CHAPTER 1

INTRODUCTION
Corruption is like gangrene which sucks up and destroys the basic value system on which a society is founded, and has no cure if allowed to go beyond a certain stage.

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Deep-rooted, cancerously spread, a multi-faceted complex evil, the phenomenon which is referred to in Danish as korruption, in Dutch as corruptie, in French as depravation, in German as bestechung, in Italian as curruzione, and in English as corruption, is inherent in a society where money is a demi-god. It is a curse and an attack on the foundation of any civilized society. It undermines morality, democracy, good governance and the rule of law. It swallows resources needed for development. It is an affront to people who bring high ethical standards to their work and dealings with their fellow human beings and who expect the same in return, in the time-honoured tradition of “do unto others”.

Manu had warned the mankind¹: Without knowing the lawful methods of receiving gifts, the wise man shall not accept any gifts, even though he may be pining for hunger....One shall not accept gift merely for the purpose of enjoying pleasures, because between vice and death, vice is said to be more harmful; the vicious’ man sinks down and down but the dead man without vices, ascends to haven.²

But then as a Chinese proverb goes: Riches are like salt water. The more you drink it the more you thirst for it. Mankind has drunk this water. It keeps craving for more. The thirst never gets quenched. The easiest resort of becoming rich finds its way through corruption. Corruption has engulfed the whole society of mankind and today can be termed as plague which is not only contagious but is spreading like fire in a jungle. Its virus is comparable to HIV leading to AIDS, being incurable. Termed as ‘Royal thievery’, corruption


² Manu VII, 53.
is just one word but a multitude of baffling realities lie concealed and congealed within it. Corruption is an old sin, and rolling the wheels of time backwards, one can hark back to first sin committed by Adam and Eve, falling prey to the temptation of the forbidden fruit. It is this phenomenon that was used by fascists in the past to overthrow democratic government or liberal government and bring their government. It was in Germany in 1920s and 1930s that corruption in the liberal government was utilized to malign it and to bring ultimately the Nazi regime headed by Adolf Hitler, with of course, neutralistic approach adopted by some social democrats. Thus we can say that corruption is a phenomenon common to all societies wedded to wealth. In fact, corruption is a multi-faceted evil which gradually kills a system. Today this phenomenon has grown to dynamic proportions. With multiple causes and effects, it has acquired an international status and is no longer a sensitive issue or a taboo. This fact gets reflected from the frequent reporting on corruption scandals around the globe and the increasing amount of research on corruption in many countries.

Embracing innumerable devices and crafts of moral deterioration, corruption has silently permeated through all the layers and cadres of the society. Looking at its sly nature, corruption appears difficult to be defined by mortals while so simple to be understood, rather felt through its immortal practices.

*Corruption, thy name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph-nodes, cancerous cells in human body spreading as wild fire eating away the vital veins in the efficacy of public functions.*

In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to public office. It is defined as the illegal use of public office for private gains. Defined as "the misuse of public power, office or authority for private benefit- through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement", corruption phenomenon

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4. Details of definitions *infra* Ch-2.
ranges from the single act of a payment contradicted by law to an endemic malfunction of a political and economic system. Strange it would sound that "bribe" has not been defined in any law; even the slippery and sleazy 'corruption and gratification' too are not defined with their essential tentacles, under any law.

Amongst the causes of corruption, the major ones are greed, circumstances, opportunities and other temptations that include party funds, money for patronage, apprehension of loss of office, need for extra money to maintain standards, etc. In an expanding economy on account of rapid industrialization and growth of an acquisitive society, a conflict of values inevitably occurs. The age old concept of values of judging people by what they are rather than what they have crumbles and people easily succumb to corruption.\textsuperscript{6} This apart, the rising cost of living and the wide gap between real wages and the opportunities to make quick money encourage corrupt practices among public servants and businessmen. Besides, consumerism and desire for an ostentatious life style and other evil social practices promote corruption.

Corruption adversely affects economic performances, undermines employment opportunities, and clouds prospects for poverty reduction. Petty corruption raises the cost of engaging in productive activities. Its burden falls disproportionately on poor people. For those with money or connections, petty corruption in public health or police services can have serious consequences. Corruption affects the lives of poor people through many other channels as well. It diverts public resources away from socially valuable services, such as, education, health and road infrastructure investments that could benefit poor people like health clinics, roads, etc. Instead, it tends to increase public spending on capital – intensive investments that offer more opportunities for kickbacks, such as defence contracts. Corruption also undermines public service delivery.

A citizen faces corruption practically at every level and in every sector of life. It could be the local rationing department, police department, Municipal

Corruption, etc. In the industry, - Inspector Raj has become a code word for regular bribes collected by the public servants at the cutting edge of administration of the various departments of Central and State Governments. That corruption has its branches and roots in all spheres of life and administration is well pointed out by our Prime Minister, who on May 23, 2007 ‘lamented that corruption in road construction projects has spread like cancer’. Corruption is an unfortunate fact of life in India. The government cannot allow huge investments in this vital sector to go into private coffers.

Earlier, on November 17, 2006, in his key note address to Central Bureau of Investigation Conference and State Anti-Corruption Bureaus, the Prime Minister agreed that any system in which a retired senior citizen is required to pay a bribe to secure his legitimate dues is the most despicable system.

Because of the mad race of becoming rich and acquiring properties overnight and because of the ostentatious or vulgar show of wealth by a few and because of change of environment in society by adoption of a materialistic approach, the cancerous growth of corruption and illegal means or profits has affected the moral standards of the people and all form of governmental administration.

Where corruption involves transfer of funds outside the country, it seriously undermines economic development. The way funds are allocated get distorted, foreign aid gets reduced and productive capacity gets further weakened. Corruption breeds a distrust of public institutions; it undermines ethical principles by rewarding those who are willing and able to pay bribes, and hence perpetuates inequality. Money laundering becomes lucrative and links are established between corruption and organized crime. Illegal activities invariably rely at some point of time on the support of corrupt public officials. Sometimes, organized criminals acquire such great power that they are in a position to undermine and destroy institutions with dire consequences for democracy and the rule of law.

Given all the contradictions and opportunities, corruption in India is ubiquitous. Through the ages, corruption in India, was mentioned in Arthashastra of Kautilya, Agnipurana, and Ashtadwaiyayan of Panini. Neither is this a modern
day development, nor is it different from the experience of other nations. That the subject was of interest even historically is seen from the ancient writings of Kautilya\(^7\) who stated thus:

> Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant, not to eat up, at least, a bit of the King’s revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the govt. work cannot be found out while taking money for themselves.

Even in the recent history, there was corruption in the time of Jahangir. Even Shahjahan committed the greatest corruption by building the Taj Mahal for the sake of commemorating his love for his wife Mumtaz Mahal. That sort of corruption was there even at that time.\(^8\)

Today, corruption has been institutionalized in the country in various forms. Corruption in high places and corruption in not high places is there. Corruption in high places would come in the guise of political corruption, social corruption, administrative corruption, industrial corruption and middleman’s corruption. The other not so high places of corruption are of course, the delay factor – the delay in putting off connected papers by various officers and Office Assistants. That is the beginning of corruption. Another form is the percentage system, existing in various departments of our Government.\(^9\)

No country is immune from corruption, and many are equally vulnerable because of their weak laws and institutions. Corruption also has an international dimension. The same open borders, technological advances and transnational communications and commercial transactions that are the hallmarks of today’s global society are allowing corruption to take root and flourish. Everyone is aware of the corruption and nepotism as the main


9. Ibid.
reasons behind the fall of Roman Empire, the French Revolution, October Revolution in Russia, fall of Chiang-Kai-Shek Government on the mainland of China and even the defeat of the mighty Congress party in India.

Today this virus has not left unaffected any country in the world. The Transparency International (TI), a global coalition against corruption, which publishes the Corruption Perception Index Table every year, in the year 2006 listed, the Corruption Perception Index (CPI), the score of 163 countries out of a total number of 194 countries of the world. One is amazed at the whopping number of corrupt countries. Corruption, both at the petty and grand level, involving a country losing hundreds of millions of dollars through the looting of its resources has attacked these 163 countries. Some of them have even their Government Heads facing accusations and allegations of corruption estimated to billion of dollars.10

In Ukraine, a former Prime Minister, himself awaiting trial on money laundering charges, has accused the Ukrainian President of involvement in corruption. Elsewhere in the former communist world, present and past top leaders of Kazakhstan have been accused of taking tens of millions of dollars in corrupt payments from Western Companies. In the Czech Republic, armed police recently swooped down on one of the country's largest banks, whose managers were suspected of fraud. In Bulgaria, recently the government was under pressure after allegations of ministerial level corruption.

But the former Communist countries hold no monopoly on corruptive practices. In many Asian nations, corruption seems an indelible feature of daily life. In India and Pakistan over the past 50 years, it has clearly held back economic and social progress. Corruption sometimes at the highest political levels, is also prevalent in some of the most economically successful Asian countries such as South Korea, Indonesia, and Thailand. Indonesia's former President General Suharto allegedly embezzled billions of government dollars and was ousted from power after 32 years in 1998 [Charges of corruption which were framed against him, were in year 2006, allowed to be dropped as he was suffering from ill-health] Corruption is widespread as well in the largest

10. *Infra Ch-4.*
Asian power and the world's largest remaining Communist State- China. Recently the Communist Party of China (CPC) announced severe punishments for a number of officials involved in scandals of buying public and party posts through bribery. The severe punishments for corruption include life imprisonment and even death penalty in China.

Corruption is deeply entrenched in the Middle East, where many countries are ruled by a small clique or clan that dictates every aspect of life and where kickbacks are common accompaniment to business deals. Corruption is omnipresent in Africa, where it deepens the rift between a very small number of wealthy people and a vast impoverished majority.

Latin America corruption is legendary, permeating every sector of society.

Some parts of the developed world, like Western Europe and North America, pride themselves on having almost eradicated institutional corruption. But in the past they suffered from widespread corruption and periodically, new corruption scandals erupt.

Some European Union (EU) members- notably, Italy, Portugal, Greece, and France- have reputations for widespread corruption at the highest political levels. And although their membership in the EU provides some impetus to fight corruption, it has also offered new opportunities for corruption. Thus, money flowing from the richer EU countries to the poorer ones- money intended to improve roads, railways, communications and public services- often has been siphoned off by corrupt businessmen and politicians.

But unlike in the post Communist countries, where corruption is considered a nasty fact of life, in western countries, it is viewed by most people as an aberration. In the West too, politicians publicly tainted by corruption usually find their careers at an end. This may be, in Western countries, ascribed to the Western countries' greater experience in developing a democratic political system which responds to the will of the majority. An independent legal system is also crucial. Also another issue here is the enforcement of law. Compliance with Court decisions is much more embedded in a country which has had a longer time to develop its [democratic system]
History is replete with examples of widespread corruption. The bribing of Judges appears as a problem in the history of Egyptians, Babylonians and Habrews. Among the Greeks, corruption was rather slow in developing. By the 5th century B.C., bribing of Greek officials by foreign powers became common. In Rome too, venality did not appear on a large scale until the indemnities, tributes, spoils and colonial revenues increased the wealth of the Republic. During the medieval times, the principal forms of corruption were the extortion of revenue by central and local officials and the perversion of justice. In England, even the common law courts developed court practices. In France, the 15th century witnessed the restoration of the sale of judicial offices.

Then came the age of exploration and colonization. During this time the Spanish and Portuguese Governors enriched themselves through their almost absolute power over colonies far removed from the central governments, which were themselves corrupt and interested in the colonies only for the revenue to be derived from them. The officials of the British East India Company amassed fortunes by a variety of venal practices. In India of the old, Kautilya in his Arthashastra implies the existence of widespread corruption.

Following the invention of the steam engine, came the Industrial Revolution, opening up vast opportunities for nations and people. The scientific theory of ‘the survival of the fittest’ was used to justify the ruthless exploitation of the weak and powerless and the notion of ‘self-advancement’ by all available means. Thus mass exploitation became the rule, aided and abetted by the use and abuse of newly acquired power from technological advances. Overpowering greed, selfishness and acquisitiveness were accepted and tolerated once again as legitimate motives of social interaction. Many people began to misuse their newly acquired power in politics, in administration or in business to secure illegitimate gain for themselves. The employees of the East India Company did in India what the soldiers of the imperial powers did in the countries of Africa, Asia and Latin America. Thus set in the modern phenomenon of widespread corruption. In the 18th century, which marked the beginning of colonial expansionism, some of the most powerful countries in the world at that time, were also amongst the most corrupt.
The Anti-corruption measures in Asia are noted for their strict, even harsh, punishment levels, and their strong legal enforcement while acting against corruption. Most Asian countries already have appropriate laws and they apply them. For instances, Korea has the law on the Public Servants, the Public Servants in Provinces, and the Public Servant's Ethics.

Hong Kong's success in substantially reducing corruption has been hard earned by a close partnership between the community and the International Commission Against Corruption [ICAC]. The ICAC has the powers of investigation, arrest, and detention and of granting bail, which are fundamental to any law enforcement agency. It contributed to maintaining Hong Kong as a fair, just, stable and prosperous community. It also educated the public against the evils of corruption by the use of television and radio commercials, as well as by printing advertisements to publicize the work of the ICAC. Singapore demands that administrative officials strengthen self-control or self-inspection for the purposes of eradicating the causes of corruption. By providing high salaries, rewards and excellent working conditions for the public officials, Singapore makes them more devoted to their work and this helps prevent possible corruption. The anti-corruption efforts by the top leadership such as Prime Minister Goh Chok Tong and senior Minister Lee Kuan- play very important role. The western press could never criticize Mr Lee's integrity, although it mentioned his dictatorship. The Prevention of Corruption Act formulated in 1937 was revised in 1960 to have more binding powers. The main point was to grant a stronger power to the Director of the Corrupt Practices Investigation Bureau (CPIB). The director is appointed by the Prime Minister and can arrest corruption-related suspects with a warrant. In Malaysia, the Anti-corruption law was established in 1997, and what is notable is that the Director General is held responsible under this law and the ACA. Based on the information they collect, the ACA prosecutes anyone with any provable case of corruption or any offence under the corruption laws or generally prescribed laws.

In countries where there is monarchy, the monarch can hang a corrupt person; in Communist countries like China the corrupt are given death penalty but in democratic countries like India, the corrupt survive on lacunae.
Independent India inherited the best administrative machinery among all decolonized nations of the world, along with a highly ethical and dedicated public service. Mahatma Gandhi personally exemplified the high moral tone laid down in the Bhagwat Gita: *Whatever a leader does, common men generally follow. And whatever standards that person sets by his deeds the society pursues.*[11] The necessity of a strong moral leadership also guided the Congress Party on its accession to power. However, this situation did not survive even the first decade of independence, as public revelations of corrupt practices among highly placed government ministers began to rock the nation.

The outburst of Mahatma Gandhi against rampant corruption in the Congress ministries formed under the 1935 Act in six states in the year 1937, was—*I would go to the length of giving the whole Congress a decent burial, rather than put up with the corruption that is rampant.*[12]

The Santhanam Committee of Inquiry established/formeda constituted/ by the Jawaharlal Nehru in 1962 uncovered corruption throughout the political and administrative institutions of India. No level of government was immune; it even touched some junior levels of the judiciary, particularly at the district level. The Santhanam Committee lamented the slow but steady erosion of that high moral tone with which the Independence of India had been ushered in. It observed: *There is widespread impression that failure of integrity is not uncommon among ministers and that some ministers who have held office during the last sixteen years have enriched themselves illegitimately, obtained good jobs for their sons and relations through nepotism and have reaped other advantages inconsistent with any notion of purity in public life.*

At that time too the approach towards this growing evil was lenient. This is well reflected in Nehru’s comments on the memorandum of charges against Partap Singh Kairon (ex-Punjab Chief Minister) submitted to the President of India by the non-communist opposition in Punjab—*“The question thus arises as to whether the Chief Minister is compelled to resign because of adverse findings on some questions of fact by Supreme Court. The ministers are collectively responsible to the legislature. Therefore, the matter was one,

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which concerned the Assembly. As a rule therefore, the question of summoning a minister would not arise unless the legislature expressed its wish by a majority vote."\textsuperscript{13}

While Nehru's tolerance of corruption among his ministers legitimized this malady, his daughter Indira Gandhi institutionalized it by holding both the posts of the Prime Minister and the party president. By doing so she was herself controlling the party funds, which gave birth to the money power in politics. Corruption cases like Fairfax, HBJ Pipeline, and HDW Submarines deal came up. The famous Bofors deal is well known. Narasimha Rao was the first Prime Minister to be prosecuted in corruption charges. Cases like Rs.2500 crore Airbus A-320 deal with France involving kickback (1990), Harshad Mehta security scam (1992), Gold Star Steel and Alloys controversy (1992), JMM bribery case, Hawala scam of Rs.65 crore and Urea scam (1996) also came up during the period of Narsimha Rao Government.

Today, a basic conflict between the ethos and system has weakened the Indian polity. The feudal outlook of the ruling class polluted the people's mindset which judge the status of an individual on his capability to flout the law to favour them. This is the reason why corruption is no more viewed by people with abhorrence in Indian society. Leaders like Laloo Yadav, Jayalalitha, Sukhram and others, who faced corruption charges, continue to have wide range of people's support. Transparency, responsiveness, accountability, probity in public life and good governance are now only slogans. The legislature has failed to make the judiciary, executive and even media sensitive to the cause of common people. The failure of the political leadership to take a principled stand against corruption has clouded the system to the extent that it is now difficult to understand whether the system is alive or dead.

With the Tehelka exposure in 2001, one may refer to our ancient law book which said: "That monarch, whose subjects are carried from his kingdom by ruffians, while they call aloud for protection, and he barely looks on them with his ministers, is a dead and not a living king."\textsuperscript{14}  Tehelka is simply an addition

\textsuperscript{13} S.S. Gill, Pathology of Corruption; New Delhi, Harper Collins, 1998.
\textsuperscript{14} Manusmriti VII, 143.
to thousands of past and present eruptions in the cancerous body polity of the country.

Manu may not be relevant to the present century, but as human nature, more or less remains same and States either in monarchy or democracy are governed by the same human beings, he is still relevant. Licence to govern does not mean licence to be corrupt. Mahatma Gandhi believed in the need for creating a social climate against corruption, which meant creation of an atmosphere in which the corrupt could not thrive. The need of the hour therefore is to wipe off the tormenting system, which could be possible only after its thorough overhaul. For this our national leadership is expected to devise a political mechanism to create a social atmosphere by empowering of people. The ongoing war cry against corruption which is nothing but a mad fight to replace one corrupt system by another is not going to transform beleaguered nation to a sustainable social order.

Rampant corruption is our major national malady. We have the dubious distinction of being classified as among the most corrupt nations in the world. Corruption is a single big factor retarding the progress of our country and is mainly responsible for millions still groaning below the poverty line, even though astronomical amounts have been spent on 'development'. If sixty years after independence we have made no progress to effectively control corruption, it is because the laws meant to control it are not deterrent. India's Corruption Study 2005, commissioned by Transparency International India, has brought out the sad and alarming fact that the common citizens of the country are being forced to pay a sum of Rs.20,168 crore annually to avail themselves of one or more of eleven selected public services in a year. And to think that we tend to dismiss this as petty corruption!

The state of corruption reached in our country is so pathetic that in 2003 a former Prime Minister of this country when asked by a journalist of India Today why he couldn’t do anything to curb corruption remarked to - ‘Left to me, I would shoot most of the IAS officers. They have collectively corrupted
the system. Unfortunately, these babus have created such a steel frame around them that even the might of the State can't dismantle it.\textsuperscript{15}

How true. It was Mao Zedong who said power flows from the barrel of a gun. In the case of Indian bureaucracy, money flows from files. These IAS officers 'were trained' to act like file pushers and now all of them expect some invisible force to help them move these files.\textsuperscript{16} That year, India Today reports 7054 public servants named in complaints received by the Prime Minister's Office (PMO) anti-corruption unit. The figures, quoted by the report, which were embezzled from government accounts, or extorted by public officials as bribe, or were those calculated as disproportionate assets amounts were running into lakhs and crores of rupees.

India is a robust third world country with most of the formal elements of good governance; a pluralist democracy, a market economy, a developmental state, a functioning civil society, institutions of free association, and acknowledgement, at least in law, that transparency and information are the gateways to accountability. Yet corruption scandals galore. In the last decade corruption in India has 'gone ballistic'. Corruption has become an unfortunate fact of life in India. Rs 900 crore fodder scam, Rs 8.7 crore JMM Bribery scam of 1993, Rs.175 crore Taj Corridor Scandal, Rs 1,150 crore Barak deal of 2000; Rs.64 crore Bofors case; are just the tip of an iceberg. Our politicians are blatantly making money and storing them in safe havens here and abroad. First Information Reports (FIRs) are registered, CBI raids are conducted, assets worth crores of rupees are found in raids [assets worth Rs 1,467 crores (and counting is still on) is what the CBI unearthed in May 2006 as the estimated wealth of Om Prakash Chautala, Haryana's ex-Chief Minister, and his family, amassed between July 1999 and March 2005, when he was the Haryana Chief Minister. Our present Punjab Chief Minister, Prakash Singh Badal is facing charges for having amassed disproportionate assets worth Rs.75 crore. Ex-Chief Minister of Punjab, Captain Amarinder Singh's involvement in the Ludhiana City Center Scam is yet another scandal involving crores of rupees]. These are the few eye openers to the direction in

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\item \textsuperscript{15} India Today, July 7, 2003, p-31.
\item \textsuperscript{16} Ibid.
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which our so called public officials, politicians, leaders of the country are taking our country to. It is slowly moving away from democracy towards a system of ‘kleptocracy’ with politicians, for whom democracy is nothing more than a tool to capture power and the licence to loot, at the center of the orbit. Around them, in the orbit are the civil servants, the police and even judges each feathering their own nest. Put in plain words, ‘kleptocracy is Government of the thieves, by the thieves, for the thieves.’

In the nearest vicinity of this research, falls the State of Punjab. The Punjab Public Service Commission (PPSC) Scam had rocked the State in 2002 in which two Judges of the Punjab and Haryana High Court were hand in glove with the former Punjab Public Service Commission Chief, R S Sidhu, in the cash-for-job scam. Sidhu was also caught red-handed while taking a bribe of Rs.5 lakhs to promote excise Inspector to the Punjab Civil Services. State Vigilance Bureau unearthed ill-gotten wealth of Rs.28 crore from him in 2002. When one looks around the country one would observe that such episodes are only some of the many instances of ‘kleptocracy’ that has now become common place. Ravi Sidhu had effectively demonstrated in 2002 that corruption acquires its own momentum. He could open a direct pipeline to all sections of high society including the august and holy precincts of superior judiciary. He has shown that commandments of good conduct, good behaviour and morality get muted when self-interest is at stake.

The entire system of governance - political, civil, judicial and even military- is on sale to the highest bidder. Tickets for contesting MLA/MP election are openly sold by the party bosses, Rajya Sabha nominations are grabbed by those ‘who can pay the price’, almost every government job is on auction and appointments to higher judiciary are on *quid pro quo* arrangement. This continues unabated whether in cash or in kind. One pays to become a legislator, a civil servant, a policeman or a judge. This payment is an investment in “a low-risk high profit business” in the words of N Vittal, the ex-Chief Vigilance Commissioner. It is these corrupt and venal elements that

17. M.G. Devasahayam, *From democracy to a system of creeping kleptocracy*, The Tribune, January 6, 2002.
govern the nation today providing a 'Government of the thieves, by the thieves'.

Corrupt attitude at high altitude has become the bane of Indian polity. Money has become the first and the last reality. Fraud was never so tempting or remorseless, thanks to the proliferation of electronic money and fast faceless transactions. People use possessions to define their place in society. Corruption has become a connective tissue for various deals and relationships. People like Ravidnerpal Singh Sidhu bait the hook to suit the fish.

Cynical use of public office is being made for private gains. Never have so many taken so much and so blatantly. Corruption is the greatest solvent of public institutions; poverty poses a far smaller threat. Anarchasis, an ancient philosopher said: "Laws are like cobwebs, strong enough to detain the weak and too weak to hold the strong." Most countries have gone down because of internal corruption than because of external aggression.

A peep at the outcome of such raids, reports, news of high public officials engaged in corruption being caught is very disheartening. An article in India Today\textsuperscript{18} cites, that since 1990, the Central Vigilance Commission (CVC) had granted sanction for prosecution against 100 IAS officers. "Only one has been convicted by a Court of law." The Central Vigilance Commission (CVC) had suggested action against 2427 officers accused of corruption charges. But charge-sheets had been filed only against 460. The CBI had charge-sheeted 827 persons in the period January 2006 to March 2007.\textsuperscript{19} The Department of Personnel in the CVC is responsible for action but "despite reminders, officers continue to go unpunished and cases are sometimes even closed." Result: officials charged with serious corruption often continue in office and even land with plum postings.\textsuperscript{20} Of course, it is not just the IAS or all India cadre officers who escape punishment. Corrupt Class I officials and those lower in the ranks too have mastered the art of dodging the charge-sheet. Even if the charge-sheet is filed, babus who know the loopholes in the law manipulate the

\textsuperscript{18.} July 7, 2003, p-31.
\textsuperscript{19.} \textit{Infra} Ch-4.
\textsuperscript{20.} \textit{Id.} at p-35.
already overloaded criminal justice system to their advantage. In 2003, over 4500 cases under the Prevention of Corruption Act were pending in various courts of the country, of which 1,803 had been languishing for over 10 years and many for over two decades.  

Ever since the 1947 Prevention of Corruption Act, legislative framework against criminalization of corruption has been set up with the necessary punishment, but this legal net is a weak one. The long pendency of cases as a result of a stay on trials by the higher courts; dilatory tactics adopted by the defence counsels; large number of documents and witnesses to be examined; non-availability/appearance of witnesses; and a heavy work load in courts are the big loopholes present in the criminal judicial system.

The Transparency International has come out with a shocking revelation that the estimated amount paid in bribes to the lower judiciary in India during 2006 is around Rs.2,630 crore. The Transparency International Report 2007 says-

Corruption has two manifestations: one is the corruption of judicial officers and the other is corruption in the broader justice system. In India, the upper judiciary is relatively clean, though there are obviously exceptions. Procedings are in open Court and documents are available for nominal payment. There is an effective system of correction in the form of reviews and appeals. In the broader justice, institutions corruption is systemic. There is a high level of direction in the processing of paper work during a trial and multitude points when court clerks, prosecutors and police investigators can misuse their power without discovery. The estimated amount paid in bribes in a 12-month period is around Rs.2, 630 crore. The primary cause of corruption is delays in the disposal of cases, shortage of Judges and complex procedures.

Corruption in judiciary leads to cynicism about the justice system. As of February 2006, 33,635 cases were pending in the Supreme Court with 26 Judges and 3,3,41,040 cases in the High Courts with 670 judges. This case

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21. Chart B and Chart C annexed to infra Ch-6 show a sordid picture of the long time taken by the courts for disposal of corruption cases in the period January 2000 – December 2006.
backlog leads to long adjournments and prompts the people to pay to speed up the process. The ratio of judges is abysmally low at 12-13 per one million persons, compared to 107 in the United States. People seek shortcuts through bribery, favours, hospitality or gifts, leading to further unlawful behaviour.

One cannot ignore the political hues of corruption. No one’s doubt that the State Government’s prosecution will depend entirely on the party in power in the State. There have been instances when a person or persons indicted for corruption under one regime have been acquitted by another ostensibly on the principle that “my cause is holier than thine.” For example, in recent years nearly half a dozen congressmen who were indicted by the Lok Ayukta in Punjab were let off the hook for further action by the Vidhan Sabha, (where too the Congress enjoyed a majority). The congressmen’s plea was that the Lok Ayukta who had indicted them had not only been appointed by the Akali Dal- BJP regime but also was a relative of a former Chief Minister Prakash Singh Badal (this was during the reign of Captain Amarinder Singh’s Chief Ministership). The case has been lingering on in courts since then. But the present position is – the Akali regime is back in power under Prakash Singh Badal. He and his family have been accused of disproportionate assets cases of corruption. Charges have been framed. Only time will tell what course the law will take now. Scams, corruption scandals, and the manipulative uses of State institutions have become the staple diet of Indian politics. A glaring weakness lies in the system which retards the pace to the door of sentencing. The very investigative agencies are no more than the sacred cows which are completely under the political influence.

The Central Bureau of Investigation (CBI) which is accountable to Parliament has degenerated into a convenient tool for politicians to settle scores with their opponents. The moment a government changes hands the CBI is busy in making out charge-sheets against the players in the earlier regime. And when the first regime returns to power, the CBI is equally adept at covering its tracks and giving a clean chit to the very people it had earlier dubbed guilty. Not so long ago, the CBI had registered cases against Ms. Mayawati in the Taj Corridor case, Satish Sharma for petrol pump allotments, Shibu Soren for
taking bribe and Tehelka for violating the Official Secrets Act. Then in 2005 the CBI got busy providing disingenuous reasons why these very same cases should be wound up.

The CBI officers have mastered the art of appearing to be busy in political investigation while actually they are dragging their feet. The best example of this is the Bofors case in which investigations have waxed and waned for 17 years. During the hearing in the Hawala case the Supreme Court duly aware of the CBI's lack of independence and the dangers of political policemen ruled that the Central Vigilance Commissioner should be involved in the selection process of the Director of CBI. But the government neatly circumvented the Court's order. During the National Democratic Alliance (NDA) regime, the Prime Minister Office (PMO) simply sat over the Central Vigilance Commissioner's panel of three names for over a year and appointed an acting director in the meanwhile. The CVC finally got the message and included the acting CBI Director in the new panel of candidates, and he was promptly appointed. This gentleman, on reaching superannuation, was given a post-retirement sinecure. The retiring Intelligence Bureau (IB) Director and the Research Analysis Wing (RAW) Chief were similarly awarded. When the heads of intelligence and investigative agencies are susceptible to such carrots, there is little chance of objectivity in the functioning of the organizations under their command.

Corruption cases involving high profile persons, politicians get a legal burial for lack of appeal against the unpersuasive and convoluted rulings [example, the Delhi High Court ruling of 2003 and 2004 in the Bofors case in which it held that there was no evidence of bribery in connection with the Rs.1,437 crore Howitzer purchase]. One cannot overlook the fact that the nation loses more money spent invariably on investigations than the sum involved in such pay off scams as in Bofors case. The amount of money spent in sending the CBI teams to various countries (earlier to Sweden, then again in February 2007 to Argentina), the money going waste in stalling proceedings in Parliament, lends encouragement to the corrupt offenders who in fact get all the attention and publicity free of cost. The nation would not have known the personalities like Jayalalitha, P.V. Narasimha Rao, the Hinduja Borthers,
Telgi, Harshad Mehta, Ms. Mayawati, Prakash Singh Badal. Om Prakash Chautala, Laxman Bangaru, Neera yadav, Lalu Prasad Yadav and the recent personality, the Italian foreign businessman involved in the famous Bofors case, Mr. Ottavio Quottrrochhi, but for the shocking, fascinating convolutions the cases in which they have been involved have taken. L'affarie Bofors continue to remind us that the cover up of corruption is as bad as the original act itself.23

Lacunae galore. The constitution and the working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons are involved. For this reason, a close communication of the constitution of these agencies, the control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive is imperative. Corruption is a particularly difficult crime to investigate because of its hidden nature and the fact that there is rarely an individual victim that could come forward, claiming a loss or harm, and thereby trigger an investigation. The successful prosecution of this type of crime is therefore strongly dependent on the receipt of verifiable information from those that might come across corruption, i.e., from within public administration and from the public at large. Reporting obligations, provisions protecting those reporting acts of corruption, and even the establishment of vigilance institutions have not proved to be sufficiently efficiently in strengthening India’s fight against bribery and corruption. Despite these provisions corruption in the public services is still widespread and the detection rate is low because of the difficulties in obtaining verifiable information by relevant agencies. Even a well-designed legal and institutional framework does not ultimately guarantee success in the fight against corruption Apathy and anxiety at the prospect of being subjected to harassment by colleagues and superior may discourage the reporting of illicit practices. In addition, a lack of confidence that law enforcement agencies will take up the complaint and investigate the reported matter further discourages citizens from taking the risk of exposing themselves by blowing the whistle. Thus, trust that reporters will be protected

and anti-corruption education are fundamental preconditions of success in the fight against corruption, as well as proof of the capacity and will of relevant law enforcement agencies and political leaders not to let corruption go unpunished.

What can written laws do when the whole system of governance collapses? What can be expected from the ultimate sentencing when the law enforcement machinery itself has excessive links with corruption? A shocking and dramatic example of this is the Nithari killings of January 2007: the discovery of human skeletons of children in Nithari village, Noida, Uttar Pradesh. The problems in the criminal justice system have come to the fore in the aftermath of the Nithari Killings. The story, in fact, is too familiar in the Indian context when numerous reports from Commissions have recognized the problem of corruption within the police, the abuse of power by law enforcement officials, lack of proper checks and balances when it comes to policing, the need for insulation of the police from the political machinery, and the accountability of the law enforcement machinery. The Vohra Committee Report of 1993, the Report of the Report of the National Commission to Review the Working of the Constitution (NCRWC) of 2002 and the Malimath Committee Report of 2003 have dealt with certain important aspects of these problems. Courts and the Human Rights Commissions have also emphasized the need for accountability among the law enforcers.

But then desires remain desires. It is the first time that the implications of corruption have been linked with protection of human rights. The Nithari killings exposed the relationship of corruption to law enforcement. It is well recognized that corruption is endemic in almost all institutions of governance in India. But with this gruesome crime relating to the killing of the children the aspect of corruption in the police department has been exposed. The incident(s) has given rise to solid suspicions on their workability, about the possibility of the police officials and other law enforcement authorities being bribed to be indifferent to the complaints in regard to the killings, their susceptibility to corruption and their collusion with the perpetrators of the gruesome acts.
Bribery in the Legislature is actually older than the Lok Sabha and the Rajya Sabha themselves. An infuriated Nehru had once warned: “If once the reputation of our legislatures goes down then democracy itself will be in peril......any misbehaviour should lead to enquiry and action.” Nehru's nightmares came true on July 28, 1993, probably the single worst day in the history of the Lok Sabha. The Narasimha Rao ministry beat the odds to survive a no-confidence motion. Rumors began of “suitcases” playing a role, not least with Members of Parliament from the Jharkahand Mukti Morcha. Three years later, the Central Bureau of Investigation filed the first FIR against four Members of Parliament with other names being added to the list as more facts came up. The case eventually ended up with the Supreme Court. The ruling of the Supreme Court in 1998 JMM MPs' bribery case came in handy for our corrupt Members of Parliament including the then Prime Minister, P.V. Narasimha Rao.

Not only that time, but even seven years later, when in December 2005, 1 Members of Parliament were exposed to the public by one Operation Duryodhana, in the 'cash for query' scam, and later Operation Chakravyuh exposing Members of Parliament misusing the Local Area Development Scheme (MPLADS), the earlier 1998 Supreme Court ruling came again to their rescue. Although the Supreme Court in January 2006 passed the verdict of their expulsion from the Parliament, but sadly, the Members of Parliament in the cash for query scam have got off relatively lightly, being expelled from Parliament - with a right to contest again - rather than being prosecuted under the penal law and punished.

Is that all what they deserved? Are the Members of Parliament above the law? They have been declared to be public servants for purposes of the Prevention of Corruption Act. They have committed an offence under the Act.

24. Jawaharlal Nehru had in September 1951 moved for the MP, H.G. Mudgal's expulsion on the complaint received that he had taken money from the Bombay Bullion Merchants Association. But before he could be voted and expelled, Mudgal submitted his resignation. Nehru fumed and considered the resignation as contempt of the House which "only aggravates his offence".

25. According to the current legal position as laid down by the Supreme Court in the JMM MPs' bribery case, the courts cannot enquire into any act in respect of anything said or done in Parliament, and hence Members of Parliament cannot be prosecuted even if they were paid money for voting in a particular way.
In Singapore, any person who is convicted of a corruption offence can be fined up to $100,000 or sentenced to imprisonment of up to five years or both. If the offence relates to a government contract or involves a Member of Parliament or a member of a public body, the term of imprisonment can be increased to seven years. How long will the laws and rules be allowed to be exploited by those in high places to their advantage? Obviously, Operation Duryodhan and Cobrapost .com have exposed only the tip of the iceberg. Such elements deserve no mercy or leniency and deserve condign punishment. More severe punishment than mere expulsion from the Parliament is warranted to emphasize the courts’ as well as society’s disapproval and abhorrence of their actions which not only has the affect of bringing the public service into disrepute, but also gravely injures the impartial workings of our criminal justice system.

At this place it would be appropriate to question that why death penalty should be given to the terrorists (who tried to storm the Parliament on 17th December 2001) when there is attack inside the Parliament, amongst the parliamentarians and an attack which destroys the very fibre which sustains democracy.

But we don’t learn any lessons as the sentencing in such nauseous corruption cases is very mild. The country was shocked to witness the cash-on-camera shame and the respect for the elected representatives took a nosedive. It was thought that others of the ilk would be shocked enough to desist from similar shady activities, but even then the similar scandals are hitting the headlines with unfailing regularity. All this just goes to show how brazen these leaders have become and no stern punishment has been able to keep them away from indulging in corruption. The minimum treatment meted out to them for nauseating the whole country should have been not only expulsion from the Parliament but also being barred from holding any public office in future. Besides that, criminal proceedings should have been launched against them for polishing off public money in such a blatant manner.

Everyone including the media complains about the rise in crime and corruption. Everyday morning newspapers are full of sordid and awful stories many of which can be traced back to the declining standards of our politics.
Murders, rapes, bribery, cheating, scams galore. Most of them are a direct fall out of the terrible way we conduct our public life. Without principles. Without scruples. Without Shame.

Why is that despite such a vigilant press and an unyielding judiciary, we are unable to stop the rising graphs of corruption. One of the answers lies in the increasing short memory of people, encouraged to be even shorter by a media that flits from one subject to another, one horrible crime to another, every morning. No one wants to see a case through. It does not sustain readership to persist with a single story beyond a week. Last week’s hottest scam yields way to this week’s quadruple murder. This week’s quadruple murder, bloody as it may be will yield way to next week’s sensational sex scandal. It is a roller-coaster ride and no one has the time to mourn over the story that died because of lack of adequate follow up.

It is precisely in this kind of environment that corruption flourishes even more. Simply because everyone knows that even if the corrupt is caught, it would mean suffering the embarrassment only for a few days. Time is just not a big healer. It is also the biggest whitewasher. The biggest headlines dock themselves into small, easily forgettable niches in public memory.

How many people remember that Buta Singh was accused of bringing tribal Members of Parliament, P V Narasimha Rao of taking a suitcase containing Rs.1 crore from Harshad Mehta, Arjun Singh of making money from the Churhat Lottery scam, the Jain Diaries exposing the politico-terrorist network, the magnanimous Jayalalitha convicted for corruption, the Bofors kickbacks scam involving our late Prime Minister Rajiv Gandhi, Ms Mayawati involvement in Rs 175 crore Taj Corridor deal, Ravinder Pal Sidhu, Chairman, Punjab Public Service Commission in the Punjab Civil Services (Judicial) recruitments scam, the 900 crore Bihar Fodder scam, the Natwar Singh’s food for oil scam, the 11 Members of Parliament cash-for-query scam and so on and so forth. These incidents may be at the back of our minds, but who talks about them than merely making a cursory mention?

In fact, statements sanctifying corruption, like “corruption is not a public issue, “corruption is preferable to communalism”, corruption is a “personal
The old headlines lapse yielding place to new. February 2007 was the month when even a layman not acquainted with law or legal matters must have learnt about the Italian businessman Quattrochhi. But as human memory is not updated or refreshed old news simply vanish into the wood work. We forget the simple logic that drove the Nazi hunters for decades - that a nation which forgets its criminals always ends up seeing the crimes again. History has the habit of repeating itself!

It would be appropriate to mention here that Laloo Prasad, our present Union Railway Minister has become a by-word for the corrupt politicians in this country. On December 18, 2006, the Special Court CBI, acquitted him and his wife in a disproportionate case for which the two were chargesheeted. The case hints at the way the justice system works against politicians in this country. But if he is the mascot of a breed that finds politics as the first bastion of the corrupt, his acquittal in this case and the way we find it all very blasé, tells us something about our opinion on graft and grubby hands. This fact is highlighted from yet another happening on the same day as the Laloo Yadav verdict. Vikas Yadav of Nitish Katara murder case and Amardeep Singh Gill, guilty of destroying the evidence, brought to light that unlike in cases involving politicians accused of corruption, public outrage saw to it that the trial Court verdict in February, that had acquitted Manu Sharma for murder of Jessica Lal, was challenged in the higher court. The trial judge had in the verdict given in Lalu Yadav case cited "lack of evidence" as the reason. Two mixed signals which emanate from this are, one, that high level politicians may still be off limits in punishment; and two, corruption like murder, remains a lesser sin in this country.

The evil of corruption has become surreptiously an all-devouring monster rivaling the ancient Greek version of the nightmarish "Hydra" who possessed nine heads with the added attribute that if one of the heads was chopped off it would instantly be replaced by a second one. To tackle any evil, punishment is required. The guilty mind is to be punished and punished severely, sternly, in order to teach a lesson to the culprit. The treatment to this ever growing evil
is not meted out as required. Conspicuous absence of social sanction, lack of fear of punishment, lenient and delayed sentencing by the judiciary, all promote corruption. To top it all, is the public complacency, the ‘chalta hai’ culture of the people which promotes corruption at all costs. The public opinion which could be a strong measure to combat corruption generates no deterrence to the corrupt offender, potential offenders.

Through its pioneering surveys in recent years, the Transparency International (TI) has tried to gauge the extent of corruption in different countries, identify Government departments where corruption appears to be most rampant and establish some reasons why it seems to grow. Two major factors diagnosed by the Transparency International that contributes to the growth of corruption are the low probability of discovering, and perceived immunity against prosecution. Secrecy in government, restrictions on access to information by citizens and the media, ill defined/ complex and excessive rules, procedures and regulations can all lead to a low chance of discovery. A lack of transparency in the functioning of the government agencies can make it easy for the perpetrators to cover their tracks and unearthing corruption becomes very difficult. The weak character of institutions which are supposed to investigate charges of corruption and prosecute the guilty as well as an inefficient or corrupt judiciary further exacerbate the problem of corruption and facilitate immunity against prosecution.

Corruption by public servants has acquired a “monstrous dimension” and its tentacles have started gripping even the institutions created for the protection of the republic. Unless those tentacles are intercepted through strong legislative, executive as well as judicial exercises, the corrupt public servants could even paralyze the functioning of such institutions and thereby hinder democratic polity. Although corruption has become deeply entrenched, yet it is not impossible to get out of the corruption trap. A strong political will and commitment to a clear anti-corruption agenda is required. Efforts have to be made in different directions to reduce corruption. Certain changes are required in the legal framework such as suitable modification of Indian Official

http://www.ti-bangladesh.org/ti-india/news
Secrets Act in order to develop greater transparency in public dealing. The promulgation of Corrupt Public Servants (Forfeiture of Property Act), 1999, will ensure real punishment of corrupt public servants by way of confiscation of property. Similarly, the appointment of independent Ombudsman by major public utilities for redress of grievances and development of codes of conduct on the basis of the Internal Zonal Code of Conduct for Public Officials can be considered. In our fight against corruption, good practices need to be adopted and encouraged. Strengthening of accounting standards and practices, establishing accountability in administration and fostering responsibility at lower levels through decentralization and elimination of unnecessary controls and developing transparency in the adoption of discretionary practices, tendering and procurement are such certain measures. Finally, and most importantly, healthy social values encouraging honesty in word and deed need to be inculcated through an active involvement of the family, the school and the community.

Our fight against corruption is an ongoing one. It has been estimated that "if the corruption level in India comes down by 15%, the Gross Domestic Product (GDP) growth will improve by 1.3% and investment will go up by 2.9% of the GDP.

Half-hearted efforts cannot achieve desired results. A glaring example of this is the Lok Pal Bill introduced in the Parliament in 1968 for bringing in an anti-corruption law whose ambit would have extended to the highest levels of every institution of the country. Till date it has not become the law.

The anti-corruption law is not very stringent. The punishment provided is very less, it does not have its deterrent effect. The law is dealing with such a serious offence which must be curbed with strong hands. The law dealing with the prevention of corruption is not a draconian law like the Anti-Terrorism law. Is corruption not a financial terrorism? Is it not a rape of democracy, a murder of peoples' faith? It is not slow poisoning and worse than a drug? Then why is it that a severe punishment is prescribed under the Narcotic Drugs and Psychotropic Substances (NDPS), the Anti-Terrorism Act, for offences like rape, murder, dacoity, and not for the corruption offence?
Corruption has plagued the whole world. What is it that despite recognizing this grave danger to polity, economy, society, even the United Nations Convention Against Corruption has not been able to contain this malady? This present research is an attempt to find out the reasons.

But is everything lost? Is there no saviour to this situation? Is there no one to control this disease from spreading? A faint glimmer of hope is still flickering. That spark can be witnessed in our apex judiciary, the Supreme Court, which has taken the crown of overactivism these days. In the recent years it has shown its attitude of dealing seriously yet not sternly with corruption cases by upturning the follies of the lower Courts. It has held the flag of justice high.

In recent times, those holding high offices have taken shelter behind subterfuges such as sanction from competent authorities. The Supreme Court has removed the impediment. By dismissing the petitions of Laloo Prasad, Rabri Devi, Prakash Singh Badal and others the Supreme Court has upheld the rule of law. At a time when corruption has reached an all time high, it has done well not to grant unfettered freedom nay licence to politicians to act without the fear of the law and indulge in corruption. The political class has been blatantly using this protective shield and claiming immunity from the law. The protective shield is still there but the way the Supreme Court has interpreted it, the misuse of the sanction provision under Section 19 of the PCA, 1988 is not possible anymore.27

By this landmark judgment, the Supreme Court has checkmated the efforts of certain political leaders to thwart cases pending against them.

To join hands with this is the recently activated investigative journalism, the media, which is opening the graves and making the ghosts rise again. Media is playing a great role in exposing corruption through its sting operations. Even the judiciary has started taking cognizance of such sting operations. It is playing a positive role through various programmes, seminars, conferences to instill in the public a spirit to look into themselves and shun that “chalta hai” culture. Let the public join hands with the media like it did in the Mattoo's

27. Details of this judgment in the Ch-VII “Corruption and Judicial Response”.
murder case and got the culprit sentenced. The public outrage should not die down, pressures from above or corruption from within, should not thwart any attempt to pronounce a verdict against acquittals of these corrupt people. No lack of evidence and no laxity by any law enforcement machinery must let the corrupt to escape,

Everything is yet not lost. But at the same time we have to be alert against the growing incidence of corruption and not forget the lines of Dr P C Alexander that: A civilization begins to decline when society becomes corrupt; a civilization falls, when society becomes impervious to corruption.

The news report of 27th January 2007 in the Hindu says: India will beat United States of America (USA) by 2050 as a superpower. If corruption evil is tackled, I am sure this 2050 will be achieved by 2015, in less than ten years.

**PLAN OF EVALUATION**

The main focus of this study is centered on the fundamental points relating to corruption. These are:

1. Adequacy or inadequacy of the statutory punishments provided under the laws to deal with this evil of corruption.
2. Adequacy or inadequacy of the sentences ultimately imposed by the courts in cases involving corruption. This includes cases where the accused has been acquitted also.
3. Passing reference in the study has also been made to deal with scams which have reached alarming proportions, so much so that India has come to be known as the ‘nation of scams’.

It will be my humble endeavour to chalk out first, the problem which ails our society, viz., corruption; second, to enumerate the development of legal concern to combat this problem through legislation; third the role of the three pillars of democracy to mitigate or vitiate the cancer of corruption; fourth, the role of judiciary in curbing or propagating corruption and tracing the sentencing patterns; fifth the present day scenario with the increased

awareness of the media, the commissions, sting operations etc. and the pressure on the apex court to set the rotting house in order and finally, the conclusions drawn thereon. With this purpose the whole study has been dealt with under eight chapters running into 706 pages.