

A Study on Corporate Crime in India

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ABSTRACT:

Corporate Crime is also known as Organisational or Occupational crimes, in White collar crimes. Corporate as a separate legal entity differ from natural person its crime committed by the Corporation and they are liable and guilty for the act. An employee of the corporation held liable for the crime committed? In the preview of the question, under the concept of vicarious liability Corporation held liable and not the employee. Corporations have currently become an integral a part of our society, and with development of firms they need become vital actor in our economy, our society runs within the risk of obtaining exploited by these corporation, and so they must be deterred too. The problem of company crime is exclusive and complicated attributable to many reasons, the first one being the character of company form. The extension of the vicarious liability to offences of mens rea led to the event of company criminal liability. The present paper discuss about the History, nature and type of corporate crime, Liabilities, Doctrine, developing on capital Markets.

I. INTRODUCTION

A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself. The importance of incorporation is that it makes the corporate itself liable in sure circumstances, further because the human beings.-Glanville Williams¹

In simple term, corporation means a group of persons coming together to carry a business. Corporation is a business recognised by law. The evolution of the concept of corporate crime which was characterised by the judiciaries to overcome the problems of assigning criminal blame to fictional entities. The main principle of corporate crime is based on the doctrine of respondent superior. Corporations are the most important part of our society². The corporation are run by natural person and these persons actions which could led to criminal in nature but sometimes it's results to economic loss as well as human loss to the society. Hence for the better understanding of the corporate crime it's necessary to know about the history, nature and type of corporate crimes. Corporate crime is also known as white collar crime in the advancement of technology; there is an adverse impact on the society.

II. OBJECTIVES

- To study in detail about the corporate crime and impact on society.

¹Corporate criminal liability in india, <https://blog.ipleaders.in/corporate-criminal-liability-in-india/amp>

²UmakanthVarotttil, "Corporate Criminal Liability: The Iridium/Motorola Case" <http://indiacorplaw.blogspot.in/2010/11/corporate-criminal-liability.html>,

- To critically analyze the corporate crime stuck in judicial quagmire.
- To suggest the relevant provision on the topic with decided case laws.

III. RESEARCH METHODOLOGY

The present research is conclusive, descriptive and based on non-empirical design. Qualitative data was generated to test the research hypothesis. In order to collect data on the dimensions of the study, a research instrument was designed. The study was conducted on secondary source of data books, articles, journals, e-sources, theories and the relevant provision with decided case laws.

IV. HISTORY OF CORPORATE CRIME

The corporation, an organisational form which was established in the 14th century and it was created and granted only by the crown or by an act of the parliament. The crown attempted to build up the ideas and it encouraged organisations to become legally authorised.³ During the sixteenth and seventeenth centuries, the corporations were grown up as hospitals, universities and other similar associations which were adapted to the corporate form. At the end of this period the corporation was growing as a joint stock company. This joint stock company was most useful in the promotion of new industries. In the initial stage, corporations were created as not-for-profit but later in the seventeenth century the corporation became profit oriented.

During the end of the seventeenth century, incorporated companies were formed on a large scale, but most of companies were run for the benefits of the investors as well as the benefit of the employee profit and most of them had a short span of life.⁴ Because the investors suffered losses in the business and they were involved in the malpractices. However, the British parliament enacted special acts for the business activities.

The basic rule of criminal liability revolves round the basic Latin maxim *actus non facit reum*, *inconclusive mens sit re*. It implies that to form one liable it should be shown that act or omission has been done that was impermissible by law and has been through with guilty mind.

During the first twentieth century, the court were begun to carry the companies reprehensively liable in varied areas within which the social control would be obstructed while not company liability. Indeed, courts were before long willing to carry that the corporation reprehensively chargeable for all wrongs except rape murder and different crimes.

³Dharm Veer singh, Corporate Criminal Liability: A Jurisprudential and Comparative Approach: Legal Service http://www.legalserviceindia.com/articles/cor_dr.htm

⁴ Geeta Nerula, CORPORATE CRIMINAL LIABILITY IN INDIA: AN INFORMATION TECHNOLOGY PERSPECTIVE, Navi.org. para3

V. NATURE AND TYPES OF CORPORATE CRIMES:

Corporate crimes are thought of to be general styles of the white collar crimes and that is additionally grasp with respect to the activity crimes. The distinction between corporate crimes and the occupational crimes is that the corporate crimes refers to the criminal act of the corporate managers for the benefit of the corporation, the occupational crimes refers to the individual employees who is against the corporation itself.⁵ For an E.g., the occupational crimes include theft, money of laundering etc.

While dealing with the “corporate crime” the acts which are against the corporation are the wrongs which are done by the managers or employees for the benefit of the company as well as for the individual benefit.⁶

Corporate crime is different from the traditional crimes which are committed by the individuals. As such there is no separate branch for the crimes which has been committed by the corporate. There are various types of corporate crime. Major types of corporate crimes are bribery, counterfeiting, embezzlement, bank fraud and blackmail etc.

In *A. K. Khosla v. S. Venkatesa*,⁷ two corporations were charged with having committed fraud under the IPC. The Magistrate issued process against the corporations. The Court during this case got wind that there 2 pre-requisites for the prosecution of company bodies, the primary being that of provision and also the different being the mens rea and the other being the ability to impose the mandatory sentence of imprisonment.⁸

VI. CIVIL OR CRIMINAL PENALTIES FOR CORPORATE MISCONDUCT

At the present, most of the countries agree that the corporations can be punished under civil as well as administrative laws. However corporate crimes have more controversial. The law commission of India in its 41st and 47th report suggested that the punishment for criminal liability is imprisonment or fine, the corporate should be fined, especially for the white collar crimes. Sadly, these recommendations never got through. Even though we have provisions under many Indian Laws whereby the fraud, corruption, bribery, insider trading etc. is punished with civil regulations but no penal statutory provisions have been incorporated in the Indian Laws which punish the company.⁹

A corporation cannot be imprisoned and was not amended to prosecution for a criminal offence which was only punishable by death or imprisonment. However, the fact which was that the penalty provided for the violation of a statute was fine or imprisonment, or both in, which does not render it not applicable to a corporation and

⁵ Professor Sara Sun Beale, *The Development and Evolution of the U.S. Law of Corporate Criminal Liability*(2013)

⁶ <http://www.oxfordlawtrove.com/view/10.1093/he/9780199590278.001.0001/he-9780199590278-chapter-21>

⁷ AIR 1991 SCC 703

⁸ <http://crg.aic.gov.au/reports/2-91.pdf>

⁹ Akhil Mahesh, *Corporate Criminal Liability*, (Lawoctopus) Academike.

the similar rule applies only where the statute creating the offence provides for imprisonment if the fine offered not paid. It was additionally worthy to say that our Parliament has additionally understood this issue associate decreed projected to amend the IPC during this regard by together with fine as an alternate to imprisonment where corporations are involved in 1972.¹⁰ However, the Bill was not passed but lapsed.¹¹ Such change in the criminal jurisprudence is a legislative function and hence the Parliament should perform it as soon as possible. Some punishment for criminal liability of corporations which can be found in Sections.45, 63, 68, 70(5), 203, etc of the Indian Companies Act. In this Act only the person who commits any offence is liable and not the company itself.

VII. DOCTRINE OF DIRECT LIABILITY

The doctrine explains how the individual on imposing offence held criminal liability. As of the nature it's also perceptively same as that of legal personality, the corporation in which the action and conduct of individual within the scope of authority, and on behalf of corporate body, the theory of corporate organ is enforceable.¹²

But ironically speaking, it's rigid that corporation is criminally liable rather than complex. Whether the corporation has done without intention or knowledge which is implied or expressed in the following circumstances of the case will be held liable are,

1. Vicarious liability: body of the corporate organs has their authority on the behalf of the individual it's held liable then the legal personality.
2. Intentionally committed offence: corporation knowingly or intentionally with the implied nature through an evidence committed an offence of nature.
3. Corporate culture: when the corporation failed to create corporate culture and encourage by them which is not related to non – compliance of relevant provision.

VIII. DOCTRINE OF MENS REA

Company has no intention to commit the crime, only the people in the company will commit such a nature of offences. A legal question has been raised; the corporation is fictions why the law should not develop corporate mensrea fiction. Here the punishment and fines towards the corporation has deducted.¹³ For the aspect of fiction, the question regarding the fictions to be in perspective in nature answered.

¹⁰ <http://www.legalserviceindia.com/article/1101-Corporate-Criminal-Liability---An-Analysis.html>

¹¹ https://www.anu.edu.au/fellows/jbraithwaite/_documents/Articles/On%20Theory%20and%20Action%20for%20Corporate%20Crim%20Control.pdf

¹² James G. Stewart, "A Pragmatic Critique of Corporate Criminal Theory: Atrocity, Commerce and Accountability", A paper presented at the University of Toronto Workshop on Corporate Criminal Liability, 2012

¹³ Nikil, The Law Reporter, Academike, <http://corporatelawreporter.com/2014/01/02/corporate-criminal-liability-indian-perspective/>

Corporate Punishment

In India, certain relevant provision in which a person will be punished under Indian Penal Code, sec 53 which includes death, life imprisonment, simple and rigorous imprisonment, forfeiture of property and fine. The question has been put forward, if the corporate crime has been committed will be liable under which statute.

Relevant statute in indian law

Indian Companies Act- sec 45, 63, 68, 70(5), 203.

Negotiable Instrument Act, 1862- sec 141

Essential Commodities Act- sec 7

IX. DEVELOPING CAPITAL MARKETS

Capital market is the driving force which is globally acknowledged growth of the national economy in which the era of globalization and liberation put forthwith. It provides the potential investor's particular wealth of the country through the financial instruments such as shares, bonds, liabilities of the company etc, and the cumulative effect which take place in the capital market it will adversely affect the environment which is seriously having the negative role and then the impact of the economy. The regulatory agencies of the market should understand with one another in such nature of crimes. Marketing will be delimitating impact of the nation economy with the impact of corporate crime.

In the Standard Chartered Bank and ors v. Directorate of Enforcement and ors , the court held that the appellant company will not liable to be prosecuted offence under sec 56 of FERA Act, 1973.¹⁴

X. ROLE OF ECONOMIC DEPRESSION

Due to rapid industrialisation and urbanisation in the advancement of the technology, the corporate crime has been increased and in most of the developing countries it result in erroneous economic depression. The state in present scenario, the crime inducing should be reduced and prevented the best formulated with policy implementation. Our country has several hazardous risk these throw light in the residential area which can be termed as potential high risk areas.¹⁵ The law is not always static and regulation should be made still in effective prevalence in manner. The different forms of the punishment incorporated should be compliance of legal process and reduce criminal conduct.

¹⁴ SEC 56, FERA ACT, 1973.

¹⁵ <http://www.commercecrimehumanrights.org/wp-content/uploads/2016/10/CCHR-0929-Final.pdf>

XI. SUGGESTIONS

- The legislature should be initiative towards the following steps. In instance corporate criminal liability new forms of punishment should be evolved and hence incorporated.
- The forms of imposing fine should be segregated in such nature of Economic and Social sanction.
- There should be effective enforcement of punishment ranging from compulsory winding and direct compensation orders.
- When the court took necessary steps for dissolution of corporation, no rights in order that shareholder and directors should not reincorporate.
- In certain circumstances, in addition to be imposing a sentence it will consider best achieve objectives of sentencing.
- Corporate crime is universal problem. There should be an international law, agreement in compliance.

XII. CONCLUSION

In my opinion, corporate crimes are the most happening evils in the society. Loop holes in the corporate crime towards the judicial approach to be more effective impact on the Society. Corporate crime refers to the crimes committed by the Corporation or the individual acting on behalf the corporation held liable and punishable in law. Corporate crimes to be sentenced in the legal provision still more effective and there is a need for the amendment. It adversely affects the capital markets. In present scenario it became a threat to the society. Even for the act of the employee on the behalf of the corporation, the concept of vicarious liability in consistent, the crime should be punished in serious offence both the employee and also the corporation. In such circumstances, the employee may take advantageous.