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PROSECUTING GRAND CORRUPTION AS A CRIME AGAINST HUMANITY

VISHAL SHARMA*

Abstract

Corruption by people in government and administrative positions is a universal phenomenon. Generally, every kind of corruption has an adverse effect on quality of governance, but sometimes quantum of corruption is very high and it has a directly disastrous impact on the lives of people. Due to such fatal and terrible nature, these incidents of grand corruption shake the consciousness of entire world. These crimes are not only against the citizens of any one country rather these are against the entire humankind. International legal instruments to curb corruption are mainly related to corrupt practices of corporates and public officials that result in an uneven playing field in international business. Grand corruption as affecting lives of people physically and mentally is missing from the international law. There are scant examples when universal jurisdiction was applied to investigate and prosecute the crime of grand corruption. There are treaties at regional level to curb corruption but these are not supplemented with regional courts having jurisdiction over the crime of grand corruption. This paper has made an attempt to scrutinise incidents of grand corruption as an international crime, and more specifically possibilities of prosecuting the perpetrators of this crime in international criminal court under the head of crimes against humanity.

KEYWORDS: *Corruption, Grand Corruption, State Capture, OECD convention on corruption, United Nations Convention Against Corruption, Malabo Protocol, Universal Jurisdiction, Rome Statute of International Criminal Court, Crime Against Humanity.*

I. INTRODUCTION

Corruption is present in every country of the world, with varying degrees. However, grand corruption, which is a severe form of corruption, is not merely an administrative problem or a routine crime; it is an international crime. This paper has argued that grand corruption has all the attributes of an international crime and it should be dealt as a part of crimes against humanity. The paper is

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divided in three main sections other than the introduction and conclusion. The first section is focused at understanding the difference between corruption and grand corruption. This section deals with the definitional aspects of grand corruption. It also deliberates on direct and indirect impact of grand corruption. The section has shown both fatal and depriving effects of grand corruption. Second section of this paper has elaborated on the response of International law to corruption and grand corruption. It has given a general overview of the development of international anti-corruption norms. This part has shown the good impact of international anti-corruption laws on normal corruption, and has established that still the problem of grand corruption is not sufficiently addressed. This section has discussed how grand corruption has all the attributes of an international crime. Common methods used by the international community to deal with international crimes can also be used to address the crime of grand corruption. This part of the paper has discussed examples where the international community has tried to confront grand corruption, with the use of universal jurisdiction and through efforts to extend the jurisdiction of regional courts to the crime of high-level corruption. The section has established, to investigate and prosecute the crime of grand corruption efforts, 'till date are insufficient hence firm initiatives are required to declare grand corruption as an international crime. Third and last section of this paper is focused at assessing whether grand corruption should be considered as a full-fledged standalone international crime or it should be considered as a part of crimes against humanity. To establish the scope of adding grand corruption as a part of crimes against humanity this part has discussed in detail the development of the concept of crimes against humanity and has shown how it has changed in past seven decades. The paper has tried to establish that the continuously evolving nature of definition of crimes against humanity has an ample scope and justification to add grand corruption as a part of crime against humanity. Here the possibilities of bringing grand corruption under the jurisdiction of international criminal court have been discussed as the crime of grand corruption has all the attributes of crimes against humanity as defined in the Rome Statute. This paper emphasises need to generate an understanding regarding the difference between crimes of common

corruption and grand corruption and has tried to bring out a case for declaring and dealing grand corruption as an international crime.

II. UNDERSTANDING CORRUPTION AND GRAND CORRUPTION

United Nations General Secretary, Antonio Guterres, in his remarks to U.N. Security Council accepted that corruption in government and administrative bodies is common all over the world.¹ There is only a quantitative difference in the level of corruptions in different parts of the world. At world level New Zealand was the least corrupt state, according to the world corruption index, 2017. However, in the 2018 report of transparency international, New Zealand has slipped to the second position and Denmark has taken first position.² It shows that no state is corruption

1 AntónioGuterres, Remarks to the Security Council on Corruption in Conflict, 10 September 2018. Available at: <<https://www.un.org/sg/en/content/sg/speeches/2018-09-10/corruption-conflict-remarks-security-council>>. I thank the United States Presidency of the Security Council for organizing this briefing, which recognizes the importance of tackling corruption as part of our efforts to maintain international peace and security. Corruption is present in all countries, rich and poor, North and South, developed and developing. Numbers show the startling scope of the challenge. The World Economic Forum estimates that the cost of corruption is at least \$2.6 trillion – or 5 per cent of global gross domestic product. And according to the World Bank, businesses and individuals pay more than \$1 trillion in bribes each year. Corruption robs schools, hospitals and others of vitally needed funds. It rots institutions, as public officials enrich themselves or turn a blind eye to criminality. It deprives people of their rights, drives away foreign investment and despoils the environment. Corruption breeds disillusion with government and governance – and is often at the root of political dysfunction and social disunity. The poor and vulnerable suffer disproportionately. And impunity compounds the problem.

2 Available at: <<https://www.transparency.org/cpi2018>>.

3 Business Anti-Corruption Portal, New Zealand Corruption Report, February, 2016. <<https://www.business-anti-corruption.com/country-profiles/new-zealand/>> accessed on 15 November 2018. Public Procurement-There is a low risk of corruption in New Zealand's public procurement sector, but some fraud risks exist. The diversion of public funds is uncommon, and businesses report that officials do not show favouritism to well-connected firms and individuals when deciding upon policies and contracts (GCR 2015-2016). Companies report no irregular payments in connection with the awarding of public contracts (GCR 2015-2016), but a few companies report other forms of corruption: Out of the 33 percent of companies that have experienced economic crime in the past two years, 19 percent out of the New Zealand companies report to have experienced procurement fraud (PwC 2014).

free.³ Even Denmark has examples of corruption. To analyse this pandemic problem, it is important to analyse the nature, scope and meaning of corruption.

The United Nations Convention against Corruption, 2004 has called the entire international community to eradicate the menace of corruption, but without actually defining what corruption is. Similarly, in Indian law Prevention of Corruption Act, 1988 has also not defined the term corruption as such. However, the Prevention of Corruption (Amendment) Act, 2018 has amended section 2 of the 1988 Act and has defined corruption as "*undue advantage as any gratification whatever, other than legal remuneration.*" However, Corruption in common parlance is *inter alia* a deviant moral behaviour of public servants or politicians. Where people in power, in the lieu of illegal personal gains in any form, provide undue benefits to some people at the cost of the nation.⁴ Chanakya, the legendary, statesman, politician and the ancient teacher in 3rd century B.C. has very beautifully described the eternal problem of corruption among the government servants:

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

4 Rollin M. Perkins & Ronald N. Boyce, *Criminal Law and Procedure* 3d edn. (Foundation Press / Thomson West, 1982), p. 885.

Corruption. 1. Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; esp., the impairment of a public official's duties by bribery. "The word 'corruption' indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety². The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.

5 R. Shamasastri (tr) *Kautilya's Arthashastra* (Chaukhamba, 2014). <https://csboa.com/eBooks/Arthashastra_of_Chanakya_-_English.pdf> accessed on 15 November 2018.

in the government work cannot be found out (while) taking money (for themselves).⁵

Chanakya has put this problem in the context of the situation where government necessarily needs the officials to wield its power. When state officials are collecting and handling the king's revenue, then it is must that there will be a little bit of corruption. However, if the officials eat up an entire 'honey' then such unusual level of corruption should be dealt with differently. This kind of extreme corruption of the state officials is called as 'grand corruption'. Transparency international has coined this new term 'grand corruption' to describe the situations of extraordinary corruption.⁶ Transparency International has defined grand corruption as under:

*Grand Corruption occurs when a public official or other person deprives a particular social group or substantial part of the population of a State of a fundamental right; or **causes the State or any of its people a loss greater than 100 times the annual minimum subsistence income of its people**; as a result of bribery, embezzlement or other corruption offence.*

*Explanatory Notes: Transparency International has developed this legal definition of grand corruption to encourage advocates, scholars, lawmakers, and others to seek ways to enhance accountability of high-level public officials and others whose corruption harms their citizens egregiously and too often with impunity. **The definition gives legal relevance to the harms and voice to the victims. Grand corruption is a human rights crime and deserves adjudication and punishment accordingly.** The terms defined below may have existing definitions in legislation or elsewhere. The definitions here are only illustrative.*

6 Transparency International, The Global Coalition against Corruption, *Definition of Grand Corruption* (19 August 2016) <https://www.transparency.org/news/feature/what_is_grand_corruption_and_how_can_we_stop_it> accessed on 10 November 2018.

*“Annual minimum subsistence income” shall be defined as 60% of the most recently officially- published median household income or an equivalent measure of a State’s official designation of the income level entitling the receipt of social benefits based on economic need.*⁷

This definition shows when survival of the common people is at the stake due to corruption; such corruption is called ‘Grand Corruption’. Another aspect of ‘grand corruption’ is ‘state capture’. State capture is a situation where few corrupt business interests influence the government policies to their own benefit, even at the cost of hardships to the common citizens of the state. ‘State Capture’ as a term was first time used by the World Bank in its report referring

7 *Ibid.*

“Bribery” shall be interpreted to involve influencing the performance or non-performance of any act entrusted to a public official by virtue of his or her official position and “embezzlement” shall be interpreted to involve the abuse of such official position of a public official.

“Fundamental right” shall include, but not be limited to, those rights set forth in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; or other international and regional human rights conventions applicable under the domestic laws of the relevant State and “depriving” shall be defined as consistent with such conventions and their official interpretations.

“Loss” shall be interpreted to encompass anything of value and include, but not be limited to: money; securities; property, including real property, both tangible and intangible, and private and state owned, and interests in the same; contractual rights or any interest in future contractual rights; benefits with a calculable economic value; or a promise to perform services, specified or unspecified, in the future on behalf of the original instigator of the act or another party.

“Person” shall include natural or legal persons.

“Particular social group” shall be interpreted in accordance with the interpretation of this term in Article 1(A)(2) of the United Nations Convention related to the Status of Refugees.

“Public official” shall be understood as defined by Article 2 a) of the United Nations Convention against Corruption.

8 J. Hellman, G. Jones, and D. Kaufmann, *Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition*, World Bank Policy Research Paper 2444, September 2000; Daniel Kaufman, “Rethinking Governance Empirical Lessons Challenge Orthodoxy”, World Bank Institute, Discussion Draft, March, 2003; Joel Hellman and Daniel Kaufmann, “The Inequality of Influence”, available at: <http://www.worldbank.org/wbi/governance/pdf/inequality_influence.pdf>.

to high-level corruption prevalent in central Asian states that were in the transition phase after the collapse of the Soviet Union.⁸ Especially, Siberia since last decade is seriously gripped with 'state capture' level corruption. Siberian parliamentarian Vesna Pesic has defined the term 'state capture' as, "Any group or social strata, external to the state, that exercises decisive influence over state institutions and policies in its own interests against the public good."⁹ It is important to understand that grand corruption and state capture can really kill the innocent people of a state. Malawian famine in Africa is an example of grand corruption, which ended up taking the lives of many poor people in the state.

A. Direct Impact of Grand Corruption on the Lives of the People

In 2002, Malawi witnessed a serious famine. Nevertheless, due to grand corruption by the state officials the impact of this famine was multiplied many folds. Professor Olivier Rubin, from University of Copenhagen, has explained the situation in Malawi as thus:¹⁰

Government corruption seems to have played a very direct role in perpetuating the Malawian food crisis into a famine. Politically connected persons allegedly sold some 168,000 tons of corn from the Strategic Grain Reserve for huge profits during the food crisis (Boston Globe). According to Devereux (2002:11), the Catholic Commission for Justice and Peace released a list of names that contained a number of prominent people who benefitted from purchasing maize cheaply from the reserve and selling it after the price hike. Although many prominent persons have subsequently been prosecuted, their actions withdrew food from the market, drove prices up further and created an artificial shortfall in the short term.¹¹

Due to such incidents of corruption, the international community also withdrew its support, as they wanted to feed starving mouths

9 VesnaPesic, *State Capture and Widespread Corruption in Serbia*, CEPS Working Document No. 262/March 2007. available at: <<http://aei.pitt.edu/11664/1/1478.pdf>>.

10 Olivier Rubin, "Malawi 2002 Famine – Destitution, Democracy and Donors", *Nordic Journal of African Studies*, vol. 17(1) (2008), pp 47–65 available at: <<http://www.njas.helsinki.fi/pdf-files/vol17num1/rubin.pdf>> accessed on 3 November 2018.

11 *Ibid.*

but not the corrupt pockets. This knee jerk reaction of the international community also contributed to aggravate the situation.¹² Even International Monetary Fund (IMF) withheld the balance of payment support. IMF pushed introduction of privatisation of economy was another factor. When reports of largescale starvation deaths started coming from Malawi, only then IMF decided to release funds.¹³ It is very clear that international support was stopped due to the reports of grand corruption. Hence,

12 Roshni Menon , “Famine in Malawi: Causes and Consequences”, Human Development Report 2007/2008, Fighting climate change: Human solidarity in a divided world , Human Development Report Office, Occasional Paper, available at: <<https://core.ac.uk/download/pdf/6248878.pdf>> accessed on 15 November 2018. Donor-government relations were also terse at this time, as a result of donor claims of economic mismanagement and governance failures. It is further alleged that the donors delayed responding to the impending crisis, as relations with the Government of Malawi had soured during 2001 due to contention over a number of governance issues—one of which was how the SGR had been emptied. In fact, the IMF withheld balance of payment support, DFID, the EU and USAID suspended development assistance, and Denmark terminated its development projects and withdrew from Malawi entirely. Much of these suspensions were based on the belief that corruption and fraud were rampant in government, though these could not have occurred at a worse time for Malawi. In fact, it was only after reports of starvation-related deaths had been published by the media that the donors reversed their hard-line stance and offered food aid without condition.

13 Global Policy Forum, “IMF Blamed for Malawi Famine”, World Development Movement, October, 2002. Director of the WDM, Barry Coates today condemned the IMF and World Bank for applying a one-size-fits-all, ultra free-market approach: “This is Jurassic economics, the policies of the Reagan and Thatcher era. They should be kept in a museum, rather than trampling all over desperately poor African countries.” Pointing out that Gordon Brown is the chair of the IMF and Clare Short sits on the governing body of the World Bank. Mr Coates continued: “The UK bears particular responsibility because of our influence over these institutions.”

Also available at; Arnaud Zacharie, “Famine in Malawi Exposes IMF Negligence” Committee for the Abolition of Illegitimate Debt, 2002. The context for the crisis in Malawi is the IMF’s (and the World Bank’s) continuing quest to privatize every portion of the economy that can conceivably be wrested from the government. This mission is by no means limited to Malawi; it is fast becoming the new modus operandi for the institutions everywhere they operate. More and more, observers are coming to fear that near-wholesale privatization of developing country governments is the agenda for the IMF and World Bank after 20 years of devastating their capacity through structural adjustment programs.

even this attitude of the international community in general and the IMF in particular does not reduce the accountability of the government of Malawi and their officials. A simple food shortage was turned into life taking famine due to the corrupt officials. Around 1000 poor people, mostly elderly and children died in this famine. This is such a level of corruption, which is not a localised crime, it is a crime against humanity.

B. Indirect Impact of Grand Corruption on the Lives of the People

Grand corruption can be directly fatal in the short term, but in the long term, it can strangle economic growth of a country. It can erode the faith of people in the governing systems. Not only the rights of citizens are violated by this level of corruption, but also the rights of foreign investor are affected. There are examples when foreign investor had to pay huge bribes to the heads of government in some developing and under-developed states. Telecom giant Millicom had to face corruption in the African state of Senegal.¹⁴ The company was asked to pay \$200 million as bribe, by none other than the son of Senegalese President Abdoulaye Wade.

Similarly, in the *World Duty Free Company Ltd. v. Republic of Kenya (WDF) case*¹⁵ the company, was forced to pay bribes in Kenya to get a business agreement in their favour. But later on WDF had to lose this agreement. Even international arbitration could not provide any remedy to WDF, as it was an agreement, secured by using corruption, which cannot be protected as a right.¹⁶ It is clear that such incidents can deplete the faith of foreign investors, which is bound to reflect as a slowed down economic growth of a state. Such situations have a negative impact on the inflow of foreign direct investment in a state, consequently on the economic growth as well.

14 Lawrence Delevingne, “The Joy Of Doing Business In Africa: How Senegalese Politicians Tried To Shake Down Millicom For \$200 Million”, *Business Insider* (Senegal, 4 February 2010), available at: <<https://www.businessinsider.com/business-in-africa-how-corrupt-senegalese-politicians-tried-to-shake-down-millicom-for-200-million-2010-2?IR=T>> accessed on 15 November 2018. In a meeting in the summer of 2008 with Millicom CEO Mark Beuls, the son of Senegalese President Abdoulaye Wade was clear: fork over \$200 million — or kiss your license to operate a cellular business in Senegal good-bye.

15 *World Duty Free Co. Ltd. v. Republic of Kenya*, ICSID Case No. ARB/00/7.

16 *Ibid.*

Grand corruption is a serious obstacle to growth in many Asian and African states.

III. RESPONSE OF INTERNATIONAL LAW TO CORRUPTION AND GRAND CORRUPTION

In the cold war era, the world was divided in two power groups. Even states claiming non-alignment were directly or indirectly supporting either capitalist or socialist group. In such a scenario, many corrupt regimes sustained worldwide as they were backed by the world powers. There are examples when intellectuals tried to justify the corruption. Some of them even declared corruption as a catalyst for economic growth. Mr. Samuel P. Huntington famously wrote that “*the only thing worse than a society with a rigid, over centralized, dishonest bureaucracy is one with a rigid, over centralized, honest bureaucracy*”.¹⁷ Though Samuel added a caveat that introduction of a little corruption in a traditionally incorrupt society is good, and more corruption in an already corrupt society will not help, but it shows the contemporary intellectual attitude towards corruption. Even U.S. companies were indulged in high levels of corruption during this period. Multinational companies were bribing public officials world over to get favourable business policies. The Water gate scandal was a kind of water dived in the American system that compelled U.S. legislators to shun their indolence and do something to curb corruption. The U.S. Congress passed the Foreign Corrupt Practices Act (‘FCPA’) in 1977, where they tried to ensure corruption free business behaviour of U.S. Corporates operating overseas. After taking this pioneering step U.S. business interests were under fear of being compromised in foreign states as non-U.S. companies were freely bribing officials in third world countries to get benefits. This scenario pushed U.S. towards comprehensive efforts to get a universal regime of international anti-corruption laws.¹⁸ Due to the U.S. lobbying, the matter was discussed in U.N. Economic and Social Council

17 Samuel P Huntington, *Political Order in Changing Societies* (New Haven and London, Yale University Press, 1968), p. 69. See < https://projects.iq.harvard.edu/gov2126/files/huntington_political_order_changing_soc.pdf>.

18 Jan Wouters, Cedric Ryngaert and Ann Sofie Cloots, “The International Legal Framework Against Corruption: Achievements and Challenges”, *Malbourne Journal of International Law*, vol. 14 (2014), pp. 1-76 at p. 5.

(UNECOSOC). However, developing countries wanted to focus on the use of bribe by corporates from developed countries rather than on the demand of bribes by corrupt officials in the third world.¹⁹ Being unsuccessful in dealing with developing countries, the U.S. tried to push international anti-corruption regimes under the banner of OECD, after bringing many European states on-board. This effort of U.S. to tackle corruption in foreign business, from the sources end, rather than the receiving end, became fruitful and in 1997, the OECD adopted a Convention for Combating Bribery of Foreign Public Officials.²⁰ In the post-cold war scenario, after the end of unhealthy competition in two power centres, the world moved towards more democratic and accountable institutions. After OECD in the same year in 1997, American States adopted an Inter-American Convention on Corruption.²¹ Europe also came out with three main conventions against corruption, convention to curb corruption among EU officials²² and two separate civil and criminal law conventions against corruption.²³ Similarly, African Union passed a convention to combat corruption in 2003.²⁴ Finally, in December 2005 United Nations (U.N.) convention on corruption came into force.²⁵ The World Bank also realised the importance of including anti-corruption norms in its loan conditions.²⁶ These norms were no more considered, as interference in internal matters of the States rather they became an essential part of good governance conditionality of

19 *Ibid.*

20 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ('OECD Convention'), 1997.

21 The Inter-American Convention against Corruption of the Organization of American States, in force since 6 March 1997.

22 The EU Convention against Corruption involving Officials of the European Union, adopted on 25 June 1997.

23 The Civil Law Convention on Corruption of the Council of Europe, adopted 4 November 1999; The Criminal Law Convention on Corruption of the Council of Europe, adopted 27 January 1999.

24 The African Union Convention on Preventing and Combating Corruption, adopted in 2003.

25 The United Nations Convention against Corruption of the United Nations, in force since 14 December 2005.

26 Courtney Hostetler, "Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects", *Yale Human Rights and Development Law Journal*, vol. 14 (2011), pp. 231-272 at p. 232. <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1103&context=yhrdlj>>.

the World Bank. All these international initiatives dealt with corruption but not with 'grand corruption' as such.

A. Extradition and Mutual Legal Assistance Regarding Corruption

Based on U.S. initiatives and OECD efforts international community of States has become more conscious about the problem of corruption. Articles 44 and 46 of the United Nations Convention against Corruption provides for extradition and mutual legal assistance respectively. As a result, many States have entered into various bilateral treaties also for the purpose of extradition and mutual legal assistance in corruption cases. According to the OECD data, there are 117 bilateral extradition treaties and 67 mutual legal assistance treaties specifically regarding the crime of corruption.²⁷ India too has signed 25 bilateral extradition treaties and 13 bilateral

27 ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Mutual Legal Assistance, Extradition And Recovery of Proceeds of Corruption in Asia and the Pacific, p. 28; available at: <<http://www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf>>

28 *Ibid.*, p. 153. Extradition and MLA in India are principally governed by treaties, the Extradition Act (No. 34 of 1962), and sections 166A and 166B of the Code of Criminal Procedure 1973 (Act No. 2 of 1974) (CCP). Extradition and MLA are available without a treaty subject to reciprocity. Additional MLA is available in cases involving money laundering under the Prevention of Money-Laundering Act 2002 (No. 15 of 2003) (PMLA) if there is an applicable treaty. Extradition and MLA requests must be transmitted via the diplomatic channel unless an applicable treaty provides otherwise. India has bilateral extradition treaties in force with 25 countries, including 5 members of the ADB/OECD Initiative (Cook Islands; Hong Kong, China; Korea; Mongolia; and Nepal) and 14 Parties to the OECD Convention (Belgium; Bulgaria; Canada; France; Germany; Korea; Netherlands; Poland; South Africa; Spain; Switzerland; Turkey; United Kingdom; and United States). An extradition treaty has been signed but is not in force between India and the Philippines, a member of the Initiative. India has extradition relations under the London Scheme with 8 countries, including 6 members of the Initiative (Australia; Fiji; Papua New Guinea; Singapore; Sri Lanka; and Thailand) and 1 Party to the OECD Convention (Australia). It also has extradition arrangements with Portugal and Sweden, two Parties to the OECD Convention. India also has 13 bilateral MLA treaties that are in force, including with 4 members of the Initiative (Kazakhstan; Korea; Mongolia; and Thailand) and 7 Parties to the OECD Convention (Canada; France; Korea; Switzerland; Turkey; United Kingdom; and United States). MLA treaties have also been signed—but not yet in force—with Kyrgyzstan (a member of the Initiative) and South Africa, a Party to the OECD Convention. India is party to the UNCAC and the UNTOC with the reservation on submission of disputes for arbitration or to the International Court of Justice.

mutual legal assistance treaties.²⁸ But all these extradition treaties are focused at corrupt business practices on the lines of OECD.

B. Impact of International Anti-Corruption Laws

Almost all international instruments to combat corruption are focused on the use of bribery by business houses to influence domestic or foreign public officials and parliamentarians. Starting from the U.S. efforts, OECD and European initiatives to U.N. Convention against corruption, civil or criminal liability of bribe giving corporates is discussed. Provisions regarding criminalising those who receive bribes and roll out destructive or sometime even fatal administrative policies are not sufficient. For example, Article 1 of OECD Convention has an entire focus on offering bribe to foreign officials, for getting undue benefits.²⁹ Moreover, all instruments have provided that governments of each state is under an obligation to make laws and take preventing steps to curb corruption. None of the instruments has discussed the possibility of investigating or prosecuting such situations where even governments are involved in grand corruption, because such cases cannot be dealt with by corrupt systems themselves. It does not mean above mentioned international anti-corruption laws are ineffective. These are effective in their area of operation. It is found in a study, undertaken in African state of Ghana, that subsidiaries of multi-national companies registered in states that are signatories

29 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ('OECD Convention'), 1997. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

30 Jennifer Spencer and Carolina Gomez, "MNEs and Corruption: The Impact of National Institutions and Subsidiary Strategy", *Strategic Management Journal*, vol. 32 (2011), pp. 280-300 at p. 293; available at <http://www.rcmewhu.com/upload/file/20150527/20150527201945_3244.pdf>. In the Ghana sample results suggested that MNEs from countries participating in the OECD Convention for Combating Bribery faced less local pressure to engage in corruption than MNEs from non participating countries.

of the OECD Convention have to face comparatively less demand for a bribe.³⁰

But there is nothing to criminalise Malawi like situation in the OECD Convention or other international conventions. Even African convention has entire stress on preventive measure to curb corrupt practices in public officials. There is no provision to distinguish corruption in implantation of business regulation from the corruption in basic public utility services. There is an urgent need to criminalise Malawian kind of incidents of Grand corruption, which can even kill the people.

C. Grand Corruption as an International Crime

One common question in this regard is whether grand corruption fulfils the criteria for international crime. Grand corruption as defined by transparency international is a situation where most of the resources of a state are usurped by the corrupt practices, and people are deprived of even basic human rights. Right to food and right to shelter are some bare minimum rights. If millions of children in any country are suffering from acute malnutrition, then these are not merely illustrative news items for the people living in other parts of the world. The entire international community feels itself concerned when pictures of such miserable children and old age people come out.³¹ When the international community as a whole feels concerned, then humanitarian intervention becomes necessary. In the absence of such humanitarian intervention in grand corruption situations, the international community had become silent spectators of hunger deaths in Malawi. Stopping humanitarian aid, as a knee jerk reaction, rather became counterproductive. At such time, stopping aid is not desirable rather prosecution of corrupt authorities in the international criminal court is the requirement. If the international community can intervene in the situation of people being killed in civil wars then why it should not intervene when people are dying because of direct or indirect impact of grand corruption. When people are suffering with severe poverty, hunger

31 Global Organisation of Parliamentarian against Corruption, Prosecuting Grand Corruption as an International Crime, Discussion Paper, 1st November. 2013. Available at: <http://www.undpaciac.org/publications/ac/2013/Discussion%20Paper%20%20Prosecuting%20Grand%20Corruption_EN.pdf>.

and other basic human right due to the corrupt practices of people in power, then who will provide them justice? Outside intervention by the international community, becomes necessary in such situations. In such cases, a universal jurisdiction is required to prosecute perpetrators of grand corruption.

(i) Physical injury is not an essential part of international crimes

Moreover, physical injury is not an essential element of international crimes. Inhuman acts causing serious injury to mental health are also part of crimes against humanity as defined in article 7 (1) (k) of the Rome Statute of International Criminal Court.³² Starving people to death, stealing from them basic amenities of life and depriving them from opportunities to grow is an attack on their mental health. Moreover, if the reason of all these, is siphoning out the state funds by grand corruption, then it is certainly an act of international crime.

(ii) International community's reaction to grand corruption

As discussed above initially international community became concerned about corruption due to its impact on the international business. Progressively it is becoming concerned about other forms of corruption also. Now the international intellectual community

32 Article 7 (1) (k), the Rome Statute of International Criminal Court. *(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

33 James Thuo Gathii, "Defining The Relationship Between Human Rights And Corruption", *University of Pennsylvania Journal of International Law*, vol. 31, no. 1 (2009), pp. 126-202; <<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1116&context=jil>>; Balakrishnan Rajagopal, "Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship", *Connecticut Journal of International Law*, vol. 14 (1999), pp. 495-504, available at: <https://s3.amazonaws.com/academia.edu/documents/31447674/ConnecticutJournal_Fall1999.pdf?response-contentdisposition=inline%3B%20filename%3DCORRUPTION_LEGITIMACY_AND_HUMAN_RIGHTS_T.pdf&X-AmzAlgorithm=AWS4HMACSHA256&X-AmzCredential=AKIAIWOWYYGZ2Y53UL3A%2F20190626%2Fuseast1%2Fs3%2Faws4_request&X-AmzDate=20190626T181733Z&X-AmzExpires=3600&X-AmzSignedHeaders=host&X-AmzSignature=9024d4c8bf7bdaf8b726273b4c3e18eb4954f2a230a1c6bc290b81f7d870c1a77>; Zoe Pearson, "An International Human Rights Approach to Corruption", in Peter Larmour, Nick Wolanin (eds), *Corruption and Anti-Corruption* (ANU Press, 2013), <<https://www.jstor.org/stable/pdf/j.ctt2tt19f.6.pdf>>.

has started considering grand corruption as a violation of human rights.³³ In a decision Kenyan High Court, while justifying the powers of anti-corruption bureau observed as under:

[T]he massive and debilitating cancerous nature of corruption in Kenya has impoverished and continues to impoverish the great majority of the Kenyan masses and leads to robbing the government of resources to build and maintain a run-down infrastructure, inadequate health services and mediocre and inadequate educational facilities. It has led to spiral inflation and unemployment.³⁴

However, intellectual writings and decisions of municipal courts have long back declared grand corruption as violation of human rights, but the response of the international community is still dwarf.

Common methods that the international community applies to deal with incidents of international crimes are the use of universal jurisdiction and prosecution in regional courts or in the international courts or tribunals. However, after the end of World War II, only 15 States have used universal jurisdiction to investigate or prosecute serious international crimes.³⁵ Examples of using universal jurisdiction for prosecuting perpetrators of grand corruption are very rare. A must mention example in this regard is the conviction of an Equatorial Guinean Presidents' son by a French court.³⁶ In this case, also, the French court did not use universal jurisdiction explicitly. Rather money earned by corruption from Equatorial Guinea, laundered, and deposited in France was the main premise of the case.

34 Murungaru II, at *82 (Elec. Kenyan L. Rep., Case Search); as mentioned in James Thuo Gathii, *ibid.*, at p. 179.

35 Global Organisation of Parliamentarian Against Corruption, Prosecuting Grand Corruption as an International Crime, Discussion Paper, 1st November 2013; available at: <http://www.undpaci.org/publications/ac/2013/Discussion%20Paper%20%20Prosecuting%20Grand%20Corruption_EN.pdf>.

36 Human Rights Watch, "French Court Convicts Son of Equatorial Guinea's President for Embezzling over €150M", Business and Human Rights Resource Centre. See <<https://www.business-humanrights.org/en/french-court-convicts-son-of-equatorial-guineas-president-for-embezzling-tens-of-millions-of-euros-amidst-serious-underfunding-of-health-education-in-the-country>>.

At the front of regional courts, there are almost no examples when grand corruption is used as a crime under the jurisdiction of any regional court. Only Malabo protocol has tried to address this problem to some extent.

(iii) Malabo Protocol: an insufficient response to the grand corruption

To address the menace of grand corruption African Union (A.U.), in 2014 has introduced Malabo Protocol to amend its pre-existing protocol of an African Court for Human Rights and Justice. This protocol has proposed to add corruption as a separate crime under the jurisdiction of the African Court of Human Rights and Justice.³⁷ In the statute of the court at Article 28A, clause 1 at entry no. 8, Malabo Protocol has kept corruption along with the heinous international crimes such as genocide and war crimes. Corruption has been treated as an international crime. This endeavour of African leaders shows their vision and commitment to the prevention of corruption. Nevertheless, their initiative invites criticism and scepticism because of many reasons. Such as, judge to crime ratio is very adverse in the statute of the African Court of Human Rights and Justice. In the International Criminal Court, 18 judges conduct prosecution regarding four international crimes; whereas in the African Court of Human Rights and Justice, merely 16 judges will hear cases related to 14 different crimes. In such an overburdened court quality, prosecution of any crime cannot be expected. Moreover, Malabo Protocol will come into force when it will be signed and ratified by at least 15 African states. In addition, so far only 15 African states have signed it and none of them has ratified.³⁸

37 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.

38 List of Countries which have signed, ratified/acceded to the Protocol on Amendments on the Statute of the African Court of Justice and Human Rights, available at: <<https://www.refworld.org/pdfid/56a9ddcf4.pdf>>.

39 Malabo Protocol: "Legal and Institutional Implications of the Merged and Expanded African Court Snapshots", available at: <<https://www.amnesty.org/download/documents/afr0161372017english.pdf>> accessed on 13 November 2018.

Zero ratifications in itself shows that the leaders were only symbolically concerned about the crime of grand corruption and other crimes in Malabo Protocol. Due to such a scenario, Amnesty International has raised great doubts on the capacity and capability of the court to deliver justice.³⁹ Nonetheless, this is a small step of the African Union towards realising its commitment to fight corruption.

In the absence of required number of ratifications, AU initiative in the form of adding corruption in Malabo protocol can only be called a theoretical resolve, not backed by practical actions. Nevertheless, in international relation and international law most of the time peaceful change come in an evolutionary process and not by overnight revolutions. A careful reading of Malabo Protocol indicates that though it has tried to implement the provisions of African convention against corruption, but mainly it has targeted the grand corruption, when it narrows the scope of court by specifying that it will deal with only such gross incidents of corruption that might pose threats to the stability of a state.⁴⁰ However, the provision of granting immunity to the sitting heads of governments and head of states is such a drawback of this protocol that create a serious doubt on the effectiveness of the court.⁴¹ The court cannot address the problem of corruption or the grand corruption with such feeble provisions. The only contribution of Malabo protocol that cannot be negated is that at least it has accepted in principle that the crime of grand corruption is just like other heinous international crimes; and it should be dealt with in the same manner. In this respect the drafters of the Malabo Protocol have shown better vision than the members of the Rome Conferences,

40 Gerhard Werle, Moritz Vormbaum (eds.), *The African Criminal Court: A Commentary on the Malabo Protocol* (T.M.C. Asser Press, 2017). Article 28I of the Malabo Protocol (Annex) regulates the crime of corruption. It replicates what the African Convention on Preventing and Combating Corruption lists as “acts and practices” deemed to constitute corruption. But the Annex to the Malabo Protocol differs from the Convention in that it criminalizes corruption only if it is “of a serious nature affecting the stability of a state, region, or the Union.” This suggests that the corruption targeted here is “grand corruption”.

41 *Ibid.*, p. 89. The immunity granted to heads of state or government raises valid concerns about the legitimacy of the African Court of Justice and Human and Peoples’ Rights in the eyes of the public.

i.e. members of the United Nations Diplomatic Conferences of Plenipotentiaries on the Establishment of an International Criminal Court. Grand corruption is not considered as an international crime in the Rome Statute of the International Criminal Court. Even in review conference held in Kampala, there was no discussion about adding grand corruption in the statute as an international crime, though the example of Malawian people dying due the impact of corruption was already there.⁴² African examples of Malawi and Senegal have clearly shown how grand corruption can directly kill people and how it can reduce employment opportunities by creating a hostile environment for those business entities that are following international anti-corruption laws.⁴³ But this is not a problem of African continent only. In South America, also many states are suffering with the state capture level huge corruptions. Especially Columbia and Venezuela in South America are particularly known for the high levels of corruption.⁴⁴ Similarly, according to transparency international European state, Romania has scored very high rank in corruption index of Europe.⁴⁵ In Asia, too states like Afghanistan, Bangladesh and Pakistan are ranking high in the list of corruption-ridden states.⁴⁶ Biggest democracy of the world, India has also seen many incidents of corruption. In 1985 the then Prime Minister Rajiv Gandhi pointed out that only 15% of funds released

42 Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May – 11 June 2010 Official Records. Available at: <https://asp.icc-cpi.int/iccdocs/asp_docs/ASP9/OR/RC-11-ENG.pdf> accessed on 15 November 2018.

43 Devrim Dumludag, “How Does Corruption Affect Foreign Direct Investment in Developing Economies?”, *Talking Business*, available at: <http://www.talkinbusiness.nl/2012/09/how-does-corruption-affect-foreign-direct-investment-in-developing-economies/corruption_image/>.

44 Transparency International, ‘Corruption Perceptions Index 2017’, available at: <https://www.transparency.org/news/feature/corruption_perceptions_index_2017> accessed on 10 November 2018.

45 *Ibid.*

46 *Ibid.*

47 PTI, “Only 15 Paise Reaches the Needy: SC Quotes Rajiv Gandhi in its Aadhaar Verdict”, *Hindustan Times* (New Delhi, 11th June, 2017), available at: <<https://www.hindustantimes.com/india-news/only-15-paise-reaches-the-needy-sc-quotes-rajiv-gandhi-in-its-aadhaar-verdict/story-I8dniDGXF6ksulggTDgb9L.html>> accessed on 15 November 2018.

for social welfare reach to the actual beneficiaries.⁴⁷ In such a scenario to protect the innocent people from the devastating effect of grand corruption, it should be prosecuted at international level.

However, there is complete absence of any international court or tribunal dealing grand corruption as an international crime. As discussed above, it is very clear that humanitarian intervention in the cases of grand corruption is necessary. Equally important is then dealing grand corruption at the level of the international criminal court by adding it in the jurisdiction of the Rome Statute, as an international crime. Next segment of this article has discussed various aspects of this question.

IV. SCOPE OF TREATING GRAND CORRUPTION AS A CRIME AGAINST HUMANITY

Professor Ilias Bantekas, professor of international law from Brunel University in his article “Corruption as an International Crime and Crime against Humanity an Outline of Supplementary

48 Ilias Bantekas, “Corruption as an International Crime and Crime against Humanity an Outline of Supplementary Criminal Justice Policies”, *Journal of International Criminal Justice* (2006), pp. 1-19, at p. 1. <<https://static1.squarespace.com/static/5728c7b18259b5e0087689a6/t/57b0f469414fb58fb6c6aa8a/1471214698155/corruption+article+JICJUS.pdf>>. Transnational corruption has in recent years been elevated to an international offence but in practical terms it is not considered serious enough in order for heads of state or cabinet members to be prosecuted in foreign jurisdictions. There is evidence to suggest that, in certain cases, corruption may take the form of a crime against humanity. This possibility extends significantly the jurisdictional ambit of national courts and empowers the International Criminal Court to consider a case. Moreover, the restorative component of such criminal prosecutions should aim at restoring, through civil mechanisms, the funds illegally appropriated to their rightful recipients, the defrauded local populations, under the principle of self-determination.

49 Global Organization of Parliamentarians against Corruption, Prosecuting Grand Corruption as an International Crime, Discussion Paper (01 November 2013), pp. 1-10 at p. 2. Available at: <http://gopacnetwork.org/Docs/DiscussionPaper_ProsecutingGrandCorruption_EN.pdf>. At the Fifth Global Conference of Parliamentarians Against Corruption, held in Manila, Philippines, February 2013, GOPAC’s worldwide network of parliamentarians unanimously resolved to seek the widespread adoption of international legal instruments and strategies, to apprehend, prosecute, judge, and sentence perpetrators of grand corruption—the gravest forms of corruption, across borders. Towards this end, GOPAC’s members have also mandated the organisation to explore how grand corruption could be deemed a crime under international law, and whether grand corruption should be considered a crime against humanity.

Criminal Justice Policies”, has considered grand corruption as a crime against humanity.⁴⁸ Fifth Global Conference of parliamentarians against corruption also mandated its members to find out the possibilities to prosecute grand corruption as a crime against humanity.⁴⁹ It shows that in intellectual as well legal communities at global level people are aware that grand corruption deserves to be dealt with as a crime against humanity. It is pertinent to analyse how grand corruption satisfies the requirements of crime against humanity.

At present, there is no forum for the international prosecution of grand corruption. The United Nations Convention against Corruption has provision against the use of corruption at both national and international levels.⁵⁰ It declares that states are under obligation to prosecute the crimes of both national and international corruption in their municipal courts.⁵¹ It does not provide for any prosecution at international level. Similarly, United Nations Human Rights Office of the High Commissioner has also mentioned that corruption is a breach of basic human rights.⁵² But the high commissioner’s office has addressed only the human rights aspect. It did not address the situation where grand corruption can become a fatal humanitarian crisis, which should be dealt with as a crime against humanity.

In previous parts of this article, it is established that grand corruption can directly kill the people and can indirectly jeopardise natural growth prospects of life. Prosecution of such cases in municipal court is prone to be ineffective since higher authorities of government or administration are involved. Inability or

50 United Nations Convention against Corruption, U.N.O., New York, 2004.

51 *Ibid.* Article 30 describes provisions related to prosecution, adjudication and sanctions.

52 United Nations Human Rights Office of the High Commissioner. <<https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>>. Corruption exists in all countries, irrespective of the economic or political system and their level of development, in the public and private spheres. It is a transnational phenomenon requiring international cooperation, including in the recovery of stolen assets. While acts tainted by corruption can constitute human rights violations, corruption itself is best seen as a structural obstacle to the enjoyment of human rights.

unwillingness of the national criminal justice system in investigating or prosecuting calls for bringing in the principles of complementarity, so that some court outside the country should complement the national courts. Hence, for grand corruption there should be an international prosecution. Either it is possible through establishing a new tribunal by amending the provisions of the UN Convention against corruption or it should be added as a new international crime in the Rome Statute. If grand corruption has capacity to kill people even directly then ideally it should be dealt with, by international criminal court. However, one important question is whether the crime of grand corruption should be added in the Rome Statute directly as an independent crime at par with other international crimes, or it should be considered as a part of crimes against humanity. Ideally, a new breed of international crime should be recognised only when it does not fit within the definition of already existing international crimes, by either reinterpreting them or even amending them. There is an ample scope of adding grand corruption as a part of crime against humanity. Crime against humanity is such a crime that can be possible within the domestic scenario of a state. According to the International Law Commission's first report on crime against humanity the concept of "crimes against humanity" is generally seen as having two broad aspects, "First, the crime is so heinous that it is viewed as an attack on the very quality of being human.⁵³ Second, the crime is so heinous that it is an attack not just upon the immediate victims, but also against whole humanity, and hence the entire community of humankind has an interest in its punishment."⁵⁴ International Criminal Tribunal on Yugoslavia⁵⁵ in *Prosecutor v. Erdemovic* has noted as under in

53 Hannah Arendt characterized the Holocaust as a "new crime, the crime against humanity — in the sense of a crime 'against human status,' or against the very nature of mankind." H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Viking Press, 1965), p 268.

54 First Report of Special Rapporteur on Crimes Against Humanity, United Nations International Law Commission, A/CN.4/680.

55 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1994). See <<http://icty.org/>>.

Whilst rules proscribing war crimes address the criminal conduct of a perpetrator towards an immediate protected object, rules proscribing crimes against humanity address the perpetrator's conduct not only towards the immediate victim but also towards the whole of humankind ... Because of their heinousness and magnitude they constitute egregious attacks on human dignity, on the very notion of humaneness. They consequently affect, or should affect, each and every member of mankind, whatever his or her nationality, ethnic group and location.⁵⁶

Though humanity was concerned about reducing the ferociousness and cruelty of wars since its beginning, but the first ever effort in this regard was the Hague Conventions of 1899 and 1907, wherein Article 47 of the Regulations provided in Annexure, proscribed attacks on civilian and their family honour. However, these provisions remained just on paper and in both the World Wars, numerous war crimes and crimes against humanity were committed. Finally, in historical events of the Nuremberg trials and Tokyo trials perpetrators of crimes against humanity were prosecuted. This concept developed over the past century through adhoc tribunals of Yugoslavia and Rwanda. After long discussions in the Rome Conference, the Rome Statute was passed and crimes against humanity was one of the crimes under the jurisdiction of the first-ever international criminal court with prospective jurisdiction. The definition of crime against humanity in international law has gone through many revisions. Initially the concept of crime against

56 *Prosecutor v. Erdemoviæ*, Appeals Chamber, Judgment, ICTY Case No. IT-96-22-A, para. 21 (Oct. 7, 1997) .

57 International Military Tribunal (Nuremberg), 1945. Available at: <<https://history.state.gov/milestones/1945-1952/Nuremberg>>.

58 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1994).

59 Rome Statute of International Criminal Court, (1998), ICC-PIDS-LT-01-002/11_Eng.

60 *Ibid.*

humanity was attached to the situation of war.⁵⁷ Later on, it was thought that only a state power could commit crimes against humanity, that too against its own people.⁵⁸ Currently it is understood as a widespread or systematic attack against a civilian population.⁵⁹ Both, state and non-state groups could commit crimes against humanity.⁶⁰ This definition of crimes against humanity is a victim centric definition.⁶¹ The focus of this definition is 'sufferings of the civilian population'. If for a particular kind of criminal act committed against civilians, state can be held responsible, then for the similar criminal act a non-state organization can also be held responsible. The first condition, which has to be satisfied for considering grand corruption as a crime against humanity, is the requirement of the opening clause. It should be in the nature of an attack against the civilian population. It should be systematic or widespread. There is no doubt that the grand corruption is a criminal act against the civilian population of a state. It is always systematic. Any act or an environment of corruption can qualify as grand corruption if it is systematic and wide spread. Example of Malawi shows that the level of corruption prevalent in Malawi was perfectly qualifying conditions of widespread and systematic. Moreover, it was against civilian population. The third condition that it should be an attack or in the nature of an attack. It is interesting to scrutinize whether grand corruption can qualify the condition of 'attack'. The Definition of 'attack' as mentioned in Article 7 (2) (a) of the Rome Statute is as thus: "*Attack directed against any civilian population*" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack." In this definition, attack does not mean necessarily a violent act. First requirement which makes an act or series of acts liable to be considered as an attack is the multiple commission of acts referred to in the Article 7 (1) of the Statute. There is no requirement of using physical force. For example the Crime of apartheid as mentioned in Article 7 (1) (j) read with Article 7 (2) (h) is a crime consisting of multiple commissions of inhuman discriminations on racial

61 Frédéric Mégret, "Victims before the International Criminal Court: A New Model of Criminal Justice?", *VCRD*, February 21, 2017. Available at: <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p6.html>>.

grounds. Hence, multiple acts of grand corruption can also come within the sphere of systematic or widespread attack against the civilian population. Second part of this definition of attack is that it should be part of a state or organizational policy. Grand corruption is such a crime, which cannot be committed by a government, which has a policy of no-corruption. Only those people who consider governmental power as a means to do huge corruptions can commit it. Another scope of dealing, crime of grand corruption as a crime against humanity is through the Article 7 (1) (k)-"*Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*" In this clause induced starvation resulted by grand corruption can be brought as an act of causing serious injury to bodily or mental health. But Article 7 (1) (k) has an element of intention as well. Therefore, it will be difficult to prove intension. Moreover, every culprit commits the crime of corruption with an intention to get maximum undue gains for himself at the cost of the citizens. Nevertheless, it cannot be said that he had an intention to cause great suffering to the people. Hence, clause (k) is not a useful route to prosecute grand corruption as a crime against humanity. It has to be added as a separate crime in the list of Article 7 (1).

Considering grand corruption as a crime against humanity will help in the prosecution of the culprits by opening the doors of universal jurisdiction and by applying the principle of complementarity. It will create a deterrent effect on the people in power. In the end, it will help in creating a corruption free environment at world level. Which will not only enhance the standards of lives of citizens rather it will help in creating a conducive environment for foreign investors also.

V. CONCLUSION

In modern governing systems, economic activities have grown many folds that too in multi-dimensional aspects. In such a system, incidents as well as quantum of corruption have also increased. Grand corruption is a crime, which is committed consciously in order to get maximum undue benefit sometimes even at the cost of the lives of poor and vulnerable people. Such crimes of corruption are capable of shaking the collective consciousness of the entire international community. Such crimes deserve to be dealt with as

international crimes, so that principles of complementarity and universal jurisdiction could be applied to them. Although, the international community has tried to deal with crime of corruption, but efforts focused specifically at grand corruption are missing. International anti-corruption covenants are lacking any direct criminal jurisdiction on the crime of grand corruption. Examples of using universal jurisdiction for prosecuting perpetrators of grand corruption are rare. At the level of the regional courts, the African Union has taken some initiative to consider such corruptions, as international crimes, that are capable of threatening the existence of the state itself, but these efforts are slow and insufficient. It is desirable if grand corruption is added as a part of crime against humanity within the scope of the Rome Statute. For this, the Rome Statute should be amended and in Article 7 clause (1) after clause (k), a new clause (l) should be added namely grand corruption. In addition, in clause (2) of Article 7 a new clause (j) should be added to define the element of 'grand corruption'. Here the definition of grand corruption presented by the Amnesty International may be adopted. It is clear that like every other crime, high intensity of corruption also affects the lives of people around the world; hence, the international community of States should deal it as a crime against humanity.