Corruption-related Decision-making for Business Managers

To pay or not to pay?
Achinto Roy

Corruption-related Decision-making for Business Managers
Corruption-related Decision-making for Business Managers

To pay or not to pay?
Corruption-related Decision-making for Business Managers

Achinto Roy
To all of us who take a moral stand against corruption

And

To those who wish to but do not know how to
Table of Contents

Preface  4

About this Book  6

Chapter One: Corruption, Redefining Corruption, Corruption-related Decision-making  9

Chapter Two: Governance: Compliance or More?  42

Chapter Three: The Dynamics of Corruption and the need for an Ethical Decision-making Model  54

Chapter Four: The Theoretical context of the CRDM Model  62

Chapter Five: The Relevance of CRDM to Enron and Shell  87

Chapter Six: CRDM in the wider Business World  112

Chapter Seven: CRDM within Business Theory & Practice  123

Concluding Discussion  131

Appendices  142
Preface

Sometime in 260 BC, the Indian emperor Ashoka of the famous Mauryan dynasty fought and won the bloodiest battle on Indian soil. It was the battle of Kalinga\(^1\) fought in Eastern India, to gain control over the land and sea routes to Southern India. The battle\(^2\) left 100,000 dead, 150,000 were taken as prisoners and many times that number left wounded or dying on either side. After the battle, Ashoka surveyed the battlefield, littered with bodies of dead and dying men, and beasts. Rivulets of blood flowed into a nearby river changing its colour to blood-red. While Ashoka was surveying the battlefield, an old man came up to him carrying a small bundle of cloth enveloping the corpse of a three-year old child. The old man sang praises of glory to the victorious Emperor and then held out the dead child pleading with Ashoka to bring the child back to life. The old man went on to say that 'you O mighty emperor could take thousands of lives, so surely you can bring back just this one life.' Ashoka knew he could not do so and soon left the battlefield stricken with remorse. This incident at Kalinga transformed the twenty-four year old Emperor Ashoka, within two years, into a monk preaching Buddhism and peace. He adopted the path of Dhammapada, the path of righteousness. Ashoka built monuments all over his kingdom displaying messages of peace, and in particular at Sarnath, he erected a pillar called the Ashoka sthamb (pillar) which displays till this day, a slogan borrowed from the Upanishads\(^3\) namely: Satyameva Jayate.

Literally translated, Satyameva Jayate means truth triumphs or truth shall prevail or truth prevails (modern day India has adopted Satyameva Jayate as the nation's motto). However, truth usually prevails only after destruction; because a battle had to be fought, 100,000 lives lost and suffering inflicted on countless more for the moment of truth to prevail in an emperor's mind. It happened in 260 BC and has happened again and again in human history and it continues to happen in our daily lives even today. Truth usually prevails after destruction, as witnessed in the Global Financial Crisis of

---
\(^1\) Kalinga is the modern day Indian State of Orissa in Eastern India.
\(^2\) 'A History of India' by Romila Thapar, p.72, 1966 edition, Penguin
\(^3\) Group of late Vedic metaphysical treatises – Collins Concise Encyclopedia. Written around 800 B.C.
2008-2009 and the fraud-induced corporate collapses of Enron, World.com, Parmalat, and many others during 2001-02 in this century. These events led to changes in international tax and banking legislation during 2009 and in the not too distant past the Sarbanes-Oxley Act in USA was passed to regulate corporate actions as none before. Legislation, whether the proposed changes to international tax and banking legislation or the Sarbanes-Oxley Act cannot by themselves ensure ethical corporate actions as is evident from our experiences of fraud-induced corporate failures.

Take the case of Enron, the company was considered the most successful company in the energy sector and appeared to meet all legislative requirements, till it went bankrupt in 2001, with the dubious distinction of being the largest fraud-induced company failure in US history. Like Enron, some successful companies meet their Kalinga from time to time with the truth prevailing after damage has been inflicted on the company and society. Royal Dutch Shell in Nigeria is another landmark case in this respect. The company was considered the most profitable company on earth at one point, yet it faced allegations of human rights violations in Nigeria due to its stakeholder practices. Shell is just a typical case of a very successful multinational that failed to assess the impact of its own actions or inaction vis-à-vis its stakeholder environment. It is only after Shell was condemned internationally, during November 1995, that Shell adopted damage-control measures. Shell, then publicly declared human rights as a significant issue in business operations, introduced mandatory human rights training for all its executives and publicised the company’s commitment to honour human rights.\(^4\) However, at the time of writing this book, Shell has not been able to win over the Ogoni in Nigeria nor resume oil drilling operations in the Ogoni region.

\(^4\) Shell’s website discusses stakeholder issues such as human rights, sustainable development at length and displays the UN Declaration of Human Rights as their commitment to human rights issues.
About this Book

This book is about corruption and bribery as a decision-making issue for a business manager. Corruption in business occurs in situations of a quid pro quo relationship between public officials and business managers representing corporations. Business managers usually focus on achieving the economic objectives of their company and are likely to adopt a transactional approach in their dealings with public officials to secure their company’s economic interests. There are a number of instances in literature and in the public domain that confirm business managers and public officials do enter into agreements of corrupt understanding to their mutual benefit. Many a time, such corrupt situations harm stakeholder interests such as human rights, the environment or issues of sustainable development. Managers, as decision-makers and participants in such corruption-related situations may fail to notice or understand the implications of their decisions focusing on economic objectives alone. They may fail to understand that their involvement in corrupt acts can lead to violation of fundamental stakeholder issues such as human rights as in the cases of Shell and Enron (discussed in this book).

The purpose of writing this book is to lend an inclusive meaning to corruption that takes into account stakeholder issues and to provide the decision-making manager a choice of action in corruption-related situations. The book comprises of eight chapters. Chapter one defines corruption and bribery in detail and explains associated terms, including gift-giving and disclosure. A working definition of corruption is proposed within this chapter from the perspective of a decision-making business manager. The conceptual distinction between “active corruption and passive corruption” (Roy, 2001; Roy & Singer, 2004; Roy, 2004) is revisited to understand the intent and role chosen by a bribe-giver in a situation related to corruption or bribery. This is followed by the second chapter that primarily asks the questions as to whether corporate governance should be interpreted as compliance with law? Or should ethical decision-making be an added dimension to corporate good governance? It is in this context that good governance is discussed within this chapter vis-à-vis the current international laws dealing with corruption. The chapter proposes that corporate good governance in dealing with corruption in business can be achieved by
moving from a narrow legal compliance approach to one that includes ethical decision-making in addition to legal compliance.

Chapter three of the book examines the dynamics of corruption in business represented by the factors that influence managerial decision-making in corruption-related situations, and more specifically the position from which a decision-maker operates in such situations. A manager’s (decision-maker’s) mental model is presented in terms of the likely exchange and psychic utilities operating at the individual level. This is complemented in chapter four by a conceptual CRDM (corruption-related decision-making) model for managers to use as decision-makers in corruption-related situations. The decision-making model is designed to help a manager conclude within a very short span of time: whether to participate or not in a transaction involving bribery and/or corruption. It is an attempt to provide a contextual meaning to one’s decision and provides an opportunity to assess the impact of one’s decisions on stakeholders. The CRDM model proposed in chapter four incorporates protection of issues such as sustainable development, environmental issues and human rights.

Chapter five of the book analyses two well-known cases of highly successful multinational companies and their alleged complicity in human rights violations and environmental issues. These real-life cases are narrated and discussed with a view to substantiate the utility of the CRDM model to avoid acts of corruption on part of business that led to violation of stakeholder rights and consequent rejection by the stakeholder community in both cases.

The sixth chapter discusses the results of a survey of 41 multinational companies conducted at Bombay, India during 2002, 2003 and 2004. The objective of the survey was to understand whether the conceptual CRDM model as discussed in chapter four is relevant in real-life practical decision-making. Another major objective of the survey was to understand whether CEO’s and senior managers as decision-makers believe that corruption can negatively impact human rights and environmental issues. The results of the survey confirmed that none of the respondents used any decision-making tools while dealing with corruption-related situations. The survey revealed that 40 out of 41 companies experienced rent-seeking behaviour (bribes demanded) in
India. Out of these 41 companies, 26 companies ‘usually’ lost business due to non-compliance with bribe demands and another 9 lost business ‘sometimes.’ The survey also explored the role of ‘fear of loss of business’ in the decision-making process and found that ‘fear of loss of business’ led decision-makers change stance from a state of passive corruption (facing demand) to a position of active corruption (making an offer), with 27 companies actually moving from a position of passive corruption to active corruption. All 41 companies, without a single exception, believed (when asked) that corruption can adversely affect stakeholder issues such as human rights.

*The survey findings confirm the relevance of the CRDM model as a decision-making tool and as a good practice document in corruption-related situations.*

The final chapter highlights the contribution of CRDM (corruption-related decision-making) to current business theory and practice to deal with the illegitimate, the illegal and oppressive ways of business. It discusses the emerging trend of management thought with a shift towards the concept of an organisational economy (Ghoshal & Moran, 2005) as opposed to the market economy concept and CRDM’s role to reduce corruption in business as an organisation based response, blending ethics and strategy in the process.

Thus, this book places a choice of conscience on the decision-making table of powerful multinational companies and business managers in general, offering them a conceptual decision-making model with underlying logic grounded in ethics, to deal with corruption-related situations. The idea is to add a stakeholder aspect to the existing focus on economic objectives in managerial decision-making, especially in situations which involve corruption/bribery.
Chapter One: Corruption, Redefining Corruption, Corruption-Related Decision-making (CRDM)

“Often what the general manager seeks and needs is a more or less orderly way of thinking through the moral implications of a policy decision” (Goodpaster, 1984:3)

Introduction:
Recorded history texts provide instances of corruption and bribery in all ancient civilizations, and through the ages our society has never been without corruption (Noonan, 1984). More than two thousand years ago in India, corruption and its related practices have found mention in Kautilya’s Arthashastra.\(^5\) This work mentions 40 different ways in which a public official could make illegitimate gain from public office (Rangarajan, 1992:295-297). The prevalence of corruption and bribery in every ancient civilization, be it Babylonian, Egyptian, Hebrew, Indian, Chinese, Roman and Greek, is discussed at length in the work of Alatas (1990). Thus, human society has never been without the presence of corruption. It exists in all societies (Huntington, 1968:492) and has been accepted as a seemingly inevitable fact of life by people from all over the world today. It is also a common perception amongst people that corruption is spreading and embedding itself within social sub-systems (Ryan, 2000).

Most of us agree that there is something immoral and wrong with the phenomena of corruption, bribe giving and bribe taking. Yet corruption and acts of corruption occur daily all over the world. Transparency International, an international NGO fighting corruption, records daily media reports of corruption from all over the world; and emails these headlines with web sources to access the individual cases, to members on its mailing list. Not a single working day passes without an instance of corruption being reported as having occurred in some part of the globe. Corruption and bribery are not confined to any geographical boundary or any single nation or a particular culture, but occur universally on a daily basis. The domain of corruption and bribery is comprised of participants who gain from their corrupt acts to the detriment of others.

---

\(^5\) *Arthashastra* covers all aspects of statecraft and administration. It was written by Kautilya, Prime Minister in Chandragupta Maurya’s empire. Written around 300 –310 B.C.
in society. It is these others who bear the cost and consequences of corruption or bribery in some form or the other.

Corruption in business conduct is a sub-set of a wider phenomenon of corruption prevalent in all parts of the world. Corruption in business is amongst the serious problems confronting global society today. Corruption in business usually occurs during the interface between business managers and public officials. Business managers seek dispensation of favours (both legitimate and illegitimate) and public officials command the discretion to dispense those favours. Some examples of legitimate (within law) favours sought by business could be grant of trading rights, licenses, permits, award of contracts, tenders and amendment of laws to suit business interest. Illegitimate favours could range from tax avoidance; suppression of wrongdoing including illegal acts to almost anything that maybe ultravires the law, but suits business interests. On the other hand, public officials command discretionary powers to satisfy both the legitimate and illegitimate favours that business may need. Thus, there is room for trade of these discretionary powers, for a quid pro quo between public officials and business managers (Rose-Ackerman, 1978; Elliot, 1997; Harris, 2003). The desire to trade discretionary powers by a public official has often been referred to as rent-seeking behaviour (Rose-Ackermann, 1978; Bhagwati, 1982; Klitgaard, 1988, Bardhan, 1997). Likewise, the desire to pay for those discretionary powers and make private gain at public cost can be termed as gain-seeking behaviour of business managers.

This chapter explores the literature on corruption and bribery and examines what constitutes corruption, examines some typical arguments for and against corruption, and analyses associated terms such as gift-giving and its disclosure. A working definition of corruption in business from the perspective of decision-making managers is proposed here. The conceptual distinction between "active corruption and passive corruption" (Roy, 2001; Roy & Singer, 2004; Roy, 2004; Roy, 2005) is revisited to understand the intent and role chosen by a bribe-giver in a situation related to corruption or bribery.
Background Literature: Corruption and Bribery

Corruption and bribery in whatever form and manner have been accepted as universal phenomena by different authors (Leff, 1964; Nye, 1967; Huntington, 1968; Johnston, 1982; Noonan, 1984; Klitgaard, 1988, Theobald, 1990). Most authors have studied the causes of corruption, its consequences, and its occurrence as a part of political structures as well as the public official’s role in corruption (Scott, 1972; Rose-Ackerman 1978; Klitgaard, 1988; Alatas, 1990; Theobald, 1990; Mauro, 1995; Mauro, 1997; Johnston, 1997; Perry, 1997; Tanzi, 1998; Harris, 2003). Corruption has also been seen as a matter of “embedded local cultures” and as a result of “political structures and institutions” (Heywood, 1997). Available literature states past cases, provides justification for the passage of the FCPA (Foreign Corrupt Practices Act) by the US government (Noonan, 1984; Jacoby et al. 1977) or enumerates consequent disadvantages faced by US companies while doing business overseas (Jacoby et al. 1977; Kaikati et al. 2000). Publications discussing corruption-control and installation of control mechanisms focus on the public official (Klitgaard, 1988; Rose-Ackerman, 1999).

Some scholars have explored the correlation between the stages of a nation’s development and their influence on corruption and found that increased corruption is experienced as an economy takes off and every developing nation experiences increased corruption in times of rapid development (Wraith & Simpkins, 1963; Theobald, 1990). In certain situations corruption has been seen as a positive occurrence. Altman (1989) considered corruption and black market in the erstwhile Soviet Union as a “market correction mechanism”, correcting the Soviet government’s price and distribution control policies. Tillman (1968:437-443) considered the black market price as a “mandatory pricing system.” Szefelt (1983) in his study of private enterprises in Zambia felt corruption led to ‘formation of capital and enterprise’ as Zambian public officials who amassed wealth through corrupt means became entrepreneurs in later life. Klitgaard (1988) finds corruption useful is some organizational situations to cut down bureaucracy and save time. However, authors such as Leff (1964); Scott (1972); Szefelt (1983); Klitgaard (1988) and Theobald (1990) have extensively argued against corruption asserting that the negative side of corruption far outweighs its perceived contextual benefits.
Corruption has also been considered as a matter of culture tracing its origins to paying homage to the tribal chief or paying obeisance to a monarch (Wraith & Simpkins, 1963) but this argument is considered outdated by the stakeholder community and in particular in the anti-corruption efforts of Transparency International and the United Nations.

In recent times, scholars have studied the impact of corruption on society (e.g. Alatas, 1990). Empirical studies, such as Mauro (1997) provide tentative evidence about the economic effects (i.e. lowers growth and investment) of corruption. Mauro (1998) provided the first cross-country (across sovereign nations) empirical evidence that corruption affects the composition of government expenditure and adversely impacts government expenditure on education. Gupta, Demello, Sharan (2001) suggest in their study that nations with higher incidence of corruption also experience higher military expenditure in relation to both a nation's GDP and government spending. Leite & Weidmann (2002), in their empirical studies of natural resource rich nations, who are otherwise poor, found that such nations experience slow economic growth due to the incidence of rent-seeking activities of public officials and corruption.

Gupta, Davoodi & Tiongson (2002) concluded in their empirical study that nations with high levels of corruption experience adverse consequences on infant mortality rates, higher percentage of low birth weight babies and higher dropout rates in primary schools (the authors used Corruption Perception Indices6 of each country selected for the study and then used individual country data against the above three variables to support their findings). Tanzi (1998:45) explains the qualitative effects of corruption on the economy, namely: distortion of markets, distortion of allocation of resources, distortion of incentives, corruption as an arbitrary tax, increase in poverty, reduction of the legitimacy of a free market mechanism and distortion of the fundamental role of government. Perry (1997) views corruption as a part of human activity in the geographical context and has discussed the causes, proximates, characteristics and functions of political corruption. Harris (2003) in his study of

6 Corruption Perception Indices are annual indices released by Transparency International. They convey the level of corruption in a country as perceived by its people (business leaders, press, scholars, accountants are usually surveyed)
political corruption has distinguished between nations of low corruption and high corruption.

Elliot (1997) mentions three different actors in the arena of corruption, namely: elected officials and politicians, non-elected officials (identified as judiciary and the bureaucracy) and private actors (which includes business). Elliot (1997) also distinguishes between “grand corruption” and “petty corruption”. She describes ‘grand corruption’ as corruption occurring at the highest levels of government involving decisions such as “procurement of military equipment, civilian aircraft, or infrastructure or broad policy decisions about the allocation of credit or industrial subsidies” (Elliot, 1997:178). While “petty corruption” according to Elliot, occurs when private actors interact with non-elected government officials for transactions such as “taxes, regulations, licensing requirements and the discretionary allocation of government benefits.”

However, in all these studies the decision-making role of business managers as a part of what can be called the “supply side of corruption” (Roy, 2001) has not been explored. It is clear that there is a dearth of significant literature or specific scholarly work that could provide decision-making guidelines to lead business managers through a decision process when dealing with corruption in business.

**Business Managers and Corruption**

Managerial decision-making relating to corruption, as discussed earlier, involves the satisfaction or rejection of rent-seeking behavior of public officials or a conscious design on part of decision-making managers to buy the discretionary powers of public officials for a price. However, such decisions pose challenges and involve risks for any decision-making manager as they carry with them the potential to harm or help the growth of their company as well as a their career graph. Such decisions can be viewed in terms of narrow corporate strategies to achieve profits, gain market shares discarding stakeholder interests cautiously, or they can be viewed in broader terms of corporate social responsibility. The more serious the impact on stakeholder groups, the more serious the consequences could be for the company and the decision-making executive. One may gain business and secure business interest by participation in a
corrupt act or lose business by non-participation. Needless to say, participation in corrupt acts raises moral questions.

In terms of their impact on stakeholders, companies have increasingly been subject to the scrutiny of various stakeholder groups. Today's corporations cannot escape the fact that its stakeholder environment expects higher standards of corporate conduct than ever before, and these standards are not likely to get diluted but raised over the years to come. Decision-making challenges in business operations are more pronounced than ever before in corruption-related situations. Corporate performance measures are no longer restricted to profitability indicators, but include stakeholder expectations of compliance with a whole range of issues such as human rights and environmental issues. Against this backdrop of stakeholder expectation, it is critical that the phenomenon of corruption is studied from the perspective of a business decision-making manager. The involvement in significant corrupt acts on part of any company could have serious consequences for its public image and acceptance by society. Two such examples of multinational companies and their complicity in corrupt acts that led to accusations of human rights violations by the stakeholder community are discussed later in this book. These cases illustrate the challenges of corruption-related decision-making that a decision-making manager can face.

**Corruption and Bribery in International Business:**

Bribery in international business has increasingly come under scrutiny of international organizations such as the OECD, UN, IMF, World Bank and regional organizations in Europe, the Americas and Africa. In February 1999, the OECD criminalised bribery of foreign public officials through the OECD Anti-bribery Convention, 1999. The document is internationally significant as it is signed by 34 nations who control 70% of exports and 90% of direct foreign investment worldwide (Pieth, 1999). Moreover, ten international anti-corruption conferences under the aegis of Transparency International; the role played by (TI) Transparency International’s 60 national chapters, the strengthening of the FCPA in USA; the regional anti-corruption conventions in Africa, America and Europe (discussed in the next chapter)

---

7 Organisation for Economic Co-operation and Development.
8 United Nations
9 International Monetary Fund
10 Foreign Corrupt Practices Act
and the United Nations Convention against Corruption, 2003 indicate deep concern about the prevalence of corruption in international business and public life.

The United Nations Convention against Corruption, 2003 (UNCAP) is by far the most comprehensive international effort covering all aspects of corruption in public life and business. These international efforts imply that business managers and public officials are expected to refrain from corruption and bribery. However, these anti-corruption conventions ignore the myriad situations today's business managers face in day-to-day conduct of business in many countries around the world where the rule of law and civil society is far from desirable. Moreover, international efforts in the form of such signed conventions lack uniform legislative enforceability across all signatory nations as well as non-signatories due to various reasons ranging from varying stages of ratification of these instruments (discussed in next chapter) to differences in the judicial and legislative structures of individual signatory nations (Pieth, 1999). Legislation has not been successful in curbing the incidence of corruption in international business as is evident from the last (BPI) Bribe Payer's Index (see appendix I), published after the OECD Convention came into effect.

What is then required, is a multi-faceted approach to tackle corruption in international business. Effective curbing of corruption in international business through legislation is still in its nascent stages, and will take years to catch up with the reality of doing business in many parts of the world. One significant way could be to use the enormous influence that multinational companies exercise in global business by encouraging MNC\textsuperscript{11} managers review corruption-related situations and decisions within a framework of corporate social responsibility. Multinational companies by virtue of their phenomenal growth in their size, operations and importance are in a position to influence global business ethics (Donaldson, 1989). Buller, Kohls & Anderson (1991) further maintain that multinationals are in the best position to create a global ethic. Prahlad & Hammond (2002) believe that multinational companies who enter and invest in poorer countries to serve the “bottom of the pyramid” market will be able to steadily reduce the effect of corruption. It is, therefore, worthwhile to re-

\textsuperscript{11} Multinational Corporations
examine the concept of corruption in business from the perspective of a decision-making manager.

Corruption and bribery are by nature private arrangements for private gain (Nye, 1967; Huntington, 1968), but any such private arrangement for private gain needs to be revisited to satisfy not only one’s moral conscience but also address stakeholder concerns. In the past, some authors have considered corruption in international business as a matter of ethical relativism and attributed it to differences in culture (Wraith & Simpkins, 1963; Fadiman, 1986:128). This understanding influences business decision-making even today. The oft quoted, “when in Rome, do as the Romans” is considered as the best way to do business in a different culture to ensure success. Francis (1991) has explained the “when in Rome” approach as a matter of ethical relativism. The multinational business manager operating in a global environment faces conflicts between home culture and host culture, between shareholder interests and stakeholder concerns, between one’s moral conscience and profit objectives, and conflict between one’s legal obligations and career advancement. A clearer understanding of corruption and its many hues would help formulate corruption-related decision-making as a part of corporate strategy to eliminate negative stakeholder outcomes.

What is Corruption?
What constitutes corruption and acts of corruption is a question of debate among scholars; however, they agree on certain common features evident in an act of corruption. Scott (1972:3) sums this up, “Corruption, we would all agree, involves a deviation from certain standards of behaviour.” This gives rise to a series of pertinent questions as to what those standards of behaviour are from which one deviates? What are the criteria to establish those standards and who lays them down? Whose behaviour is to be checked against those standards? Scott (1972:3) mentions three broad criteria, each with a distinct analytical focus but overlapping with each other, namely: public interest, public opinion, and legal norms. He debates what constitutes “public interest” and what is “public opinion” and issues of law. He concludes that both public interest and public opinion have different connotations in different situations and may be difficult to use as yardsticks in all cases. If compliance with the law is the expected standard of behaviour, then are we narrowing down the issue of
corruption to contractarian requirements and in the process are we relegating a moral problem to a contractarian solution? The requirement of compliance with law would still harbour lingering doubts as to what is acceptable behaviour and what is not, and whether the law in question is unconstitutional or repressive. Scott (1972:5) addresses this dilemma aptly when he writes:

Our conception of corruption does not cover political systems that are, in Aristotelian terms, “corrupt” in that they systematically serve the interests of special groups or sectors. A given regime may be biased or repressive; it may consistently favour the interests, say, of the aristocracy, big business, a single ethnic group or a single region while it represses other demands.

Scott's definition mentions “special groups” whose interests are served, albeit within the law by designs of a political structure. Some formal special interest groups who expressly promote the interest of their own groups within the law are professional bodies of accountants, lawyers, doctors, architects, engineers and trade associations, wherein the rules are set for satisfying specific group interests, and in so far as they do that inflicting cost on society, such systems still remain corrupt. This happens if in the process of serving their own interest, they act to the detriment of society. Likewise, the theory of 'Milgram's six degrees of freedom' or the concept of Chinese guanxi or the old boys network are indicators of the prevalence of informal groups of people who can end up serving their group interest to the detriment of others. The activities of such groups may meet legal compliance but that compliance may not rule out pursuit of corrupt advantage over others.

Legal compliance, however, as a criterion is not ruled out and scholars have used words like “norms”, “formal duties”, “extra legal”, “system of public order” to define corruption and the underlying notion of legal compliance. Leff (1964:510) has highlighted the outcome of a corrupt act, namely: private gain at the expense of common good. He defines corruption as:

---

12 Milgram's six degrees of freedom is based on an experiment conducted by Prof. Milgram on a hypothesis that everyone in this world is connected through a short chain of acquaintances (approximately 6 persons in a chain).

13 The underlying theme in a Guanxi relationship is a reciprocal relationship for mutual benefit between people in business or otherwise. Guanxi is a word coined during Confucian times to indicate various relationships between the Emperor and people and between networks of people.
Corruption is an extra-legal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case.

Leff’s definition strengthens the use of legal compliance as a criterion, but at the same time discusses influence to a “greater extent than would otherwise be the case” as an outcome of the process. However, Leff’s use of the word “extra-legal” and his definition and related work is critically assessed in the work of Alatas (1990: 177-182) who has categorised corruption into seven distinct types: transactive, extortive, investive, defensive, nepotistic, autogenic and supportive and provides a context-specific insight into corruption in public office (Alatas 1990:3).

Huntington (1968:492) defines corruption as, “behaviour of public officials, which deviates from accepted norms in order to serve private ends.” Huntington highlights the private nature of gain made through a corrupt transaction by public officials. Nye’s (1967:567) definition is more comprehensive:

Behaviour, which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains: or violates rules against the exercise of certain types of private-regarding influence.

Nye (1967) offers a better understanding by mentioning the possible beneficiaries of a public official’s corrupt transaction. Rogow and Lasswell (1963:132) define it from the viewpoint of public good or common good, thus:

A corrupt act violates responsibility toward at least one system of public or civic order and is in fact incompatible with (destructive of) any such system. A system of public or civic order exalts common interest over special interest; violations of the common interest for special advantage are corrupt.

Klitgaard (1988:75) contends that illicit behaviour (corruption) flourishes when agents (public officials) have monopoly power over clients by virtue of great discretionary powers that they (public officials) command by way of occupying a
public office. On the other hand the agent’s (public official’s) accountability as an agent to the principal (the nation’s electorate) is weak. In his work detailing control mechanisms for corruption, he has defined these ingredients of corruption in an informal equation thus: Corruption = Monopoly + Discretion − Accountability. In other words, corruption is a situation of monopoly arising out of the discretionary powers vested in a position without being accountable for one’s actions.

A general consensus is noticed amongst these scholars: that corruption is for private gain at the expense of common good and inflicts costs on the public and it is a deviation from norms and subverts the rule of law. ‘Private gain at the expense of common good’ provides the ground of ethical reasoning against corruption. However, literature also provides exceptions to what is perceived as common good, but in reality may not be for be individual good nor satisfy basic principles of equity and justice. For instance, in war time Germany the Nazi perception of common good involved imprisonment and extermination of Jews. Rose-Ackerman (1978:9) explains this situation in her book when she writes, “One does not condemn a Jew for bribing his way out of a concentration camp.” The morality of this act of corruption overrides issues of legal compliance and private gain. Hence, the definition of corruption needs contextual application. Johnston (1989:16) says “there are many forms of corruption, differing in participants, settings, stakes, techniques, and cultural legitimacy.”

Corruption, thus, is private gain at public cost and involves deviation from rules, norms and the law. It is also a trade in discretionary powers of a public official with an underlying element of a *quid pro quo* relationship between the public official and the beneficiary of the discretionary powers. It usually has the ingredient of illegal and immoral gratification. However in certain cultural situations, the discretionary powers are exercised by a public official’s corrupt act to provide private gain to a close circle of people at public costs, without the underlying element of reciprocity. These beneficiaries (people) could belong to the public official’s own family, extended family, circle of friends and associates, persons from one’s tribe or ethnic background or province. Such misuse of powers vested in a public office of national trust is undertaken by the public official to express love, devotion, loyalty towards one’s family, tribe, province or friends and associates, although the public official is not paid for it by the beneficiaries (Abueva, 1966). This exception to the standard *quid*
*pro quo* practice also amounts to corruption because the actions are designed to provide an unfair advantage to certain individuals or a section of society.

Tanzi (1998:24) addresses all these situations by comparing corruption to an elephant:

Like an elephant, while it may be difficult to describe, corruption is generally not difficult to recognize when observed. In most cases, different observers would agree on whether a particular behaviour connotes corruption.

**Defining Corruption**

However, traditional definitions of corruption in literature discussed above do not clearly convey the far reaching consequences of corruption in business. They are narrow and limit themselves to the understanding that a corrupt act amounts to deviating from some norms (Scott, 1972); (Huntington, 1968) or laws (Leff, 1964) or jumping the queue (Rose-Ackerman, 1978) or securing an undue favour or making a private gain (Nye, 1967) at public expense. These definitions fail to explain the possible negative impact corrupt acts of business can have on the stakeholder community (Alatas, 1990). An act of corruption on part of a multinational business manager may have the potential of *inter-alia* jeopardising human rights, the environment and sustainable development. Many a time the decision-making manager may fail to identity all the stakeholders who could be affected and fail to take into account that sustainable development is a concept not restricted to the present generation of stakeholders, but includes all the future ones whose interests might be endangered. Therefore, corruption needs to be redefined in terms of the resulting implications of a corrupt act on part of a decision-making manager.

Accordingly, the compelling circumstances of business that many a time lead managers to take part in corrupt acts needs to be revisited and examined in the perspective of outcomes relevant to stakeholder issues. The purpose of redefining corruption for business managers will fail if one is not able to drive home that corruption has serious potential to damage, to harm and destroy society many a time beyond repair. With this purpose in mind, I propose a redefinition of the concept of
corruption and more particularly corruption in business to make it more relevant for business managers.

Defining corruption from the perspective of a decision-making manager will overcome the limitations of existing definitions of corruption in literature. The need to redefine corruption also arises from the need to appeal to the opinion leaders of our contemporary society who control societal wealth as CEO’s and senior decision-making managers of multinational corporations. External control mechanisms of anti-corruption alone are not likely to win the battle against corruption without the aid of internal self-restraint decision-making models. Transparency International admits that the incidence of corruption is increasing and anti-corruption bodies are losing the battle.14

When we place societal wealth in the hands of bright minds that are members of our society who manage these multinational companies, we also need to provide them with perspectives that motivate them to refrain from corrupt acts. The aim is to encourage internal self-restraint mechanisms (framework offered in the book) within the hearts and minds of decision-making executives. Engaging and eliminating corruption has so far been seen as a legal process at international and national levels; however, it is essential that elimination of corruption is considered also as a process of conscience in terms of honouring basic stakeholders rights at the individual managerial level. Democratic societies cannot function on legal processes alone but to thrive need commitments from individuals who are part of society. This book aspires to convey that message to decision-making managers.

When a manager actively plans, insinuates, arranges in anticipation to satisfy or encourage the rent-seeking behaviour of public officials, the manager’s actions can never be interpreted as anything other than that of an active participant. In order to understand one’s position in a corruption-related situation, the distinction between ‘active’ corruption and ‘passive’ corruption (Roy, 2001) must first be drawn. The decision-making manager may offer his or her perspective and even believe that the arguments offered are correct in so much as they are objective and decisions were

14 Peter Eigen, Chairman of Transparency International admitted that corruption is on the rise while releasing the Bribe Payers Index 2002 in Berlin and we are losing the battle (www.transparency.org).
objectively made in the greater interest of the company. But again, this cannot be and should not be treated as objective because the decision-making manager cannot separate himself or herself from the usual object of observation (economic goals). The decision-making manager in a corruption-related situation is in a situation of "position-dependent objectivity" or "positional objectivity" as Sen (1993:126; 2002:463-483) writes in his work, "what we can observe depends on our position vis-à-vis the objects of observation." The observer (decision-making manager) cannot separate oneself from the object of observation (economic goals). According to Sen (2002:465) the notion of positional objectivity, "is important in understanding the objectivity of beliefs, whether or not these beliefs happen to be correct."

The presence of positional objectivity in a corruption-related situation is apparent from the memoirs of Carl Kotchian, director of Lockheed. Kotchian, in his personal memoir, Lockheed Sales Mission: Seventy Days in Tokyo (Jacoby et.al, 1977:163) wrote:

Was it really possible, from the standpoint of reality, to say, "I refuse to pay"? I thought of all the effort expended by the thousands of men since the conception and designing of the L-1011 Tristar; our superhuman efforts to avoid bankruptcy because of our own financial difficulties as well as similar difficulties of the engine maker (Rolls Royce); the successive defeats in both the KSSU and Atlas competitions in the European theater. I thought of the painful final efforts of the seventy days. And I thought of being told: If you make this payment, you can surely get the order of as many as 21 airplanes.” I must admit that my moral and ethical considerations gave way to the commercial gains we had been seeking for so many hard days and weeks.

Kotchian's question: "was it possible from the point of view of reality?" offers a position-dependent insight into the mind of a decision-making manager in a corruption-related situation. Kotchian concludes that there is no other solution but to pay a bribe for securing the much needed business deal.

The discussion here is not to find fault with either the bribe-receiver or the bribe-giver, but to achieve a deeper understanding of the mind of a decision-making

---

15 Lockheed Corporation confessed under amnesty during the 1975 US congressional hearings; to have paid bribes in 41 countries out of the 70 countries that Lockheed did business in (Noonan, 1984).
manager. It is possible that Carl Kotchian may have written his memoirs as a public relations device or he may have written it in remorse and in reflection. Whatever the purpose, if we search for answers in any situation of bribe-taking and bribe-giving we are likely to face the proverbial question of whether the chicken came first or the egg came first. Someone wanted to pay a bribe so someone took it or it could be someone asked for a bribe so somebody paid it. To avoid such ambiguous areas in corruption-related situations, we need to consider that doing business or the right to do business in society is derived from an unwritten social contract between the company and society. The company is required to honour some basic norms, which can be better explained in the context of ISCT thinking (Donaldson & Dunfee, 1999) i.e. Integrated Social Contracts Theory.

ISCT thinking proposes that certain basic norms are recognised as universally acceptable and are a part of an implicit social contract between business and society. The issues of human rights, environmental concerns and sustainable development are not subject to relativist thinking but are of universal concern and relevance. Corruption or acts of corruption that undermine universally accepted norms are clearly a violation of the social contract between business and society. If these critical issues or universal norms are incorporated in a corruption-related decision-making (CRDM) process, not only will the managers of a socially conscious company be able to honour their stakeholder obligations but also pave the way for application of ethical principles in other aspects of business conduct.

**Value and Utility of Ethical Business Conduct**

Ethics as a body of knowledge has found practical application (ethical conduct) in business situations, just as philosophy in general has influenced understanding of moral issues in society. Business ethics and its relevance in strategic thinking are now being mentioned in management literature more than ever before (Luijck Van Henk, 2000:3). Practical application of business ethics requires a dialectic understanding of issues in hand by a decision-making manager (Singer, 2002). Thinking in terms of profit and utility in the market place is one side of the coin. Values based outcomes relating to overall human flourishing are the other side of the coin. Both are complementary; they are not mutually exclusive. If both value outcomes and
utilitarian outcomes are evaluated by business managers it will go a long way to ensure that businesses thrive and executives live longer in good health.

There is indeed a cash value of ethical conduct besides the spiritual side of it. Ethical conduct is likely to help an executive maintain good health free of undue stress and enjoy what he or she is doing and that can mean added years of life and earning to the executive. Rational company executives do not want to die on the corporate battlefield of unhealthy competition, corruption, intrigue, conspiracies and aim for a Mercedes Benz as his or her coffin, a fate that befell J Clifford Baxter, a senior executive of Enron. The executive shot himself in his Mercedes Benz because he could not bear the stress of investigations into his role in Enron’s bankruptcy (McClean & Elkind, 2003). Major corporate scandals have executive suicides associated with them. For instance, when the Lockheed investigations started, the treasurer shot himself (Jacoby et al, 1977); when United Brands was exposed in a bribery scandal in South America, the CEO Eli Black jumped off the twenty-second storey of his New York office building (Jacoby et al, 1977).

The Academy of Management, USA, prompted by the series of fraud induced corporate failures in USA during 2001 and 2002, as a matter of reflection, admitted in an email to academia around the world that education institutions and business schools had failed to morally educate business school students about business conduct. Therefore, successful business conduct is ethical business conduct which in turn can ensure rising executive career graphs and handsome rewards, devoid of situations that are tarnished by allegations of corruption, fraud and rejection by the stakeholder community. This is possible through ethical decision-making and practices based on ethical principles and reasoning. Ethics generally deals with the reasoning process and is concerned with the justification of actions and practices in specific situations (Buchholz & Rosenthal, 1998). The authors believe that when we learn to think we also become free moral beings in the process. Freedom involves moral responsibility and this in turn involves the ability to recognise moral problems. A plurality of conflicting interests must be integrated, and that can only be done by the morally perceptive, creative, individual operating in response to specific conflicts.

---

16 Academy of Management USA sent out a draft resolution admitting this serious lapse on part of business schools in educating business school students in August 2002.
The way of creatively integrating these is then a "manifestation of one’s moral character" (Buchholz & Rosenthal, 2001:29).

The corruption-related decision-making (CRDM) process as presented here has a specific purpose: it is to make individual managers think and recognise moral problems, in specific contexts. It is a logical process that imports an ethical dimension to grey areas in corruption-related situations, with a view to achieving either an outright rejection of an action due to its consequences on others, or a justification of one’s decision in a specific context within the framework of corporate social responsibility. The CRDM process ensures that “ethical missteps” (Sims, 2002) do not occur defeating all other strategies for success.

**CRDM and Strategy**

Strategy is always designed to win, whether in business or in military science from where the concept originates. According to military science, strategy is an unambiguous term about the science and art of winning at war that requires planning (Husted & Allen, 2000) to achieve success at war. What constitutes a win in military science is bound to inflict pain and suffering on the enemy, but the same logic cannot be extended to the concept of a ‘corporate win’ in a civil society. What then constitutes a win for a multinational company (or any business) in society? Should a corporate win be defined as achievement of profitability, increase of shareholder capital, growth of operations and expansion of market share or should it also include respect for human rights, good environmental practices, good manufacturing practices that protect sustainable development? Pursuing economic goals such as seeking profits will mean making money but implementation of the second part of the same question could mean outflow of money or reduction of profitability. Ostensibly, it represents a conflict and reflects the ethical problems in strategic management. According to Hosmer (1987:3) it is “a conflict between an organisation’s economic performance (measured by revenues, costs and profits) and its social performance (stated in terms of obligations to persons both within and outside the organisation).”

These contradictions can be debated either way and represent binary issues whose solutions lie in dialectic reasoning or analysis (Singer, 2002). For any given thesis, there is an anti-thesis. A winning strategy for any business is a matter of dialectic
understanding of how a win or victory should be defined. A good starting point to seek an answer would be to set out all the narratives and perspectives and then compare the elite-consensus view with the dissenting views including cultural specific understanding and minority voices (Singer, 2002), thereby restating or reframing the problem in its entirety. This would amount to shifting the paradigm of strategic management thought from a narrow perspective of an elite-consensus view of business reality to a state where dialectic reasoning becomes the central principle in strategic business analysis (Singer, 2002), thus leading to solutions that are everlasting with win-win situations for all concerned. This is essential because “the traditional language of competitive strategy is often associated with relentless pursuit of essentially selfish interest, by stronger and more powerful players” (Singer, 1997:72). Mindless pursuit of competitive strategy is akin to a “descending iron cage” that Max Weber associated with calculated forms of rationality as it creates victims of economisation (Singer, 1997:73). This situation can be consciously overcome by adapting models of rationality augmenting the language of strategy so that strategic management incorporates ‘business ethics.’

The notion that a ‘rational economic man or a rational economic organisation’ is devoid of human feelings is discarded by Klein (2002). The author argues that emotions and feelings are essential ingredients to rational decision-making and practical rationality. It “involves the ability to determine and achieve ends associated with human flourishing or happiness” (Klein, 2002). Practical rationality therefore, “implies both determining the correct means for achieving the desired ends and aiming at those ends which promote what Aristotle calls human flourishing or eudaimonia” (Klein, 2002:349).

Human flourishing can be analysed from the fundamental principle of hedonism as established in the ethical theory of utilitarianism propounded by John Stuart Mill and Jeremy Bentham. The original meaning of the term ‘hedonism’ implies achieving maximum pleasure at the cost of very little pain. When applied to business actions and decisions, the main stream meaning of ‘hedonism’ or utilitarian theory involves achieving greatest amount of happiness for the greatest number of human beings as opposed to pain inflicted on human beings by business actions and decisions. In analyzing business decision-making outcomes one could adopt a qualitative approach
(as proposed by John Stuart Mill) or a quantitative approach (as proposed by Jeremy Bentham) to determine the outcome. In doing this, one must remain mindful of the danger that the rights of minorities might be compromised and minorities may suffer. Indeed, this is a standard critique of utilitarian theory. With quantitative approaches, the limitations of all methods of quantification and assessment must also be understood, which in turn implies that pluralistic approaches are often appropriate (eg: Resnick, 2003). Overall, the ends and outcomes of any rational decision-making process should necessarily lead to human flourishing and not human suffering, therein lies the challenge in a corruption-related situation before any decision-maker.

Considering the importance of corruption-related decisions to a corporation’s success or failure in many situations, decisions relating to situations of corruption and bribery need to be studied from the perspective of strategic management. In order to address the company’s long-term strategic interest managers need an “orderly way of thinking through the moral implications of a policy decision” (Goodpaster, 1984:3) while dealing with corruption-related situations. Corruption-related decision-making (CRDM) is that orderly way of thinking through the moral implications of a policy decision in the realm of corruption and bribery. It is concerned with the protection of stakeholder interests and strategic interests within the framework of corporate social responsibility. Corruption-related decision-making or CRDM can, therefore, be regarded as a new concept in strategic management thought whose purpose is to consciously protect stakeholder issues during decision-making in corruption-related situations.

Morals, Ethics and Corruption:
Corruption like any other human activity in society is subject to evaluation against certain moral standards. These are standards of expected behaviour based on beliefs held by society or a group of persons, of what is right and what is wrong or what is good or what is bad. When society classifies some human activity as wrong or bad, the logical question would be on what basis does society do that?

This question brings us to the well documented debate in Great Britain between Lord Patrick Devlin (Justice of the High Court, Queens Bench, 1948-1960 and Lord of Appeal, 1961-1964) and Prof. H.L.A. Hart (Professor of jurisprudence at Oxford
University, 1952-1968) that ensued over the Wolfenden Report.\textsuperscript{17} The debate was essentially about legal enforcement of morals in society. Lord Devlin takes a view that morality is a sphere in which there is public interest and there is private interest, often in conflict, and the problem is to reconcile the two with a toleration of maximum individual freedom that is consistent with the integrity of society (Devlin, 1959). Here, in order to retain the integrity of society, Lord Devlin has argued that the law has the right to curtail individual private activity if that activity is considered as detrimental to society by the ‘majority’, which is reflected in the opinion of any ordinary person (who could be picked up at random from the street and placed in the jury box). The source of a majority opinion is immaterial, as long as the reasonable man on the street believes that a practice is immoral (Devlin, 1959:46).

Prof. Hart questioned Lord Devlin’s views. Prof. Hart argued that the legislator should investigate whether the majority moral opinion is based on ignorance, superstition, or misunderstanding. He argued that moral issues are both private and public, and certain issues may cause disgust and intolerance but if it is a private activity, it cannot be curtailed by law merely because it is disgusting or intolerant as it will result in curtailing individual liberty (Hart, 1963). To take the step of legal enforcement of a moral issue involving any human activity, Hart (1959:52) recommended two questions,

First, we must ask whether a practice which offends moral feeling is harmful, independently of its repercussion on the moral code. Secondly, what about repercussion on the moral code? Is it really true that failure to translate this item of general morality into criminal law will jeopardize the whole fabric of morality and so of society?

Thus, legal enforcement of moral standards is logical only when the moral standard itself has been investigated, and whose breach is likely to cause serious harm to society. Although moral standards are based on beliefs of individuals and society, in order to legally justify and enforce them, mere majority opinion can also amount to tyranny of the majority. A moral standard becomes suitable for legal enforcement\textsuperscript{17} The Wolfenden Report (1957) refers to a parliamentary committee report in Great Britain dealing with homosexuality and prostitution. It is a landmark report because it also queries the function of law itself while dealing with two very difficult legal and social problems of that period.
only when its breach will jeopardize the fabric and existence of society. Whether a moral standard is reasonable or unreasonable is the study of ‘ethics’ as a body of knowledge. Ethics is the normative way of studying moral standards, in which, the normative study attempts to find out what ought to be the moral standard or state of affairs and why so, and if not, then why not? Morality and moral standards offer a choice between right and wrong but the justification for that right or wrong is found through the discipline of ethics.

The arguments in the Hart-Devlin debate and the concepts of moral standards and ethics are inter-related and sometimes used in an interchangeable manner. When applied to the human activity of corruption, one can safely conclude that is immoral and unethical since it fundamentally involves private gain at public cost. If left unchecked, corruption can lead to chaos and anarchy in society. Corruption also breaches the principle of distributive justice and undermines the fiduciary role of business as a custodian of societal wealth and resources. Moreover, corruption violates the utilitarian role of business to achieve the economic welfare of society. This logic has prompted the formulation of anti-corruption legislation both at national, regional and international levels to protect the economic interests of society and protect society from an immoral situation of private gain at public costs. Except for the situations defined by Abueva (1966), corrupt influence and acts of corruption are largely sustained through an intricate system of bribery (irrespective of the nomenclature), questionable payments and influence peddling against a quid pro quo. Let us examine the terms these further.

**Bribery:**

Bribery is the act of providing incentives in exchange for an act of corruption. A bribe includes payments in cash or kind and can include provision of free goods or services and non-repayable loans. A bribe can also be termed as a gift or donation or bear any nomenclature denoting cultural customs and nuances but with a view to extract a corrupt act. Companies get around bribery legislation by donating money to a trust that the bribe-taker nominates as in case of Lockheed and Prince Bernhard of Holland where Lockheed made donations to the Prince’s wildlife trusts in exchange for aircraft orders (Jacoby et.al, 1977) or by providing free goods, free services, scholarships for
the bribe-taker’s children for overseas study, payment of marketing commissions, payment of consulting fees to third parties nominated by the bribe-taker.

Bribes can be paid or provided before the task sought by the bribe-giver is done or it may be paid or given after the task sought by the bribe-giver is done. At times, bribe-givers and bribe-receivers claim legitimacy for their acts under labels of customs and cultural requirements. If the objective of any of these acts is to seek reciprocity and create a relationship or understanding of *quid pro quo* for private gain against public good, it is a bribe irrespective of the nomenclature used.

In the context of business and its interaction with the government (public officials) corruption occurs and bribes are paid or given by a business manager. According to Noonan (1984:23), “in a modern society corporate bribers may be more powerful than the officials they bribe” and the “bribe-takers are among the powerholders in society that is why they are bribed.” One (corporate executive) has the power to bribe and the other (public official) has the power to reciprocate with the discretionary powers of one’s office. The bribe given by a corporate manager to a public official is to achieve a favourable disposition and line of communication with the public official who has dispensing powers and whose dispensation is sought by the corporate. As Noonan (1984:697) clarifies, “The bribe is intended to reflect or create an overriding obligation. The briber pays because he (or she) feels he (or she) must reciprocate or must have reciprocation.” Noonan (1984:697) reiterates that, “Bribe is used today not only in its primary sense of an exchange with an officeholder, but in the sense of any inducement given to alter conduct that would naturally be otherwise.” Johnston (1997:62) explains the process that underlies this primary sense of exchange thus:

- The initiative may come from either private clients or public officials:
- the first may offer bribes, the second may delay decisions or contrive shortages until payments are made, or may simply exhort them. The climate of corruption can be so pervasive that no explicit demands are needed: “everybody knows” that decisions must be paid for.

Once an understanding is reached, the bribe-taker is expected to reciprocate by way of a corrupt act in exchange for the bribe.
In case of bribe transactions involving large stakes there are inherent elements of ‘secrecy’ and ‘enforcement.’ Lambsdorff (1998:43) has analysed the element of secrecy involved in such bribe transactions in two ways i.e. (a) it has to be kept as a secret from the world at large to avoid public scandals and extortion (b) as a secret transaction known to only few within the organization under a safeguard that employees privy to the bribe transaction will not be able to skim off some of the bribe for their own. Lambsdorff (1998) writes about an employee of a German firm in Hong Kong who was given money and asked to bribe Chinese government officials. The employee diverted funds meant for bribing Chinese government officials to his personal account instead of delivering the bribe. Later, the company discovered that bribes were not delivered and it threatened the employee with prosecution. The employee, in turn, threatened to expose the company and the Chinese government officials involved and escaped prosecution.

When it comes to enforceability of a bribe, a bribe-taker is also conscious that the secret arrangement of reciprocity between the bribe-giver and the bribe-taker is enforceable by the bribe giver (though not in all situations). In event of non-performance by bribe-receiver, the bribe-giver (business) can use the services of others to ensure performance and may have access to other influential persons within the bribe-taker’s organisation, or to organised criminals or command political influence. The bribe-giver can use a combination of all three or two of these to ensure compliance (on behalf of the bribe-giver) by coercing and intimidating the bribe-taker. Only in those instances where a bribe-taker is not afraid of such coercion by virtue of being more powerful than the bribe-giver can the bribe-taker risk non-performance in a corrupt transaction.

Dellaporta & Vannucci (1999:20-24) in their extensive study of corrupt exchanges in Italy between the networks of politicians, business, mafia and middlemen believe that corruption operates successfully because of a complex web of relationships between public officials (bribe-receivers), business cartels (bribe-givers), middlemen and organized crime that ensure “flow of information” (discretionary powers) in exchange for “money” (bribes) with the underlying element of “trust.” Casual observation indicates that what has been observed in Italy holds true in other countries around the world in relation to the nexus of corruption. The main actors are the public officials.
(rent-seeking behaviour) and business (gain-seeking behaviour) with supporting roles played overtly by 'middlemen' who act as consultants or liaison agents brokering deals between the two (indicated by the double headed arrows in figure 1), with organized crime in the shadows to play a covert enforcement role paid for by the party asking them to intervene (indicated by arrows in the figure) if it becomes necessary. The web of these relationships is depicted below:

**Figure 1. The Nexus of Corruption**

Middlemen as brokers of deals/ trust

Public officials (rent-seeking)  
Bribes in Exchange for favours  
Business (gain-seeking)

Services of Organised Crime as enforcers of corrupt deals if needed

**Bribes vs. Gifts:**
Most people understand when a bribe is offered or demanded from them. Indeed, most nations around the world have words denoting a bribe in common parlance in their own language (see Appendix II). But, it is essential that a distinction be made between a bribe and a gift, because many bribes acquire the cloak of gifts within a cultural context. Noonan (1984:697) elucidates this distinction:

> The key differences between a gift and a bribe are: a gift may be disclosed, a bribe must be concealed, the size of a gift is irrelevant whereas the size of a bribe is decisive, a gift does not oblige, a bribe coerces; a gift belongs to the donee; a bribe belongs to those whom the bribee is accountable.

These two words, *bribe* and *gift* form two ends of a segment, with a few related activities in between ranging from tips to cultural situations of gift-giving. Tips are used to influence conduct for future services and reward past services, however the distinction between a tip and a bribe can be determined from the size of the tip, its relevance to the service rendered or expected and the fact whether it can disclosed or not. If the size of a tip is disproportionate to the service and it cannot be disclosed, it is a bribe (Noonan, 1984:688).
Gifts in a cultural situation express love, affection and exchanges during occasions in a context of personal relations (example: gifts exchanged at Christmas). The distinction between such a gift and a bribe can be made by examining whether love and affection exist within the cultural context claimed and furthermore, is it being concealed or disclosed. Even in instances of statutory disclosure such as campaign contributions which can be made out of love for a political cause, the clue lies in pre-election or post-election campaign conduct of the donee (Noonan, 1984:621-51). If the donee reciprocates by a *quid pro quo* act, the campaign contribution is a definite bribe. The briber has sought in this case to secure a benefit of some kind from the office of the bribee. A gift always belongs to the donee (Noonan, 1984:697) once given by the giver\(^{18}\), but a bribe belongs to the bribe-giver to whom the bribee is accountable for reciprocal performance of a corrupt act in exchange for the bribe.

A few centuries ago, in most countries around the world, gift-giving to people in power, especially monarchs, nobles, tribal chiefs and public officials, were an accepted and essential practice (Wraith & Simpkins, 1963). In Japan for instance during the Tokogawa (1603-1867) rule, written regulations existed prohibiting acceptance of bribes, but in practice merchants offered large gifts of gold to public officials, calling them “gifts in anticipation” and promised them a “thanks offering” (Mitchell, 1996:5) when the work was done. Today gift-giving to people in public office, especially large gifts of gold will be open to question and the act would be viewed with suspicion.

Gift-giving and taking is subject to cultural relativism in many places around the globe (Wraith & Simpkins, 1963) and such cultural relativism confuses and clouds the judgement of an observer. Certain cultural situations are accepted as ethically correct or moral within the society in question. A Middle-Eastern princess was beheaded for adultery in the Eighties. This was considered sound punishment for adultery in that particular society but if the same treatment were meted out to anyone (for adultery) in another society, it would raise a human rights debate. Such cultural relativism “is grounded in the assumption that a person or culture believing an act is morally

\(^{18}\) There are exceptions, for example one of the principles used by diplomatic corps is that a gift must be accepted lest refusal give offence; but it is understood that the gift was made in an official capacity. The donee later hands the gift over to some worthy organization such as a charitable organization.
correct, helps make it morally correct” (Donaldson & Dunfee, 1999:20). The fallacy of a relativist view is obvious; morality is linked to group or cultural belief and not to universal principles of ethics.

Managers with relativist views, when involved in an overseas gift-giving decision can use the test of disclosure to satisfy themselves and their critics that their act of gift-giving is being done to honour a local custom or culture of gift-giving. If managers feel that their act of gift-giving can be announced in the local newspapers without any adverse impact on the company’s work or reputation in the host country, then it is a gift within the cultural context of that country. If managers are uncomfortable about local journalists learning about the gift, then it is certainly not a gift within that culture because announcement of gifts, which are culturally accepted, will not create an embarrassing situation for the company in that country or in that society. We come back to Noonan’s (1984:697) distinction between a bribe and a gift: “a gift can be disclosed, a bribe needs to be concealed.” To be called a gift, it has to pass the “test of disclosure with comfort” (Roy, 2001). It is important in such situations to provide disclosure as evidence confirming that the gift in question is culturally acceptable in the host country. Undisclosed gifts, hidden from the public eye, thus can be classified as bribes, irrespective of cultural arguments as they fail the “test of disclosure with comfort” in the host country.

**Lobbying:**
Lobbying is the promotion of individual or group interests by various means including dissemination of information to create a favourable disposition towards that individual or group. Businesses adopt lobbying, *inter-alia*, for creation of favourable public opinion and legislative opinion to obtain benefits by passage of favourable laws or repeal of unfavourable laws. Lobbying involves creation of favourable public opinion and/or legislative direction to serve group interest or individual interest of the lobbyists. It is achieved unnoticed, usually to the detriment of public interest or common good.

A lobbyist need not promise bribes nor pay a bribe; lobbyist influences situations, individuals or systems to make them favourably disposed towards the purpose of the lobbyist. Lobbying can occur through different means. One of the recognised forms of
lobbying which is legally prohibited in USA is the “revolving door phenomenon.” Revolving door situations are said to occur when “government officials leave office and join private firms that then bid on contracts from government agencies for which the officials formerly worked” (Rauch, 1997:113). In Japan, revolving door situations known as amakudari (literally descent from heaven) are legally accepted (Rauch, 1997:113). Another form of accepted lobbying is use of public relations consultants who plan media publicity to create or sustain a favourable public image of the client company. Such public relations exercises are widely accepted and not prohibited.

**Favouritism and Nepotism:**
Favouritism can be an after-effect of successful lobbying activity by an interested group or individual. Favouritism can also occur not necessarily as a result of lobbying, but on account of considerations of friendship, kinship, nationality, ethnicity, ideology or plain prejudice. Favouritism is said to occur when the decision-maker decides in favour of specific group or individual interests by deviating from the established standards of decision-making. The rules are bent, the procedures are abandoned or the procedures are ostensibly followed with a premeditated decision in favour of a particular group or individual who would not otherwise have been the beneficiary by merit. Nepotism is a form of favouritism. Abueva (1966:534) defines nepotism as arising from “kinship claims” in certain cultures and is expanded to include “non-kin on the basis of other personal or partisan considerations” (Abueva, 1966:534). Nye (1967:567) defines nepotism as: “bestowal of patronage by reason of ascriptive relationship rather than merit.” Nepotism, therefore, is a form of favouritism influenced by relationships between the concerned parties (example: Contracts given to a minister’s relative without inviting bids).

**Marketing Commissions as bribes:**
Some marketing commissions have been used as a sophisticated version of bribery (example: Lockheed). Such commissions are paid to either the direct beneficiaries or their middlemen. These payments are not declared in public and statutory documentation, nor are they mentioned in agreements available for public scrutiny. These payments are made either in cash or in the form of providing free goods, services or non-repayable loans or amounts paid into numbered bank accounts (in any of the tax havens). Bribes of this nature are labeled as marketing commissions or bear
any nomenclature to hide the nature of payment. Lockheed Corporation made such payments from a “market contingency fund” as Lockheed called it. Lockheed used its “market contingency fund” to pay Saudi Arabian middlemen in order to win the deal to supply planes to Saudi Arabia (Sampson, 1977:198). Such commission payments frequently occur in transactions involving sale of arms; sale of airplanes (example: Lockheed aircraft sales in Japan and Indonesia), both civil and military airplanes; construction tenders; and aid spending by donee country. Secrecy from the public eye and non-disclosure in statutory documentation are the key features of such bribes. For example in case of Lockheed’s aircraft sales to Saudi Arabia, three different contracts were discovered for the same transaction in course of investigations and obviously all three were not public documents (Noonan, 1984:659).

Facilitating payments:
Multinational companies while doing business in a foreign country encounter situations when they have to either pay a bribe or suffer business losses, property losses and even loss of human life due to non-payment. In those countries where political corruption is rampant at all levels, it becomes a part of a multinational corporation’s business agenda to take care of public officials. Payments have to be made at every stage of business conduct right from securing permissions to do business in that country to everyday functions dealing with various administrative departments who can interpret laws, rules and regulations in ways that harass the company. Usually petty officials will find fault with day-to-day rules ranging from hygiene, employee welfare, working conditions, export/import documentation and packaging, to bank permits for repatriation of profits to anything that can be done to hinder smooth business operations. These situations are typically called rent-seeking behaviour (Bhagwati, 1982; Bardhan, 1997) and require multinational businesses to pay or else suffer time delays, losses and, at times, threat of closure of operations. These are situations in which the bribe-taker demands bribes by virtue of one’s position or public office and the bribe-giver has to give in as a matter of commercial prudence and practicality. For instance, in a country where the corrupt sub-systems operate (Ryan, 2000) as a part of one’s daily life an importing company may find it difficult to clear a simple import consignment through the customs department without paying the standard facilitating payment for clearance of documents (experience of the author in India). In a situation where the consignment to be cleared
comprises of perishable produce or goods, the rent-seeking behaviour of petty officials in the customs department becomes more pronounced, predatory and extortionate.

**Extortion:**

Payments made under necessity or grave compulsion need to be distinguished from the bribes explored above. If the bribe-taker is in the position to oppress and cause physical harm to the bribe-giver, the act should more appropriately be termed extortion. The bribe-receiver becomes a collector of bribes by virtue of his or her power to oppress, harm or injure. In such situations the moral responsibility is with the bribe collector or the extortionist and not the bribe-giver paying for peace and protection. This applies to companies as much as to individuals. Payment of protection money to organised extortionists (ranging from politicians, administrators to crime syndicates and terrorists) is not uncommon in many countries. It is similar in some ways to buying insurance to protect corporate property and lives of one's employees as much as to ensure the survival of the business. Occurrence of extortion indicates serious political and administrative failure on part of the national administration.

**Corruption: Active vs. Passive:**

In any given corrupt transaction, either the bribe-giver initiates the corrupt act or the bribe-receiver initiates the process of corruption, or both participate as in a courtship process. During the corruption courtship between the bribe-giver and the bribe-receiver, neither party spells out in clear terms one's intentions, but both parties go through the motions of discussing and doing everything else without the bribe-receiving party completing the transaction till the bribe exchanges hands. From a multinational manager's perspective there could be two situations (active or passive) as in figure 2:

a) When the manager initiates the process of corruption or the corruption courtship

b) When the manager faces demands from a corrupt system, group or an individual
As an initiator of the corruption process, the manager’s role as a bribe-giver is premeditated and therefore it amounts to “active corruption” (Roy, 2001:23). Every business manager who initiates the process of corruption, be it bribery, lobbying, undisclosed gift-giving or offering facilitating payments without a demand, is involved in active corruption. In those cases where the manager responds to the demands of a bribe-seeking system, or a group or an individual, the manager is a passive participant and is said to have involved in “passive corruption” (Roy 2001).

This distinction between active and passive corruption clearly states and reveals the role chosen by the multinational business managers in a corruption-related situation. “Business has the power to uplift, business can also corrupt and damage” (Donaldson & Dunfee, 1999:25), therein lies the difference in the intent and role chosen by the decision-making manager. The distinction between active and passive corruption will help us re-define the meaning of corruption for a multinational business manager. This new definition is much wider than all the existing definitions and it takes into account the power of business to uplift and respect stakeholders or the choice of business to ignore stakeholders and inflict damage or destruction by corrupt acts.

Redefining Corruption for the 21st Century Business Manager:
Corruption from the perspective of today’s business managers can be redefined as: A phenomenon that involves illegal, immoral gratification in cash or kind in exchange for securing an unethical advantage over others in business and/or in society. The word ‘unethical advantage’ in the above definition refers to corrupt acts that lack justification from a stakeholder perspective. Corrupt business conduct has the
potential to undermine human rights, democracy and sustainable development, amongst other stakeholder obligations. The explicit mention of human rights and sustainable development is essential to the core of all stakeholder commitments that any business operation has to honour in today's global society. It is the core social clause in the contract between business and society which business has to honour (Donaldson & Dunfee, 1999).

The corrupt advantages sought by multinationals over others in business and/or society can manifest itself in various forms, such as bribes paid to win commercial tenders and contracts, obtaining of promotional articles in return for paid advertisements, bribes paid to escape legal obligations to more serious situations. These could include usage of political influence for passage of favourable legislation by governments, installation of favourable governments both civil and dictatorial, and result in wilful damage to means of livelihood, wilful damage to the environment, compromising on human right issues and issues linked to sustainable development.

Redefining corruption to include stakeholder issues will help us analyse inherent shortcomings of well-intended anti-corruption guidelines of the OECD as we shall see later in this thesis. It will also help us understand the concept of CRDM (Corruption-related decision-making).

**CRDM or Corruption-related Decision-making:**
Corruption-related decision-making by a business manager is an orderly way of thinking through the moral implications of any decision in the realm of corruption and bribery. Corruption-related decision-making or CRDM is a new concept in strategic management thought whose purpose is to consciously protect stakeholder issues during decision-making in corruption-related situations and not jeopardise stakeholder issues ranging from fundamental or universal human rights, to sustainable development. Conduct of business cannot and should not lead to outcomes of human suffering, degradation of the environment, loss of means of livelihood or any such outcome that will mean a legacy of pain and regret for us and our future generations.

Although, it has been said in the past that the business of doing business is business and sustained profit outcomes are essential for the continued survival of business, its
very existence is also dependent on the continued goodwill and acceptance of business operations by society. Business cannot and does not operate in an isolated sphere, but within society. If society rejects the actions of business, sooner or later business will find it difficult to sustain profitability and survive. A good example of such a situation was the entry and demise of Enron in India discussed in this book. Corruption-related decision-making thus comes under the domain of business ethics and corporate strategy, both long-term and short-term, and it is concerned with the continued success of a corporation.

**CRDM and Ethical Decision-making:**

Corruption-related decision-making differs from ethical decision-making by addressing the ethical dilemmas in corruption-related situations between economic objectives, the business environment and stakeholder issues. The general process of ethical decision-making is concerned with the concept of right and wrong. However, in a corruption-related situation (such as paying a bribe to secure a business contract) when the company’s economic interests are in question, one’s decision about whether to take part in a corrupt act or not, is usually evaluated in terms of the economic impact on the company and not in terms of what is right and wrong. For instance, CEOs in India acknowledged in 1993 that their companies constantly engaged in bribery and payoffs and they justified their actions on grounds of “extortion” (by the Indian government officials) as they were “forced to bribe” (Donaldson & Dunfee, 1999:226). Thus, these business managers did not see it as a matter of right or wrong but as a matter of their business environment that forces them to pay a bribe or take part in corruption. This argument was also offered in the infamous Lockheed case and by 500 US companies who confessed to overseas bribery (under amnesty) before the US Senate during the seventies (Jacoby et al., 1977).

In those cases where a company possesses an ethical frame of mind and refrains from a corrupt act once or twice or on numerous occasions because it is ethically wrong to do so, but as a consequence loses business and suffers the economic impact of their honest policies, the decision-making managers in question may become bitter and disgruntled. Later, they may get tempted by the business environment around them and start participating in corrupt acts because every one else is doing it and they have to do it to survive (this is a timeless argument noticed in literature dealing with
bribery scandals eg: Sampson, 1977; Jacoby et. Al, 1977; McClean & Elkind, 2003). This was also observed in the survey of multinational companies at Mumbai, India (discussed in Chapter seven). Thus, in order to achieve the economic objectives, the very same company may enter into corrupt transactions with the justification that other companies are doing it or it is the norm of doing business in country ‘x’ or country ‘y’. It is in such cases where the companies are ethically pre-disposed but suffer from a dilemma between ethics and economic gains that CRDM takes over and provides the decision-maker an opportunity to check whether a corrupt act on part of the decision-maker has the potential to negatively impact human rights, environmental issues, sustainable development or any other stakeholder issue.

If one establishes as a result of the CRDM process that the decision is going to adversely affect stakeholder issues then the company withdraws from such a situation. It is in such situations, when a company has withdrawn under the most difficult business conditions, the company will succeed in sending a message (both within and outside their organization) that the company will never do anything to jeopardize critical stakeholder rights as some things will never be done and should never be done. As a result the company may suffer economic consequences but the company will have created a moral fabric within the organization, and displayed moral courage to its outside environment, thus communicating and setting an ethical standard where it did not exist. On the other hand, when there are no prospects of negative stakeholder consequences under the CRDM process in a particular corrupt transaction, if the company is forced to take part, then there will a sense of justification for the company’s participation.

CRDM may also work in cases where a company did not possess an ethical company culture but has suffered from a public scandal and wants to recover its public image and status by changing its organizational culture. Adoption of a CRDM process will help in such a situation.
F. Fear of loss of business (competitor’s bribery)
1. (Question: To what extent do you fear that corrupt activities of any competitor will result in loss of business to your company?)

<table>
<thead>
<tr>
<th></th>
<th>N= 41</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>2</td>
</tr>
<tr>
<td>A rare chance</td>
<td>3</td>
</tr>
<tr>
<td>To an extent</td>
<td>23</td>
</tr>
<tr>
<td>To a great extent</td>
<td>13</td>
</tr>
<tr>
<td>Completely</td>
<td>NIL</td>
</tr>
</tbody>
</table>

G. Decision-making process
1. (Question asked: When faced with a situation of corruption or bribery do you refer to a) company policy b) previous experience c) Feedback from subordinates d) Personal discretion e) strategic decision-making model f) any other, please specify)

<table>
<thead>
<tr>
<th></th>
<th>Company Policy</th>
<th>Previous Exp</th>
<th>Feedback</th>
<th>Personal discretion</th>
<th>Decision-making model</th>
<th>Any other, pl specify</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responses</td>
<td>35</td>
<td>8</td>
<td>1</td>
<td>8</td>
<td>NIL</td>
<td>1(verbatim policy)</td>
</tr>
</tbody>
</table>

2. a) How often have you been forced to pay because it was a situation where either your company property or human life was in danger? (Keyword: Extortion- life/property)

b) How often have you made a facilitating payment (payments of small sums of money) to lower level staff (public office) especially at clerical, administrative or security staff simply to avoid harassment and time delays? (Keyword: facilitating payment)

c) How often have you been forced to pay organised crime, extortionist or protection racketeers? (Key word: Organised crime)

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Usually</th>
<th>Extremely frequently</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extortion-Life/property</td>
<td>35</td>
<td>6</td>
<td>NIL</td>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>Facilitating payment</td>
<td>2</td>
<td>3</td>
<td>12</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>Organised Crime</td>
<td>34</td>
<td>5</td>
<td>2</td>
<td>NIL</td>
<td>NIL</td>
</tr>
</tbody>
</table>
This book places a choice of conscience on the decision-making table of powerful multinational companies and business managers in general, offering them a conceptual decision-making model to deal with corruption-related situations. The purpose of writing this book is to lend an inclusive meaning to corruption that takes into account stakeholder issues and provides business managers an ethical choice of action in corruption-related situations.

Achinto Roy

Dr. Achinto Roy teaches Strategic Management and Business Ethics at Deakin University, Australia. Previously, he has worked as a Chartered Accountant at Mumbai, India and has over 23 years of professional, business and consulting experience. He holds a PhD in Management from University of Canterbury, New Zealand.