (employers), what happens to their moral obligation? The obligation to protect the information does not cease, when one shifts to another employee. Otherwise, the former employee will reveal this information to the new employer or sell it to a competitor of the former

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employer. The integrity of the employee, even upon switching the employer demands that he maintains confidentiality and does not to divulge the information. The professional integrity of engineers is more valuable than the loyalty to the current employer.

Many engineers value professional advancement than long-term tie and loyalty to a single employer. The engineers involved in research and development and expert contribution change jobs. Normally they are familiar with the innovative developments in the parent organizations. For example, one manufacturing expert along with his colleagues as well as with some secret documents left General Motors and joined Volkswagen. This violation of trade secret, lead the V W to pay huge compensation to GM in cash and compulsion to buy parts from GM for seven subsequent years.

Employees, who change jobs, will not able to withhold their knowledge and expertise. They are sought after only for their expertise. They may not carry the papers and but their active brain always carry memories. Although some organizations hold that this is unethical, the individuals can not be prevented from divulging the facts to benefit the current employer. The courts have held a moral verdict. Even though the previous employers had the right to maintain their trade secrets confidential, the personal rights of the employees, who switched job in pursuit of career advancement, had to be honored and balanced.

### **B. Management Policies**

How can we protect the rights of the employers and at the same time recognize the genuine personal rights and other rights of the engineers/employees? Some of the management practices and their limitations are discussed hereunder:

1. One way is to restrict the future employment of employees, by using employment contracts at the time of their exit. Details such as the restriction on geographical location, time gap between the departure from one place and engagement with the other employer, and on the type of jobs that one can perform with future employer, are entered in to contracts. But such contracts have not been given legal sanction.
2. An incentive instead of threatening their rights by the employment contract, may offer some positive benefits in exchange for the restrictions listed. A lump sum post-employment payment or compensation over a specific period may offered as incentive to restrict him.
3. Another approach by the management is to effect tighter controls on internal information flow on trade secrets and other vital features. But this is likely to create a mutual distrust in the organization and to throttle the creativity of engineers involved in the research and development.

A better understanding between the ethical management and the professional responsibility of the engineers will fulfill both professional concerns and employee loyalty.

### **CONFLICT OF INTERESTS**

A conflict of interest occurs when the employee has more than one interest. A professional conflict of interest is the situation where the professional has an interest that, if pursued, might prevent him from meeting his obligations to his employers or clients, e.g., an Electrical Engineer working in the State Electricity Board may have a financial interest in a company which supplies electrical instruments. If the engineer is decide on the bid for the supply of electrical instruments, a clear case of conflict of interest exists.

A 'conflict of interest' is different from 'conflicting interests'. A student has to clear four arrears subjects in the supplementary examination. But he finds that the time available is sufficient to study only three subjects. This is a situation of 'conflicting interests', where he has two or more desires that can not be fulfilled under the given circumstances. But there is no moral problem involved in pursuing all subjects. In case of professional conflict of interest, there is a possibility of pursuing all the conflicting interests, thereby inviting a moral problem.

### **Types of Conflicts of Interest**

Several types of conflicts of interests exist depending on the ways and severity of outside interests. A few common types are discussed here.

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### 1. Actual Conflict of Interest

This refers to the situation where the objectivity is lost in decision making, and the inability to discharge the duty to the employer. It is the result of weaker judgment and service. A Civil Engineer working in the Public Works Department has a financial interest in a contracting company, which has submitted a bid for the construction of a bridge. There may be a variety of outside interests. But the conflict arises when the outside interest influences or threatens the professional judgment in serving the employer or clients.

### 2. Apparent Conflict of Interest

This is explained in the following example. An engineer is paid based on a per cent of the cost of the design and there is no incentive for him to cut the costs. In this situation, it appears that the engineer makes the design more expensive in order to get larger commission for him. This situation leads to doubting the engineer's interest and ability for professional judgment.

### 3. Potential Conflict of Interest

There are situations where the interest of an employee extends beyond the current employer and into the interest on one's spouse, relative or friend. The interest changes into intimacy and subsequent non-moral judgments against the interest of the employer and in favor of the outsider or even a potential competitor.

#### (a) Favorable Contact

When an engineer's spouse is working for a contractor or vendor, a conflict does not arise. But if the engineer is to give a subcontract to the contractor or purchase order to the supplier, the conflict arises. This happens even when the engineer has partial or substantial stockholding in the business of that contractor or supplier.

#### (b) Bribe and Gift

The conflict arises when accepting large gifts from the suppliers. Bribe is different from a gift. The following table shows a comparison of the nature of bribe and gift.

**Table 4.2** How does bribe differ from gift?

Tests	Bribe	Gift
1. Timing	Given before	Given after
2. Cost of item	Large amount	Small amount, articles of daily use
3. Quality of product	Poor	Good/High
4. Giver is a friend	Yes	No
5. Transparency	Made in secret	Made in open
6. Motive	Expect undue favor	Expect a favor or thanking for the favor
7. Consequence on organization's goodwill	Damaging the goodwill and reputation	No damage is involved

Codes of ethics do not encourage even gifts, but employees have set forth flexible policies. Government and company policies generally ban gifts more than a nominal value (>Rs.1000?)

An additional thumb rule is that the acceptance of gift should not influence one's judgment on merit.

#### (c) Moonlighting

It is a situation when a person is working as employee for two different companies in the spare time. This is against the right to pursue one's legitimate self-interest. It will lead to conflict of interests, if the person



works for competitors, suppliers or customers, while working under an employer. Another effect of moonlighting is that it leaves the person exhausted and harms the job performance in both places.

#### **(d) Insider Information**

Another potential conflict of interest is when using 'inside' information to establish a business venture or get an advantage for oneself or one's family or friends. The information may be either of the parent company or its clients or its business partners, e.g., engineers might inform the decision on the company's merger with another company or acquisition or an innovative strategy adopted. In such cases, their friends get information on stock holding and decide on trading their stocks to sell or buy quickly, so that gain more or prevent a loss. For example, in WorldCom USA, the insider information was used to manipulate and sell a large amount of stock holding by the Director, upon knowing that the government has declined to admit their product.

### **OCCUPATIONAL CRIME**

An occupational crime may be committed by (1) wrong actions of a person through one's lawful employment or (2) crime by an employee to promote one's own or employer's interest or (3) theft or

**pilferage by the employee or (4) damage to the property or an employee of one's organisation. These are also called *white-collared crimes*.**

Many of these crimes are examples of conflicts of interest. These are motivated by the greed, corporate ambition, and misguided loyalty. Even the crime to promote the interests of the employer, is an occupational crime. Some of the examples of occupational crimes are:

#### **1. Price Fixing**

Fixing the bidding rate by companies, in collusion with other companies, especially for the contract/services, is called *price fixing*. This is an occupational crime, prevalent in electrical equipments industries, where there used to be a few contractors but large number of contracts. Because of this, public as well as the government incur huge loss. Two top officers of Westinghouse and GE, USA who were involved in price fixing without the knowledge of their Directors, were sentenced to imprisonment a few years back. These officers held that it was legal to fix price and even argued that this procedure is really beneficial to the people! However, the court did not accept this view.



## 2. Industrial Espionage

It means simply spying for personal or company benefits, e.g., in the Silicon Valley area, there are several company manufacturing computer chips, ICs, and microprocessors. There are a lot of engineers who are entrepreneurs and venture capitalists. The espionage is more prevalent here because of the following factors:

- (a) The development of chips is extremely competitive and on fast track. Profit and loss can be made quicker.
- (b) Manufacture of chips is very costly. Huge saving through reverse engineering could be made only by breaking open the competitors' gadgets or fast tests. Some organizations prefer to steal the design details through illegal means rather testing and development.
- (c) The components involved are very small. Hence, pilferage or removal of gadgets could be done easily and without being caught.
- (d) The crime detection and law enforcement are difficult and ineffective.
- (e) Employees do not carry out the activities directly, but through engineers who were employees or through the weakest link in the supplier-producer chain.

## 3. Bootlegging

Manufacturing, selling or transporting products (liquor and narcotics) that are prohibited by law, is called *bootlegging*. In engineering context, it refers to working on projects which are prohibited or not properly authorized.

## 4. Endangering Lives (Occupational Hazards)

Industries who expose their employees to hazards usually escape penalties. Victims have the right to sue, but only to claim some monetary compensation. The *asbestos* industries in USA were responsible for the death of one lakh workers and 27 million workers afflicted with cancer, in the 80s. Even after 22 years since Bhopal gas tragedy, appropriate compensation has not been paid. Even the government could not bring to book the culprits for the crime committed.

Occupational Health and Safety Assessment Series, OHAS-18001 Certification has been adopted in many Indian Industries. As per the Annual report of RIL10, an initiative called Project CASH, Change Agent for Safety and Health, had been formed to bring about a positive change and continual improvement in occupational health practices at the work place, besides attitudinal and behavior changes.

This is claimed to have prevented work-related diseases, injuries, reduced absenteeism, and ultimately increased the productivity level

## HUMAN RIGHTS

Human rights are defined as moral entitlements that place obligations on other people to treat one with dignity and respect. Organisations and engineers are to be familiar with the minimum provisions under the human rights, so that the engineers and organizations for a firm base for understanding and productivity. Provisions under 'human rights' are as follows:

1. Right to pursue legitimate personal interest
2. Right to make a living
3. Right to privacy
4. Right to property
5. Right of non-discrimination
6. No sexual harassment

Under professional rights, the following provisions are protected:

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1. *Right to form and express professional judgment:* It is also called the *right of professional conscience*. In pursuing professional responsibilities, this empowers one to form and exercise the professional judgment. Both technical and moral judgments are included. This right is bound by the responsibilities to employers and colleagues.

2. *Right to refuse to participate in unethical activities:* It is also called the *right of conscientious refusal*. It is the right to refuse to engage in unethical actions and to refuse to do so solely because one views that as unethical. The employer can not force or threaten the employee to do something that is considered by that employee as unethical or unacceptable. For example, unethical and illegal activities that can be refused are: falsifying data, forging documents, altering test results, lying, giving or taking bribe etc. There may be situations, when there is a disagreement or no shared agreement among reasonable people over whether an act is unethical. Medical practitioners have a right not to participate in abortions. Similarly, the engineers must have a right to refuse assignments that violate their personal conscience, such as when there exists a threat to human life or moral disagreement among reasonable people.

3. *Right to fair recognition and to receive remuneration for professional services:* Engineers have a right to professional recognition for their work and achievements. This includes fair monetary and non-monetary forms of recognition. It is related to morality as well as selfinterest. They motivate them to concentrate their energy on jobs and to update their knowledge and skills through continuing education. This will prevent the engineers from diversion such as moonlighting or bother on money matters. Many times, the engineers who have labored to get patents on the organizations are not adequately remunerated. Based on the resources of the organization and the bargaining power of the engineers, the reasonable salary or remuneration for patent discovery can be worked out.

4. *Right to warn the public about dangers:* It should be done without damaging the reputation of the employer. The views can be expressed through the professional society to get a backing.
5. *Right to talk publicly about the job:* This should be done within the limits of decency, confidentiality, and loyalty.
6. *Right to engage in the activities of professional societies:* Attending membership campaign and seminars are typical activities to promote the professional society.

**EMPLOYEE RIGHTS**

Employee rights are the moral and legal rights that are obtained by the status of being an employee. The provisions made to the employees under this category are:

1. Professional rights (discussed already)
2. Basic human rights (discussed already)
3. Institutional rights or contractual employee rights. This include the rights to the institution due to the organisational policies or contracts, right to receive specified salary and annual increments, and profit sharing. The quantum of such benefits, scale of pay etc. are fixed and reviewed periodically by the employers and employees.
4. Non-contractual employee rights: These are the rights provided in common, besides the contractual ones. They include:

**1. Right to Privacy**

It is the right to control the access to and use of information about oneself. This right is limited in certain situations by employers' rights. But who among the employers can access the personal information is again restricted. Only duly authorized persons can get the personal information.

For example,

- (a) The Pay Bill Section can access the information on insurance premium paid, medical reimbursement etc. but one's immediate boss need not get this data.
- (b) Persons who have applied for the jobs of cashier are required to report if there are any criminal or civil cases pending against them. Those persons may mishandle the money. Hence, that information may be sought from them.
- (c) A supervisor might suspect a worker and conduct a search in his cupboard when the worker is absent. But the supervisor is to have another officer as witness, in such cases. Otherwise the supervisor may plant-in some evidences against the worker.
- (d) Upon frequent pilferage reported from the stores, the company may install surveillance cameras or bugging devices to monitor personal conversations, without notifying the employees. Prior notice to the employees on the intentions of such a step along with the proposed date of implementation should have been communicated to all concerned.

**2. Right to Choose Outside Activities**

This is also interpreted as a right to personal privacy as that means a right to have a private life outside the job. There are some situations when this right can be curbed. For example,

1. When those activities lead to violation or found detrimental to the duties of their job.
2. When the activities of the employees form a conflict or interest (e.g., when moonlighting).
3. When the interest of the employer is getting damaged (if the employee transfers some vital information on plans or strategies to the competitor).

**3. Right to Due Process from Employer**

It is the right to fair process or procedures in firing, demotion and in taking any disciplinary actions against the employees. Written explanation should be initially obtained from the charged employee and the orders are given in writing, with clearly-stated reasons. Simple appeal procedures should be framed and made available to all those affected. Fairness here is specified in terms of the process rather than the outcomes.

**4. Right to Equal Opportunity—Non-discrimination**

Discrimination because of caste, sex, religion, creed, and language are regressive actions. Discrimination which means a morally unjust treatment of people in the workplace is damaging to the human dignity.

For example,

- (a) A senior manager post is vacant. There is competent and proven candidate from outside the state. A local engineer with lesser competence is promoted.
- (b) Prize amounts for the winners in the world sport events are not the same for men and women.

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### 5. Right to Equal Opportunity—Sexual Harassment in the Workplace

The sexual harassment is a display of arrogance and misuse of power through sexual means. It is against the moral autonomy i.e., freedom to decide on one's own body. It is also an assault on one's human dignity and trust.

Sexual harassment may be defined as the unwanted compulsion or attack on sexual requirements (gratification) in the context of unequal power. It includes physical as well as psychological attack or coercion and indecent gestures by men shown on women or by women on men. Two such forms of harassment are found to exist. In one type called 'exchange of favors', senior officers demand sexual favor as a condition for giving a job, or granting a promotion or increment. It may be either in the form of a physical or verbal threat or sexual offer. In another type called 'hostile work environment', it is the sexually-oriented work environment that threatens the employee's right to equal opportunity.

Undesirable sexual proposals, advances, lewd remarks, mailing obscene photographs are some of the typical examples of this type of harassment.

A rights ethicist interprets this as a serious violation of human right to pursue one's job free from extraneous force, compulsion, punishment or threat or insult. A duty ethicist would call it as a blatant violation of duty to treat human being with dignity and individual freedom, and not to treat as inanimate object for immoral gratifications. The utilitarian would expose the effect on the happiness and the welfare of the victims, especially of women.

### 6. Right to Equal Opportunity—Affirmative Action or Preferential Treatment

It means giving a preference or advantage to a person of a group that was denied equal treatment in the past. Such treatments are given especially to women and minorities all over the world. It is also called 'reverse preferential treatment', because it reverses the historical preferences.

There are arguments in favor of as well as against such treatments, all over the world. Table 4.3 presents a comparison of these views.

**Table 4.3** Pro- and against-preferential treatments

<i>In favor of preferential treatment</i>	<i>Against reverse preferential treatment</i>
<ol style="list-style-type: none"> <li>1. Compensatory justice: Violations of rights in the past must be compensated. Usually this treatment is extended to all in the group rather than individuals.</li> <li>2. Racial and sexual violation and violence still exist today. To counterbalance this, the reverse preferential treatment is necessary to ensure equal opportunity to minorities and women.</li> <li>3. It has produced desirable consequences. It has raised the social and economic status and provided them role models and have promoted self-esteem.</li> </ol>	<ol style="list-style-type: none"> <li>1. It violate the rights to equal opportunity for majority, to compete on merits.</li> <li>2. Compensation may be given only to specific individuals and not for all.</li> <li>3. Provide special funding and education for the disadvantaged. But jobs should not be used as a compensatory tool.</li> <li>4. Reduces the productivity, as the merit is the casualty. Self-doubts and indecision affect others' morale and efficiency.</li> </ol>



A compromising stand is to permit reverse preferential treatment within organizations, where the bias against women and minorities existed. Alternatively, the weak form of reverse treatment instead of the strong form, may be accepted.

For example, in India, the admissions and employment in government organizations and all educational institutions are given on the preferential (community quota) basis, namely scheduled, backward and most backward castes etc. The article 15(5) of the Constitution effective from January 20, 2006, provides for the advancement of socially- and educationally-backward classes of citizens in matters of admission—including reservation of seats. The reservation in state-run educational institutions including I.I.T.s and I.I.M.s is planned to be fixed at 22.5% for Scheduled Castes and Tribes and 27% for the other backward classes, from June 2007 onwards.

This is being suggested for implementation in the private organizations also. But the Indian private sector and multinational organizations and industries prefer to follow the system of affirmative action where the deprived are raised to required levels of competence.

## WHISTLE BLOWING

### Definition

Whistle blowing is defined as conveying information by an employee, on an important moral problem to somebody in a position to take action on the problem. Further, this is done outside the approved organizational channels.

### Aspects

There are four aspects of whistle blowing, namely:

1. *Basis of disclosure*: The basis for disclosure may be intentional, or under pressure from superiors or others not to disclose.
2. *Relevance of topic*: The whistle blower believes that the information is about a significant problem for the organization or its business ally. It can be a threat to the public or employees' health, safety and welfare or a criminal activity, or unethical policies or practices, or an injustice to the workers within the organization.
3. *Agent*: The person disclosing the information may be a current or former employee or a person having a close link to the organization.
4. *Recipient*: The person or organization, who receives the information, is in a position to remedy the problem or alert the affected parties. Usually, the recipients are not aware of the information fully or even partially.

### Types

Based on the *destination (recipient)*, whistle blowing is classified into types, as:

- (a) *Internal*: In this case, the information is conveyed to a person within the organization, but beyond the approved channels.
- (b) *External*: This happens when the information is transmitted outside the organization. The recipient may be a municipal chairman or member of legislature or minister. It becomes severe if the information reaches the press and through them the public. The damage is maximum and sometimes poses difficulty in remedying the situation.

Based on the origin or source (agent), this can be divided into three types, as follows:

- (a) *Open*: The originator reveals his identity as he conveys the information. This information is reliable and true, but sometimes partially true.
- (b) *Anonymous*: The identity is concealed. The information may or may not be true. But the agent anticipates perhaps some repression or threat, if identity is revealed.
- (c) *Partly anonymous (or partly open)*: Such a situation exists when the individual reveals his identity to the journalist, but insists that the name be withheld from others.

### When to Justify ?

Under the following situations, the whistle blowing may be justified:

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1. When the potential harm existing is identified as serious, or anticipated to occur with a high probability, in the near future.
2. When sufficient data on the harm had been gathered and adequately documented. This condition may not be required if revealing the information would jeopardize the national interests or help the competitors. A request to the appropriate authority for external investigation or permission by a court to release the information may be a solution.
3. The concerns have been reported earlier to the immediate superiors and no satisfactory response was forthcoming from them, within a reasonable time.
4. Regular channels within the organization have been used to transport the information to the highest level of management and the information has reached them. Situations 3 and 4 may not be appropriate, when one's supervisors are the main source of the problem or when urgency demands that regular channels are expected to only add the delay.
5. There is a reasonable hope that the whistle blowing can prevent or remedy the damage existing or anticipated.

Professional societies, unions, and some central laws are there to protect the genuine whistle blowers, but the route is full of adventure still. Laws alone are not sufficient. The engineers and other employees have to act as watch dogs and provide necessary legal assistance to the blowers. The IEEE has taken active roles by assisting the members, backing them when they are to face legal proceedings, helping the engineers discharged unjustly, and honoring the courageous whistle blowers with public recognitions.

To conclude, the whistle blower has to consider (a) the personal obligation to family (b) right to pursue one's career and (c) sometime sacrifices, before this venture.

### **Before you Blow the Whistle**

Here are some of the instructions that should be followed before blowing the whistle:

1. One should familiarize with the rules for appealing within the organization. Normal organizational channels, up to the ombudsman or top ethics committee, should be tried, except when extreme urgency conditions exist.
2. Consult the trusted colleagues for advice and to avoid isolation.
3. Use polite and tactful language. Avoid any personal criticisms that may antagonize and divert the attention towards solving the problems.
4. Keep the supervisors informed of your actions, through informal discussion and formal memorandum.
5. Keep your observations and claims precise and accurate. Prepare formal records of events in support of your claims.
6. Before going outside the organization, consult the ethics committee of your professional society.
7. If necessary consult a lawyer regarding potential litigations.
8. Offering to resign is one of the peaceful and effective methods of blowing your views. Whether you are relieved from the specific project or from the organization, either way your autonomy and self-respect are recognized.

## INTELLECTUAL PROPERTY RIGHTS

*Patent, Publish, and Prosper — Dr. Mashelkar, Dir. Genl., CSIR*  
*Future can be best predicted by inventing it — Xerox, USA*

### Intellectual Property

It is the information and original expression that derives its original value from creative ideas, and is with a commercial value. IP permits people to have fully independent ownership for their innovations

and creativity, like that of own physical property. This encourages the IP owners towards innovation and benefit to the society. It is an asset that can be bought or sold, licensed, and exchanged. It is intangible i.e., it cannot be identified by specific parameters.

The agreements with World Trade Organisation (WTO) and Trade-Related aspects of Intellectual Property System (TRIPS) have been adopted effective from January 2005. Besides the minimum standards set for protection of IP rights, appropriate laws framed by the member countries are expected to reduce distortions and barriers for and promote the international trade. The global IPR system strengthens protection, increases the incentives for innovation, and raises returns on international technology transfer. However, it could raise the costs of acquiring new technology and products, shifting the global terms of trade in favor of technology producers.

### Need for Protection of IP

IP plays an essential role to stabilize and develop the economy of a nation. This protection actually stimulates creativity, research, and innovation by ensuring freedom to individuals and organizations to benefit from their creative intellectual investments. The IP serves many purposes, namely

- (a) it prevents others using it,
- (b) prevent using it for financial gain,
- (c) prevent plagiarism
- (d) fulfill obligation to funding agency. ICICI Bank has advanced loan against IP as security to Shopper's Stoppe, New Delhi, and
- (e) provides a strategy to generate steady income.

Some of the challenges in the acquisition of IP are:

- (a) Shortage of manpower in the industry. Educational institutions can play a vital role in providing the same.
- (b) High cost of patenting and lengthy procedure. This was being considered by the Government and a simpler and faster procedure is expected, and
- (c) Lack of strong enforcement mechanism.

### Types and Norms

The agreements establish norms and conditions for the following instruments of intellectual properties:

#### 1. Patents

Patent is a contract between the individual (inventor) and the society (all others). Patents protect legally the specific products from being manufactured or sold by others, without permission of the patent holder. Patent holder has the legally-protected monopoly power as one's own property. The validity is 20 years from the date filing the application for the patent. It is a territorial right and needs registration. The Patent (Amendment) Act 2002 guarantees such provisions.

Patent is given to a product or a process, provided it is entirely new, involving an inventive method and suitable for industrial application. While applying for a patent, it is essential to submit the documents in detail regarding the problem addressed, its solution, extent of novelty or innovation, typical applications, particulars of the inventor, and the resources utilized. Inventions are patentable and the discoveries are not.



Some of the salient features of the Patent Act 2002 are listed as follows:

1. **Patent outside India:** Applications for Patent outside India, on inventions for defense purposes or related to atomic energy are prohibited. For other patents, an inventor should apply for a patent within India and then seek clearance for filing patents abroad.
2. **Licensing:** The controller of patents grants the license upon verification and on some terms and conditions. The controller shall endeavor to secure that the articles manufactured under the patent shall be available to the public at the lowest price consistent with patentees deriving a reasonable gain from their patent rights.
3. **Negative right:** The grant of patent for an invention does not guarantee the merit or any other commercial value of the invention disclosed. The state which grants the patent does not also guarantee the validity of the patent granted. If other regulations do not permit, even the patent holder can not commence manufacturing. In this context, it is a negative right.
4. **First to file rule:** Indian like many other countries follows the system of first to file or first to register system to determine priority. Accordingly, a patent or invention which is filed or registered first in the patent office will have precedence to the patent or invention, which is filed later in the date, even if it had been invented earlier.
5. **Burden of proof of infringement:** Legal rights of patent can not be enforced automatically. In any suit for infringement of a patent, the patentee must move the court. The court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process.

### Types of Patents

#### (a) Utility Patent

The utility patent is granted to anyone who invents or discovers any new and useful process, machine, manufacture or chemical composition of any manner or any new and useful improvement thereof. The utility time is 20 years.

#### (b) Industrial Design Patent

The industrial design patent is an idea or conception regarding features of shape, configuration, pattern, ornamental with lines or colors applied to any article, two or three dimensional, made by any industrial process and is judged by the eye or a product. The Designs Act 2000 excludes from its purview the functioning features of an article and grants protection only to those which have an aesthetic appeal. For example, the design of a tea cup must have a hollow receptacle for holding tea and a handle to hold the cup. These are functional features that can not be registered. But a fancy shape or ornamentation on it would be registerable. A table has a flat surface on which other objects can be placed. This is its functional element. But its shape, color or the way it is supported by legs or otherwise, are all elements of design or artistic elements and they are registerable, if unique and novel. Other examples include the design applied to shoes, T.V., and textiles.

The design patent has a term of 14 years from the date of filing the application. Designs Act 2000 gives further details on this aspect.

## 2. Copyright

The copyright is a specific and exclusive right, describing rights given to creators for their literary and artistic works. This protects literary material, aesthetic material, music, film, sound recording, broadcasting, software, multimedia, paintings, sculptures, and drawings including maps, diagrams, engravings or photographs. There is no need for registration and no need to seek lawyer's help for settlement. The life of the copyright protection is the life of the inventor or author plus 50 years.

Copyright gives protection to particular expression and not for the idea. Copyright is effective in (a) preventing others from copying or reproducing or storing the work, (b) publishing and selling the copies,

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(c) performing the work in public, commercially (d) to make film (e) to make translation of the work, and (f) to make any adaptation of the work. Copying the idea is called 'plagiarism' and it is dealt with separately.

Can software be protected through copyright? Indian copyright Act amended in 1984 included the rights of in a computer program as literary work. Many countries protect software as a copyright.

Some holds the view that copyright is not the right type of protection for software. They held that the patents and trade secrets are more appropriate forms of protecting software. While trade secret is the most conventional form of protection of software, in the recent years, both patents and copyrights are adopted to protect software.

Copyright (Amendment) Act 1999, India ensures fair dealing of broadcasting through the internet. The concerns of Book industry, Music Industry, Film and Television Industry, Computer Industry and Database Industry are sufficiently met by this updated Act.

### 3. Trademark

Trademark is a wide identity of specific good and services, permitting differences to be made among different trades. It is a territorial right, which needs registration. Registration is valid initially for 10 years, and renewable. The trademark or service mark may be registered in the form of a device, a heading, a label, a ticket, a letter, a word or words, a numeral or any combination of these, logos, designs, sounds, and symbols. Trademark should not be mistaken for a design, e.g., the shape of a bottle in which a product is marketed, can not be registered as a trademark. Trademarks Act 1999 made in compliance with TRIPS agreement, provides further details.

There are three functions of trademark:

1. Just as we are identified by our names, goods are identified by their trademarks. For example, the customer goes to the shop and asks for Lux soap. The word 'Lux' is a trade mark. In other words it shows the origin or source of the goods.
2. The trademark carries with it an inherent indication or impression on the quality of goods, which indirectly demonstrates that it receives the customer's satisfaction.
3. The trademark serves as silent sales promoter. Without a trademark, there can be no advertisement. In other words, it serves as a medium for advertising the goods.

The marks should be distinctive i.e., it should be able to distinguish from one good to the other.

The terms used for trademarks are usually generic, descriptive, and suggestive. Some of the terms which are not distinctly distinguishing the goods or services from others, are called *generic term* and are eligible for protection under trademarks. The descriptive term should clearly indicate or convey the specific purpose, function, physical characteristic and the end use of the product. Relatively, the suggestive

marks do not describe the goods at first sight, but with an element of imagination or perception the nature of the goods can be understood. Thus, the suggestive marks are distinctive and are protected as trademarks. Arbitrary marks and fanciful marks are distinctive and hence accepted for registration.

Besides this, there is also a certification mark by the Bureau of Indian Standards (BIS or ISI) which guarantees that the holder's product bearing the mark has met certain standards or requirements. This adds considerably to the market value and to a great value in the export trade.

### 4. Trade Secret

A trade secret is the information which is kept confidential as a secret. This information is not accessed by any other (competitor) than the owner and this gives a commercial advantage over the competitors. The trade secrets are not registered but only kept confidential. These are given limited legal protection, against abuse by the employee or contractor, by keeping confidentiality and trust.

The trade secrets may be formulae, or methods, or programs, or processes or test results or data collected, analyzed, and synthesized. These are related to designs, technical processes, plant facilities, list of suppliers or customers etc. This information should not be disclosed or used by any other person.

