

CODE OF ETHICS

ca Sharad Vaze

'Ethics' (n) " the moral principles that govern a person's behaviour or how an activity is conducted". Oxford Dictionary

'Ethical' (a) " decent, fair, good, honest, just, moral, noble, principled, righteous, upright, virtuous"

The motto of our Institute is Ya Esha Supteshu Jagarti adopted from Kathopanoshad which means -----

In my opinion, ethics is nothing but answerability to one's conscious, person's inner mind. In reality, it is easier to advise or much easier to tell but difficult to follow or practise. Even, in Mahabharata, the honest person, Dharmaraj has to state "naro wa kunjaro wa."

Many of us consider that Code of Ethics is restrictive. It hampers the growth. In fact, it is incorrect. CoE, protects the profession thereby it increases the members / professionals credibility and respect. It distinguishes a profession from business.

There has always been a criticism about the laxity on the part of our Institute in disposing the complaints and awarding the punishment. Generally, the punishment was either a reprimand, suspension or fine. The Institute was not to be blamed but the law was like that. Necessity was felt after Satyam Scam. The law was drastically amended in 2006.

Chartered Accountants Act 1949.

The provisions re 'misconduct' are contained in Chapter V of the Chartered Accountants Act 1949.

Accordingly, 'professional misconduct' shall be deemed to include any act or omission specified in either schedules to the Act. However, the section authorises the Institute to enquire into any 'other misconduct' of a member, thus giving wide powers to enquire the misconduct which is not necessarily related to the professional work. Generally, it refers to the conduct unbecoming of a professional.

Authority to documents issued by ICAI

Statements : Statements are mandatory, hence must be followed while discharging attest function. Therefore, the deviation must be adequately disclosed.

Accounting / Accounting Standards : Mandatory in nature, obviously from the dates notified by ICAI. The Standards over-ride the Statements.

Guidance Notes : Recommendatory in nature. A member should ordinarily follow them except when he is satisfied that in the given circumstances it may not be necessary to do so.

Authorities to implement CoE :

Prior to 08th August 2006, the date on which Chartered Accountants (Amendment) Act 2006 came into force.

After the Amendment Act :

Sec 21 : Disciplinary Directorate established.

Director Discipline to give opinion as to whether a member is *prima facie* guilty on the complaint / any information received by him.

If guilty under First Schedule ---- Reference to Board of Discipline

If guilty under Second or both Schedules ----- Reference to Disciplinary Committee.

Sec 21 A – Board of Discipline - Consists of three persons – an outsider i.e. a person with experience in law and having the knowledge of disciplinary matters and profession; and two members of the Council of which one is Central Govt nominee.

Sec 21B – Disciplinary Committee. Consists of five members. President or Vice-President as presiding officer plus two Central Council Members and two nominees of the Central Govt. (Not necessarily Central Govt nominees on the Council). The nominees to have experience in the field of law, economics, business, finance or accountancy.

Appellate Authority : Secs 22A to 22G. The Central Govt is to constitute the Appellate Authority. Aggrieved person to appeal. Aggrieved person may be a member of ICAI or Director Discipline.

Powers of the Authorities :

Board of Discipline : One or more of the following punishments can be awarded

- a) Reprimand the member;
- b) Removal upto three months;
- c) Fine upto ` 1.00 lakh.

Disciplinary Committee : One or more of the following punishments can be awarded

- a) Reprimand the member;
- b) Removal for such period as it thinks fit;
- c) Fine upto ` 5.00 lakhs.

Consequences : Besides a blot/stigma on the profession, a member is disqualified for allotment of audits from RBI, Banks, C & AG, other Govt bodies. These restrictions are by these bodies and not of the Institute.

Principles of Enquiry

1. Action for misconduct can be initiated either on receiving a complaint or information from any source. *Suo moto* action by Council is also possible.
2. Council is not concerned with complainant's behaviour or conduct.
3. Complaint once lodged cannot be ordinarily withdrawn except with the permission of BoD/DC.
4. Committee has authority to punish individual member and not the firm or an outsider.
5. The Complainant intends to withdraw the complaint or does not pursue it or remains absent, the Respondent is not automatically absolved. The Council takes the complaint to its logical conclusion by stepping into the shoes of the Complainant.
6. Complaint to be filed within seven years from the date of occurrence.
7. Compensation payment by the Respondent will not absolve him.
8. Complainant need not prove that he is aggrieved or has suffered a loss.
9. No time limit for disposal of a complaint.

Procedure for Complaint :

1. Complaint in Form I.
2. Fees ` 2500/-
3. Complaint forwarded to Respondent.
4. Explanation received from Respondent forwarded to the Complainant for his rejoinder.
5. Director Discipline may call for additional information.
6. DD to decide whether the Respondent is *prima facie* guilty under either of the Schedules or "other misconduct.

7. If DD finds the Respondent not *prima facie* guilty, the matter is closed with the concurrence of BoD.
8. If *prima facie* guilty, BoD / Dc, as the case may be, to conduct the enquiry.
9. BoD / DC to give report on its findings as to the guilt.
10. One more hearing for the punishment.
11. Orders passed by BoD / DC are appellable to AA. ICAI member or DD (if authorised by the Central Council) may prefer an appeal. Complainant cannot appeal to AA.
12. Appeal to be filed within 90 days of the receipt of the order.
13. Filing fees ` 5,500/-

Who are the Complainants ?

1. Normally user of our services viz clients, financial institutions, banks etc. Disputes between Directors / partners.
2. Staff members, article trainees, professional brothers. Even there are instances where members have complained against there present or ex-partners.
3. Private complaints mainly out of ego, rivalry for 'arm-twisting' purposes. Even in one case a lady member has complained against her ex-husband!

Reasons

1. Members do many things in too much of 'good faith.'
2. Lack of basic documentation.
3. Work should not only be done but it should be seen that it is done.
4. Faintest of ink is stronger than the strongest of memories.
5. Quality is compromised due to seasonal pressures of meeting deadlines.
6. Tax considerations override accounting & auditing principles.
7. Lack of communication skills. Difficulty in saying 'No' to unjustified demands.
8. Greed.
9. Constraints of resources - infrastructure, manpower, library etc.
10. Corruption

11. Legislative incompetency.
12. Attack is not the best defence.
13. Blind faith on software. No mind in the work.
14. Compliance machine.
15. Indispensability in Society.
16. Showmanship. Average, sincere practising CA has lost his identity.

Remedies :

1. Above points are suggestive of remedies.
2. Risky audits are being signed by juniors or some other CA.
3. Audit should be conducted without fear or favour.
4. Purpose and coverage of audit. Need based reporting.
5. Counselling between complainant and respondent.
6. Arbitration between members *inter se* and between member & article trainees.
(To be introduced by ICAI)

Conclusion :

If we become good human beings and then the professionals, the Code of Ethics will flow from within and will not have to be imposed from outside.