CHAPTER- III

INTERNATIONAL AND REGIONAL LEGAL REGIME ON AND AGAINST CORRUPTION
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“This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development”.

-By Kofi A. Annan, former Secretary-General, UNO.

3.1. INTRODUCTION.

The rapid growth of globalization, liberalisation and privatisation is widely accompanied by the internationalization of illegal activities, the international dimension of certain problems such as money laundering, illegal trafficking, and gains in significance. In this context it is observed that in the past quarter century (namely since the end of the cold war), global governance has failed to keep pace with economic globalisation. Therefore, as unprecedented openness in trade, finance, travel and communication has created economic growth and well being, it has also given rise to massive opportunities for criminals to make this business proper.¹

In recent times, the problem of corruption is internationally and universally recognized as a major problem in society, one capable of endangering the stability and security of societies, threatening social, economic and political development and undermining the values of democracy and morality.² Furthermore, it has been

recognised that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential.\(^3\) As a result, reducing corruption becomes a priority at both the national and international levels and requires concerted efforts, exchange of experience and a certain degree of standardization.

The global attention has been drawn to the problem of corruption and much has been said and written about the causes, consequence and existing strategies of the nations against this menace.\(^4\) It is clear from the existing reports and literature on the corruption that countries differ in their anticorruption strategies. The consolidation of these strategies is potential for the countries to cooperate and exchange information on successful practices.

Therefore, it is evident from the various international and regional mechanisms that international cooperation is indispensable to combat corruption and promote accountability, transparency and the rule of law.\(^5\) The national, regional and international aspects of growing corruption and the good governance issues should be recognised and controlled as matter of urgency in view of the increasing and alarming devastation of the corruption.

In this backdrop, a systematic approach to crime prevention planning should be pursued to provide for the incorporation of crime prevention policies into national development for the incorporation of crime prevention policies into national development planning, starting from an overall reassessment of substantive criminal and procedural laws whenever appropriate. This approach would include the

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4. Civil society organisations, Transparency International (TI) amongst them, have done much to create a world-wide awareness about the problem of corruption. The TI has actively been involving in publicising the incidence of corruption in countries through its now well established, and widely known corruption perception index. The list of countries in their index has increased steadily and includes countries, developed and developing. These statistics are published by TI on an annual basis.
introduction of the processes of decriminalization, de-penalization and diversion, as well as reforms of procedures that would ensure the support of members of the public and review of existing policies with a view to assessing their impact. It is also important in providing the international community with procedures and methodologies aimed at assessing the efficacy of measures taken and in facilitating the promotion of compatible efforts against corruption. It is intended to offer to those countries which express their interest in receiving it a coordinated set of possible anticorruption activities, grouped in modules in order to guarantee flexibility and sustainability in relation to their different contexts and needs.

In this background, this chapter provides a review of the most recent literature related to the international legal regime on corruption which intends to establish of social justice in developing countries. Addition to this, this study stresses the need to develop global activities against corrupt activities and that the chapter has as its primary aim the assessment and promotion of internationally recognized measures to combat corruption. Along with these lines, this chapter proposes that the joint effects of international and national prompt efforts and healthy coordination are able to address the problem of cancerous corruption within the developing countries.

3.2. NEED OF GLOBAL DIMENSION FOR ANTI-CORRUPTION.

The healthy respiration of administrative systems constitutes a major element in the process of giving new life to public administration. It requires constant and committed principles of administrative authorities to establish strategic framework for public affairs management. The States have possessed distinctive and unique skills and techniques in their administrative process to utilize resources to effectively respond to public needs. Besides, they have constantly continued with the invention of innovative techniques, which accelerate growth, quality, cost-effectiveness and equity in the administration.

In an effort to improve the management of the public sector, public administration has recognized the value and virtue of partnerships among the various sectors, cooperating with different actors in the private and civil society sectors at

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the local, national, regional and global levels to galvanize experience, knowledge, skills and to utilize resources to effectively respond to public needs. Thus, partnerships constitute a major element in the process of giving new life to public administration.⁷

“...the growth of choice and....The realization that we must develop a sense of what world governments, regional governments, national governments and local governments are best fit to take responsibility for. The borders between world and regional, world and national and regional and national are of most dynamic and no less important than local borders.”⁸

“The emerging global public administration is based on a number of structural adjustments or readjustments that have been taking place around the globe. These readjustments have been in the forms of redefining the scope and boundaries of public and private sectors, of administrative reforms, or civil service reforms, of organizational reconfiguration and restructuring, and many more.”⁹

The above academic works illustrate that the present public administration system has crossed its earmarked national boundary. The increasing expansion of the public administration at global level, demonstrate that the sharing of virtue and value administrative techniques of the various nations are very essential for sustainable development of the governance. The successful story and strategy of the States brought the attention of the global community to consolidate such successful practices of good governance and materialise administrative techniques at international level.

Therefore, in line with national legislative and policy framework to combating corruption at the national level, a coordinated approach must also be used


to combat globalized corruption. For this, there must be an increased understanding by legislators, the executive and civil society of the complexities of globalization\(^\text{10}\) and corruption. This should include expanded access to research and information on these issues, as well as global measurement instruments that are credible and include as many players in the corruption game as possible.\(^\text{11}\) Furthermore, as the problem of corruption is transforming as transactional crime, it would certainly be possible to make the case that transnational organized crime impacts human security directly at the individual level in particular national, regional or local contexts. If criminal organizations are successful in eluding authority in the jurisdictions in which they operate, and are able to run their various operations in a profitable fashion, it is logical to assume that rather than acting as a destabilizing force, they will behave like any profitable business and seek to support the administrative status quo under which they have prospered.\(^\text{12}\)

The control of corruption by various regional and international institutions and mechanisms and study of international mechanisms under the context of globalisation is very much required for the following reasons;

- Developing an international code of conduct for political officials, banks, the private sector and other actors in society;
- Creating and strengthening inter-parliamentary unions among various nations for the effective eradication of corruption.
- Improving co-ordination between policy makers and investigators, particularly in establishing systems or conventions that shed light on offshore accounts held by elected officials under investigation;


\(^{11}\) The desire was expressed by a number of parliamentarians to work with TI to improve the Corruption Perception Index so that it encourages developed countries to assume responsibility for their role in globalized corruption. One participant stressed that knowledge is power in underscoring the importance of parliamentarians understanding the global dimensions of corruption.

- Ensuring conformity of anti-corruption laws and regulations to other countries in the region;

- Drafting regional conventions on anti-corruption.

### 3.3. CONTRIBUTORY FACTORS BEHIND THE INTERNATIONAL ANTI-CORRUPTION LAWS.

The fight against corruption has caught up rapidly after the Second World War with the concept of World Ombudsman idea. However, in the post 1962 period it has particularly made the grade almost all over the world. No single factor can be assigned towards identifying contributory phenomena. The following factors, however, appear to be common in most of the cases.

#### 3.3. A. Changed Socio-Political Scenario.

After the second world war two development in particular- the liberalisation of many countries from colonial rule and their emergence as independent nations, and adoption of the ‘Welfare State’ by large of them, significantly influenced the spread of the Anticorruption movement in the world. The Welfare State gave a new concept of polity and a new system of administrative mechanism. The new orientation was basically the fulfilment of the people’s hopes and visions.

Despite major substantial philosophical, political, and ideological differences between them, conceptually, welfare States do have some common ideal characteristics which focus on democracy. The diversity among welfare States is inextricably linked to many factors including, but perhaps not limited to, the strength of different groups within the society, the State's level of economic development and the governmental components of the State. When focusing on the political factors that have influenced the emergence of the welfare State, a focus on governmental institutions engineered by State builders may offer a comparable way of determining the likelihood of certain social policies. States with a larger degree of federalism and more legislative levels within the federal government may be more representative of the median voter’s preference for targeted or occupationally dependent social policies, and therefore, less likely to pass encompassing welfare legislation.
3.3. B. Emphasis on Protection of Human Right.

The present era undoubtedly can be considered as fertilised era for the protection of Human Right. There are good numbers of national as well as international instruments which strengths, resources and support the human rights of individuals. For example, the Preamble of the UN (United Nations) Charter referred to the dignity and worth of the human person, equal rights of men and women, and the need to promote social progress and better standards of living in larger freedom.\(^{13}\)

The preamble of the UDHR (Universal Declaration on Human Rights), 1948 assures the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world\(^ {14}\). The Declaration also recognises that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood\(^ {15}\). The International Covenant on Civil and Political Rights (ICPR), 1966 ensures the protection of political and civil rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 recognize the economic, social and cultural rights of the every human being.

The preamble caution the States that keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member States themselves and among the peoples of territories under their jurisdiction\(^ {16}\).

According to The Declaration on the Right to Development, 1986, The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized\(^ {17}\). The human right to development also

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\(^{13}\) Charter of United Nations, 1945.

\(^{14}\) Preamble of UDHR, 1948.

\(^{15}\) Article 1 of UDHR, 1948.

\(^{16}\) Preamble of UDHR, 1948.

\(^{17}\) Article 1 (1) of Declaration on the Right to Development, 1986.
implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.¹⁸ Declaration on the Right to Development, 1986, imposes primary duty on the States for the creation of national and international conditions favourable to the realization of the right to development.¹⁹

Mere assurance or declaration is not enough to execute these inalienable rights of the individual. It requires good administrative machinery to bring these rights into operation. An important requirement for ensuring probity in governance is the absence of corruption. The other requirements may be effective laws, rules and regulations that govern every aspect of public life coupled with effective law enforcement and criminal justice systems.

There is close link between corruption and Human Rights. The same has been pointed out by Laurence Cockcroft in following words “The fight for human rights and the fight against corruption share a great deal of common ground. A corrupt government which rejects both transparency and accountability is not likely to be a respecter of human rights. Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes. They are inextricably linked and interdependent. The elimination of corruption and the strengthening of human rights both require a strong integrity system. Indeed, there is a remarkable similarity between the two. The experience of the international human rights movement suggests that, as in promoting and protecting human rights, the primary responsibility for strengthening the national integrity system rests with civil society.”²⁰

From the forgoing words it has now become clear that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, human rights etc around the globe. The quality counts discussion amongst economists has recently concluded that the key to reducing poverty is to undertake an integrated approach to development - one that addresses quality growth, including environment, education,

¹⁸ Article 1 (2) of Declaration on the Right to Development, 1986.
¹⁹ Article 3 (1) of Declaration on the Right to Development, 1986.
health, and governance. Good governance, in its crosscutting nature, is the key determinant among these elements. It requires, among other things, trust between the State and the people, integrity, transparency, rule of law, checks and balances, coordination among agencies, and increased involvement of all other key stakeholders.21

Petter Langseth tried to demonstrate the links between corruption and free and free trail as human right in the following words. International and regional human rights instruments recognise as fundamental that right of everyone to due process of law, including to a fair and public hearing by a competent, independent and impartial tribunal established by law. The importance of this right in the protection of human rights is underscored by the fact that the implementation of all other rights depends upon proper administration of justice. An essential element of the right to a fair trial is an independent and impartial tribunal. Another inherent element of a fair trial is the procedural equality of parties, the so-called “equality of arms”. If the judicial system is corrupt, no such elements will exist. Judicial corruption influences unduly access to and outcome of judicial decisions. The decisions will remain unfair and unpredictable and consequently the rule of law will not prevail.22

3.3. C. Corruption as a Universally Recognized International Crime.

An international crime has been broadly defined as “an act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstances”. These are the crimes that a State may participate in their repression even though they were not committed in its territory. A crime of universal interest is a crime under international law, can be characterized as such irrespective of its designation under domestic law. The general principle of international law recognized in the Charter of the Nurnberg Tribunal is that international law may impose duties on individuals directly without any

22. Ibid.
interposition of internal law. Besides, the principle of the supremacy of international law over national law is reaffirmed in the Draft Code of Crimes against the Peace and Security of Mankind.

However, the question remains unanswered as to whether the term corruption meets the exacting standards of an international crime as laid down in the Nuremberg Charter and the Draft Code of Crimes, which entails individual responsibility. Under the Draft Code of Crimes, a prohibited conduct qualifies as a crime if it is of such a character as to threaten international peace and security. That is, it must be seen as a crime of exceptional gravity or extraordinary magnitude and of sufficient seriousness to justify the concern of the international community. The plethora of efforts made by international institutions at various levels to curb corruption prove that there is a consensus all over the world that in the developing countries corruption hinders economic growth and scuttles development in a direct and tangible manner. At the most, it may be argued that there is a lack of political will to engage, and suggest innovative and effective solutions to attack, the problem of corruption so that changes are seen in the not-so-distant future.

To gauge the problem of corruption parallel to universal crime Rajkumar has referred various issues associated with corruption which enlarge the scope of the corruption than mere ordinary crime. The author refer the historical richness of the problem by revealing the fact that corruption has long been prohibited by the laws and Constitutions of most States - in the old democracies of Western Europe and North America, the new democracies of Central and Eastern Europe, Asia, and Africa. He further explores the Constitutional prohibition of corruption in Haiti, Nigeria, Paraguay, Peru, the Philippines and Sierra Leone. The author also identify various special investigative initiatives in terms of special tribunals and Commission of enquiry initiated by the various countries to prove into and try cases of corruption.

27 Ibid.
by public officials to equaling the problem of corruption with that of universal
crime.28


Together with an associated drive for economic liberalisation, notably in the
area of international trade, globalisation has increased the pressure on countries to be
more transparent and accountable in management of their economics.29 There are
abundant formal and empirical researches to show that malfunctioning economic
institutions reduce international trade. The problem of corruption is closely
associated with institutional quality the overall impact of corruption on international
trade is expected to be negative.

In order to address this economic crisis, the IMF has paid increasing
attention to the importance of good governance in Member State in support of
macroeconomic stability and noninflationary sustainable growth, the promotion
which is centre to its mandate. This recognition is reflected in the IMF’s three core
activities; surveillance of economic policies of member countries, financial support
for adjustment programme and technical assistance to strengthen economic and
financial management.30

3.3. E. International Institutions or Organisations.

There has been a burgeoning field of law-making at both the national and
international levels on the subject of corruption. The leading global and regional
organisations spearheading this movement, including the United Nations, the World
Bank, the International Monetary Fund (IMF), the Council of Europe, the European
Union (E.U.), the Organisation of American States (OAS), the Organisation for
Economic Co-operation and Development (OECD), the Global Coalition for Africa
(GCA), and the International Chamber of Commerce, have articulated anti-
corruption policies and strategies.

28 Ibid.
Abed & Sanjeev Gupta (eds.,). Governance, Corruption and Economic Performance, Washington D C:
30 George T Abed & Sanjeev Gupta, op cit., at p.8.
Similarly, transactional anti-corruption networks are considerably influenced shaped and materialised the global concern on corruption. According to Paul Whatmore, Director Inspector at Metropolitan Police Proceeds of corruption emphasised that “There are major overall international directions for the anti-corruption agenda..... Transparency International, Global Witness, Human Rights Watch all agitate in the international community. They say that companies have got to stop doing this, and if it does not start somewhere, no one will follow.”

3.3. F. Domestic effects of International Integration.

The impact of international system on domestic outcomes are analysed by Wayne Sandholtz and Mark M. Gray in the following words that economic modes of international influence on domestic outcomes are those that operate through changes in relative prices; rational actors seeking to maximize their material well-being make choices on the basis of changing balances of costs and benefits. Some international transactions increase the costs of corrupt acts or decrease their payoffs. Normative modes operate differently, through social standards of appropriateness and fit. International normative factors are those that establish standards of conduct, in this case that delegitimize and stigmatize corrupt practices. International norms condemn corruption not just by pointing out its costs but by establishing that it is wrong.

The view of the authors indicates that as the corruption has its own negative and positive impact on economy, it should be conduct through accepted norms and standard. Especially, the negative facet of the corruption is categorically condemn by the international norm, when it is occur, the national system should look into standard norm of international community. The authors have substantiated the international integration by put forwarding the intervening relationship between international norms and international society.

In addition, the authors have also identified certain core areas and scholarly works which result in international integration and project for the hold of international norm on domestic laws. They are: international economic crisis; the

openness of international markets\textsuperscript{33} shifts in relative prices in international markets\textsuperscript{34} transnational epistemic communities\textsuperscript{35} transnational network of activists and advocacy groups\textsuperscript{36} and international and supranational organisations.\textsuperscript{37}

3.4. MAJOR INTERNATIONAL MECHANISMS.

The intensity and gravity of the norms regulating the conduct of human being is vital for every society, irrespective of its national or international application. The rules perform both constructive and regulative functions, defining various roles and delineating parameters of acceptable conduct for the inhabitants of those roles. Rules are indispensable for human interaction at any level. As Nicholas Onuf asserts “people need rules for all but their most transient exchanges. When they confront the necessity of dealing with each other without knowing if they follow the same rule, they learn what they commonly know and make what other rules they need.”\textsuperscript{38}

The problem of corruption is such a problem common to every society irrespective of its diversities and homogeneities with others. It is appropriately indicated by United Nations Convention against Corruption, 2003 in the following words “corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential.”\textsuperscript{39} The States have created and adopted standards norm according to their socio-economic and political conditions. However, the end object of all these diversified legislative frame work is to establish transparent and accountable administration.


To tackle the global problem of corruption international institutions and regional groups have invoked criminal law as a means of regulating human behaviour. In recent times, there are good numbers of international and regional institutions involved in drafting corruption combating legislative frameworks for adoption by contracting States. The motto behind these collective and stable attempts of international community is it mutual co-operation between the various regional bodies and international institutions resulting in a largely harmonised and a comparatively uniform legislative approach to fighting corruption amongst the contracting States. Such international mechanisms are as follows:


3.4. A.U.N. Convention against Corruption.\(^{40}\)

The most comprehensive and globally applicable agreement to date was developed under the auspices of the United Nations. More than 130 countries participated in the two-year negotiation for the U.N. Convention against Corruption,

\(^{40}\) In December 2000, the UN General Assembly decided to establish an ad hoc committee for the negotiation of a convention on corruption. (See GA Res. 55/61 (Dec. 4, 2000). After seven negotiating sessions held in Vienna from January 2002 to October 2003, the committee transmitted a final text to the General Assembly. (See Report of the Ad Hoc Committee for the Negotiation of a Convention Against Corruption on the Work of Its First to Seventh Sessions, UN Doc. A/58/422 (Oct. 7, 2003). For the committee's interpretive notes on the convention, see UN Doc. A/58/422/Add1 (Oct. 7, 2003). On October 31, 2003, the General Assembly adopted the UN Convention against Corruption.
which entered into force in December 2005.\textsuperscript{41} It covers all of the areas of corruption and for the first time, establishes a framework for cooperation in asset recovery cases. It also is on track to be the first true globally applicable international anticorruption agreement, with 140 signatories and 80 parties to date.\textsuperscript{42}

The new United Nations Convention against Corruption has enormous significance. It proves that a destructive practice as old as history can no longer be tolerated. It manifests the realization that the world of the 21st century needs new rules to become a better place for all peoples. It demonstrates that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development for all.

People around the world, in developing and developed countries alike, have become increasingly frustrated at witnessing and suffering from the injustice and the deprivation that corruption brings. On a daily basis, people have faced head-on the effects of corruption on areas such as the administration of justice and the provision of adequate medical care. They have watched with awe and anger the revelations about the luxurious lifestyle and immense fortunes amassed by corrupt leaders, while their people toiled to scrape a living and were denied the most basic of services.

The Convention demonstrates the consequences of the corruption by saying that the corruption constitutes a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States. Projecting the socio-economic impact of the corruption the Convention expressed its concern that the problem of corruption is serious threat to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law. The Convention asserts that there is close nexus between corruption and other forms of

\textsuperscript{41} On 9\textsuperscript{th} May, 2011 India became the 152nd country to ratify the United Nations Convention against Corruption, which was signed on 9 December 2005.

\textsuperscript{42} The new Convention can be seen as the most recent of a series of developments in which experts have recognised the far-reaching impact of corruption and the need to develop effective measures against it at both the domestic and international levels. It is now widely accepted that measures to address corruption go beyond criminal justice systems and are essential to establishing and maintaining the most fundamental good governance structures, including domestic and regional security, the rule of law and social and economic structures which are effective and responsive in dealing with problems, and which use available resources as efficiently and with as little waste as possible.
crime, in particular organized crime and economic crime, including money laundering.

The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) To promote integrity, accountability and proper management of public affairs and public property.\textsuperscript{43}

3.4. A (a).Definitions.

Before the United Nations Convention against Corruption materialised on October 2003, over the past several years, the number of General assembly resolutions have condemned the practice of corruption. In order to make a decadal struggle more successful, it was necessary for the Convention to clear and clarify some of the concepts, without which the Convention would have veined. Some of the States that submitted proposals for the draft Convention wanted to have clear and rigorous definitions established for the most important terms.\textsuperscript{44}

Whereas a number of prior resolution dealt with the crisis of corruption, UNCAC, 2003 is appears to be the first international agreement to actually attempt to define the terms associated with the issue of corruption. Under Article 2 of UNCAC, 2003, nine concepts have been clearly defined. They are public official, foreign public official, official of a public international organization, property, proceeds of crime, freezing or seizure, confiscation, predicate offence, controlled delivery. Though the term corruption not finds the place in the definition Article 2 of the Convention, it has wide and elaborative definition in subsequent Articles.

According to the Convention, “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a

\textsuperscript{43} Article 1 of the UNCAC, 2003.

public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. In line with Public Official, by defining the Foreign Public Official and Official of Public International organisation, the Convention has taken appropriate course against corrupt official involving in the corrupt activities. The Convention by providing the broad and wide notion on the public servant, particularly with their domestic, international and foreign perspective, the Convention has fixed inescapable boundary to the corrupt officials.

Another significant and practically clarification require terms are property and crime proceeds. “Property” is define to mean “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.” Whereas, any property derived from or obtained, directly or indirectly, through the commission of an offence constitute “Crime Proceed”. The other major definitions provided under Convention are various form of corruption such as bribery, embezzlement, trading influence, abuse of the functions, illicit enrichment, laundering of proceeds of crime. On account of diversified facet of the corruption, the authors of the convention have cautiously brought all form of corruption under the purview of the Convention.

The Convention defines the Bribery to mean; (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the

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45. Article 2 (a) of the UNCAC, 2003.
46. According Article 2(b) of the Convention, “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise. Whereas, Article 2(c), “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization.
47. Article 2 (d) of the UNCAC, 2003.
official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The undue influence is defined by the Convention under the nomenclature of Trading Influence. According to the Convention, Trading Influence means;\(^{50}\) “(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

According to the Convention Abuse of the Functions means “the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”\(^{51}\) The Convention defines Illicit Enrichment to mean “significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”\(^{52}\)

The following activities constitute laundering of proceeds of crime under the Convention; (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;\(^{53}\) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.\(^{54}\)

\(^{50}\) Article 18 of the UNCAC, 2003.
\(^{51}\) Article 19 of the UNCAC, 2003.
\(^{52}\) Article 20 of the UNCAC, 2003.
\(^{53}\) Article 23 (1) (a) (i) of the UNCAC, 2003.
\(^{54}\) Article 23 (1) (a) (ii) of the UNCAC, 2003.
The definition part of Convention constitutes a vital part of the Convention to achieve the goals set out in the preamble of the Convention. The national anti-corruption law might be structured in line with particular condition of the country. There may be some omission or commission in providing the conceptual analysis of the basic terms. But, by looking to the text of the Convention, we can meaningfully conclude that the Convention has provided precise and clear definition in order to harmonize terminology and interpretation of the various terms under national legislation.

**3.4. A (b). Preventive Measures.**

The objectives and principles enshrined under the Convention are to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption. By imposing commitment on the States to adopt preventive measures, the international policy makers have strategically strived to bring transparency and fairness in the management of public affairs.

Chapter II, Article 5-14 of the Convention have attachment with preventive strategies and these provisions have created an obligation to adopt preventive measures. More importantly, Article 5 of the Convention mandates that “in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”\(^{55}\) The Convention further requires States to endeavour to establish and promote effective practices aimed at the prevention of corruption and to periodically evaluate relevant legal instruments and administrative measures.\(^{56}\)

The preventive institutional strategy are to be implemented by the State by establishing preventive anticorruption bodies, entrusted with the duties of the policies referred to in Article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; increasing and disseminating knowledge about the prevention of corruption.\(^{57}\) State Parties to the Convention shall,

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56. Article 5 (2) & (3) of the UNCAC, 2003.
where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials.\textsuperscript{58}

The State must ensure integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system \textsuperscript{59} and codes or standards of conduct for the correct, honourable and proper performance of public functions.\textsuperscript{60} Besides the States have following obligation under the Convention. to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption;\textsuperscript{61} to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes;\textsuperscript{62} to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary;\textsuperscript{63} to prevent corruption involving the private sector;\textsuperscript{64} enhance accounting and auditing standards in the private sector, to promote the active participation of individuals and groups outside the public sector;\textsuperscript{65} to prevent money laundering;\textsuperscript{66}

Crime prevention has entered a new, more robust phase of research activity and holds greater relevance to policy and practice today than ever before. It stands as an important component of an overall strategy to reduce crime.\textsuperscript{67} The prevention is considered the fourth pillar of crime reduction, alongside the institutions of police, courts, and corrections.\textsuperscript{68}

The preventive strategies against corruption play a critical role in addressing the occurrence of the corruption in future days. There is growing consensus about

\textsuperscript{58} Article 6 of the UNCAC, 2003.
\textsuperscript{59} Article 7 of the UNCAC, 2003.
\textsuperscript{60} Article 8 of the UNCAC, 2003.
\textsuperscript{61} Article 9 of the UNCAC, 2003.
\textsuperscript{62} Article 10 of the UNCAC, 2003.
\textsuperscript{63} Article 11 of the UNCAC, 2003.
\textsuperscript{64} Article 12 of the UNCAC, 2003.
\textsuperscript{65} Article 13 of the UNCAC, 2003.
\textsuperscript{66} Article 14 of the UNCAC, 2003.
the creation and adoption of the preventive strategies among the nation. This traditional strategy is considered as emerging and promising alternative method for prevention of crime. The preventive strategy of UNAC, 2003 is recorded its role as a unique research strategy and to address the gaps in knowledge and priorities for research. By incorporating competitive techniques on prevention of corruption, the Convention has well established the effectiveness of developmental and situational corruption prevention strategies. By adequately accommodating provision on participation of civil society and inculcation of ethical codes in the administration, the Convention has marked extraneous influence on prevention of corruption.

3.4. B (c). Criminalization and Enforcement Provision.

It is fundamentally recognised that corruption is a lucrative attitude and a successful corrupt officials can gain enormous wealth and could become a rich man. The Convention recognises that corruption and other forms of crime, in particular organized crime and economic crime, including money laundering. As the compliance of these words, Chapter III, Article 15-42 of the Convention have devoted to develop the theme of criminalization of corruption and allied activities.

Under Article 15 of the Convention the bribery is criminalised and States are under obligation to take legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally. Besides, bribing to the foreign officials and international organisations has been criminalised under Article 16 of the Convention. The other activities criminalised under the convention and imposed obligation on the States to create and adopt appropriate legislative and other measures are Trading in influence,69 Abuse of functions,70 Illicit enrichment,71 Bribery in the private sector,72 Embezzlement of property in the private sector,73 Laundering of proceeds of crime,74 Concealment of property,75 Obstruction of justice,76 Participation and attempt in an offence of corruption.77

73. Article 22 of the UNCAC, 2003.
77. Article 27 of the UNCAC, 2003.
The second part of Chapter III is enforcement provisions. There is convincing evidence that the effective enforcement strategy holds greater relevance to policy and practice in the administration of criminal justice. In this context of needy situation, broad and elaborative enforcement provisions have been provided under the Convention. The important enforcement provision provide under the Convention are Prosecution, adjudication and sanctions,\textsuperscript{78} Freezing, seizure and confiscation,\textsuperscript{79} Protection of witnesses, experts and victims,\textsuperscript{80} Protection of reporting persons,\textsuperscript{81} Cooperation with law enforcement authorities,\textsuperscript{82} Cooperation between national authorities,\textsuperscript{83} Cooperation between national authorities and the private sector.\textsuperscript{84}

In Chapter III of the Convention, the drafters have brought greater attention to the need for higher quality of cooperation with enforcement authorities as well as co-operative between national authorities. Perhaps the most important and steady progress can be witnessed in the provisions of protection of Whistle blower, confiscation of property and co-operation of anticorruption investigating authorities. Including India, these are major drawbacks for certain developing countries for rational and evidence-based enforcement policy. In addition to this, there is a growing evidence of scientific knowledge on the effectiveness of a wide range of developmental and situational crime prevention modalities in the Convention.


Article 43-50 of the Convention grouped under Chapter IV, has made a significant effort to strike a greater balance between prevention and punishment of corruption at international level. The convention mentions that States Parties shall consider and to promote international cooperation in preventing, investigating, combating the problem of corruption and assisting each in other in these process. The major provision provided under this part are Extradition,\textsuperscript{85} Transfer of sentenced persons,\textsuperscript{86} Mutual legal assistance,\textsuperscript{87} Transfer of criminal proceedings,\textsuperscript{88} Law

\textsuperscript{78}. Article 30 of the UNCAC, 2003.
\textsuperscript{79}. Article 31 of the UNCAC, 2003.
\textsuperscript{80}. Article 32 of the UNCAC, 2003.
\textsuperscript{81}. Article 33 of the UNCAC, 2003.
\textsuperscript{82}. Article 37 of the UNCAC, 2003.
\textsuperscript{83}. Article 38 of the UNCAC, 2003.
\textsuperscript{84}. Article 39 of the UNCAC, 2003.
\textsuperscript{85}. Article 44 of the UNCAC, 2003.
\textsuperscript{86}. Article 45 of the UNCAC, 2003.
\textsuperscript{87}. Article 46 of the UNCAC, 2003.
enforcement cooperation,\textsuperscript{89} Joint investigations,\textsuperscript{90} and Special investigative techniques.\textsuperscript{91}

3.4. A (e). Asset Recovery.

Chapter V of the Convention establishes the means to prevent and detect transfers of the proceeds of crime through measures affecting financial institutions and public officials;\textsuperscript{92} measures for the direct recovery of property;\textsuperscript{93} mechanisms for the recovery of property through international cooperation and measures for the return and disposal of assets.\textsuperscript{94}

3.4. A (f). Mechanisms for Implementation.\textsuperscript{95}

A great deal of provisions about effective corruption prevention has emerged from the Convention in the form establishment of mechanism for implementation of the Convention. The Convention by establishing a conference to improve the capacity of and cooperation between States Parties\textsuperscript{96} and by providing the necessary secretariat services to the conference of the States Parties to the Convention,\textsuperscript{97} the Convention has strived to promote anti-corruption movement at grassroots level.

The Convention mandates that the conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in the Article 63 of the Convention, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.\textsuperscript{98} The Convention further provides that the Secretary-General of the United Nations shall Assist the Conference of the States Parties in carrying out the activities set forth in Article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties.\textsuperscript{99}

\textsuperscript{88} Article 47 of the UNCAC, 2003.
\textsuperscript{89} Article 48 of the UNCAC, 2003.
\textsuperscript{90} Article 49 of the UNCAC, 2003.
\textsuperscript{91} Article 50 of the UNCAC, 2003.
\textsuperscript{92} Article 52 of the UNCAC, 2003.
\textsuperscript{93} Article 53 of the UNCAC, 2003.
\textsuperscript{94} Article 54-59 of the UNCAC, 2003.
\textsuperscript{95} Article 63-64 of Chapter VII of the UNCAC, 2003.
\textsuperscript{96} Article 63 of the UNCAC, 2003.
\textsuperscript{97} Article 63 of the UNCAC, 2003.
\textsuperscript{98} Article 63 (2) of the UNCAC, 2003.
\textsuperscript{99} Article 64 (2) (a) of the UNCAC, 2003.
3.4. A (g). Final Provisions.

The final provisions have been framed in Chapter VIII, Article 65-71 of the Convention and these provisions are based on the treaty obligation of the States. The Convention directs that State party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention. 100 This Convention is subject to ratification, acceptance or approval of States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. 101 The dispute concerning the interpretation or application of the Convention can be settled through arbitration and by referring the dispute to the International Criminal Court of Justice. 102 Other Final provisions provided under the Convention are Entry into force, 103 Amendment, 104 Denunciation, 105 and Depositary and languages. 106


The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition of UN Member States that this is a serious and growing problem that can only be solved through close international cooperation. The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training. 108

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100 Article 65 of the UNCAC, 2003.
103 Article 68 of the UNCAC, 2003.
104 Article 69 of the UNCAC, 2003.
105 Article 70 of the UNCAC, 2003.
107 The United Nations Convention on Transnational Organized Crime, Resolution 55/25 of November 15th, 2000. Signed by 147 countries; ratified by 122 countries (as of July 5th, 2006); came into force on September 29th, 2003 and requires corruption of public officials to be established as a criminal offence.
States Parties will be able to rely on one another in investigating, prosecuting and punishing crimes committed by organized criminal groups where either the crimes or the groups who commit them have some element of transnational involvement. This should make it much more difficult for offenders and organized criminal groups to take advantage of gaps in national law, jurisdictional problems or a lack of accurate information about the full scope of their activities.

The Convention deals with the fight against organized crime in general and some of the major activities in which transnational organized crime is commonly involved, such as money laundering, corruption and the obstruction of investigations or prosecutions. To supplement the Convention, two Protocols also tackle specific areas of transnational organized crime that are of particular concern to UN Member States.\(^\text{109}\)

### 3.4. C. Council of Europe.

As a safeguard instrument for ensuring a common area of freedom, security and justice, fighting corruption was seen among the priorities of the European Union, as early as the Treaty on European Union:

“[…] the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by […] preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- Closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32;
- Closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit (Euro just), in accordance with the provisions of Articles 31 and 32;

- Approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).\textsuperscript{110}

In Europe, the Council of Europe (COE) has developed three primary instruments to guide members in the fight against corruption. Two of these documents are Conventions Criminal Law Convention against Corruption (COE), 1997 and the Civil Law Convention against Corruption (COE), 1997 and one consists of nonbinding principles the COE Twenty Guiding Principles to Fighting Corruption. COE has also developed a peer review mechanism for monitoring implementation of these principles and conventions for 42 nations, including the United States. The European Union (EU) also has developed several documents to guide members. These include the 1997 EU Convention on the Fight against Corruption involving officials of the European Communities or Officials of Member States and the 1998 EU Joint Action on Corruption in the Private Sector. There is also a 2002 EU Framework on Combating Corruption in the Private Sector. A Stability Pact developed in 2000 that was signed by seven Southeast European nations, and the resulting peer review mechanism to monitor implementation, is known as the Stability Pact Anticorruption Initiative (SPAI).

\textit{The Council of Europe Criminal Law Convention on Corruption}\textsuperscript{111} approved by the Committee of Ministers of the Council of Europe; opened to signing on 27\textsuperscript{th} January 1999 is another important instrument against corruption in European Union. The Convention deals with the crimes of active and passive bribery of public officials, active and passive trading in influence, laundering of the proceeds of corruption, accounting crimes linked to corruption, active and passive bribery in the private sector, and facilitation and complicity in these crimes.


\textsuperscript{111}The Council of Europe Criminal Law Convention on Corruption (CoE Criminal Convention) was the third multinational anti-corruption convention to be adopted and was negotiated by the member states of the Council of Europe, along with the participation of a number of observers, including Canada, Japan, Mexico and the United States. It represents a European regional consensus on what states should in the areas of criminalisation and international cooperation with respect to corruption.
The Council of Europe Civil Law Convention on Corruption, 1999, was adopted in Strasbourg on 4th November 1999. It is the first attempt to define common international rules in the field of civil law and corruption. In particular, it provides for compensation for damages as a result of acts of corruption.

3.4. D. Inter-American Convention against Corruption (IACAC).\textsuperscript{112}

The IACAC was designed with three major objectives: (1) to prevent corrupt practices, (2) to criminalize and punish corrupt practices, and (3) to ensure international cooperation in enforcement efforts. The IACAC contains several provisions aimed at achieving these policy objectives, which can be broadly categorized into substantive and procedural provisions. The substantive provisions set forth appropriate preventative measures, define crimes, and provide the scope of the IACAC’s coverage. Because the IACAC’s enforcement depends on domestic legislative implementation and international cooperative measures, the procedural provisions provide for the international obligations that must be undertaken to completely enforce the substantive provisions of the Convention.

3.4. E. Organisation for Economic Co-operation and Development (OECD).\textsuperscript{113}

Bribing public officials in international business transactions is a crime that distorts markets, undermines good governance and, at the end of the day, hurts the world’s most vulnerable.\textsuperscript{114} Anti-bribery Convention requires that State parties to criminalize bribery of foreign public officials by their citizens or corporations. The Convention permits countries to move in a coordinated manner to adopt national legislation making it a crime to bribe foreign public officials. It provides a broad definition of bribery, requiring countries to impose dissuasive sanctions and committing them to providing mutual legal assistance. Under OECD auspices, a

\textsuperscript{112} Inter-American Convention against Corruption, Mar. 29, 1996, 35 I.L.M. 724, available at http://www.oas.org/juridico/english/Treaties/b-58.html. Thirty-three of the thirty-four OAS member states have signed and ratified the IACAC.

\textsuperscript{113} The convention was signed in December 1997 by representatives of 34 countries, including all 29 OECD member States and five non-members. It entered into force in February 1999. As of May 2001, 32 of the signatory nations, including all the OECD members, had ratified the convention, and ratification by the others was expected shortly. As of the same date, 28 participating nations had adopted implementing legislation, with other enactments in process. For discussion of the status of the convention and the OECD implementation procedure, see OECD, Report by the CIME: Implementation of the Convention on Bribery in International Business Transactions and the 1997 Revised Recommendations, Doc. No. C/MIN (2001) 5, 11 (May 2001).

rigorous process of multilateral surveillance began in April 1999 to monitor compliance with the Convention and assess the steps taken by countries to implement it in national law.

In Asia, 21 nations in the Asia-Pacific region have adopted a nonbinding compact against corruption. Known as the ADB/OECD Anticorruption Action Plan for Asia and the Pacific, this compact was developed under the auspices of the Asian Development Bank and the Organization for Economic Co-operation and Development, and peer review is anticipated in the future.115 In 2004, leaders of APEC (Asia-Pacific Economic Cooperation) approved an APEC Anticorruption Course of Action that includes a strong commitment to implementing the U.N. Convention against Corruption and to working regionally to deny safe haven to corrupt officials, those who corrupt them, and their illicitly acquired assets. The ADB/OECD Anti-Corruption Initiative for Asia-Pacific wishes to enhance public access to information, and it maintains this Web site, and the information, documents and materials for the purpose of minimize the corruption.

The merit of the Convention is asserted by the Angel Gurria, General Secretary to the OECD in following words “This Convention is one of the world’s most powerful tools to promote more transparent international business practices. It sets the highest and toughest standards for fighting bribery in business. Proper implementation and active enforcement of the Convention can help countries save billions of dollars and improve public services by increasing competition and transparency in their public procurement systems.”116

3.4. F. African Countries and Prevention of Corruption.

The origin of a regional framework to fight corruption in Southern Africa first came to light in the form of a draft Declaration Against Corruption at a meeting of Southern African Development Community (SADC) senior officials held on 23rd August 1998, in Harare, Zimbabwe at the initiation of the SADC Secretariat who emphasised the need for Southern Africa as a region to take a stance against corruption.

115. The Working Group has recently welcomed two new members: Russia and Colombia. In 2011, China, India, Indonesia, Malaysia, Peru, and Thailand participated in Working Group meetings.

The Southern African Development Community (SADC) Protocol against Corruption, 2001: The Southern African Development Community (SADC) Protocol against Corruption was adopted by the SADC Heads of State and government at their August 2001 Summit held in Malawi making it the first sub-regional anti-corruption treaty in Africa.

Because of its historic significance many questions arise as to its origin, purpose, context, implementation mechanisms, modalities and more importantly its impact in the fight against corruption in Southern Africa. The SADC Protocol follows in the wake of the Inter-American Convention against Corruption of 1996, the European Convention on the Fight against Corruption of 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business, Transactions, 1997 from which it derives inspiration, thus adding an African perspective in the globalisation of the fight against corruption. The adoption of the SADC Protocol is recognition of the extent to which corruption has become a menace worldwide, and Southern Africa is not an exception in this regard.

The preamble notes the serious magnitude of corruption in the region, its destabilising effects particularly that it undermines good governance. The protocol provides both preventive and enforcement mechanisms and demonstrates some form of political will in the region to combat corruption. The purpose of the protocol is threefold viz.\(^\text{117}\)

(a) To promote the development of anti-corruption mechanisms at the national level.
(b) To promote cooperation in the fight against corruption by state parties.
(c) To harmonise anti-corruption national legislation in the region.

The Protocol provides a wide set of preventive mechanisms which include the following\(^\text{118}\):

- Development of code of conduct for public officials.
- Transparency in public procurement of goods and services.
- Easy access to public information.


➢ Protection of whistle blowers.
➢ Establishment of anti-corruption agencies.
➢ Develop systems of accountability and controls.
➢ Participation of the media and civil society; and
➢ Use of public education and awareness as a way of introducing zero tolerance for corruption.

The protocol criminalizes the bribery of foreign officials.\textsuperscript{119} This is in line with the OECD Convention on Combating Bribery of Foreign Officials in International Business Transaction. The Protocol also addresses the issue of proceeds of crime by allowing for their confiscation and seizure thereby making it more difficult to benefit from proceeds of corruption.\textsuperscript{120} It makes corruption or any of the offences under it an extraditable offence making it difficult for criminals to have a haven in one of the SADC countries.\textsuperscript{121} More so the protocol can be a legal basis for extradition in the absence of a bilateral extradition treaty. The SADC Protocol also provides for judicial cooperation and legal assistance among State Parties. This is important as corruption often involves more than one country.

\textit{African Union Convention on Preventing and Combating Corruption (AUCPCC), 2003}: The erstwhile Organization of African Unity (OAU)\textsuperscript{122} may have been the soul of the continent in fighting for the integrity of Africa and the human dignity of all the peoples of the continent. But it certainly was not the soul of the continent in fighting corruption seriously. The body demonstrated a high degree of insensitivity and passivity towards corruption, allowing the ailment to develop into a pandemic. On account of its inability to cope up the situation African Union (AU) came into existence.

\textsuperscript{119}. Article 6 (1) of the Southern African Development Community (SADC) Protocol against Corruption, 2001.
\textsuperscript{120}. Article 8 (1) of the Southern African Development Community (SADC) Protocol against Corruption, 2001.
\textsuperscript{121}. Article 9 of the Southern African Development Community (SADC) Protocol against Corruption, 2001.
\textsuperscript{122}. Organization of African Unity (OAU) came into existence with Charter of the Organisation of African Unity, 479 U.N.T.S.39, entered into force 13\textsuperscript{th} September 1963. The purposes of the organisation were: (a) To promote the unity and solidarity of the African States; (b) To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; (c) To defend their sovereignty, their territorial integrity and independence; (d) To eradicate all forms of colonialism from Africa; and (e) To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.
The African Union (AU), which replaces the OAU, has taken a bold step towards immunizing Africa against corruption pandemic. At the second annual summit of the AU Assembly holding in Maputo, Mozambique, in July 2003, the AU adopted the African Union Convention on Preventing and Combating Corruption. The objectives of the Convention are follows:

- Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
- Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
- Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.
- Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
- Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

The Convention provide the provision pertaining to criminalisation of corruption, international co-operation, laundering of the proceedings of the corruption, corruption related offences, illicit enrichment, information on assets, funding of political parties and private sector corruption.

3.4. G. Arab Countries.

In the Middle East, Arab States have been working through a regional network, the Good Governance for Development (GGD) initiative, to provide support for an ongoing process of governance reform and public sector modernization and to create the conditions needed for economic and social

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development throughout the region. Fighting corruption is a main pillar of action, particularly efforts to implement the U.N. Convention against Corruption.

The 37 nations that have signed the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions have created a peer review mechanism to monitor implementation. The OECD convention is relatively narrow and specific in its scope. Its primary focus is the use of domestic law to criminalize the bribery of foreign public officials.


The Financial Action Task Force (FATF) is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.124

The work and principles of the Financial Action Task Force (FATF) also contribute immensely to the international anticorruption agenda. The FATF establishes a global standard to combat money laundering and financial crime in its recommendations, and it monitors countries' implementation of these recommendations. This intergovernmental body brings together representatives from supervisory/regulatory authorities and financial institutions to address abuse of the financial system, which has included abuse posed by corruption.

The FATF Standards have been revised to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime. At the same time, these new standards will address new priority areas such as corruption and tax crimes.125


125. For detailed revised recommendations, see Financial Task Force, The FATF Recommendations, op cit.,
India, having met the strict evaluation norms of the FATF, was granted full-fledged membership (34th Member) in June 2010. Further, in recognition of India's efforts in this regard, the Asia Pacific Group (APG) on Money Laundering and Terrorist Funding chose India as Co-chair of the Group at its annual meeting in Singapore in July 2010. For furtherance of the objectives of joining the global efforts against money laundering and bolstering the national programme, India successfully hosted the annual meeting of the APG between 18 and 22 July 2011 at Kochi, Kerala. India is fully committed to following the FATF norms of KYC and customer due diligence, illegal transfer of funds and their recovery, and international cooperation.126

3.4. I. Group of Eight (G8) and prevention of Corruption.

In recent years, the Group of Eight (G8), an informal group of eight countries—Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States—who meet to discuss broad economic and foreign policies, has made the fight against corruption a top priority, including efforts to combat high-level corruption deny safe haven to corrupt officials, coordinate on the recovery of illicitly acquired assets, and support for transparency pilots to improve budget, procurement, and concession-letting accountability and transparency.

The United Kingdom holds the G8 presidency for 2013 and will host the summit on June 17-18, 2013 in Lough Erne, Northern Ireland. The summit agenda will focus on the traditional pillars of the G8 however specific attention will be paid to supporting the private sector, trade, tax reforms, transparency, food security, the crisis in Syria and Middle East.127

3.5. CONCLUSION.

While the idea of a specific Convention for and against corruption remained a dead letter for the last few years, the countries devised their own strategies for addressing the problem of corruption. However, the intensity of the problem compelled global community to come out with specific tool against corruption. It is

rightly pointed out under the United Nations Convention against Corruption, 2003 that “corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it.”

The anti-corruption strategies and anti-corruption approaches of the countries are varied and diversified. Nevertheless, most of the nation’s etch out certain issues associated with problem of corruption are fundamental and non-negotiable. These issues, as outlined in the United Nations Convention against Corruption, 2003, vivid, comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively. In this background, though, the States have their own vision and mission to address the cancerous corruption are not homogenous or common, yet there are some facts that appeal to all cumulative as a member of the global community.

United Nations Convention against Corruption, 2003, is a unique and the quintessential reflection of the global anti-corruption strategy. It has the distinction of being the first and paramount global instrument against corruption. This radical thought of international community completely revolutionized the outlook on the status of the good governance. The Convention was meant to complement the prevailing provisions and resolution of United Nations. The Convention has marked bright remarks in the way and means of anti-corruption strategies in terms of formal co-operation arrangement, exchange of information, law enforcement liaison networks and sharing of skills and capabilities.

After the Convention, the international prevention of corruption law has developed impressively and enormously since last few years. Today, the regional and international law relating to corruption has strived hard to keep pace with changing socio-economic culture of the States. In response to the evolving nature of good governance, the international prevention of corruption law working consistently and constantly with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
Despite several challenges that this Convention faced in its effective working, its reputation remains intact and its essential spirit to uphold transparency, accountability and responsibility of the States continues to be much more important. The protection of stability of democratic institutions, rule of law, human rights and social progress at regional and national level considerably improved as the parties to the Convention are under obligation to review their domestic law in line with the Convention.

Though these international and regional mechanisms continue to play a key role in the growing international condemnation of corruption, the commitment of the Indian Government to take action and revise its domestic law according to the Convention shameful. Though, the Government of India signatory to the United Nations Convention against Corruption, 2003, the political will to review their domestic laws in order to harmonize them with the Convention is yet to be materialised. As the proceeds of the corrupt Indians are increasingly becoming sophisticated, well financed, constantly evolving and growing at international level, there is an urgent need to review of our domestic law to harmonize with the provisions of the Convention.