Chapter 6

The Ethics of Corporate Stakeholder Rights and Duties

Executive Summary

Rights and duties are involved in every area of business and markets, and society and governments. Most often, rights and duties involve serious ethical and moral issues of conflict. A good theory of the ethics of rights and duties, obligations, and responsibilities will empower us to understand the impact of our actions on various stakeholders. Additionally, a deep understanding of rights and duties could help us to analyze better the impact of our executive actions on various stakeholders and, in particular, to fathom the damaging effects of rights and duties violated by the man-made current financial crisis when seen from an ethical and moral point of view. Our coverage on the ethics of corporate rights and duties will comprise of two parts: Part 1: The Nature of Corporate Business Rights and Duties, and Part 2: Respecting Corporate Rights and Duties. The chapter will feature Newcomb Wellesley Hohfeld's framework of legal interests such as claims, privileges, power, and immunity and its various applications to contemporary market and corporate executive situations. We illustrate the theory of rights and duties using several cases from the current turbulent markets.

Case 6.1: Apple's Rights versus those of FBI or Terrorists

Tim Cook, CEO Apple, has been tweeting for months playing on media interest. On February 16, 2016, after consulting with his cabinet of advisers, Tim Cook made a vigorous statement on privacy rights that attacked the governments. He vowed to fight government "overreach" and help "people around the country to understand what is at stake." "We feel we must speak up in the face of what we see as an overreach by the US Government," said Tim Cook, when he explained on February 16 why he felt his firm should refuse to comply with an FBI request to break into an iPhone used by Fyed Sharook, a dead terrorist, but one of the terrorists involved in the San Bernardino, California, shootings in December 2015. Sharook and his wife Tashfeen Malik, who were sympathizers with the Islamic State (IS), shot and killed 14 people in San Bernardino, CA, December 12, 2015, before both were gunned down by the police. The US government dismissed Tim Cook's letter, tweet, and statement as a stunt to bolster Apple's sales.

Ever since 2013, Edward Snowden leaked sensitive information to the public, the issue of public security and private privacy has been surfacing and getting to be conflicting and expanding. Lately, the problem has taken national and global dimensions.

The files on any phone or iPhones are encrypted. Unless the correct code is entered to unlock the phone, the files are meaningless gibberish. By itself, such a code provides little security. It is, by default, a mere four-digit-long passcode, easy to memorize, but it has 10,000 possible combinations. One could try every combination until by chance you hit the right one, a process called "brute-forcing." Of course, there are methods to make brute-forcing harder. For instance, after six wrong tries, a user has to wait a minute before trying a seventh. That delay rises rapidly to an hour. That is, on an average, brute-forcing a four-digit iPhone passcode could take 5,000 hours – nearly seven months. This could be surmountable for some hackers, but for the fact that some computers automatically wipe themselves clean after every ten failed attempts to log in.

But all this process of brute-forcing can be circumvented by the phone's internal operating system (IOS), and an IOS can be changed. Apple does so regularly, issuing updates that add new features or fix bugs. In essence, the FBI is just asking for such an update, which can brute-force quickly (albeit with reference to Farook's phone). Theoretically, the FBI's office could write such an update, but it can do so only with Apple's help, as Apple itself uses a special cryptographically signed certificate. Currently, only Apple possesses this long, randomly generated number code as a key to this process.

FBI's request for that code may not be that simple. Many security officials are skeptical; they do not believe looking inside Farook's phone is the only motive of FBI. Possibly knowing this, Farook and his wife destroyed two phones and a laptop, while leaving the iPhone intact. The iPhone, incidentally, belonged to Farook's employer. In fact, a few weeks before the rampage, Farook did disable the phone's online backup feature, data from which the FBI would have access to.

The Apple–FBI Confrontation Problem

When public security is threatened, whose rights should prevail: Apple or FBI? Do citizens have a right to privacy or security, both or none? The issue at stake is as old as mass communication: how much power the governments should have to subvert regular innovative communication products and services that citizens and companies use to keep their private business private?

The problem endangers the rights and duties of at least four groups: (1) privacy and security rights of the American public; (2) the right and duty of American IT firms who create privacy-security devices to safeguard them as strictly as possible; (3) the right and duty of the US government represented in this case by the FBI to protect the safety and security of the American

people, and do whatever it takes to fulfill their duty; and (4) the rights of over a billion phone and iPhone users (such as Syed Farook) to remain private and secure in the use of their devices.

The problem arises when two or more sets of rights are in conflict. Indeed, such is the case with Apple and FBI, and on a larger scale, the rights of American information technology (IT) firms that have been locked in battle with their own government in this regard, and the safety-security rights of the American public.

On the other hand, the issue of "trade-off is not security versus privacy, but security for everyone versus the police's ability to investigate specific crimes," argues Dr. Kenneth White, a director of the Open Crypto Audit Project, an American Charity (*The Economist*, February 27, 2016, p. 70).

Some Defend Apple and for Valid Reasons

Apple, arguably the most valuable company in the world, has refused to comply with a court order from the FBI as the order fundamentally compromises the privacy of its users.

Those who defend Apple argue: the firm has the right to appeal against a court order, especially when that court order seems to be an overreach by the US government. If Apple eventually loses the legal battle, it will have to comply. But currently, Apple is right in refusing to comply.

FBI's request to Apple will create a precedent that cannot be justified on legal or moral grounds. As a legal precedent, the FBI case would let policemen and other spies break into private computers and iPhones more easily and wantonly. Moreover, soon defense lawyers would use the unlocking code, and so would court-appointed experts given the job of checking crimes or verifying evidence. Hence, where does this forced breach into people-privacy stop?

Apple is global. It has governments beyond that of USA that it must respond to. Deliberately compromising its security for the Americans will encourage other countries to make similar, even perhaps broader requests for access, says Dr Kenneth White. Having conceded the point once, Apple will find it hard to resist in the future. In countries less concerned with human rights, civil liberties, and the rule of law, this compromise would have even more serious consequences.

Once Apple succumbs to PR pressure that the FBI's request is staging and creating, it will find impossible to refuse similar requests from domestic and foreign governments. In fact, the Department of Justice (DOJ) was demanding Apple's help in at least nine similar cases, seven of which Apple has been resisting. Some IT experts fret that the FBI might even require Apple to start sending subverted codes to specific suspects over the air, using the technology it employs to distribute legitimate updates. Cyber-security experts feel aggrieved that policemen and politicians do not seem to grasp

what they view as a fundamental point: weakening security for the benefit of the police will inevitably weaken it for everyone.

Some Defend FBI and Governments and for Valid Reasons

FBI, the most famous law enforcement agency in the USA, feels right in ordering Apple to help it to unlock an iPhone used by Syed Farook. It is a request to unlock a specific device, akin to wire-tapping a single phone line. Apple and other tech firms regularly cooperated with the authorities on criminal cases; this is no different.

FBI has argued many times that encryption can thwart the legitimate investigation, leaving vital clues undiscovered. But security experts also argue that what works for the good guys can also for the bad guys. If a subverted operating system managed to escape into the "wild' even once, then the security of every iPhone could be at risk.

The phone as a public service belongs to the government department, not Farook. Farook was a government servant.

The FDI wants help unlocking Farook's iPhone because it may contain information on the motive or contacts of a dread terrorist. What could be more reasonable?

FBI says that Apple's defiance jeopardizes the safety of Americans. National security is more important than a private firm's patents and IPR, or Farook's right for privacy!

The Apple and FBI Debate Implications

Will FBI's request create a precedent? The law enforcers say: No. This is not an attempt to build a generic flaw in Apple's encryption, through which the government can walk as needed.

Yet Apple feels it is being asked to do something new: to write a piece of software that does not currently exist in order to sidestep an iPhone feature that erases data after ten unsuccessful password attempts. But Apple and IT firms have other commercial interests as well: they have made privacy and security important selling points for their products and services.

If the court order is upheld, it signals that firms can be compelled by the state to write new operating instructions for their devices. That breaks new ground. If the courts rule against Apple, it will work to make its devices so secure that they cannot be overridden by any updates. On the other hand, if courts succumb, legislators will be tempted to mandate backdoor access via the statute book. If Tim Cook is not to hasten the outcome he wishes to avoid, he must lay out the safeguards that would have persuaded the firm to accede to the FBI's request. If Apple rejects FBI's request, then it must propose its own solution.

Another major issue is when and whether a precedent is justified. This entails a judgment call on whether security would be enhanced or weakened by Apple's compliance. In the short term, security will be enhanced. Farook was a terrorist; his phone is the only one being currently unlocked; and the device may reveal the identity of other malefactors. If information is needed to avert a specific and imminent threat to many lives, then the end justifies the means, as long as the means are not something intrinsically evil. But in the long term, this invasion of privacy may lead to other cybercrimes. Are cryptographic backdoors and skeleton keys the only way to unlock terrorists?

Moreover, security does not just mean protecting people from terrorism, but also warding off the threat of rogue espionage agencies, cybercriminals, and enemy governments. If Apple writes a new software that could circumvent its password systems on one phone, that software could fall into the hands of hackers and be modified to unlock other devices.

Concluding Thoughts

All these arguments will be rehearsed when Apple meets FBI in court, March 22, 2016. That will not be the last word on the matter. It could reach the Supreme Court. Meanwhile, Apple and other IT firms are taking steps to lock themselves out of their own customers' devices, deliberately making harder to fulfill official requests for access.

Perhaps, the ultimate question would be if the American government could be trusted not to abuse its powers of surveillance. People now trust businesses more than their governments, according to surveys by Edelman, a PR agency. Firms like Google and Facebook have taken over the role of dissemination of information that governments once claimed. Tim Cook and Mark Zuckerberg often publish their views in blog posts rather than give interviews, often taking no questions (*The Economist*, February 27, 2016, p. 58).

Ethical Questions

(1) What is the crucial legal issue in this case: legal compliance? Apple's defiance? Legality and legitimacy of FBI's request, or brute-forcing total transparency?
(2) What is the crucial ethical issue here: What is the "right thing to do"? Using legal defiance as a sales-stance? Defense of free-enterprise capitalism? Force industry-government noninterference?
(3) What is the critical moral issue here: How to do the "right thing rightly"? Moral obstinacy? Moral courage? CEO statesmanship? Moral corporate citizenship?
(4) Of the four parties identified in this case, whose rights/duties should prevail and why? Under what circumstances: non-emergency?

Emergency of a national threat because of persistent IS-related terrorism? Under peaceful negotiations?

(5) In light of your answers to questions 1–4, if you were Apple's head, how will you resolve this matter and most effectively?

(6) Terrorism thrives on global networking of the IS, conspiracy, complicity, secrecy, information, financing, and arms. What should be the collective roles of various agencies involved, including IT companies, Swiss banks, Private Equity Funds, Airlines, NGOs, NRIs, and private and public investigative agencies?

(7) Or, is the real solution to this global threat beyond law, ethics, and morals? Should we have recourse to corporate executive spirituality that surpasses corporate egos, to political transcendence that goes beyond political agenda, and to national and international cooperation for religious tolerance, racial harmony, human solidarity, and global peace?

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Case 6.2: The Debacle of "Paid News" Media in India

India is the largest democracy in the world, and the media has a powerful purpose and presence in the country for safeguarding its democracy. Of late the abuse of "paid news" has corrupted the media. *Paid news indicates favors toward the institution which has paid for it. The news is more like an advertisement praising the person or hiding the faults of the institute or ruining the reputation of the opposition party, all these for some significant payment.* Paid news is also called as one-sided news in which privilege is given to an individual or group of individuals. Paid news is advertorial, that is, it is an advertisement in the form of an editorial. The advertorials are designed to look like articles of objective new which they are not.

Sometimes, there is no money paid: media houses show favoritism toward the groups having more power. Paid news became widespread during the 2009 elections. Most campaigning politicians paid media heavily for positive

coverage and for ignoring obvious skeletons in the closet. Also, the mode of payment in the paid news can violate tax laws and election spending laws of the country. It can seriously buy and bias national and state elections thus ruining democracy at its roots.

The alarmingly increasing phenomenon of "paid news" transcends the corruption of individual journalists and media companies. It is omnipresent, structured, and highly organized; it has been steadily destroying the concept of democracy in India. For instance, in the April–May 2009 general elections to the Lokh Sabha, despite the clear guidelines of the Press Council of India, a number of political candidates had started paying generous sums of money to the media personnel for giving them benevolent spotlights. Such "paid news" disables the public in making right franchise decisions. The paid news phenomenon was ten times worse during the 2014 general elections.

With massive paid news by the powerhouses, the Indian media is not available to the powerless in India for self-publishing newsworthy items. Open confessional criticisms by marginalized people include:

- "I offered to pay for positive coverage."
- "A TV channel demanded Rs 2.5 lakhs to cover a Rahul Gandhi visit."
- "I was told to pay up like others had."
- "No one covers my party (BSP). So we pay."
- "I paid Rs 50,000 for three featured articles."
- "Every paper in my constituency was on sale."
- "Take an ad if you want to get in the news, we were told."

It was advertising that financed the media originally and set it free from government subsidies. Now that advertisements liberated the press for giving us objective and accurate news, we hope the advertisements via *paid news* will not take this freedom back via corporatization.

Indian media has grown tremendously in the last two decades. Over 100 million copies of newspaper are sold every day. The number of news channels has grown to 80 dedicated ones, whereas originally there was just one national news channel, Doordarshan. From the black and white TV broadcasting on a single national TV channel (Doordarshan) in the 1980s, the Indian TV broadcasting media has grown to almost 600 channels with about one-third operating in the General Entertainment Channels (GEC) space. Exhibit 6.1 provides a brief timeline of the growth of the Indian Media Empire.

Paid news has increased with the increase in media power concentration. Most of the media are controlled by a few corporate and politician powerhouses. For instance, the father-in-law of Congress MP Naveen Jindal holds a 15% interest in NDTV. Aditya Birla Group owns 27.5% in India Today Group. CA Media owns 49% stake in Endemol India (famous for Big Boss). Reliance Industries Ltd (RIL), India's largest private corporation, transferred Rs 2,100 crore to enter into India's media industry with strategic associations with the Network 18 Group and the Eenadu Group.

Exhibit 6.1: A Timeline of Indian Media Growth.

Year	Media Growth Event
Up to 1980s	Doordarshan was the national single broadcaster
1992	Five new channels were introduced by Hong Kong-based Star TV
1996	More than 50 channels were available to Indian viewers
2002–2003	More international channels such as Nickelodeon, Cartoon Network, VH1, and Disney were introduced in India; the number of channels increased to 100
2003	Entry of authentic news channels such as AajTak and Star News
2006	Two million digital TV households in India.
2009	394 TV channels. Non-news and current affairs TV channels grew from 0 to 183 news and current affairs TV channels grew to 211
2010	Over 500 channels in India and another 100 waiting to go live. Launch of HD channels, Food First, Movie Now; launch of HD feed of Star, Zee Channels
2013	The Indian press is over 220 years old, the Indian radio, about 100 years going, and Doordarshan was half a century strong
2010–2015	Annual growth rate for the TV industry is projected to be 12% over the next five years

The business tycoons control news coverage. The presence of conglomerates in the Indian media is currently posing a serious threat to democracy. Collusion may erode the plurality of ideas and diversity of opinion, both of which are essential for the smooth running of a democracy. However, the ownership patterns of the media in India and abroad are alarming. A higher concentration of media increases the risk of a monopoly and hence, the phenomenon of captured media. Worse, major national newspaper editorials in India are biased, and even controlled by politicians, and corporate powerhouses that own them. This has seriously endangered media objectivity and credibility in news coverage and in serving public interest. Paid news is a serious malpractice as it deceives the innocent citizens into believing a paid political campaign or product advertisement as real news.

Few years back, the Radia Tapes clearly indicated the cross-linkages between industrialists and politicians and how the media acts as an interface between them. Over the years, Securities and Exchange Board of India (SEBI) has observed and warned that media companies have been entering into agreements with listed companies and in return were providing coverage

through favorable news reports, editorials, and advertisements – a clear case of conflict of interest and dilution of independence of the press.

A major news report on the phenomenon of paid news in India's media was submitted to Parliament in 2013 by the Standing Committee on Information Technology. The report pointed out that self-regulation by India's media has failed to stop the practice of paid news. It suggested a more powerful regulator and stiffer penalties, including criminal charges possibly leading to imprisonment, for those who accept payment for news. It lambasted the Ministry of Information and Broadcasting for "dithering" by failing to tackle the issue. "The rise of 'Paid News'," the report says, "has undermined the essence of a democratic process." But the document, submitted to the Lok Sabha on May 6, generated little media coverage.

Bennett Coleman was among the few media companies mentioned by name in the report. The quoted portion named Bennett Coleman as a pioneer of the private treaty agreement, an arrangement by which Indian media firms accept an equity stake in an advertiser's company in lieu of payment for ad space. The committee report found this practice, initially meant to pay for marketing, as being used by companies to ensure "favorable coverage."

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Ethical Questions

(1) How can paid media reflect objective reality when it is obliged to patronize the views and news of the owners or of those who pay? Explain.
(2) What is the overall positive and negative impact of paid media upon people's right for all important and objective news? Discuss.
(3) How do "paid media" violate the rights of the Indian consumer public? Explain.

(4) How do "paid media" violate the duties of the Indian media to the consumer public?
(5) How do "paid media" compromise news reporting and coverage rights in a democratic country?
(6) Can media assume to be the national or state conscience of India without jeopardizing individual and collective consciences resulting from one's religions and cultures?
(7) What corrective justice measures would you suggest for immediate enforcement such that democracy and freedom of the press and of the citizens are safeguarded?

Case 6.3: Women Discrimination: Violation of Human Dignity Rights

Male dominance and consequent deep prejudice against women assume different forms in different cultures. For instance, the second oldest institution in the world is prostitution. Girl babies have been less than welcome in certain societies even to this day. Female feticide is over 95% among infanticides. Other atrocities in certain societies include female child labor, females being deprived of education beyond elementary level, dowry deaths, overworked home keepers, women used as baby-producing machines, women trafficking, women paid a lesser wage for the same work, and more recently, gang rape, murder, and brutal domestic violence against women. Women are commonly treated as sex objects in advertising and in the media, and are used as mistresses in promoting international sex tourism. Moreover, there is systematic discrimination against women in economic, social, educational, ergonomic, political, religious, and even linguistic structures of our society; it is often part of an even deeper cultural prejudice and stereotype. Many women feel that men have been slow to recognize and honor the full humanity and dignity of women.

This situation, however, has begun to change, chiefly because of the critical awakening and courageous protest of women themselves. Men too have joined hands with women in fighting such attitudes which offend against the dignity of men and women alike. Nevertheless, the systematic legacy of discrimination and alienation of women continues unabated. In many parts of the world, women already disadvantaged because of civil war, poverty, religious intolerance and bigotry, persecution, economic migration and ethnic cleansing suffer a double disadvantage precisely because they are women. There is a distinctive feminine face of oppression (see "Jesuits and the Situation of women […]," General Congregation 34; Decree 14, #s 361–384).

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) adopted by the UN General Assembly in 1979 is often considered as an international Bill of Rights of Women. It consists of a

preamble and 30 articles; it defines what constitutes discrimination against women, and sets up an agenda for national action to fight such discrimination. It was only 20 years later in 1999, that following CEDAW (General Recommendation No 19), the Indian Supreme Court in the Vishaka vs. State of Rajasthan case recognized for the first time that sexual harassment (SH) was a violation of human rights, and that gender-based systemic discrimination affects women's right to life and livelihood (Chandra, 1999). The Court defined SH very clearly as well as provided guidelines for employers to redress and prevent SH in the workplace. The Court also recognized that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as SH at the workplace.

Ethical Challenges

(1) In recognizing and restoring equality and dignity of men and women, what model or strategies would you design and justify?
(2) How would this model incorporate and recognize the dedication, sacrifice, generosity, and joy that women bring to home, schools, and colleges where they teach, to places where they work, and other social, technological, and political fields where they have made significant contributions?
(3) How will you render your men–women equalizing model to be delicate and sensitive to women, and avoid alienating them in their own culture?

6.1. The Ethics of Business Rights and Duties

Thomas Jefferson once wrote, "We hold these truths to be self-evident, that *all men are created equal*, they are endowed by their creator with certain inalienable rights, which among these are life, liberty and the pursuit of happiness" (*Declaration of Independence of the United States of America*, July 4, 1776). The Declaration said that "all men are created equal," it did not mean that all were of equal ability. It possibly meant that all men should be equal in their political rights. Even this was not clear in the USA when even though every citizen had a right to vote, the rules of the game affected the ability and likelihood of exercising that right, for instance, by making it more difficult to register to vote, or even to vote, for certain groups (e.g., those without driver's license, the usual ID in the USA) who were discouraged from voting (Stiglitz, 2015, pp. 71–72).

Thus, in the *Declaration of Independence*, the founding fathers spoke of the "natural" inalienable rights of life, liberty, and the pursuit of happiness. Today, we prefer to call these rights "human." The American Constitution upholds some fundamental God-given human rights. Currently, almost all nations and their constitutions grant human beings the rights of life, liberty, property, and

the pursuit of happiness. To begin with, all corporate executives should recognize, protect, and respect the human or natural rights of all their stakeholders for life, liberty, property, and the pursuit of happiness.

We discuss the topic of rights and duties under two heads: Part I, The Nature of Corporate Rights and Duties, and Part II, Respecting Corporate Rights and Duties.

6.2. Part 1: The Nature of Corporate Rights and Duties

Rights are important to our lives. We are ready to defend them, to demand their recognition and enforcement, and to complain of injustice when they are not complied with or violated. We use them as vital premises in arguments that proscribe courses of action. When we receive no redress for violations of our natural rights, we even consider civil disobedience. At a larger collective level, we are even prepared to undertake civil war. Thus, human rights were the justification for the American and the French Revolutions in the eighteenth century and for a succession of revolutions for political independence in the nineteenth and twentieth centuries. The basic motivation for the American civil rights movement in the 1960s and the women's movement in the 1970s was also the defense of human rights.

There are many approaches to the subject of rights and duties. One is based on prima facie principles such as autonomy, non-malfeasance, beneficence, and justice (Beauchamp, 1983, 1993; Beauchamp & Childress, 2001). The others, in contrast, are based on the development of character and virtue, as well as on social, religious, and cultural determinants of moral experience and moral agency (e.g., Dubose, Hamel, & O'Connell, 1994). The former is more Western or Occidental, while the latter is more Eastern or Oriental. We advocate a combined orientation, focusing on the plus points of both approaches.

6.2.1. What are Rights?

The term "rights" is used in many different ways in relation to different types of rights versus duties we have. Much would depend upon what legal, social, ethical, moral, philosophical, or theological principles from which we derive our rights (and duties). Often legal, ethical, social, and moral rights come into conflict, and hence, a common universal definition of "rights" is not possible or necessary.

A right is a claim we make on others regarding something about us, our human dignity, our life and its basic needs, our talents and our accomplishments, and certain objects and property. Every right implies a freedom to possess a claim, and a claim to safeguard that possession. Thus, a right is a conjunction of a freedom and a claim-right.

Some regard rights as *entitlements.* Rights entitle you that you act in some way or that others act or treat you in some way without asking permission of anyone or being dependent on other people's goodwill. *Entitlement enables and empowers us to make claims* on other people either to refrain from interfering in what we do or to contribute actively to our well-being. Voting, K-12 education,

access to colleges and universities, unemployment compensation, disability claims, veteran claims, pension claims, severance compensation claims, senior citizen claims, healthcare claims, gainful employment claims, safety and privacy claims, and the like may be better explained as entitlements or privileges rather than rights. Entitlements are bestowed on us for being bona fide and one-time contributing citizens. Some philosophers explain rights this way (e.g., McCloskey, 1966; Wasserstrom, 1964).

In this connection, moral philosophers distinguish several types of rights:

- *Natural rights* are those fundamental human rights we have because of our human nature. These rights accrue to us naturally because of our inalienable God-given human dignity. Such rights include the right to life, liberty, and the pursuit of happiness. These natural rights are inalienable rights – i.e., nobody can take them from us nor can we abdicate them.
- *Moral rights* are those rights justified by a moral system (e.g., Deontologism, Utilitarianism, and Distributive Justice Canons). For instance, the right to work is not guaranteed by the American Constitution, but is based on the deontological moral principle that all human beings have a right to work in order to sustain themselves and their families. Similarly, rights to education, health care, shelter, welfare, and the like basic necessities may be construed as moral rights that belong to us as humans in a civilized society.
- *Positive rights* or legal rights are those that law or society and state or government provide for its members; e.g., the Bill of Rights for Americans; e.g. the right to freedom of speech, the right to practice one's religion, and the right to vote. Economic rights (e.g., rights to subsistence, welfare, education, employment) are often positive rights. Legal rights derive from and are rooted in the laws of a given nation.
- *Negative rights* require others to forebear acting in certain ways such that the bearer of the rights can act without impediment (e.g., all humans have negative rights not to be killed, raped, maimed, abused, or emotionally destroyed). Positively stated, I cannot kill, rape, abuse, or maim others because of their right to life and the pursuit of happiness; I cannot trespass on my neighbor's property since it impedes the neighbor from using it. These negative rights are important, precisely because they protect the basic preconditions of participation in society. Often, the line between positive and negative rights is not clear. For instance, the state may have to legislate (positive rights) in order to protect our negative rights.
- *Prima facie rights* are presumptive rights that may not necessarily be actual or written rights in a given situation but they just seem obvious (e.g., my right to listen to loud music in my car or backyard may be overridden by somebody's prima facie right to peace and quiet).
- *Absolute rights* are those rights that cannot be overridden (e.g., right to life, right to basic freedom) by any utilitarian considerations. Most agree that few rights are absolute, total, and without infringement on the rights of others (e.g., right to life, right to marriage, right to procreation, right to subsistence,

and other basic necessities). In principle, these absolute rights are inalienable and cannot be overridden by other rights. Most of these are natural rights that God endows us with.

Since rights often conflict with one another and there is no widely accepted hierarchy of rights, some moral philosophers have concluded that rights should be accorded prima facie validity. That is, rights should be respected unless there are good moral reasons for violating them; the moral force of a right depends on its "strength" in relation to other moral considerations applicable to the context in question (Jones et al., 2007, p. 139).

6.2.2. A Hohfeldian Analysis of Rights and Duties

According to Newcomb Wellesley Hohfeld, an early twentieth-century American philosopher and jurisprudential scholar, the nature and extent of a person's rights are dependent upon the correlative duty of others. Hohfeld (1913, 1919) argued that any legal right or interest we have could be of four types: claim, privilege, power, and immunity, and reasoned that each legal right type relies on a structure of correlatives and opposites. That is, each type of legal interest (e.g., claim, privilege, power, and immunity) is accompanied by a matching interest held by at least one person. Hohfeld called this matching interest a "jural correlative." Thus, Hohfeld argued that the correlative of a claim is a duty, the correlative of a privilege is no-right, the correlative of a power is a liability, and the correlative of immunity is a disability.

Further, each legal interest has also a "jural opposite." Like jural correlatives, *Jural Opposites* are fourfold: right versus no-right; privilege versus duty; power versus disability; and immunity versus liability. Whereas a jural correlative is what others must have if I have a legally protected interest, a jural opposite is *what I cannot have* if I have a legally protected interest, both with respect to a certain type of act (Hohfeld, 1913, pp. 32–33). Thus, if one has a right, one cannot simultaneously have a no-right; if one has a privilege, one cannot also have a duty; having a power precludes having a disability, and having immunity precludes having a liability (Hohfeld, 1913, p. 30).

Thus, Hohfeld distinguished four different levels of legal interests or concepts of rights and identified each with its appropriate "jural correlative" and "jural opposite."

(1) The first concept of "right" is that of "claim." Hohfeld uses the word "right" (or claim, demand) specifically for the case in which one says: "X has a right to something from Y," and its correlative is duty (obligation) whereby "Y has a duty to do something for X, if X demands so." This does not imply that every right has a corresponding duty. What characterizes a right–duty relationship is that Y is obliged to act only if X demands that Y should do so. There are some duties, however, such as duties of benevolence or compassion, where no one has a corresponding right to demand their performance.

(2) The second concept of right is a "privilege" or a "liberty," the opposite of a duty, and its correlative is "no-right." Thus, "X has the liberty to do L" entails both that X has no duty to do or not to do L and that Y has no right (i.e., no basis for claim) that X shall or shall not do it. Consistent with this, however, is that Y has no duty to urge or prevent X from doing L. This is the case with two people in legitimate competition. Hence, a no-right is distinct from a duty not to interfere, and correlatively X may possess both a liberty to do L and a right (claim) that Y (and others) should not interfere.

(3) The third concept of right is a "power," a legal capacity for altering the jural relations of another person; e.g., the power to make a will, power to transfer ownership by sale, or power to appoint an agent. For instance, "X has power against Y" implies that X can change Y's legal relations in some way, and Y has liability with respect to X. For example, an employer has power against the employee if the latter signs a contract of employment under which he/she will work for the employer; the signing of the contract generates a set of claim-rights and duties (as specified in the contract) between the employer and employee. The correlative of power is "liability" (risk or subjection) that one's jural relations may be changed, for better or for worse, at the instance of the other person.

(4) The fourth concept of right is "immunity" (or no-liability) when Y is "disabled" from making (or has no power to make) changes in X's jural relations. For instance, X has an immunity against Y means that Y cannot change X's relations in some way; i.e., Y has a "disability" with respect to X. For example, A has signed a contract of employment with employer B, but A is a minor. Then, A is immune from liability from B; i.e., B does not have power to bring the set of contractual claim-rights between A and B.

From (1) follows: The [claim] right and the duty share the same content (e.g., "that Y stay off X's land"). They share a content that is satisfied by "Y's staying off X's land" (Sreenivasan, 2002). In this sense, there cannot be a right without a duty; right in one person presupposes a duty in another person or institution. The concept of right without corresponding duty is meaningless. As a corollary, it also follows that there is no right unless there is someone who is subject to that right *accepts* that duty (Cooray, 1998).

From (1) and (2) follow: A right is an entitlement, while a privilege is available from sufferance; the latter is a discretion vested in the person granting it. Hence, what are commonly called rights to education, employment, welfare, healthcare, etc., are not rights, but privileges given to certain persons by those who had the discretion to grant them, such as employers or the government. A right to employment or welfare is meaningless because there is no person under a duty to employ you or provide you with welfare (Cooray, 1998).

Hohfeldian analysis can be easily applied to everyday events or properties. A simple assertion such as "As a shareholder, I have voting rights" implies the following embedded legally protected interests or rights:

(1) Right: "The board must have elections each year." I have a RIGHT to demand elections be held in a timely way. The board has a correlative DUTY to hold elections. Without this right, I would have NO-RIGHT.
(2) Privilege: "Shareholders may vote as they please." I have the PRIVILEGE to vote as I choose, or just not to vote. The board has NO-RIGHT to demand that I vote in a certain way. Without this privilege, I would have a duty to vote only in a particular way.
(3) Power: "Shareholders can vote to mend the bylaws." I have POWER (shared with other shareholders) to amend the bylaws; for instance, to change the venue, date, and timing of annual meetings. The board has a LIABILITY to abide by shareholder-initiated bylaw changes, if so specified. Without this power, I would be DISABLED from changing the bylaws; that is, I would be disempowered.
(4) Immunity: "The board cannot manipulate the voting process during an insurgency." I have IMMUNITY from the board manipulating with the voting process. That is, the board is DISABLED from interfering with my voting rights. Without this immunity, I would be LIABLE to (i.e., forced to accept) the board's actions.

Hohfeld insisted on the differences between natural and legal relations; he even believed that there was a world of legal relations alongside the world of natural relations. However, Hohfeld's four distinctions of right express primarily "legal relations" between persons and not natural relations. That is, the law lays down the rules and conditions under which persons may enter into binding relations with another, by contract, joint venture, marriage, sale, alliance, and so on. Hohfeld also believed that most jural relations could be satisfactorily analyzed only as complex bundles of relations of different types.[1]

6.2.3. Hohfeldian Analysis and Legal Realism

Based on Hohfeld's analysis, a distinction might be made between *first-order relations* (such as claims-duties and privileges-no-rights) and *second-order relations* (such as power liabilities and immunities disabilities). The first-order relations can be expressed in terms of prescription or the absence of them (permissions), while the second-order relations define the conditions under which actions will be legally significant, and hence, under which new rules and changes in legal relations can be made. If powers and immunities can be treated as rights at all (e.g., the power to offer a sale, and immunity of ambassadors from libel proceedings are often referred as rights), then some rights are neither correlated to sanctioned duties nor expressive of the absence of such duties. Such rights require a conception of law that is not simply prescriptive and permissive but regulatory, in the sense that the law lays down conditions under which persons can enter into binding relations with one another.

It follows from Hohfeld's work that what constitutes a legally protected interest (e.g., claim, privilege, power, or immunity) is arbitrary and is not defined by the nature of things; rather, it is defined, shaped, and created by mutually defined legal and political rights, powers, and duties. Concepts like private property, consent, and liberty do not simply re-present previously existing things in the world; rather, they result from the system of differences between legal and moral concepts, and in so doing constitute the political world we live in (Balkin, 1990, p. 5).

Thus, according to Hohfeld, a right is an entitlement, while a privilege is available from sufferance. The latter is a discretion vested in the person granting it. Hence, what we commonly call rights to vote, education, or employment are not really rights but *privileges* given to certain persons by those who had the discretion to grant it, such as employers or governments. A right to employment is an abstraction that is meaningless because there is no one who has an enforceable duty to employ us. Table 6.1 is a Hohfeldian Analysis of Corporate Executive Rights and Duties in the specific context of imminent bankruptcy.

Exhibit 6.2 is a Hohfeldian Analysis of Corporate Rights and Duties in the context of the paid media (Case 6.2).

6.2.4. Stakeholder Hohfeldian Rights in Corporate Situations

The conflicting rights involve basically two parties: the corporation which undertakes merger, acquisition, or turnaround and its executives versus the

Table 6.1: A Hohfeldian Analysis of Corporate Executive Rights and Duties.

Hohfeldian Concept of Right as	**Jural Correlates/ Opposites**	**Corporate Executive Duties and Responsibilities under Bankruptcy Situations**	**Stakeholders' Duties and Responsibilities under Bankruptcy Situations**
Claim	Duty	Corporate executives have a duty to respect the rights of all stakeholders by providing them all material financial information on corporate performance, if they so demand it	Duty for seeking and studying clear and adequate information on corporate financial performance and related business activities before acting upon it
	No-right	Corporate executives have no-right to deceive stakeholders by exaggerated financial statements of corporate performance	No-right to claim ignorance on unintended consequences that are reasonably foreseeable in companies under a bankruptcy or turnaround situation

Table 6.1: (*Continued*)

Hohfeldian Concept of Right as	Jural Correlates/ Opposites	Corporate Executive Duties and Responsibilities under Bankruptcy Situations	Stakeholders' Duties and Responsibilities under Bankruptcy Situations
Privilege	No-right	Corporate executives have no-right for legal approval or social legitimacy if distressed corporations arbitrarily close plants and force massive layoffs	No-right but a privilege to invest or disinvest in distressed companies either as employees, customers, suppliers, or creditors
	Duty	Corporate executives have a privileged duty to safeguard the corporation and not to abuse Chapters 7 or 11 bankruptcy provisions but honestly strive to save the company for good	Privileged duty to protect themselves and other stakeholders when they suspect decline, distress, or insolvency of corporations they have a stake in
Power	Liability	Power to operate, downsize, or close plants or parts of the corporations or sell them to others under stipulated conditions, but as long as these are the last and only alternatives	All legitimate stakeholders are empowered for equitable compensations, as also be prepared for incurring substantial losses
	Disability	Despite power to manage and operate corporate situations, executives are disabled from harassing their stakeholders by deceptive financial reports and other fraudulent business practices	Stakeholders are normally disabled from harassing turnaround executives by the severe public and social scrutiny or interference, especially, when the latter are honestly trying to save the corporation
Immunity	Disability	Once legally approved for bankruptcy or business re-organization, corporate executives are immune from external interference, unless they seriously violate stakeholder rights	Disable stakeholders of losing corporations from further losses by providing timely warning and counsel on imminent bankruptcy consequences

Table 6.1: (*Continued*)

Hohfeldian Concept of Right as	Jural Correlates/ Opposites	Corporate Executive Duties and Responsibilities under Bankruptcy Situations	Stakeholders' Duties and Responsibilities under Bankruptcy Situations
	Liability	Despite legal approval, corporate executives may be held liable for generating disproportionate losses or injustices in the fulfillment of their Corporate duties	Despite legal protection, stakeholders could be liable for harassing turnaround or bankruptcy executives in the fulfillment of their reorganization or liquidation duties

corporation's stakeholders (e.g., customers, employees, governments, creditors, and suppliers). The rights and duties of each stakeholder group are predicated along (1) the four Hohfeldian concepts of right: claims-right, privilege, power, and immunity and (2) under each concept, along corresponding jural correlates and jural opposites.

Thus, for instance, under a *claim-right* and its jural-correlative *duty*, the responsibilities of executives include respecting the rights of all stakeholders by providing them the right financial information (e.g., accurate financial reports such as profit and loss statements, balance sheets, and cash flow statements) at the right time, by not over-marketing or inappropriately promoting the company when it is declining or bankrupting, and the corresponding duties of the stakeholders would include seeking clear and adequate information on corporate performance, studying it, so that they could make timely decisions of investing or disinvesting in the said corporation. Assuming an equally balanced relationship between the turnaround executives and the stakeholder public, under *claim-right* and its jural opposite *no-right*, turnaround executives have "no-right" to deceive stakeholders by false financial statements, round trip sales, exorbitant compensations (e.g., high severance compensations such as golden parachutes or handshakes), or any other fraudulent practices or declarations, while the stakeholders cannot claim ignorance of the turnaround situation when by due diligence they must assess their commitments to the failing corporation.

Under the third concept of right as "power," different rights and duties follow. Turnaround executives have the power to withdraw their operations anytime or sell them to approved buyers under prior stipulated conditions, but they also bear the liability for creating "ghost towns," significant labor layoffs, and other undesirable social externalities. Similarly, stakeholders are empowered to equitable compensations for what the corporation owes them. The jural opposite of power is *disability*. If stakeholders claim too much power and interfere with honest turnaround operations, then they could disable turnaround executives from the proper functioning of their duties. At the same time, if turnaround

Exhibit 6.2: Analyzing Case 6.2 using Hohfeldian Analysis of Rights and Duties.

Legally Protected Interest or Right		**Paid Media**
Claim	Jural Correlate as Duty	Paid media may have some *duty* to satisfy their paying clients in terms of covering news and information that positively features them, especially if the latter demand them
	Jural Opposite as No-right	But by the same token, paid media has *no-right* to feature the clients exclusively nor portray the competition or opponents negatively, or deny the general public's right for a broader coverage of news and services
Privilege	Jural Correlate as No-right	Media may have some *privilege* to accept paid media contracts but they have *no-right* to give them exclusive coverage on several channels thus virtually shutting the public from alternate news and information sources
	Jural Opposite as no Duty	In fact, paid media has the *duty* not to exclusively feature the client at the expense of other claimants and the general public's right for news on other parties and issues
Power	Jural Correlate as Liability	The paid media has some *power* to cover their clients in news coverage, but it is under *liability* not to harm by blocking the completion and opponents thereby
	Jural Opposite as Disability	Paid media has some *power* to cover its clients in coverage, but it is thereby *disabled* from exclusively doing it because of its duty to protect the rights of the general public, competition, or opponent parties
Immunity	Jural Correlate as Disability	The paid media has some *immunity* from being sued for over-covering its paying clients, but it can also be *disabled* from doing so, especially if thereby it is forced to undercover or not cover opponents or competition
	Jural Opposite as Liability	The paid media has some *immunity* from being sued for over-covering their paying clients, but they can also be under *liability* for doing so, especially when thereby they undercover opponents or competition

executives deluge stakeholders with false financial reports or other fraudulent business practices, they equally disable the stakeholders from their honest involvement in and compensation from the failing corporation.

Lastly, under the fourth concept of right as "immunity," there arise several forms of possible "disability" and "liability" outcomes to both executives and stakeholders. Thus, on the one hand, while legally approved turnaround executives are immune from unfair external interference from stakeholders and governments, they are also disabled from immunity and thus held liable for unjust and illegal turnaround operations (e.g., deprivation of rightful compensation to stakeholders or for degrading the social and/or physical environment). Equivalently, legally approved stakeholders may seek immunity from disability of further losses by being timely warned and counseled on the distress or bankruptcy situation of the company they have invested in, and they will incur liability if they unduly interfere with business turnaround operations. When immunity is linked with its jural opposite of liability, then turnaround executives may be held liable for generating too many losses or engaging in too many unjust practices in bringing about turnarounds and transformation. Under the same conditions, stakeholders would not be immune from liability if they unduly stall executives in the execution of their duties.

6.3. Part 2: Respecting Corporate Rights and Duties

We need to understand the different ways in which rights implicate responsibility and irresponsibility and the interplay of notions of responsibility as accountability and as autonomy. Libertarians justify rights by asserting that responsibility should be understood as the opportunity to exercise one's moral and intellectual capacities, which requires individual freedom. On this account, loss of the opportunity to develop and exercise moral responsibility, to take responsibility for and act on one's life plan, is a casualty or cost of not protecting individual freedom. In this context, responsibility is understood as autonomy. Although protecting responsibility as autonomy may entail some irresponsible decisions, this conception considers it a more serious cost to move the locus of such responsibility from the individual to the community or state.

According to Chris Argyris (1986, 1991), we need to redesign organizations for a fuller utilization of our most precious resource, the workers, and in particular, their psychological energy. Giving up the pyramidal and hierarchical structure of decision-making, Argyris (1993) suggests that decisions should be undertaken by small groups rather than by a single boss. Satisfaction in work will then be more valued than material rewards. Work should be restructured in order to enable individuals to develop to the fullest extent. At the same time, work will become more meaningful and challenging through self-motivation. Rensis Likert confirms this trend of thought. He identified four different types of management styles: exploitative-authoritative, benevolent-authoritative, consultative, and participative. He found the participative system to be most effective since it satisfied a whole range of human needs. For instance, if major decisions

are taken by groups, this results in achieving high standards and targets and excellent productivity.

Participative management can generate complete trust within the group, and high participation can lead to a high degree of human motivation and conflict resolution (Weiss & Hughes, 2005). As Rosabeth Kanter (2003) observes, open dialogue in a group setting where decisions are made fosters mutual respect. When employees feel self-confident enough to actively participate and where corporate leaders move them toward respect and reconciliation, the organization is more likely to transform itself from a dysfunctional, underperforming organization into one that raises the quality of its products and services, formulates stronger customer relations and interface, and thus, improves its strategic financial position. All this success emanates from small group team work. In any organization, once the beliefs and energies of a critical mass of people are engaged, conversion to a new idea will spread like an epidemic (Kim & Mauborgne, 2003, p. 62).

Corporate negative behaviors destroy employee rights, duties, and responsibilities. According to Theory X of McGregor, common such behaviors include:

- Being intolerant, vindictive, recriminatory, and punitive;
- Being aloof and arrogant, distant, and detached from the workers;
- Unconcerned about worker welfare, morale, and family problems;
- Blaming, finger-pointing, and imposing guilt upon workers;
- Being unjust, unsympathetic, not-listening, short-tempered, proud, elitist, and antisocial;
- Being non-participative, non-team-building, one-way communicating and not fostering worker-learning.
- Not inviting suggestions, feedback or interactions, and being ungrateful.
- Taking criticism badly from one's reports or peers, and tendency to retaliate.
- Poor in delegating, but good in giving orders and commands.
- Issuing threats to enforce people follow instructions;
- Issuing mandates, directions, and edicts to force worker obedience and submission.
- Withholding pay, rewards, bonuses, commissions, and other remunerations to demand obedience.
- Suppressing pay-raises, promotions, recognitions, and acknowledgments of challenging workers.
- Scrutinizing work expenditures to the point of mistrust and false economy.

Obviously, the opposite of these negative behaviors (i.e., positive corporate behaviors) will produce positive effects of empowering and upholding everyone's rights, duties, and worker and management responsibilities. Opening channels of communication and transparency, starting from the top, is the best way for resolving problems. Open dialogue means that everyone deserves a response; it exposes facts and tells the truth. It is hard to play politics when everyone discusses and everything is discussed openly. Successful turnarounds and transformations arise from long-term relationships built on mutual trust and reciprocal openness (Kanter, 2003, p. 64).

According to Herzberg's (1968) two-factor theory of motivation, workers are affected by biological or hygiene factors, and psychological or motivation factors. *Hygiene* factors are extrinsic to the job and relate to dissatisfaction-avoidance; hence, they indirectly motivate the worker on the job (such as pay, safe working conditions, non-boredom, and social interaction on the job). *Motivation* factors are intrinsic to the job and make the job interesting, enriching, and rewarding (e.g., training, recognition, respect, promotion, and personal growth on the job). In energizing, motivating, and empowering workforce, one could emphasize on the psychological and motivation factors, however, not to the exclusion of hygienic factors. The former empower rights, duties, and responsibilities.

How do employees find work exhilarating and perform best on their job? According to Mihalyi Csikzentmihalyi, who pioneered the research on workflow, the key to worker exhilaration is not the task itself (which often could be routine), but a *special state of mind* that the workers create as they work, a state called "flow." Csikzentmihalyi (1990, 1997) found that the most successful workers were in flow most of the time, while those who were apathetic and dissatisfied were the least in flow. The feeling of workflow is analogical to the feeling or emotion of being in the zone or in the groove. The flow state is an optimal state of intrinsic motivation, where the person is fully immersed in one's work or duty. Following Csikzentmihalyi, we must first define "workflow" in a firm, its nature and properties, especially in the critical departments. Next, one could incorporate the following findings in order to optimize the workflow in your employees under a rights-duties claim situation:

- Those who control and organize their job had the maximum flow.
- Flow is maximized with control of critical parts of the job.
- For some, excellence and pleasure in work are the same, and workflow was very high.
- Flow moves people to do their best at work, no matter what work they do.
- Flow blossoms when the workers' skills are fully engaged.
- Flow enhances when the challenges of work stretch workers to new and creative ways.
- Flow is heightened when workers are fully absorbed in their work, handle the demands of work effortlessly, and nimbly adapt to shifting demands.
- It is not so much the work, but what you bring to the workplace, your mind and heart, skills and talent, passion and emotions, and commitment and dedication that create the flow.
- Workflow itself is a pleasure.
- Encouraging and supporting supervisor presence can increase workflow.
- Intensifying one's psychological presence by being empathetic, understanding, recognizing and rewarding, and compassionate and caring can empower and maximize workflow and best performance.
- Psychological absence, on the other hand, characterized by suspicion, mistrust, eves-dropping, interference, and impersonal vigilance can minimize workflow, productivity, and worker involvement.

In general, the higher the workflow and its internalization, the higher is the perception of worker duties, worker rights, and worker responsibilities. Similarly, Amabile and Kramer (2007) believe strongly that job performance is positively linked with inner work life of the workers. People perform better when their daily work-day experiences include more positive emotions, passion for work, and more favorable perception of their work, their team, their leaders, and their organization (Amabile & Kramer, 2007, p. 77). The dynamics of inner work life of people, their mind and heart, their emotions, perceptions, and motivations do affect work performance, and hence, by implication, the organization.

Every worker's performance is affected by the constant interplay of perceptions, emotions, and motivations triggered by workday events, including managerial action – yet inner work life mostly remains invisible to management (Amabile & Kramer, 2007, p. 75). The knowledge-based worker's inner life is "the dynamic interplay among personal *perceptions*, ranging from immediate impressions to more fully developed theories about what is happening and what it means; *emotions*, whether sharply divided reactions (such as elation over a particular success or anger over a particular obstacle) or more general feeling states, like good and bad moods; and *motivation* – your grasp of what needs to be done and your drive to do it at any given moment" (Amabile & Kramer, 2007, p. 76).

6.3.1. Human Solidarity as a Commitment to Human Rights

To defend and recognize human rights, it is not enough to respect other human beings as possessing fundamental human dignity. In a spirit of real human solidarity, we next need to recognize them as partners or fellow members of a community.[2] There are various degrees of solidarity with our fellow human beings:

- On the negative extreme, we may totally ignore them or refuse to see them – this is crass neglect.
- To see them as mere pawns in our own plans and purposes – we use them as "factors of production"; we use them as "instruments with a work capacity and physical strength to be exploited at low cost and then discarded when no longer useful" – this is exploitation or slavery.
- We can use legal rules as "masks" to render human beings invisible. In the legal realm, to pierce the legal constructs that "mask" the plight of other human beings, and reckon the persons and faces that are forced to lie behind suck masks.
- We can see the world of "others" as moral agents with plans and purposes of their own.
- We can recognize our commonality with all humans, despite differences in culture or native ability.
- Willingness to imagine ourselves in the concrete circumstances of the other in order to reshape our perception of the other and of the right course of action.
- We maintain a community in which all persons are able to participate in a productive manner.

- We pledge to observe the Golden Rule in all that we do: Do unto others what you want to be done unto yourself.

Merely honoring human rights does not necessarily imply appropriate and effective action. Each community or corporation needs to strategize a step-by-step concrete approach to identifying, recognizing, and fulfilling human rights of all its members for the common good of all its inhabitants. Table 6.2 lists a set of consumer rights and a corresponding Bill of Rights and Duties of corporate executives and stakeholders. The commonest consumer rights in relation to market offerings include rights to product safety, to know (i.e., to be informed about the product or service), to product choice or variety, to be heard, to redress, to full value, to education and representation and participation. While the first four rights are normally provided by any constitution, the remaining four are still being debated as a Bill of Constitutional Rights.

6.3.2. The Debate about Moral Rights

Nobody disputes about positive and negative rights. The debate surrounds moral rights. Some philosophers (e.g., Bentham, 1845) reject the idea that citizens have any rights (positive or negative) apart from what law happens to give them. Others (e.g., Dworkin, 1977) following John Locke (1632–1704) defend citizens' rights (e.g., natural or human rights) quite apart from any law. These rights are inalienable or non-prescriptive; that is, we do not give them to people, nor can we take them away or give our own rights away. Some rights can be even moral rights against the government (e.g., conscientious objector's rights against war-draft). Dworkin (1977) argues that the collective goals of the state (such as prosperity, legitimate national defense, and political efficiency) are not a sufficient justification for denying individuals their rights; rights are like *trump cards* that prevail over all other political considerations.

Moral rights are important, normative, justifiable claims, or entitlements, often argued from a moral or ethical theory, but are rooted in morality and in the nature of the members of the moral community. They are rooted in the fact that human beings are rational beings that are *ends-in-themselves* (Cfr. "ens pour soi" of J. P. Sartre) and not *means* unto others, that they are worthy of respect, and should be treated with dignity. Hence, human rights cannot be overridden by other rights or by considerations of utility. Legal rights are rooted in law and protected by it. In a just society, moral and legal rights often overlap.

Rights are valid moral claims that give us inherent human dignity (Feinberg, 1970). Conversely, the dignity of the human person means nothing if by virtue of natural law, the human person has no human rights apart from any law (Maritain, 1944). Finally, there are others who hold that rights are simply entailments of moral obligations (e.g., Frankena, 1973; Kant, 1964; Ross, 1930) or are simple derivations from our understanding of utility (e.g., Mill, 1974). Gewirth (1984) argues that rights are the basis of morality; based on generic features of action, freedom, and purposiveness, we can conclude that there are universal human rights.

Table 6.2: Bill of Rights and Duties of Corporate Executives and Stakeholders.

Hohfeldian Consumer Privileges	Corporate Executive Privileges	Corporate Stakeholder Privileges	Corporate Executive "No-rights"	Corporate Stakeholder "No-rights"
To safety	Privilege to safe entry in the legally approved competitive corporate market; privilege of safety from public harassment	Privilege to corporate strategies, products, and services that are personally and socially safe and just	"No-right" not to protect corporate customers and non-customers from all personal and social harm of unsafe and addictive products	Society and public have "no-right" not to provide safe market entry to responsible corporate executives even though they may not ensure socially safe corporate products and services
To know (i.e., to be informed)	Privilege that corporate executives receive objective feedback on the firm's products and operations	Privilege to truth in corporate advertising and promotions without information overload or under-disclosure	"No-right" not to truthfully inform and instruct corporate stakeholders through objectively clear and meaningful promotions and products. Hence, no over-marketing and deceptive corporate offerings!	"No-right" not to search, shop, and compare corporate products and services from representative competitive corporate offerings and thus learn about their justice and equity
To choice	Privilege to offer a wide variety of competitively good and socially safe	Privilege to choose from a variety of socially safe corporate products and service packages	"No-right" not to offer a wide variety of corporate product bundles that are socially and competitively	"No-right" to demand or expect access and choice to a variety of competitively and socially safe corporate

	corporate products and services		safe. Hence, build justice before variety	products and price packages. Hence, choose cautiously
To be heard	Privilege to be heard by proper authorities when unduly harassed by corporate stakeholder and non-stakeholder public	Privilege to complain to proper authorities about corporate abuses and be heard	"No-right" to immunity when legitimately opposed by corporate stakeholder and non-stakeholder publics. Hence, avoid corporate abuses and seductions	"No-right" to be heard and acted upon by proper authorities when complaining about corporate abuses. Hence, negotiate redress prior to corporate contracts
To redress	Privilege to adequate compensation when unduly maligned or vandalized by corporate stakeholder and non-stakeholder public	Privilege to recourse and adequate compensation when unjustly tricked into attractively deceptive corporate packages	"No-right" to demand undue compensation when unjustly maligned or vandalized by corporate stakeholder and non-stakeholder public	"No-right" to undue compensation when justly or unjustly tricked into attractively deceptive but losing corporate packages
To full value	Privilege to advertise and deliver full value of corporate product bundles that include no harm	Privilege to receive on purchase full value of corporate product bundles that include no harm	"No-right" to assume that corporate stakeholder and non-stakeholders will not expect full value that includes no harm. Hence, sellers beware!	"No-right" to assume that corporate products will always deliver full value that includes no harm. Hence, buyers beware!
To education	Privilege to educate corporate stakeholder and non-stakeholders about the costs and benefits of corporate	Privilege to educate yourself on corporate products and services. Hence, learn when to say "no"	"No-right" to demand that current and prospective stakeholders will seriously educate themselves about the costs and benefits of	"No-right" to educational and counseling programs that enable better education on corporate products and services.

Table 6.2: (*Continued*)

Hohfeldian Consumer Privileges	Corporate Executive Privileges	Corporate Stakeholder Privileges	Corporate Executive "No-rights"	Corporate Stakeholder "No-rights"
			corporate. Hence, counsel them	Hence, also work on your own
Representation and participation	Privilege to an objective representation and unbiased participation of corporate stakeholders when serious corporate product/service issues arise	Privilege to represent objectively serious corporate stakeholder issues as and when they occur to proper corporate or government authorities	"No-right" to an objective representation and unbiased participation of corporate stakeholder and non-stakeholders when serious product/service issues arise Hence, preempt problems	"No-right" to demand to be heard and redressed when corporate executives rightly represent to the right stakeholders with just procedures. Hence, act much before problems arise

Rights can conflict. I compromise my right to life when I unjustly kill another. The right to life of the unjust attacker may be overridden by the right of life of the innocent victim. In general, the right to life is superior to the right to private property, and, in a conflict, the former takes precedence. For instance, Jean Valjean (in Victor Hugo's *Les Miserables*) steals a loaf of bread because he is starving and that is the only way he can survive. Jean's right to life overrides the baker's right to private property (e.g., the loaf). The conditions necessary for one right to override another, however, are very stringent. The point of the story of Jean Valjean is not so much to justify his taking or stealing the bread as it is to condemn an unjust society that makes it impossible for people to exercise their right to life (De George, 1999, p. 100).

6.3.3. Labor Law Reform and Labor Rights and Duties in India

During the last decade, the corporate world has argued that labor laws in India are excessively pro-worker in the organized sector, and this has led to serious rigidities and adverse consequences in terms of productivity. Hence, the corporate world has asked for labor law reform. One of the chief reasons for such a reform is that many labor laws in India are ancient, irrelevant, and do not reflect the requirements of the day. For instance, the Industrial Disputed Act and the Trade Unions Act, among many others, were crafted in an era when concepts like liberalization, privatization, and globalization were not either fully evolved or understood. Indian labor laws need reform to give appropriate flexibility to the management side to compete with the international world markets of intense competition. Existing laws are also less employment friendly – despite GDP growth, there has not been proportionate growth in employment in India as robotics, automation, outsourcing, and plants redesign and relocation have adversely affected jobs in India.

While labor law reform has been on both supply and demand sides, and employee and employer sides, the exact content and direction of labor reform are far from clear. The pluralist industrial relations paradigm (traced to Sidney and Beatrice Webb in England, to John R. Commons, the father of US industrial relations, and to members of the Wisconsin School of Industrial Relations in the early twentieth century) analyzes work and the employment relationship as a bargaining problem between stakeholders with competing and conflicting interests. John Commons proposed a balancing paradigm that focused on the need for equilibrium between capital and labor rather than the dominance of one over the other.

Whatever and whenever the labor law reform in India, it should safeguard all stakeholders, especially labor and customers as human beings and not as economic agents, as partners in production and not economic factors of production. That is, rights and duties on both sides must be recognized, upheld, and enforced. Moreover, labor law reform should consider the nature of work and the lives of workers. A new industrial relations paradigm is needed that explicitly considers the interest of the employees, employers, the employment relationship, humanization of labor and labor markets via equity and self-actualization, and

not mere productive efficiencies and profitability. John Budd (2004) extends the content of labor reform by including efficiency and equity with "voice." Equity reflects fair employment conditions and standards, while voice is the ability to have meaningful input into employment-related decisions, including both industrial democracy and personal autonomy.

6.3.4. "Paid" Media's Violation of Rights and Duties

"A free press should be neither an ally nor an adversary […] but a constructive critic" (Mahatma Gandhi). Media is the bridge between the ruler and the ruled for transport of information inputs. The media, particularly the press, the radio, the television, and the cinema, together or independently, have the potency to either make or mar, and reform or deform the society.

The advancement and diffusion of knowledge are the only guardian of true liberty (James Madison). Media, one of the four pillars of modern democracy, is entrusted with the responsibility of providing and diffusing truthful and objective information to all people. By definition, media collects, frames, and objectively communicates nontrivial worthy information to the public it serves. The way information is collected, stored, sorted, structured, and disseminated has a deep impact on how it is read and interpreted by the public. Hence, the media can and does wield much power and control in informing the public and even in "forming" its economic, ethical, and moral conscience. People form views, beliefs, values, and lifestyles often on the basis of what they see and hear in the media. "Whoever controls the media, controls the mind" (Jim Morrison). Knowledge is power, and the media that collects, stores, and disseminates knowledge is power. Hence, the critical need of media scrutiny and media ethics – an ethic of rights and duties.

In general, information has four dimensions: structure, content, provision, and dissemination understood as follows:

(1) *Structure*: This determines what of the information (if at all) will be remembered by the audience and how. It encompasses not only the mode of presentation, but also the modules and the rules of interaction between them.
(2) *Content*: Incorporate ontological (reality) and epistemological (truth) elements; "hard" data that can be verified represent the reality; "soft" data or data interpretation offered with the hard data represent the truth of reportage. A message comprises both worldview (theory) and an action and direction-inducing element (practice).
(3) *Provision*: This comprises the intentional input of structural content into information channels. The equation of provision also includes the timing, quantities of data fed into the channels, and their quality.
(4) *Dissemination*: These are channels that bridge between the information providers (media) and the information consumers. Some channels are merely technical with respect to bandwidth, noise to signal ratios, and the like. Other channels are metaphorical, and the relevant determinants are effectiveness in conveying content to target consumers.

Today in 2018, the Indian press is over 225 years old, the Indian Radio is about 100 years going, and Doordarshan is half a century strong. Media has about five main functions: information, interpretation, education, entertainment, and evaluation. While some of these functions are still provided, the Indian Media Empire is indulging in sensationalism, yellow journalism, paid news, TRP domination, politician control, and corporatization. The Press Council of India that is supposed to enforce values and ethics in the print medium is seemingly passive and teethless. "The sole aim of journalism is service. The newspaper press is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within" (MK Gandhi).

Article 19(1) of the Indian Constitution states that, "everyone has the right to freedom of opinion and expression." And so is the media – the Free Press. This right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers. The successful survival and flourishing of the world's largest democracy owe a great deal to the freedom, power, and vigor of the press. However, the freedom of the media is not absolute. Article 19(2) puts reasonable restriction on the media in the interest of the sovereignty and integrity of the country, the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense, and the like. The right of freedom of speech of individuals and of the media is a great power, but with great power comes great responsibility.

Corresponding media duties toward the public include: freedom of publications, plurality in media ownership, diversity in information, culture and opinion, support for democracy, support for public order and security, universal reach, quality on information and culture disseminated to the public, avoiding harm to individuals and the society, respect for human rights, and informing citizens about current events and developments in society. Media should be a fact-finding body engaged in firsthand reports whenever possible and presenting the facts to the public without much interpretation or representation. Media can get into argumentation. More information is required to support the truths that the media claims in a given case. But arguments are not correct if the media does not back them with accurate facts, figures or events, laws, and doctrines. Arguments are not correct if the media neglects facts that actually support a different claim.

The World Media Ethics Code specifies the following media duties:

- Honesty and fairness: Duty to seek the views of the subject of any critical reportage I advance of publication; duty to correct factual errors; duty not to falsify events and facts or to use them in a misleading direction.
- Duty to provide an opportunity to respond to critical opinions as well as to critical factual reportage.
- Appearance as well as reality of objectivity; in this connection, some codes prohibit members of the press to receive gifts.

- Duty to respect privacy.
- Duty to distinguish between facts and opinion.
- Duty not to discriminate on such grounds as race, religion, nationality, color, gender, or language; some codes call on the press to refrain from mentioning the race, religion, or the nationality of the subject of news unless relevant to the story; some codes call for coverage that promote tolerance.
- Duty not to use dishonest means to obtain information.
- Duty not to endanger people.
- General standards of decency and taste.
- Duty not to prejudge the guilt of an accused and to publish the dismissal of charges against or acquittal of anyone.

In India, the legislature makes laws, the judiciary interprets them, and finally, the executive body executes them. These are three pillars of democracy. The media can become a fourth pillar of democracy by being a watchdog of all the three pillars. Unfortunately, in the last decade the media has become a fourth pillar instead on its own right by being selective about news, by subjecting itself to "paid news," by faking sting operations to settle personal scores with rival firms, and by tabloidization of news. Further, by assuming partisan affiliation with certain political parties, the Indian media has patronized those parties and failed to objectively represent them to the voter public. By focusing on TRP ratings and due to fierce media rivalries, the ethics of journalism has been seriously compromised.

Often media writes many articles in order to push an agenda. Some media writers try to convince us what they believe by a collection of facts that support their proposal or agenda. There is a huge difference between decision-based evidence making versus evidence-based decision-making. There is a difference between truth when an agenda is pushed and when the media lets the facts speak the truth. When media content is biased toward a certain race, sex, gender, religion, nationality, region, or political party, then media begins to lose its independence to observe and collect facts, and worse, it is difficult for the media to "represent" truth with accurate facts and figures. A neutral and objective presentation of news is the duty of the media and the right of the public.

India is the largest democracy in the world, and the media has a powerful presence in the country for safeguarding its democracy. Of late the abuse of "paid news" has corrupted the media. Paid news indicates favors toward the institution which has paid for it. The news is more like an advertisement praising the person or hiding the faults of the institute or ruining the reputation of the opposition party, all these for some significant payment. Sometimes, there is no money paid: media houses show favoritism toward the groups having more power. Paid news became widespread during the 2009 elections. Most campaigning politicians paid media heavily for positive coverage and for ignoring obvious skeletons in the closet. Also, the mode of payment in paid news can violate tax laws and election spending laws of the country. It can seriously buy and bias national and state elections thus ruing democracy at its roots.

6.4. Concluding Remarks

Perhaps, the most basic institution of civil society, the family, which should be a moral educator schooling the next generation of citizens in the interplay of rights and responsibilities, is in peril and that "the second line of defense" (schools and colleges) cannot alone prevent the decline of a responsible citizenry. Although schools are reluctant to engage in moral education and character formation, they must do so to combat the "moral deficit" among young people. There seems to be among the young an increasing tendency to express needs and wants in terms of rights and to invoke rights talk, a tendency summed up by social critics and popular media as "rights inflation" or a "rights explosion." For example, people call for new rights without regard to the duties and obligations that a right creates (e.g., asserting affirmative rights to healthcare without considering the implications for the public finance). Exaggerated rights talk only shuts down debate and makes compromise difficult but also devalues rights. We need a return to a language of social virtues, interests, and, above all, social responsibilities that will reduce contentiousness and enhance social cooperation.[3]

Any discussion of rights and duties must be prefaced by a discussion of certain principles that rights and duties are based upon: principles of distributive justice, contributory or participatory justice, and social and family justice. The approach allows for balancing the responsibilities of individual (contributive or participatory justice) with that of family need (social and family justice) and that of institutions and governments (distributive justice, corrective justice). An optimal situation of rights and duties should, accordingly, include strategies for avoiding poverty, as well as emphasize the social duty emerging from private property, all this in spirit of solidarity and subsidiarity. Lastly, any discussion of rights and duties should be framed within the context of global and ecological sustainability.

Moreover, the discourse on human rights should be a systematic attempt to work out the implications of the Golden Rule in political and social life. "Do unto others as you would have them do unto you" – this rule encapsulates an ethic of reciprocity and serves as the logic of rights and duties. By this golden rule, executives need to shift their consideration from the implications of their strategies for their lives and that of the company to the implications of these actions for the lives of employees, their families, and local communities.

NOTES

1. This notion comes very close to that of H. L. A. Hart. Hart (1954) argued that it is a mistake to ask for a definition of "right" or "duty" because legal words can only be illustrated by considering the conditions under which certain statements (such as "X has a right to $10 from Y") are true. The conditions are: (1) there is a legal system in existence, and (2) under the rules of that system, some person Y, given the events that have actually happened, is obliged to do (or abstain from doing) something for X provided X or his agent chooses that Y should. Under these conditions, the statement "X has a right" is used to draw a conclusion of law in a particular case falling under those rules. However,

not all rights are conclusions of the law. For instance, the Second Amendment to the US Constitution (the right of the people to keep and bear arms shall not be infringed) and the Sixth Amendment (in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial) are not conclusions of law, but "rules" of law.

2. One of the best definitions of human solidarity was provided by Pope John Paul II in his 1987 Encyclical *Solicitudo Rei Socialis*: "Solidarity helps us to see the 'other' – whether a person, people, or nation – not just as some kind of instrument, with a work capacity and physical strength to be exploited at low cost and then discarded when no longer useful, but as our 'neighbor,' a 'helper' (Gen 2: 18–20), to be made sharer, on a par with ourselves, in the banquet of life to which all are equally invited by God." (Pope John Paul II (1987), Solicitudo Rei Socialis, No 39; (http://www.vatican.va/holy_father/john_Paul_ii/encyclicals)).

3. Communitarians appeal to use the moral voice of the community to exhort people to meet their responsibilities. They claim responsibility originates in community. There is an implicit certitude about what the responsible choice is and a striking lack of attention to the problems of conflicting responsibilities and values, particularly for people who are members of many communities and who find themselves pulled by conflicting obligations. Moreover, the particularity with which some communitarians are willing to spell out what responsibility requires and what fosters community seems to replace the role of personal autonomy, of taking responsibility for one's own conception of the good life, with accountability to the prescriptions of the community. But what they mean by "community" is far from clear. Often such definitions and discussions are amorphous and wishful. Communitarians are vague on such issues as the relationship between community and polity, the possibility of consensus on values and responsibility, the role of law in achieving a communitarian moral revival, and the role of rights in responsive communities.