CHAPTER-II

HISTORICAL BACKGROUND
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“The wealth earned through pious means flourishes; those who earn through dishonest means are destroyed.”

-Atharva Veda 2000 B.C.

2.1. INTRODUCTION.

Society exists for the common good of those who have formed it. Since the primitive societies, people have come to live together and form themselves into groups and clans under the leadership of the able men. For this purpose, they have established social, political, religious and other institutions. These institutions had dealt with intended objectives of the society by adopting a normative system and social and moral codes. A well-established society had political and religious intuitions which maintain law and order, moral and ethics of the society respectively.

The ancient period was such a condition, where these ideal principles, practices, beliefs keep the members of the society under rigid control. As the society subjected to social change, these principles were started to move towards erosion and modification. But, it is fundamentally and universally proved fact that such a change or a race with culture, tradition, and ancient beliefs cannot be destroyed altogether and can no longer live. The problem of corruption is an old and universal social problem which had disastrous effects on the individual and society throughout the history. It was a serious issue in the ancient world and it was most widely discussed domestic problem of the every country. In line with this view, Padya.K.S asserted that “Corruption has been an age-old phenomenon, deep-rooted evil and a universal malady afflicting each and every society in one form or another.”

The ancient India as well as Western legal philosophy is treasure house containing peerless gems in the form of legal concepts and jurisprudential theories against this wide oldest social problem. The study of these principles can certainly contribute a lot to address the present disastrous impact of corruption by establishing

and strengthening moral fabric of our modern society. In this context, S.K. Purohit in his study on Indian Legal Philosophy opined that “Indian legal precepts and practices strikingly appropriate which, if modified to an extent as would take notice of the changing circumstances and social milieu, will definitely help us to achieve not only the ideal of a socialistic pattern of society but would make our life happier.”

Therefore, it is a positive and strong assertion of the researcher that the ancient legal philosophy can perform the therapeutic function. It is a rational plan of the researcher to harmonise and integrate the ethical principles with anti-corruption strategies. In this backdrop, in this chapter an attempt has been made by tracing out the Western as well as Indian jurisprudential thought on corruption to lend moral tone and viability to the theory and practice of anti-corruption law.

2.2. HISTORICAL BACKGROUND: INTERNATIONAL PERSPECTIVE.

In the task of reformation of the society, care must be taken to detect and legally treat the problem of society. The problem of corruption which is a social menace is severely condemned all over the world and posed a big challenge to the social scientists and policy makers. Even though we have sincere and systematic legislative measures to curb this disease, we are failed in our performance to prevent and cure this deadly disease. The present experiences and practices show that the legislation or policy of the government has a limited capacity in addressing a problem of corruption. Without rational justification, legislation or book of law cannot hope to direct human beings towards progressive realisation of patterns of life and conduct. Therefore, it is necessary for the anti-corruption laws and strategies to take care of the rational habits and custom of the society, so long the problem cannot be cured.

In Western civilisation there are deliberate efforts to define the limits of coercion, to mark out spheres which should be left to the free choice of individual, for example, the spheres of thought and its expression, religious belief and worship. In all these ways the notion of justice according to law is gradually pervaded by the

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3 Ibid, at p.80.
notion of justice in the law. Therefore, in ancient Western society the law was moral compulsion which freemen can impose upon themselves. The law maker was moral teacher of righteousness and his duty was to preserve the acts ought to be done and also to reveal and inspire in man true motives.

In the ancient Western thoughts, the rational, religious, morality and public opinion based social organism and legal structure, which can act as antidote to corruption was well established. Aristotle notes that “the worst fault of untempered democracy was its lawlessness and the reign of arbitrary will and thus entailing a condition of negation of freedom, the dethronement of reason and the predominance of clashing impulses”. Similarly, Plato says in his Laws VI, 702 “The service of the laws is also the service of the Gods, a service in which to obey is nobler than to rule”. At the ultimate analysis, It can be concluded from the above discussion that the Western thoughts, in line with Indian philosophical thoughts, have projected the sense of honour and of duty and to human dignity to moral responsibility and to enlightened patriotism. Accordingly, the spirituality of Western thinkers was so dynamic as to re-vitalise and reorient the society suffering from the deadly disease of the corruption.

Come to the specific anti-corruption strategy of Western countries, History of anti-corruption strategies goes back to various holly religious literatures like Bible, Korana and Zuardic law. It seems to have existed ever since man learnt to organise himself collectively. According to Ralph Braibanti, Government corruption is found in all forms of bureaucracy and in all periods of political development. A review of penal codes utilized in various ancient civilizations clearly demonstrate that bribery was a serious problem among the Jews, the Chinese, the Japanese, the Greeks, the Romans as well as the Aztees of the New World.

Corruption was spread widespread in Western Countries in ancient and medieval times. Bribery of judges was a problem in the history of the Egyptians,

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6. Ibid.
Babylonians, and Hebrews. Using their position as priests, the sons of Eli extorted more than their share of the sacrifices from the people. The problem of corruption has been around a long time and affected all parts of the world. In fact, the problem is grappled with in ancient Arabic, Indian, Chinese, and Greek texts. Carl Friedrich has argued that the basic understanding of corruption as, ‘a general disease of the body politic’ is common to the ancients and the moderns. John Noonan traces the concept back to roughly 3000 B.C. and claims that, although the concept has transformed over time, it has, in its main contours, remained constant. Similarly, there are good number of references in Rousseau and Machiavelli working to show that the problem of corruption is old as human history.

2.2. A. Hammurabi Code.

The first unified body of law, the Code of Hammurabi from the eighteenth century B.C., specifies legal sanctions against corrupt activity, particularly the bribing of judicial officials. In 120 BC, Hammurabi of Babylon talks about inquiries into corruption cases. Hammurabi Code is the classic work which deals with various codes.

In A History of Egypt, British authors King and Hall wrote: "The code shows to what an extent the administration of law and justice had been developed in Babylonia in the time of Hammurabi. From the contracts and letters of the period we already knew that regular judges and duly appointed courts of law were in existence, and the Code itself was evidently intended by the king to give the royal sanction to a great body of legal decisions and enactments which already possessed the authority

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13. This is a collection of laws and edicts of Hammurabi, King of Babylonia (18th Century B.C.). Hammurabi’s Code is the earliest complete known legal code; sets forth in cuneiform legal procedure and penalties for unjust accusations, false testimony, judicial injustice and other rules with the goals of “stable government and good rule,” and that “the strong may not oppress the weak.”
conferred by custom and tradition...."14 "In cases where fraud was proved Hammurabi had no mercy, and summoned the money-lender to Babylon to receive punishment, however wealthy and powerful he might be."15

The author mentioned that “After a case had been heard and judgment had been giver, a summary of the case and of the evidence, together with the judgment was drawn up and written out on tablets in due legal form and phraseology. A list of the witnesses was appended and after the tablet had been dated and sealed, it was stored away among the legal archives of the Court, where it was ready for production in the event of any future appeal or case in which the recorded decision was involved. Moreover, when once a judgement had been given and had been duly recorded it irrevocable and if any judge attempted to alter such a decision he was severely punished…..”16 They further points out that after the judgment a further check upon injustice was provided by the custom of the elders of the city, who sat with the judge and assisted him in the carrying out of his duties and it was always open to a man, if he believed that he could not get justice enforce to make an appeal to the king.17

2.2. B. Corruption during Greek and Roman Period.

As it is mentioned in the above discussion the problem of corruption exist since time immemorial either in the form of political, judicial or administrative in nature. In that too, the political corruption has a rich history in its profile. The studies asserted that this heinous practice and immoral act marked its role as nation building as well as collapse of the kingdoms. It is pointed out that as one of the oldest and most perplexing phenomenon in human society, political corruption exist in every country in the contemporary world and it is not exclusively a problem of developing countries. The classical concept of corruption as a general disease of the body politics was stated by ancient political philosophers Plato and Aristotle.18

Corruption during Greek Period: Corruption and bribery had a rather slow growth in ancient Greece because of the small size of the Greek city-State. However,

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15. Ibid, at p. 306.
16. Ibid at p.267.
17. Ibid at 268.
by the fifteen Century B.C., corruption had become a common feature in the political life all over Greece. The growth of corruption in Greece in the later period of its history could be attributed to the increase in economic activity of and the growth of political apathy.

In Aristotle’s classification there were three kinds of Constitution, he lists kingship, aristocracy, and polity. He goes on to note that each can be corrupted. His discussion of kingship is particularly relevant because what constitutes the corruption of kinship into tyranny is the disregard the tyrant has for his subjects, he rules only to further his own ‘interests’.¹⁹

Plato,²⁰ in his theory of the ‘perverted Constitutions-Democracy, oligarchy, and tyranny’, has worried that these regimes instead of being guided by the law were serving the interest of the rulers. "These fundamental general notions of corruption all practically define corruption as dysfunctional. For it is seen as destructive of a particular political order, be it monarchy, aristocracy, or polity, the latter a constitutionally limited popular rule, and thus by definition devoid of any function within a political order."²¹

Mark Philip notes that there are many words in Ancient Greek that make no distinction between a gift and a bribe (doron, lemma, chresmasi peithein) since, for the Greeks, to persuade through gift giving was acceptable and no perversion of judgement could be assumed.²² He makes the point that if the Greeks have no conception of bribery then this puts into question the whole idea of a public body in Ancient Greece. The author further pointed out that If these were the only terms for bribery in the Ancient Greek world we would have to take the view that there is a basic untranslatability of the terms between us and them that they not only failed to distinguish gifts and bribes, but that they also had no real concept of public office or

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²⁰. This outstanding Greek philosopher has provided a rich and glorious contribution to the history of political philosophy. Out of which, Republic (380-370 B.C), the Statesman (360 B.C) and the Laws (350 B.C) were of perennial interest to all those interested in the history of political ideas. He has generally been regarded as the founder of philosophical idealism by virtue of his convictions that there is a universal idea in the world of internal reality beyond the world of sense. Ian Adams and R W. Ryson. Fifty Major Political Thinkers. New York: Routledge, 2007, p.3.
It shows the strongly assertion of the Mark Philip that even the most glorious historical Kingdom was also not exempted from the corruption.

He goes on to argue, following Harvey (1985), that there was a term for bribery in Ancient Greece, *diaphtheirein*. However, in opposition to Philip’s interpretation, it is not true that *diaphtheirein* has the same status as the modern term bribery or that it can be said to constitute a form of corruption in the modern sense. *Diaphtheirein* refers to the corruption of the mind in that the ability to make sound judgements and pursue the ‘good’ has been impaired and, more generally, to destruction and decay. All bribery is not corruption in the modern sense. A closer reading of Harvey’s discussion of *diaphtheirein* reveals this point.24

Harvey takes great pains to show that, in contrast to and concurrent with neutral and positive terms, there did indeed exist at least one negative term (*diaphtheirein*) for influencing through giving money and gifts. Nowhere, however, do we find any reference to ‘public trust,’ ‘private interest’ or any such category we usually use in discussing bribery and corruption. Bribery as *diaphthora* was negative because it implied that the citizen, by way of accepting a bribe, was no longer able to properly act as a citizen since their will and power to judge had been destroyed. As Harvey puts it: The man who takes a bribe surrenders his free will; what he says and does he does for another, and in that sense he no longer exists as an independent individual: he is a non-entity. That, I suggest, is the essential point.25

Rather than some ‘public trust’ succumbing to ‘private interests’, the recipient of a ‘bribe’ has lost the ability to be a citizen by relinquishing his autonomy. Like slaves, merchants, and women, all precluded from being citizens since they all lacked some essential requisites for properly acting as a citizen, so the recipient of a bribe is incapable of the autonomous thought and moral judgement necessary for being a citizen.26

23. Ibid.
24. The more common version of the term is *diaphthora*, the standard definition can be found in the Liddle-Scott Greek-English lexicon (available online at www.perseus.tufts.edu), retrieved on 20th January 2010.
26. Peter Euben (1989) has equated the term *stasis*, not *diaphthora*, with political corruption. *Stasis* refers to the destruction and fracturing of the political community, and thus can easily be thought of as an instance of *diaphthora*. As with *diaphthora*, *stasis* does not imply any question of public-private
Cimon Corruption Case: Cimon was charged in ancient Greece at the end of his third term a *strategos* and as part of his *euthynai*, with having been bribed by Alexander of Macedon not invade his country, although it was at Cimon’s mercy following the suppression of the revolt of Thasos. The people appointed the young Pericles as one of the accusers, thus, it is said giving him chance to make his mark as populist leader, though, it is not clear how much good it did him, for Cimon was acquitted.

Further *Claire Taylor* asserted that Bribery (more specifically, bribery accusations) seems to have been major feature of Athenian political life. If the evidence of law Court speeches and comic drama is to be believed that how much Athenian were under the clutch of Corruption. It is clear from the vicious nature of many bribery accusations and the amount of anti-bribery legislation that, it was generally thought as detrimental and was something that the Athenians wanted to reduce. They did this principally in two ways: through direct legislation to deter and punish wrongdoer and through preventive measures designed to make it difficult to successfully give or receive bribe.

Corruption during Roman Period: The Romans extended their empire till they left no polished nation to be subdued, and found a frontier which was everywhere surrounded by fierce and barbarous tribes; they even pierced through uncultivated deserts, in order to remove to a greater distance the molestation of such troublesome neighbours, and in order to possess the avenues through which they feared their attacks. But this policy put the finishing hand to the internal corruption of the State. A few years of tranquillity were sufficient to make even the government

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27. Cimon is an important citizen of Athens because he is responsible for the friendship between Athens and another Greek city-state called Sparta. He cared about Sparta so much that he asked the Assembly to send soldiers to help Sparta end the rebellion of the helots. Athens sent 4,000 soldiers to fight for Sparta and Cimon lead them into battle. After Cimon lost the battle, Sparta decided that it did not want any more help from Cimon and his soldiers because the Spartans did not trust them. Athenian citizens are angry that their soldiers were dishonoured and dismissed. Cimon is the reason the Athenians sent soldiers.

forget its danger and in the cultivated province, prepared for the enemy a tempting prize and an easy victory.\textsuperscript{29}

According to \textit{Adam Ferguson} the rules of despotism are made for the government of corrupted men. They were indeed followed on some remarkable occasions, even under the Roman commonwealth; and the bloody axe, to terrify the citizen from his crimes, and to repel the casual and temporary irruptions of vice, was repeatedly committed to the arbitrary will of the dictator. They were finally established on the ruins of the republic itself, when either the people became too corrupted for freedom, or when the magistrate became too corrupted to resign his dictatorial power.\textsuperscript{30}

This species of government comes naturally in the termination of a continued and growing corruption. But has, no doubt, in some instances, come too soon, and has sacrificed remains of virtue, which deserved a better fate, to the jealousy of tyrants, who were in haste to augment their power. This method of government cannot, in such cases, fail to introduce that measure of corruption, against whose external effects it is desired as a remedy. When fear is suggested as the only motive to duty, every heart becomes rapacious or base.\textsuperscript{31}

The vigorous and abiding interest which the Greek citizens evinced gradually waned as could be judged by the poor attendance at public meetings. With the opening of new opportunities for speculations, bribery and corruption began to increase cases.

The historic civilized State Rome was also witnessed this malady. Corrupt practices no less in the ancient Rome, though the evil did not make its appearance on any large scale until indemnities, tributes and colonial revenues increased the wealth of Republic. The scholarly work of \textit{Adam Ferguson} further demonstrates that the governors of provinces, who were unpaid, exploited the people for their own material benefit. In election to public offices, in the senates and in the Courts bribery and corruption was common feature. Those who were in charge of giving contracts of public works looked upon bribes as a source of income. Companies were given

\textsuperscript{30} Ibid, at p.398.
\textsuperscript{31} Ibid.
the contracts of gold mines, salt mines, forests; collection of taxes and of customs and these companies did not hesitate to bribe officials to abstain the contracts. Under the Empire, the powers of the provincial governors and tax collections were slashed somewhat but a new type of evil came into existence in the open sales of public offices on hereditary freely transferable basis. The forces which were likely to revolt against open corruption were silenced, the army with money and civilian population with bread and circuses.\(^\text{32}\)

Aristotle asserted that the Constitutional principles such as kingship, aristocracy and polity are always prone to the problem of corruption. Explaining the relationship between kingship and corruption, he pointed out that the kingship is particularly relevant because what causes the corruption of kingship into tyranny is the disregard the tyrant has for his subjects; he rules only to further his own interests.

2.2. C. Medieval Period.

During the medieval period the corruption was rampant in the form of extortion of revenue by the central officials and the perversion of justice. The task of collecting this tainted money was actively performing by servants of king and feudal barons. During this medieval period corrupt practices developed even in the administration of justice. Common law Courts started to perform its functions under the clutch of the corruption judicial officers were sold in France during the fifteenth century.

Various philosophers like Machiavelli and Rousseau, have identified the symptom of political corruption in their work. This classic conception of corruption continued into modern times, and is central to the political thought of these philosophers. Scott. J viewed that prior to the early modern period; there was no widely accepted practicable corruption. Classical distinction between, say, monarchy, and tyranny turned in the contrast between the public responsibility of kings and their private gains. Still it would be anachronism to define for example, the sale of the public offices in early modern absolutist monarchies as corruption; this way simple

\(^{32}\) Explaining the level of misuse of power during Roman period, Adam Ferguson viewed that “We are apt to admire the empire of the Romans, as a model of national greatness and splendour; but the greatness we admire, in this case, was ruinous to the virtue and the happiness of mankind; it was found to be inconsistent with all the advantages which that conquering people had formerly enjoyed in the articles of government and manner”, Ibid, at p.97.
the way these regimes did their business and they did not exist, but rather that the most recognizable lineages, handed down from Plato, treated corruption in ways that were broadly cosmological, and so served less as guides for institutional reform than as moral indictments of individuals, peoples, and cultures.\footnote{Scott, J.C. \textit{Comparative Political Corruption}, Englewood Cliffs, N.J. Princeton Hall, Inc, 1972.}

\textit{Machiavelli}\footnote{Niccolo Machiavelli (1468-1527 CE) was born in Florence. As part of his education, he learned much from the Greek and Latin classics that were being rediscovered during the Renaissance. He entered public life in 1494 as a clerk, becoming a secretary of Florence four years later. As such he served a council exercising control over departments of interior and war, involving him in diplomatic missions to various parts of Europe and in organizing militia. This was a time of continual warfare in Italy, where unstable governments opened the way for invasion by foreign powers. For more details; see, Niccolo, Machiavelli. \textit{The Prince} translated by W.K.Marriott . London: J.M.Dent and Company, 1908.} has analysed the problem of corruption in moral perspective. He has measured this administrative issue by comparing people’s collective character and moral standards of everyday conduct as defined by their Christian context. For \textit{Machiavelli} corruption was process by which the virtue of the citizen was undermined and eventually destroyed. "Since most men are weak and lacking in the virtue of the good citizen except when inspired by a great leader, the process of corruption is ever threatening. And when virtue has been corrupted, a heroic leader must appear who in rebuilding the political order infuses this virtue into the entire citizenry."\footnote{Friedrich, Carl. "Corruption Concepts in Historical Perspective." in AJ Heidenheimer, Michael Johnston and Victor T. LeVine (ed.). \textit{Political Corruption: A Handbook}, New Brunswick: Transaction Publishers, 1989. 15-23, at p.18.}

Famous philosopher \textit{Rousseau}\footnote{Jean-Jacques Rousseau was born in the independent Calvinist city-state of Geneva in 1712, the son of Isaac Rousseau, a watchmaker, and Suzanne Bernard. Rousseau's mother died nine days after his birth, with the consequence that Rousseau was raised and educated by his father until the age of ten. Isaac Rousseau was one of the small minorities of Geneva's residents who enjoyed the rank of citizen of Geneva, a status which Jean-Jacques was to inherit from him.} opined that corruption was the centrepiece of a natural moral empathy among humans and the emergence of a bourgeois egoism. \textit{Rousseau} forthrightly identifies “the worst possible condition for free men” as that in which citizens are deprived of “civil safety” and “their goods, life, or freedom” are “at the discretion of powerful men” without the guarantee of protection by laws. Such a condition, Rousseau argues, constitutes grounds for government’s immediate dissolution.\footnote{Kelly, Gary M. and Gregory A. Mc Brayer. "The Implicit Rousseauan Market Place: Discerning the Economy in Rousseau’s Discourse on Political Economy." \textit{Paper delivered at the 2010 Annual Meeting of the American Political Science Association}, 2010. Quoted in; Hanley, Ryan Patrick}
Arnold Heidenheimer opined that “Montesquieu saw corruption as the dysfunctional process by which a good political order is perverted into evil one and a monarchy into despotism”. 38 According to Rousseau political corruption is a necessary consequence of the struggle for power. Then he argued "that man had been corrupted by social and political life. It is not the corruption of man which destroyed the political system but the political system which corrupts and destroys man." Arnold further pointed out that there was an agreement between the views of Rousseau and Lord Acton that "all powers tend to corrupt and absolute powers corrupt absolutely." Lord Acton is focused on the moral depravity which power is believed to cause in man, "they no longer think about what is right action or manner, but only about which is expedient action or manner." 39

Ombudsman Institution: The unique system of the history of administration and prevention of corruption is Ombudsman. This watchdog agency has recorded a glorious mark in addressing the citizen’s grievances and maladministration of the bureaucracy. The institution has provided the citizen with an alternative institution with in the democratic frame work which enjoys his confidence and to which he can have an easy access for the redress of the grievances. The institution is also regarded as cheap, quick, thorough and impartial in providing remedies to the victims of the maladministration. 40

Office of Ombudsman is a form of an agency to check the government institution. The institution, being relatively different than other Courts, act as an external agency, outside the administrative hierarchy, to probe into administrative faults. Theoretically, it is the projection of the legislative function of supervising the administration. 41 Explaining the conceptual analysis of the Ombudsman institution, Gerald E. Caiden et al in the International Hand Book of the Ombudsman have defined Ombudsman broadly as “A special office or officer to whom people can go with their grievance about the way their business with large anonymous

38. Friedrich, Carl., op cit., at p.19.
bureaucracies has been handled. The Ombudsman records public complaints, investigates them and reports the findings to the complainants and the organisations investigated. Should any wrong be discovered, it is expected that it will be put right, if not to the complete satisfaction of the aggrieved party, then at least better than it would have been without the Ombudsman’s intervention.”

Another study pointed out that “The Ombudsman is an independent and non-partisan officer, often provided for in the Constitution, who supervises the administration. He deals with specific complaints from the public against administrative injustice and maladministration. He has the power to investigate, report upon, and make recommendations about individual cases and administrative procedures. He is not a judge or a tribunal, and he has no power to make orders or to reverse administrative action. … His authority and influence derive from the fact that he is appointed by and reports to one of the principal organs of State, usually either the parliament or the chief executive.”

According Geoffrey Sawyer some of the symptoms of this prestigious institution can be traced with the ancient Roman republic. As the public grievance and maladministration was routine business of the State affairs during these days, they had attempted to constitute an effective grievance redressal mechanism line with the present Ombudsman institution. Sawyer has tried to trace the origin of this investigative agency to the offices of Censor and Tribune of the ancient Roman republic. But, subsequent researches have showed that the Mediterranean culture was not favourable to Ombudsman and the Tribune, which might have once functioned as a quasi-Ombudsman during the Republic’s lost its role during Roman Empire.

However, the official records recognised Sweden as the first country to adopt this institution. In the year of 1697 and at the age of fifteen, Charles XII became King of Sweden and in 1713 he created the office of the Hogsta Ombudsman as the

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42. Quoted in; Ranjani Ranjan Jha, *op.cit.*, at p.21.
supreme Ombudsman of the King to look in to the complaint against royal officers’. The task of this Ombudsman was to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them. In 1719, the official title of the institution was changed from Supreme Ombudsman to Chancellor of Justice. The formal process of the appointment of the Ombudsman office was substantially changed after the death of Charles XII.

During the administration of King Charles and his predecessors, the monarchy became weak. Soon after his death in November 1718, the Parliament assumed a key role in the State affairs. As a result, the power of the appointment of Ombudsman institution passed from the King into the hands of Parliament. On account of these rapid political changes, the Hogsta Ombudsman (a Supreme Ombudsman of the King) transformed into Ombudsman of Risksdag (a Supreme Ombudsman of Parliament). Finally, for the first time in the world history, the first Parliamentary Ombudsman office was established in Sweden in 1809 as an effective mechanism for handling the grievance of the public against administrative impropriety and insensitivity.

When the existing mechanisms against corruption have been found inadequate in practice, the innovative idea of Ombudsman contributed by the Sweden has acquired sensational place in the administration. The majority of the nations have adopted the concept of Ombudsman in one or other nomenclature. The institution has proved its efficiency in practice by acting as external agency falling outside the administrative hierarchy and by enjoying Constitutional statutes. Unfortunately, in India the institution is struggling a lot to come out with its complete form and it is waiting for materialisation of political.

2.3. NATIONAL DEVELOPMENTS ON PREVENTION OF CORRUPTION

Law is an instrument of social control and organisation and a means of human welfare and happiness. But at the same time, it is a part, nay, a vital part of the reality

itself. The ancients realised this truth and were, therefore able to formulate a legal
theory which sub served the highest purposes of life. While the legislative strategy
expressed its inability to cope up with modern emerging challenges, the ancient
Hindu jurisprudence reiterated its efficiency to address the same.\textsuperscript{47} The ancient Indian
legal theory has regarded as magnificent part of world jurisprudence. The ancient
Hindu philosophy has proved itself as an embodiment of spirituals principles which
are gauged as much effective as modern laws.

The legislation is the instrument to control external behaviours of the
individual rather than inner attitude of the individuals. But in reality, the ultimate
success of the jurisprudence lies at modification of the individual in his external as
well as internal attitude. The problem of corruption, being psychological as well as
moral issue needs a spiritual approach which can make the individual to live and
think in freshness of spirit, works for synthesis and integration though his thought
and action. The necessary consequences of a spiritual view on prevention of
corruption law is that it can establish a working principle and enlightened guidance to
the public service system which is conducive to happiness and welfare of the people.
It is therefore, cautiously asserted that the ancient Hindu jurisprudence must be
understood, interpreted and constructed as to perform the therapeutic function of
saving us from the baneful influence of the materialistic civilisation which has
already dehumanised us.\textsuperscript{48}

In addition to the study of Indian metaphysics, it is also necessary to look in
to our rich statesmanship so that it can mould our present ruler and administrators.
Ancient India had given a great deal of thought to science of Statecraft.\textsuperscript{49} It has been
observed by \textit{Padhay} that "The corruption prevailed on a larger scale in India during
the ancient period and the ones that followed."\textsuperscript{50} In the Indian thought, a king had to
act within the bounds of dharma and an elaborate list of the duties and
responsibilities of the king towards his subjects has been prescribed.\textsuperscript{51}

\textsuperscript{47} Purohit S.K. \textit{op, cit.}, at p.240.
\textsuperscript{48} Ibid, at p.241.
\textsuperscript{49} Mathur, B.P. "Kautilya- The Art of Governance." \textit{Indian Journal of Public Administration, VOL-
\textsuperscript{50} Padhay, K.S. \textit{op cit.}, at p.26.
\textsuperscript{51} For elaborative explanation on the relationship between Dharma and duties and responsibilities of
King see, Ghoshal, Upendranatha. \textit{A History of Indian Political Ideas}, New Delhi: Oxford University
2.3. A. Ancient period.

**Vedic Period:** In the absence of Vedic knowledge about corruption, the conceptual and strategic analysis of the corruption will completely be failed. As it is apparently witnessing, the public servants who have complete faith at superiority and divinity providing their services with transparently and accountably. Their inner divine mind-set and virtuous conduct has provided noble dimension to public service. The Vedic metaphysical principles are absolutely rich contribution of Indians as various national as well as international agencies have started to combat problem of corruption by providing ethical dimension to their anticorruption strategies.

The Vedic metaphysics considered that those learned persons who praise or justify any type of evil or wickedness is a corrupt and evil minded person. The text demonstrates that committing the corrupt act and protecting the corrupt persons is also wickedness. The Veda’s have tried to trace out the causes of corruption by referring divergent conduct of the individual. The first category is those who always have consciousness of their gross bodies and always look to the phenomenal world as real. This kind of persons has invariably contradictions in their definitions of righteousness and self-righteousness owing to their ambivalent personality. The other kind of individuals referred in the Vedas are those a few who have consciousness of their inner self. In view of these two extreme kinds of individuals in any society, the attitude towards corruption and all other evil practices vary considerably with the kind of consciousness one has.

References:


53. The background of the Veda’s is quiet interesting. This visionary tradition was early formulated into orally transmitted texts. The priestly families kept collects of their own inherited hymns and shortly before the first millennium B.C. These were in turn collected into an anthology known as the Reg-ved. The rituals grew more complex, specialised functions were introduced and a priest was appointed specifically to handle there complex issues. The utterance of these performances were then collected into another anthology, the Yajur-veda. Again another priest took on the role of cantor and chanted scared verses to special melodies and these verses were collected, along with musical notion in the Sama-veda. In addition to these texts, the threefold scared knowledge, a fourth collection of hymns collected the Atharva-veda, was made specifically for the magical averting of evil. Stephan V. Beyer. " The Background to Buddhism" in Charles S. Prebish (ed.,) . *Buddhism- A Modern Perspective*. U.S.A: Penn State Press, 1975. 3-9, at pp.5-6.

54. This discussion is based on Prem Sabhlok work on “Introduction to Glimpses of Vedic Metaphysics”, *op.cit.*. The researcher has utilised the Chapter of the book Hydra Headed Corruption to discuss the vedic aspects of the corruption.

55. Prem Sabhlok, *op.cit.*, at p.98.
Based on their consciousness, some individuals are highly transparent, truthful in thoughts, desires and actions, while others are hypocrites, sweet tongued but always unpredictable. Further, the Hindu ancient principle asserts that consciousness of the body and the outer world dims the eye of the mind and hides the truth, virtue, spirit, soul and divinity. The ten servants provided by the supreme mother Prakrti, i.e., five senses and five organs are always at the service of the human being should under control. Otherwise they tend to become the masters and make the human behaviour highly unpredictable. Such human beings under the influences of their senses take even delight in the miseries of others.

The author has traced out the conceptualisation of corruption in Rig-Veda. According this scared principle corruption refers to the form of bribery and other evils as misappropriation of public funds or what results in the reduction of State revenues. The Rig-Veda analysed the corruption by referring its monetary loss on State revenue and misuse of the public fund by the public servant. The Holy Scripture further mentions that the bribe takers are thieves. Rig-Veda has made cautious warn to the corrupt officials by saying that the corrupt people face gloom and misery through their children as they sow the seed of evil in the family. Sama Veda refers to 99 sources for the entry of this corruption evil in the human body. Yajur Veda advises the King and the elected President to ensure that such low character and evil minded corrupt people should not be allowed to mix with other individuals following divine profession.

Bhagavad Gita gives a metaphysical description of corruption and its systematic impact on complete end of the human being. While dwelling on the sense objects (tons of money, transitory pleasures, sensual enjoyment etc.,) the outward looking mind takes you to attachment for these objects. From the attachment springs up more desires which result in vicious circle of corruption. The Gita further demonstrate that when the desires are not fulfilled, anger arises and this anger is the beginning of the all kind of criminal activities including corruption. At the end, the criminal activities or corrupt practices leads to infatuation and distinction between

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57. Rig-Veda 1-104-3, Quoted in; Prem Sablok, op.cit., at p.11.
58. Rig Veda 1-42-3, Quoted in; Prem Sablok, op.cit., at p.87.
59. Rig Veda 2-2-12, Quoted in; Prem Sablok, op.cit., at p.88.
60. Prem Sablok, op.cit., at p.88.
61. Verses 62-63 of Chapter II of Bhagavad Gita, Quoted in; Prem Sablok, op.cit., at p.98.
right and wrong disappears. This confusing status of mind-set leads to complete loss of the sound reasoning power and finally it takes a person to complete ruin.

Rta, Dharma, Satya: The Hindu philosophical approach in terms of Rta, Dharma and Satya, are very appropriate and relevant concepts in anti-corruption strategies. Satya or truth has a practical importance in individual life and it act as great constraint for corrupt activities. The truth which can engenders mutual truth and love, and binds the individual together, can create a working environment or administration which contributes to the welfare and harmony of the society as whole. Dharma is the observance of the truth in action. The concept Dharma teaches morality and lays down duties of the individual based on truth and regards that the deviation from them as sin. Rta denotes the mental perception and realisation of truth.

The author of Hindu ideals says “while Rta denotes the mental perception and realisation of truth and ‘Satya’ denotes the exact expression of word of truth as perceived by the mine, Dharma is observance of truth in conduct of life.” These concepts of Rta, Dharma, and Satya have a great convincing power for corrupt officials. They can bring changes in the attitude in the view of public servants about what is just and what is not just. Men generally base their ideas of justice upon the truth of certain facts or opinions. But when they realise the untruth of these facts and opinions they easily change their belief about justice or otherwise of those facts or opinions.

Explaining the contemporary relevance and impact of ignorance of these principles Prem Sabhlok, opined that “Since lofty Rta and Satya- the stern laws of God and eternal truths prevail in the entire universe, these social evils (corruption) opposed to Rta and Satya first create diseases of mind leading to superiority and inferiority complexes, depressions, manipulations, hypertension and later even mental and physical diseases.”

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63. Ibid, at p.169.
64. Prem Sabhlok, op.cit., at p.86.
Viduranithi and corruption: Vidhuranithi⁶⁵ the ancient ethical values and ethos have hold a great relevance even for modern times. These unparallel eternal and ever relevant principles focus on making the life of a common man as fruitful and relevant as possible. These are very timely principles to rectify the community which indulging in the cancerous corruption and creating a transparent system.

Maharshi Vidhura, the learned minister of king Dhrtarastra, has explained the most important qualities of leadership and administration. Maharshi Vidhura prescribes the following values for a ruler to be a perfect leader: simplicity, purity, contentment, truthfulness, self-restraint, practice, honesty, charity, steadiness, humility, faith, exertion, forbearance, sweetness in speech and good company. Maharshi Vidura explains various ‘Rules of Conduct’ aimed at Kings, administrators, ordinary citizens and how one should act in different situations.

A King should wish for the prosperity of all and should never set his heart on the misery of his subjects. The King who desires the highest success in all matters connected with worldly profit should from the very beginning, practice virtue. Prosperity takes its birth in good deeds.⁶⁶ A King must avoid misuse of wealth and should never make a person his minister without examining him well. During examination a King should reject those who are ungrateful, shameless, who have wicked dispositions, and who don’t give others due. It is further demonstrated by Maharshi Vidura that “He alone is wise man, who knows his capacity, who is never idle or lazy but exerts himself according to his might, who is not affected by pleasure or pain, profit, or loss, honour, or dishonour, who has a firm in Dharma and who is not tempted by sensual objects.”⁶⁷

He whose studies of the Sastras (scriptures) are regulated by reason and whose reason follows the scriptures, and who abides by the ideals or virtues of good persons and never abstains from paying respect to those that are good, is called a

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⁶⁵. Mahatma Vidura is a famous character in the Mahabharata, who has discussed morality in great detail in the Vidhura Niti. In the context of Mahabharata, several Nitis have been compiled, among them Vidhura Niti is a reputed historic epic. Vidhura Niti comprising Udyoga Parva, Sections XXXIII to Mahabharata, is one of the prominent Niti Sastras containing ethical values, having relevance even today. Quoted in; Bhatia V.P. "Ethical Values in Viduara Niti.” Vedic Science, VOL.11, NO.2 (2009): 72-78, at p.72.

⁶⁶. Ibid, at p.76.

⁶⁷. V.N: 1.16. Quoted in; Bhatia V.P. op. cit., at p.77.
wise man. Stating the signs of foolish persons he said that “A man who without knowing his own strength desires an object, which is devoid of both virtue and profit(wealth), difficult of acquisition, without again adopting adequate means, is said to be a fool in this world”.

The ancient Hindu spiritual and divine rule has touched the heart of the problem of corruption by analysing wickedness of the society. The principles demonstrate that the society is to be operated at spiritual way to put an end to the problem of corruption. The ancient scriptures emancipated that the purity mind and spiritual attitude of the society certainly can achieve that what law so far has not achieved. In materialistic society, the ministers, governors and officials become cynical and contemptuous of social and moral values. The true knowledge and rigorous practice of these idealist principles dispel the inner darkness of the human beings and make all paths relating to economics, politics, religion, soul, spirit, social conduct, physical sciences etc., clear and transparent.

2.3. B. Kautilya’s Arthashastra and Prevention of Corruption.

Kautilya was the Minister in the Kingdom of Chandragupta Maurya during 317 – 293 B.C. He positioned the State as an institutional necessity for human advancement. He has been considered as one of the shrewdest ministers of the times and has explained his views on State, War, Social Structures, Diplomacy, Ethics, Politics and Statecraft very clearly in his book called Arthashastra.

Kautilya possessed remarkable insight in the art of Statecraft and the general philosophy advocated by him is still relevant, more than two millennium after, it was propounded. Kautilya was the first political theorist to realise the importance of

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68. V.N:1.29. Quoted in; Bhatia V.P. op. cit., at p.78.
69. V.N:1.40 Quoted in; Bhatia V.P. op. cit., at p.79.
70. There are several studies pertaining to kautilya’s background, but due to paucity of sources, no full length biography of the kautilya is available. He called Vishnugupta or Canakya and lived during 350-275 B.C. He is also popularly known as Kautilya (or Kautalya ). The name Kautilya is derived from the Sanskrit word Kutila meaning ‘wicked’, ‘shrewd’, or ‘astute’. Narasingha P Sil. Kautilya’s Arthasastra- A Comparative Study. Calcutta, New Delhi: Academic Publishers, 1985, p.19.
72. The definition of the science of Arthasastra is given in the first Sutra or thread as well as in the concluding section of the book. According to this explanation, ‘Artha’ is the sustenance or livelihood of men. ‘Arthasastra’ is the science which is the means of acquisition and protection of the earth. It further demonstrate that ‘Arthasastra’ composed by earlier teachers for the acquisition and protection of earth. Chamola, S.D. Kautilya's Arthasastra and the Science and Management- Relevance for Contemporary Society. Gurgaon: Hope India Publications, 2007, p.34.
wealth as the foundation of a strong and righteous State. Kautilya observed that the welfare and protection of the people is the main function of the King (Ruler) and it is through Dandaniti.\textsuperscript{73}

From the earliest times, the welfare of the people was one of the foremost duties laid on the King. The modern political philosophy of the State was recognised by the Kautilya centuries ago. There was an active encouragement to industries, agriculture and commerce by the State. It is remarkable that the State’s ideal of public and social duty towards the subjects was very high. The maintenance of orphans, aged, handicapped, helpless, women or newly born was the duty of the State.\textsuperscript{74} When a person with means neglects to maintain his or her children, wife, mother, father, minor brother, unmarried and widowed sisters, he or she shall be fined of twelve panas, except when these have become outcasts, with the exception of the mother.\textsuperscript{75}

The *Kautilya’s Arthasastra* was responsible for the compilation of a work on polity, a work that has exerted a profound influence on the development of political ideas in traditional India. The *Arthashastra* was believed to have been lost and was known only through references to it and quotations from it in subsequent works on law and polity in Sanskrit.\textsuperscript{76}

A chapter in *Kautilya’s Arthasastra*\textsuperscript{77} titled "Detection of what is embezzled by government servants out of State revenue" is so vivid and detail that it resembles largely any meticulously prepared official report of today on modes of corruption.

\textsuperscript{73} Danda is the law of punishment. Danda niti is the science of government. According to Kautilya, it is means to make acquisition to keep the society secure to improve them and to distribute among the deserved the profits of the improvements. Kautilya advises restraint in excessive use of Dandaniti; for whoever imposes severe punishment becomes repulsive to the people; while he who awards mild punishment becomes contemptible. Chaturved B.K. *Kautilya’s Arthasastra*, New Delhi: Dimond Pocket Book Private Ltd., 2006, p.11.


\textsuperscript{75} Book II, Chapter I, Section 28 of Sanskrit Text, Quoted in: Gupta V.K, *op. cit.*, at p.153.

\textsuperscript{76} The book *Arthasastra* is a compendium consists of 15 books, 150 chapters, 180 sections and 60 thousand Shlokas. Dealing with wide knowledge on every subject, this essence of teachings of the ancient teacher has been devised in such as way as to leave no margin for any doubt and comprehensible. Chaturved B.K., *op cit.*, p.13.

\textsuperscript{77} The *Arthashastra* is essentially a handbook for the guidance of the governing group, a manual for the practicing politician. In the significantly major portion of it, *Kautilya* prescribes for specific need and uses tested administrative procedures. The procedures, thus prescribed, the indications of good governance, have not lost their relevance till date with reference to the socio-political and cultural contexts in India. See Shamasrastry R, *Kautilya’s Arthasastra*, Mysore: Wesleyan Mission Press, 1929.
and how to control such corruption. He had identified forty types of embezzlement committed by public servants.

*Kautilya’s Saptang* theory or theory of 7 elements of the State throws sufficient light on the conduct of the King, Amatyas (the ministers), and the officials. They were required to *Dharmapashudha*, (morally, ethically pure), *Arthopashudha* (honest and financial matter) and *Charitopashudha* (of good and pure character). Some other virtues, covered to *Kautilya*, necessary for a person to serve as a state official were a person and fallible memory, friendly nature, wisdom, patience and endurance.

The prevention of Corruption was the jurisprudence of *Kautilya*. The law and order against corrupt practices and using public offices for private gain was severe and stringent. The concept of *Dandaniti* is the nomenclature of Kautilya’s view on maintenance of Law and Order system of the State. The concept *Danda* is the punishment and *Dandanitiis* the Science of Punishment. It is the means of making acquisitions, holding them secure, improving them and distributes profits of improvements among the deserving. It is on this Science of Punishment that the course of progress of the world depends.

*Quality of the King: Arthasastra* recognises that the welfare and protection of the people is the main function of the State/king. It says that “in the happiness of his subjects lies the king’s happiness; in their welfare his welfare. He shall not consider as good only that which pleases him but treat as beneficial to him whatever pleases his subjects.”

One of the duties of the king recognised as follows “A King who observes his duty of protecting his people justly, according to law, goes to heaven, unlike one who does not protect his people, or inflicts unjust punishment.”

*Quality of Amatyas (Ministers):* *Kautilya* describes in great detail qualities and qualifications which ministers should possess. Before appointing minister the king should thoroughly investigate his qualities. Nationality, family background and amenability to discipline shall be verified from reliable people. A citizen born of high family, influential, well-trained in arts, possess of foresight, wise, of strong memory, bold, eloquent, skilful, intelligent, possessed of enthusiasm, dignity, endurance, pure

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78. Book I, Chapter XIX, Section 34 of Sanskrit Text. Quoted in; Mathur, B.P., *op cit.*, at p.787.
79. Book III, Chapter I, Section 14 of Sanskrit Text, Quoted in; Mathur B.P., *op cit.*, at p.787.
in character, affable, firm devoted, loyal endowed with excellent conduct, strength, health and bravery, devoid of stiffness and fickleness, amiable, and free from such quality as excited hatred and enmity—these are the qualifications of a minister.\textsuperscript{80} The King after he has appointed the minister shall test his integrity by a variety of secret tests. This task was done by Prime Minister and high priest by offering temptations, examining the character of ministers appointed in the government debarment of ordinary nature.\textsuperscript{81}

\emph{Quality of public servants: Kautilya} realise the importance of civil service in providing good administration. He describes in graphic detail the duties, responsibilities and qualification for appointment to high public offices. Along with highest level public officials Kautilya documents 34 \emph{adhakshas} for smooth functioning of administration.

The various legal principles demonstrated in the \emph{Kautilya's Arthashastra} considerably enhanced the quality of the governance during ancient period. “Just as it is impossible not to taste a drop of honey or poison that is placed at the tip of one’s tongue, so it is impossible for one dealing with the government funds not to taste at least a little bit of the Kings wealth.”\textsuperscript{82} “Just as it is impossible to know when a fish moving deep under water cannot be possibly found out either as drinking or not drinking water, so it is impossible to find out when government servants in charge if undertakings misappropriate money.”\textsuperscript{83}

“It is possible to ascertain the movements of birds flying high up in the sky but it is not possible to ascertain the movement of government servants or their purposes who hide their dishonest intention.”\textsuperscript{84} Kautilya suggest strong action against corrupt and incompetent officials. “Those who have amassed money wrongfully shall be made to pay in back; they shall then be transferred to other jobs where they will not be tempted to misappropriate and made to disgorge again what they have eaten.”\textsuperscript{85}

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\item \textsuperscript{80} Book I, Chapter IX, Section 1 of Sanskrit Text, Quoted in; Gupta V.K, \textit{op. cit.}, at p.181.
\item \textsuperscript{81} Book I, Chapter X, Section 1 of Sanskrit Text, Quoted in; Gupta V.K, \textit{op. cit.}, at p.181.
\item \textsuperscript{82} Book II, Chapter IX, Section 32 of Sanskrit Text. Quoted in; Mathur B.P., \textit{op cit.}, at p.791.
\item \textsuperscript{83} Book II, Chapter IX, Section 33 of Sanskrit Text. Quoted in; Mathur B.P., \textit{op cit.}, at p.791.
\item \textsuperscript{84} Book II, Chapter IX, Section 34 of Sanskrit Text. Quoted in; Mathur B.P., \textit{op cit.}, at p.792.
\item \textsuperscript{85} Book II, Chapter IX, Section 35 of Sanskrit Text. Quoted in; Mathur B.P., \textit{op cit.}, at p.792.
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Kautilya, being very much aware about the strong existence of treasury, maintained systematic financial system. He had identified following core causes for loss to treasury; ignorance of work, laziness, neglect of duty, timidity, corruption, short temper, arrogance, greed. Along with identifying aforementioned officials’ errors, Kautilya list 40 ways in which a public servant can cheat the government or exploit the public.\(^8^6\) Officials who committed such offences will be tried and a fine or penalty will be imposed on him according to gravity of the problem. Kautilya’s Dandaniti not only indented to punish the errant official, the interest of the public will also be protected by providing for compensation to the victim of the malpractices.\(^8^7\)

The recruitment system was that while the appointment of the officials includes a test of character through four allurements their duties were set out, with attention not only to office organization but also to professional technique. They were full-time royal servants, with salaries to be paid by king. At the same time, what indicates towards good governance is the carrying out of preventive and punitive measures to punish corrupt government servants, judges or jailors.\(^8^8\)

Besides, in Arthashastra, we can find systematic financial management system which in general very prone to corrupt activities. The high officials shall

\(^{86}\) Book II, Chapter VII, Section 10 & Book II, Chapter VIII, Section 28 of Sanskrit Text. Quoted in; Mathur B.P., op cit., at p.792.  
\(^{87}\) Forty ways of Embezzlement mentioned in the Arthasastra are follows: what is realised earlier is entered later on; what is realised later is entered earlier; what ought to be realised not realised; what is collected is shown as not collected; what is collected in parts is entered as collected in full; what is collected in full is entered as collected in parts; what is collected of one sort is entered of another sort; what is realised from one source is shown as realised from another; what is payable is not paid; what is not payable is paid; not paid in time; paid untimely; small gifts made large gifts; large gifts made small gifts; what is gifted is one sort while what is entered is of another; the real paper is one while the person entered in the register is of another; what has been taken in to treasury is removed while what has not been credited to it is shown as credited; raw materials that are not paid for are entered, while those that are paid for are not entered; an aggregate is scattered in parts; scattered are converted into an aggregate; commodities of greater value are bartered for those of small value; what is of smaller value is bartered for one of greater value; prices of commodities enhanced; prices of commodities lowered; number of nights increased; number of nights decreased; the year not in harmony with its months; the month not in harmony with its days; inconsistency in the transactions carried on with personal supervision; misrepresentation of source of income; inconsistence in giving charities; incongruity in representing the work turned out; in consistency dealing with fixed items; misrepresentation of test marks or the standard of fineness of gold and silver; misrepresentation of prices of commodities; making use of false weights and measures; deception in counting articles; and making use of false cubic measures. These are all the prominent embezzlement mentioned in the Arthahasastra. For more details; See Book II, Chapter IX and VII of Sanskrit Text, Quoted in: Gupta, V.K. op.cit., at pp.56-57.  
submit accounts in full in accordance with their activity, without contradicting themselves. Those officers who give contradictory statements or speak falsely shall be punished with the highest amercement. The controller of record and audit shall check the accounts for each day, group of five days, fortnight, month, four months and a year. He shall check the receipts with reference to the period, place, time, head of income, source, form, quantity, the payer, the person causing payment to be made, the recorder and the receiver.

The concept of Yatha Raja Thata Praja, was the core principle of ancient India, as the King is model for the society he should be virtue one. Kautilya did not subscribe to the theory of 'Divine Origin of the Monarch'. King was not the vicar of the god. Monarchy, in his view, was a human institution and therefore manned by a human being. However, the king was expected to be more than a mere human being since he was the protector of the dharma of the whole society. He had to observe an exemplary conduct himself. He had no private life and all his actions were subject to public scrutiny. The King had to follow his Raja dharma. This included a thorough knowledge of the four branches of knowledge.

The whole essence of science and religion was this: control over the senses. A King acting contrary to it and not having control over the senses quickly perishes, even if he be the ruler of the four ends of the earth.

Many ruler have perished, giving themselves up to the group of six enemies (lust, anger, greed, pride, arrogance and foolhardiness), those with character shall not follow their path, but preserve righteousness and wealth. The ruler, by overthrowing the group of six enemies, shall acquire control over the senses; acquire wisdom by association with elders; keep a watchful eye by means of spies; bring about security and wellbeing by remaining ever active; maintain his subjects in the observance of their respective duties by exercising authority; acquire discipline by receiving instructions in the sciences; attain popularity by association with what is materially advantageous and beneficial to the people.

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95. Book I, Chapter VII, of Arthasastra. Quoted in; Shamasastry R., op cit., at pp.11-12.
2.3. C. Buddhism and Jainism on Corruption.

Buddhism: Gautama Buddha\(^{96}\) has been regarded as a great religious philosopher and he emerged a major figure in this global philosophic and religious thought. The Buddhism\(^{97}\) based on the teaching attributed to Gautama Buddha, has provided a context for expression of diversity of views, traditions, beliefs and practices. The constructive and descriptive Buddhism principles\(^{98}\) try to make every human being as moralistic, always just and fair by giving philosophical interpretations to the conduct of human being.

In particular, pertaining to corrupt activities, astangika marga of Gautama Buddha are a unique code of conduct provided under the Buddhism, leading to the cessation of suffering among these eightfold path. The following particular paths of astangika marga have made a human being to be transparent, corrupt less and clean hand in his activities; Right thought (Samyak Samkalpa) thought free from lust, ill will and cruelty. What is intended here is a proper “shaping together” (Samkalpa) of one’s framework. Right Speech (Samyak Vaca) essentially reframing from improper speech consisting on falsehood, malicious talk or harsh or frivolous talk. Right Actions (Samyak Karmanta), according to these principles, three primary actions to be avoided killing, stealing and general misconduct. Right Effort (Samyak Vyayama) making effort to clear one’s mind of all existing evil thoughts, preventing new evil

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96. The historical Buddha is often referred to as Sakyamuni (the sage of the Sakya or Sakiya people). He was born into the Gautama clan. According traditional account his personal name before left home to live religious life was Siddhartha. The founder of Buddhism is called the Buddha by both the Buddhist and non-Buddhist religious traditions. His followers sometimes referred to as Buddha’s by the adherents of other schools. The term “Buddha” means “Enlightened one”. Thus the Buddhism might be called “the Religion of Enlistment”. Hirakawa Akira. A History of Indian Buddhism: From Sakyamuni to Early Mahaya (translated and edited by Paul Gronner). New Delhi: Motilal Banaridas, 1998, pp.20-21.

97. Buddhist sacred literature is generally divided into three types according to dominant characteristic of the peace on question. The three types are Vinaya, which deals with disciplinary regulations for the community of monks, Sutra, comprising discourses or sermon delivered by the Buddha and Abhidharma, scholastic text which give detailed discussions of matters in Vinaya and Sutra literature by way of definition of terms, link of like terms. These three parts constitute the Tripiṭaka (literally three baskets). Francis H. Cook. ” Sutra Pitaka.” in Charles S. Prebish (ed.). Buddhism- A Modern Perspective. U.S.A: Penn State Press, 1975. 54-58, at p.54.

thoughts from arising from and on the positive side maintains and increased good thoughts.\textsuperscript{99}

The text of early Buddhism offers us a way to execute radical interventions in the mechanism of our desiring. These interventions, via a self-initiated transformation of consciousness, can lead us to live less harmful and more satisfying lives. Our lives can become such that our interaction with sense objects is not invariable turned by an impossible and damaging clash after mind constructed ideas of performance and sustainability.\textsuperscript{100}

\textit{Jainism and Corruption:} The World’s major religious traditions have both reflected and shaped the values of societies of which they have been inseparable element historically religious leaders have been influential in setting national moral, social and political agendas and this remain true on many countries.\textsuperscript{101} \textit{Vardhaman Mahaveera}\textsuperscript{102} belongs to such global religious leader whose teaching impressed the society through his idealistic principles. The fundamental principles and preaching of \textit{Vardhaman Mahaveera} are very well reflected in the \textit{Jainism}\textsuperscript{102} as a religious tradition in India about the same time to Buddhism. The underlying principle of \textit{Jainism} is that that renunciation of worldly desires and self-conquest leads perfect wisdom.\textsuperscript{104} The spiritual teachings of \textit{Mahaveera} are closely associated with seven categories of truth which constitute deterrence to the corrupt activities.

\textsuperscript{99} Charles S. Prebish, \textit{op cit.}, at p.30.
\textsuperscript{102} \textit{Vardhamana}, later also know as \textit{Mahaveera}, was the son of Kstriya called Siddartha. He was born in Kundagrama, i.e, Basukanda of today. It was suburb of Vaisali (now Besahr) ot the north of the present city of patna in the province of Bihar. The family to which Mahaveera belonged was called in sanskrit jnatri and prakrata Naya (nata). That is way the male members of the family were called jnatriputras (Nataputtas). Mhaveera’s Gotra was Kasyapa. Helmuth Von Glasenapp (traslated by Sridhar B Shrotri). \textit{Jainism: An Indian Religion of salvation}. New Delhi: Motilal Banaridas Publication, 1999, p.29.
\textsuperscript{103} Jainism is religion propounded by a Jina. Principles enunciated by a Jina constitute Jainsim and the followers of Jainism is know as a Jaina (or Jain, the editor). Further, a Jaina is neither a supernatural being nor an incarnation of powerfull god. The word Jina mean the conqueror or the victorious, that is one who has conquered world passions by one’s own strenuous effort. Kurt Titze. \textit{Jainism- A Pictorial Guide to the Religion of Non-voilence}. New Delhi: Motilal Banaridas, 1998, p.3.
\textsuperscript{104} The canonical literature of the Jina’s is known variously as Nigamtha- pavayana(sermons of the nirgranta), gani-pidaya (basket of the ghandhrs, suya-nana (scripturued knowledge) or merely siddhanta (doctorine). It consist of som 60 texts devided into three groups of works known as purva, anga and angabhaya, all handed down in an ancient Magadhan lauguage called ardhmagadhi. Padmanab S Jaini. \textit{Jain Path of Purification}. Motilal Banaridas: New Delhi, 1998, p.47.
These seven which form the frame work of the *tattvartha sutra*, recognise 2 fundamental existences. The first is the beginning less and interdependent co-existence of physical and spiritual reality. The interaction between soul and matter is the nature of worldly life, whatever soul possess, whether the capacity to speech, breath or thought is result of its interaction with matter. The second critical principle underlay the categories of truth is the inexorable law of cause and effect (through Karma) which derives the universe. There is sneaking irrational belief seen in the behaviour of individual and nations that we can get away with bad behaviour that when hardship we are victims of undeserved bad luck.\textsuperscript{105}

The principle of Jainism which can act as deterrence on the practice of corruption can be find out with its five stages of auspicious conduct. The first stage is known as *Samyika*. A Person belongs to this does not any harm to others. He developed the sense of equanimity. The second stage is called *chadopasthapanta*. At this stage the person begins to follow the path of self discipline rigorously. The people observe a particular type of austerity at this stage. The fourth stage is known as *suksm samparaya*. One belong to this suffers subtle passion. The last stage is called *yathakhyata*. At this stage the self disciplined person possess perfect and pure conduct.\textsuperscript{106}

2.3. D. Corruption during Medieval Period.

Review of various historical literature shows that the nature and scale in the increase of corruption from medieval to the present time in the countries of the Indian sub-continent is abundant. One of the greatest evils of medieval administration in India was the extortion of perquisites and presents.\textsuperscript{107}

_Ziauddin Barani_, a notable historian and political thinker of the Tughluq dynasty opined that the sultan (king) must rely on the learned, supervened, and well wishing *wazirs* (ministers) and counsellors. He prescribed 24 *Nasihats* (advices) for an ideal sultan. One of the *Nasihats* as given is his scholarly work ‘*Latwa-i-Jahandari*’ pertains to appointing just, honest, truthful, reliable and intelligent


officers. He considered that the king should opine officers who do not accept bribes or presents or accede to recommendations and that the revenue collectors will always refrain from misappropriation of revenue.

We also find further seeds of corruption during the Mughal times. There was vivid account of corruption under various rulers in the century that followed the down fall of the Mauryan Empire. Alexander Hamilton in his New Account of the East Indies (1774) observed that “The Mohammadans have the law in their hands and distributed justice best to those who pay best for it. The judge’s fees are twenty-five percent on all sums that he pronounces due to the party whose plea is best supported by bribes or interest, for the justice of the cause seldom prevails.”

Corruption was rampant even in the heyday of its glory. Of condition towards the end of sixteenth century Sir Thomas Roe wrote: “The people of India live as fishes do in the sea the great ones eating up the little. For first, the farmers rob the peasant, the gentleman robs the farmer, the greater robs the lesser and the King robs all.”

Francisco Pelsart, chief of the Dutch factory at Agra wrote in 1626 as follows: “The second Bakshi, and other imperial officers. If one of these wants a workman, the man is not asked if he is willing to come, but is seized in his house or in the street, well beaten if he should dare to raise any objection, and in the evening paid half his wages, or perhaps nothing at all.”

During the Portuguese period also the corruption was rampant. About corruption during these days of the Portuguese, an official report of 1542 said “Justice was sold at tribunals and the most infamous crimes escaped punishment when the criminals were affluent enough to corrupt the judges. All methods of accumulating wealth were considered lawful, and extortion was openly advocated.”

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108. Historically speaking, India is believed to have governed by Muslim rule between 712 A.D. to 1765. Imad-Uddin-Muhammad bin Quasim, a seventeen year old general was perhaps the first established a Muslim Indian dominion in 712 A.D. However, according to an eminent historian Basheer Ahmad, the Muslim institutions didn’t get any foothold in India until 1206 A.D. He has further written that the Mughal Government was firmly established in India only in 1526 A.D. by Zahir-Uddin Babar who defeated the last Lodhi Sultan ruled India effecting until 1750 A.D. and nominally up to 1857, when the last Mughal Emperor was succeeded by Queen Victoria as the Empress of India. For further details see: Sarkar, J.N., op cit., Hassan, The Central Structures of the Mughal Empire, London: Oxford University Press, 1936.


110. Ibid, at p.7.

111. Ibid.

112. Ibid.
2.3. E. Corruption during British Period.

During British\textsuperscript{113} (1765 to 1947) period place for corruption was very negligible. The British bureaucracy was structured with high moral and skill. The present bureaucratic has been the victim of fraudulent interventions some are attributed to policy changes while others to the play of various interests. But the British India was exempted from this situation. The British bureaucracy in India before World War II came very near to fulfilling the extreme standards of bureaucratic rectitude.\textsuperscript{114}

The reasons that were responsible for making the Indian civil service before 1939 such a high water mark of bureaucratic excellence are various. A substantial part of the service was British, which could easily maintain isolation from the public and which had in any case, a different social background and a different set of social values. The Indian members of the ICS trying to emulate and follow the pattern of behaviour laid down by their politically superior foreign colleagues, soon became known in Indian terminology as a separate caste, away from the common run of people and society at large. The code of conduct to promote professional ethics in governmental business was very effective. The substantial part of bureaucracies and bureaucrats were under foreign rule and some boosted their impurity in administration. The complete dominance of government was not tempered by any democratic control. During British period Indian administrative accountability and transparency in such a way that, even the British home civil service did not measure up to the standard of the Indian civil service in British India.

From 1806, the Company trained its young recruits in Haileybury College near London. Appointments were still organized on a system of patronage, but after 1833 the Company selected amongst its nominated candidates by competitive examination. After 1853, selection was entirely on merit and the examination was thrown open to any British candidate. The examination system was influenced by the

\textsuperscript{113} The British came to India in 1600 A.D as traders in the form of the East India Company. However, they did not become the ruling party until the seemed half of the 18\textsuperscript{th} Century. The victory of the company in the battle of Plassey in 1757 against Sirajuddin-daula Nawab of Bengal laid the foundation of the British Empire in India. In 1765, Shah alarm granted the Diwani, the responsibility of the collection of revenue to the company which automatically involved the administration of civil justice. The British rule came to end in 1947 with the coming into force of the Indian Independence Act of 1947.

\textsuperscript{114} Agarwala, A D. \textit{say not the struggle}. Bombay: Oxford University, 1978.
Chinese model, which had worked well for 2,000 years and had a similar emphasis on classical learning and literary competence. The Indian civil service was therefore able to secure high quality people because (a) it was very highly paid; (b) it enjoyed political power which no bureaucrat could have had in England.

In 1829, the system was strengthened by establishing districts throughout British India small enough to be effectively controlled by an individual British official who henceforth exercised a completely autocratic power, acting as revenue collector, judge and chief of police. This arrangement later became the cornerstone of Imperial administration throughout the British Empire. As the civil service was ultimately subject to the control of the British Parliament, and the British community in India was subject to close mutual surveillance, the administration was virtually incorruptible.

_Braibanti_ points out the reasons for high level of transparency and accountability of British administration in the following words “that the old ICS patterns for officers recruited in India required a two bear probationary period either at Oxford, Cambridge, London, Dublin............... in any case two years of British university training was common to all entrants. This probably was responsible more than any other single factor in considering the attitude of the ICS. It put them in intimate contact with English intellectuals and social life perfected their use of English language, some enhanced their self-confidence, poise and command presence. It forced a bond of common experience between themselves and their ICS colleagues. If it also served to detach the Indian officers from the realities of Indian life, it could also be said that it severed than from corrupting web of trail, communal and familial obligation which so strained the impartiality of Indian members of the services.115

Even though British India well known for its transparency and accountability it doesn’t mean that there was no corruption in India in the days of the British bureaucracy. Corruption was evident even during the British rule in India. There was almost regular and systematic corruption involving almost all officials at different

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levels in the political and administrative hierarchy. There was an underlying belief among officials of "making hay while the sun of British Raj shone."\textsuperscript{116}

The members of the Indian civil service and other all India services at and above the district level officials were corrupt and were accused of it, throughout the British rule. The land revenue and public works department were represented to be seething beds of corruption. In the military sphere also, corruption was reported to be quite widespread.

Till the beginning of Second World War corruption was prevalent in considerable measure amongst the revenue, police, exercise railways and public work department officials, particularly in the low grade officials. The high ranks even in these departments remained comparatively uncontaminated. The smaller compass of the State actively set limits to both the opportunities and the capacity to corrupt or be corrupted. The immense war efforts during 1939-1945, which involved expenditure of colossal funds over all kinds of war supplies and contracts, created unprecedented opportunities for acquisition of wealth by dubious means. The wartime controls and scarcities provided opportunities for bribery, corruption, favouritisms. Etc.\textsuperscript{117} During the Second World War, large scale diversion of productive resources to British war efforts had created shortage of essential commodities in the country.\textsuperscript{118}

During early stage of British rule in India, corruption was quite rampant among the officers of East India Company and British government. In the early years of East India Company’s rule, many civil and military officials must have shaken the pagoda tree and returned home with ill-gotten riches.\textsuperscript{119} Furthermore, the East India

\textsuperscript{118} Giving a graphic picture of corruption during Second World War Supreme Court of India in State Of Madiya Pradesh v/s Shriram Singh viewed that “The mance of corruption was found to have enormously increased by first and Second World War conditions. The corruption, at the initial stages, was considered confined to the bureaucracy who had the opportunities to deal with a variety of state largesse in the form of contracts, licenses, and grants. Even after the war the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by the public servants. As the consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of the huge sum of money which lay in the control of the public servants giving them the discretion with the result of luring them to the glitter shine of the wealth and property.” see AIR 2000, SC 870 TO 873.
\textsuperscript{119} Hallayya, M, \textit{op cit.}, at p.7.
Company in Bengal begins with corruption, which flowed from a variety of circumstances more especially civil and commercial functions exercised by the company’s covenanted servants.\(^{120}\) Even though administrative corruption during British period was very least form, political corruption was in its crude form, that is, making out of political office we seem to be living in the times of the East India Company.

The corruption cases of Robert Clive and Warren Hastings made a strong sound during British India. They were indulged in crudest form of corruption and bribery to enrich themselves personally. Sardar *K.M Panikar’s* characterised that the East India Company regime in Bengal during 1765-1772 as ‘Robber State’ applied not only to the administration in the general but was particularly appropriate in regard to the conduct of Clive.\(^{121}\)

*Lord Macaulay* once remarked, “The business of a servant of East India Company was simply to wring out of the natives a hundred or two hundred pounds as speedily as possible, that he might return home before his constitution has suffered from the heat, to marry a peer’s daughter, buy rotten boroughs in Cornwall and give balls in St. James Square”. Besides, *Iris Butler*, in a new biography of Marques Wellesley, observed that, “In the process of making money Company servants turned a blind eye on corruption.” *Edmund Burke* led a crusade against him in British Parliament and in 1780 the House of Common passed a resolution for his recall. But he continued at the helm in India till 1785 by bribery the directors of the company and showering favours on their kith and kin.\(^{122}\)

The legal framework in combating corruption in India by and large non indigenous and foreign law affected. British legal regime substantially has its impact on Anti-corruption laws and strategies in India. During British regime also known as Colonial Era, government economic policies in India were concerned more with protecting and promoting the British interest than with the advantage, the welfare of the native population. The administration preoccupation was with maintainability of


\(^{121}\) Quoted in; Chitkara, M. G. *op cit.*, at p.21.

law and order, tax collection and defence. Nonetheless, significant legislative steps were taken by the British government to curb the problem of corruption and to establish good governance.

Accordingly much of the legislations enacted during the British period were primarily aimed at serving the colonial rules instead of natives. There were, however some pieces of legislations which protected the overall public interest through certain anticorruption measures. Prominent among these were Indian Penal Code, 1860 and Prevention of Corruption Act, 1947, Criminal Law Amendment Ordinance, 1944.123

The Indian Penal Code124 is one of the prominent legislation enacted by British regime to tackle the problem of corruption. Indian Penal Code may be described as the Criminal Law of England freed from all technicalities and superfluities, systematically arranged and modified in some few particulars (they are surprisingly few) to suit the circumstances of British India. That the Code “Has established itself as an eminently successful Code of Law both in India and elsewhere may now an affirmed without fear of contradiction. The Indian Penal Code which enacted in the year 1860, contained anticorruption provisions under sections 161 to 171 of Chapter XI titled ‘Offences by or Relating to Public Servants.’125

One more land mark development links with prevention of corruption during British period is enactment of Delhi Special Police Act, 1946. As the result of Second World War it became necessary to enact a more severe law so as to prevent corruption in public services. During this period the enormous expenditure incurred for purposes connected with the war had brought about a situation in which unscrupulous and anti-social persons both officials and non-officials were enriching themselves dishonestly at the cost of public and government. The Government of

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124. The first Law Commission presided over by Macaulay prepared a draft of the Indian Penal Code of 1860 perhaps the most outstanding of Indian Codes. The scheme of the code is to divide offences into different categories and deal with them in separate chapters. It is based on the principles of Criminal Law of England and has with alteration been administered with satisfaction for nearly a century.
125. These Indian Penal Code provisions have been omitted by enactment of Prevention of Corruption Act 1986.
India realised the necessity to set up an organisation to investigate offences relating to such transactions. Moreover the offences of bribery and were already on the statute book in chapter IX of the IPC. Obviously the existing laws could not cope with the new situation and therefore the Delhi Special Police Act 1946 was enacted by Government of India.

Due to the gravity of the problem during war period an organisation known as Special Staff War Department was set up in 1941 by an executive order of Central Government under the administration of a Deputy Inspector General of police with matters relating to the war department. The superintendence of this special force was vested in the defence department which was called as war department.

It is general notion that the British system in India was designed on the mindset of the 19th century to serve the interests of colonial administration. At the same time, it is undoubtedly recognised and recorded in the Indian history that the contribution of British system to the Indian legal environment is magnificent. The present Indian legal system is highly influenced and shaped by the English law drafters. Particularly, regarding corruption, Indian Penal Code, 1860, and Delhi Special Police Establishment Act, 1946 are major among them. In addition to these laws, Indian Police Act, 1861, Indian Evidence Act, 1872, Indian Telegraph Act, 1855 are the laws enacted by the British Indian to bring transparency and accountability in the administration. Besides, fundamental rules and supplementary rules, the financial bibles for all government financial transactions, were framed in the twenties when the government’s financial transactions and commitments were very simple. The British had designed this legal system to strengthen a regulatory colonial administration. These laws were based on distrust of the natives and a firm belief in their inability to govern themselves.

2.4. CONCLUSION.

As elucidated in this chapter corruption was in one form or another became an integral part of politico-administrative systems of each and every part of the Globe. Each society has struggled to address the issue in its own perspective. In that too, the Indian philosophical, ethical and moral approach are very relevant in these days and the situation made the present society to inevitably heading towards these principles. The way and means invoked by these ancient societies to eradicate
corruption can certainly contribute to the modern society to re-engineering the contemporary tools against corruption.

The present Indian political philosophy massively affected by the welfare State concept and cautious responsibility lies at the government to achieve the principles of idealist society. It is not a new phenomenon; instead, it is commonly believed Hindu philosophy *bahujan sukhey bahujanhitay*. i.e., public welfare lies in the happiness of the masses. Currently, as it is Constitutional obligation, the State is to be taken dynamic role to ensure and secure social, economic and political justice to all its citizens. However, it is not an effortless job to the government to achieve these goals. The today’s big task is to how the nation should reclaim wealth, liberty, equality, freedom and democratic principles of the people to articulate the development of the society by building fair and transparent civil service regime free from the corruption.

The answer to above question is in ancient Hindu literature. As the problem of corruption is big challenge to the nation to achieve welfare State, moving towards ancient period by inculcating moral principles is a sound way to address this issue. Of course, we have good number of legislation to tackle this menace. However, it is not a sole way to come out from this administrative crisis. In addition to preventive and legislative measures, the reformative measures are also necessary to solve the problem of corruption. It is necessary to understand and adopt the working of reformative strategies to estimate the effectiveness of anticorruption strategies. The ancient Hindu metaphysical concepts relating to ethical and moral attitude of the society can compensate these reformative strategies effectively.

Unfortunately, the Vedic metaphysical concepts relating to an ideal society is grossly affected by the changing life of the society. The modern concepts of Liberalisation, Globalisation and Privatisation have top rooted our idealist and ancient principles. We are richest treasurer of the divine and spiritual knowledge among the world. However, the ancient philosophy has stood at the test of time. The performance of these holy principles are confined only to the rituals, yajnas, ceremonies, blind faiths than rational, moral and ethical necessity. Today, the bulk of the society worshiping money as supreme God and our prayer to God is only for still more money and fulfilment of all mundane desire. In that too, the regime of the
public servant at the helm suffering from the insolvency of metaphysical concepts like good, virtue, morality, ethics, detachment etc. In the absence of these endangered principles, such as laws of God, and divine nature, the evil of corruption can absolutely infiltrating all the activities. Therefore there is a need of practice and inculcation of the spiritual knowledge for the moral betterment of the society. If the society fail to do so and continue with attitude of corruption, it highly downgrades and demoralise the society by dimming the power of the mind and inner light of the soul.