



Corporate Crimes in India and Corporate Criminal Liability under Indian Legal System

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Abstract

The emerging problem of corporate crime poses a serious threat to nations around the world. This issue is difficult to control as a result of the enormous benefit these crimes can yield in addition to the terrible certainty that the greater part of the culprits use a wide range of authority, being corporate entities with immense financial assets available to them. This paper details out the system of corporate criminal liability. The law has bound the courts to force just fine as a type of discipline for corporate which should be explained by advancing and fusing new types of disciplines upon the corporate with the end goal that the genuine reason for disciplines for example prevention or development, for example, fine or a punishment is accomplished. Corporate criminal liability has attracted several researchers and has been a subject of discourse on the growth and development of the criminal justice system in many jurisdictions. Hence, there is no deficiency of assets or past investigations that will feature both the methodology and hypothetical structure for the detailing and requirement of corporate criminal liability. The present criminal justice system is not sufficient to deal with these situations. There is need to define the criminality of corporations and lay down penal sanctions. This research paper has been taken as an effort to study the principles of corporate criminal liability and their penal aspects.

Keywords: Corporation, Corporate Crime, Corporate Criminal Liability, Criminal Justice System

Introduction

Corporate crime is by a wide margin the most genuine of a wide range of crime so it needs to understand why the most extravagant, most remarkable corporations on the planet routinely, efficiently disregard the law.

Corporate crime is a phenomenon that marked the 20th century. The first half was marked with two major world economic crises (The Great Depression) and another with an increasing number of heavy corporate scandals. What is important is that this type of fraud is spreading, and as a result, there has been a need to study this concept from a scientific and professional point of view, able to find a solution and prevent corporate crime.

Corporate crime, also known as white-collar crime or composed crime, alludes to criminal offences that are carried out by individuals during legitimate business activities. Crimes are frequently peaceful and include crimes such as fraud, insider trading and money laundering. Another type of crime is a state-corporate crime, in which corporations that depend on states for financial help illegally carry out crimes to pick up benefits. The principals and directors of corporations can be accused of corporate crimes, and corporations can organize themselves for crimes. Workers of businesses and corporations can also carry out crimes, regularly without the information of business owners or principals.

Corporate Crime Law and Legal Definition

Corporate offence means a business element or corporation, or by people who might be identified with a corporation or different business substance. A corporate crime is a demonstration of its faculty and ought not to be approved or affirmed by its officials. This is adequate if the officials were practising standard powers for the benefit of the corporation. Thus, to a large extent, the crime of a

corporation is linked to the acts of its officers. Such criminal acts reflect the character of the individuals managing the corporation. As a result, if an officer is associated with a crime, it would seem appropriate to use corporate crime to reduce the credibility of a corporate officer.

Definition of Corporate Criminal Liability

Corporate crime means a crime committed either by the corporation, or by someone who can be identified with the corporation. A corporate crime is its personal act and should not be authorized or confirmed by its officers. This is adequate if the officers were practicing standard powers for the benefit of the corporation. Thus, to a sufficient degree, the corporation's crime is tied to the acts of its officers. Such criminal acts reflect the character of the individuals managing the corporation.

Now, criminal liabilities of corporations are taking its sweep. The term corporate crime describes these corporate activities, which are perused to involve some aspects of criminal law. Corporate crime is commonly used to denote bridges of regularity offences. Corporate crime also includes fraud and other illegal activities, which affects general laws.

Origin of Corporate Crimes

The concept of corporate crime can be derived from the larger concept of white-collar crime, which was first introduced into social science by the American scientist Edwin Sutherland in his 1939 Presidential Address to the American Sociologists Association. He defined white-collar crime as "a crime committed by a person of high regard and honor during his occupation". Focusing on the powerful as well as the downcast, such a concept represented a radical recombination in theoretical notions of the nature of criminality. Sutherland later published a book called White

Collar Crime (1949), which focuses almost exclusively on corporate crime. Using official records of regulatory agencies, courts and commissions, He found that at least one of the 70 corporations he investigated over a 40-year period had violated the law or against them for inaccurate advertising, patent misuse, wartime trade infringement, pricing, fraud or intended manufacture and defective goods. There were several repeaters with an average of eight negative judgments issued for each. Sutherland said that "crime in the streets" made newspaper headlines, while "crimes in sweets" continued. While white-collar crime was undeniably more costly than road crime, most cases were not secured under criminal law, however were treated as common or regulatory infringement.

Concept of Corporate Criminal Liability

Criminal liability is only associated with these acts in which criminal law is violated. The basic rule of criminal liability revolves around the original Latin maxim "*acts non facit ream, nisi men sit rea.*" Corporate crime refers to criminal practices by individuals who have the legal right to speak for a corporation or company, in which the President, Manager, Director, and Chairman, salespeople, agents, or any company, may act within the authority to act on their behalf. Firm corporations can be considered criminally liable for a wide assortment of crimes like-

1. Contempt in disobeying decrees and other court orders.
2. Conspiracy
3. Maintaining public nuisance
4. Violation of consumer protection Laws.
5. Selling, exhibiting obscene matter.
6. Frauds
7. Extortions,
8. Antitrust violations, etc.

Most of these crimes are financially motivated where the crime is commercial and driven by a desire to increase profits.

Necessity of Corporate Criminal Liability

For more than fifty years, most criminal law and corporate scholars in the United States have opposed corporate criminal liability, contending that it ought to be nullified. Numerous law and economic researchers have contended that corporate criminal liability is wasteful and ought to be rejected for civil liability for the entity and criminal liability for the individual's corporate officers and agents. A decent arrangement of researchers starts with the reason that corporations are fictitious entities, which is no presence separated from individual persons, who follow up for the benefit of the real entity. These premises can quickly lead to the end that corporate liability is unfair in light of the fact that it successfully punishes innocent third parties (shareholders, employees and others) for the acts of individuals who commit crimes in the employ of these fictitious entities. What this record misses are the truth that corporations are definitely not fictional. Rather, they are very powerful and very real, actors whose lead regularly causes significant damage to both individuals and society. Furthermore, the creation of power by the corporation now is both very large and unprecedented in human history. It misses a lot to compare corporations such as Exxon Mobil, Microsoft, or AIG to horse or a cart that was treated as deodand under ancient English law.

In the modern-day world, the strong influence of corporation activities on the society is incredible. In day-to-day activities, not only do corporations affect people's lives as a blessing, but they also prove to be destructive at times, which then comes under the category of crimes. For example, UP cinema tragedies or thousands of scandals, especially white-collar and organized crime, may fall into the category that have expressed immediate concern. Prof. Sutherland highlighted the serious consequences of white-collar crimes in the 1940s as socio-economic crimes are continuously increasing. The 1990s and 2000s are the decades of high profile scams. Corruption in telecom 2G licenses, Delhi Common Wealth Games of 2011 and Hassan Ali tax evasion of Pune goes into the transaction of money by politicians. Top business professionals are not far behind in this sector's top business Ramalinga Reddy manipulation of Satyam computer accounts, Unit-64 of UTI, liquidation of Global Trust Bank, stockbroker Harshad Mehta and Ketan Parikh exploitation of the stock market system. The fodder scam of Bihar, the mines mafia in Bellary, etc. have proved that the threat of white-collar crimes by companies is a more serious threat to the existence of society than blue-collar crimes.

Despite so many disasters, the law was not ready to impose criminal liability on corporations for long. This was for two reasons:

- Corporations have not held men guilty or guilty of committing crimes
- That corporation cannot be imprisoned

Judicial Response to Corporate Criminal Liability in India

In *Kusum Products Ltd. v. S.K. Sinha's* case in early 1984, it was clearly stated that, "A judicial person, being a company, cannot possibly be sent to prison and it is not open to the court to sentence the penalty or allow any punishment if the court has found the company guilty, and if the court does so, it will change the very plan of the Act implementing the legislative act.

But with the section of time, the court began to take a positive view on the issue. In the case of *Standard chartered Bank and Org v, Directorate of Enforcement and others*, the court was not required by the literal and stringent interpretation rule to punitive law and went on to provide full justice there by imposing a fine on the corporate. The court observed in the interpretation rule that all punitive statutes must be strictly enforced in the sense that they have to see that the word charged as a crime is within the clear meaning of the words used and stresses the words on any assumption. Should not be given There is a slip that the issue is so plainly within the prank that it would have been proposed to be incorporated and if thought would have been included. At the same time, it also thought about the administrative expectation and considered that all penal provisions, like all other laws, should be implemented impartially according to the legislative intent. The view was that the legislative intent to prosecute against the corporate bodies for the crime committed by them here is clear and unambiguous and the law does not intend to avoid prosecuting them.

In the case of the *Asst. Commissioner, Assessment I, Bangalore v. Velliappa Textiles Ltd*, the court held that corporate criminal liability can't be forced without making related criminal changes. The court was of the view that the

company could be prosecuted and punished for a crime of one lakh rupees or less as the court is given the option to impose imprisonment or fine, where the amount or value exceeding one lakh rupees in case of crime, the court isn't given the carefulness to impose imprisonment or fine and hence, the company cannot be prosecuted as it cannot impose custodial punishment.

In this case it was clearly stated that the company is also liable to prosecute, even if the offense carries both imprisonment and fine. If the company is seen as liable, the company can't be sentenced to imprisonment, then the penalty is to be awarded and the court has legal carefulness to do as such. The course is open just in the case where the company is found guilty; such a person is to be sentenced to both imprisonment and fine. There is no debate that a company is subject to be prosecuted and punished for criminal offences.

Judicial Response to Affirmative Action Programmes in India

India is called the "world's largest multi-ethnic society" and "the world's largest democracy". While many democratic institutions differ from British rule, since independence, India has continued to operate under a system of democratic governance. According to "traditional democratic theory, India should not be as a democracy" based on its history of poverty since independence from Britain and its long struggle with the caste system, either of which is generally for democratic governance will not support transition. Perhaps not surprising, therefore, "a long series of false prophets foretells the imminent demise of India's democracy and silence". This assumption is largely based on the belief that India is "one of the most socially divided [nations] with religious, caste, regional and ethnic differences. "However, more than half a century has passed since independence, and "India is a unique example of a functioning democracy in the Third World".

India had preferential policies aimed at achieving equality which were probably "longer than any other country, as well as on a much larger scale than any other country". Although the country is about 80% Hindu, various subgroups make up this religious majority, including Scheduled Castes, Forward Castes and Other Backward Classes. They are now known as "Scheduled Castes", a post-independence nomenclature for the then 'untouchables' of India, 'those who were considered to be beyond the four-fold caste system and who were called Gandhi Harijan or' God's Children were called. The "untouchable" class, which has for generations included the lowest class of Indian society, is "probably the classic Pariah class of the world". They have been persecuted for centuries and continue to face discrimination even today. The three groups that derive direct benefit from Indian state-sponsored affirmative action programs are "Scheduled Castes ('untouchables'), Scheduled Tribes and a diverse and less well-defined remnant known as the ' Other Backward Classes".

Judicial responses

(a) Judicial Response; Period from 1950 to 1970.

It was initially argued that unlike a company being an artificial person, a natural person cannot be held liable for criminal offenses. In addition, the company does not have body or soul. Therefore, it cannot be punished like natural

persons. Therefore, the company should be excluded from the jurisdiction of criminal jurisprudence. These are the issues raised in *Ananth Bandu v Corporation of Calcutta*.

Judicial response; post 1970s period

There were not many cases of criminal liability of the company during the 1970s as the corporate sector in India was still in its early stages of expansion. Section 10 of the *Essential Commodities Act 1955* states that if the person is a company and violates Section 3 of the *Essential Commodities Act 1956*. Any person who is responsible to the company for the conduct of the company's business at the time of contravention will be prosecuted with the company. For this clause company means any corporate and includes a firm or other association of individuals. This section clearly states that a company can be prosecuted under the *Essential Commodities Act 1955*. The company cannot defend that it is unable to create the mental element of committing a crime and cannot be punished. Further, it cannot be said that the violation of law made by its officer is the personal responsibility of the officer but not of the company. Such provisions are also seen in other laws which are specifically related to socio-economic crime. Those statutes state that the company may be criminally liable along with the guilty officers concerned. Apart from this, even the officer who is in charge of the company at the time of commission of crime is also liable. Another notable point of those statutes is that, any other officer who consents, facilitates or fails to prevent such a crime is also held to be criminally liable.

In *Giridhar Lal Gupta v. D.H. Mehta and Another*, the Supreme Court of India faced the important question of the interpretation of the word "in-charge" under Section 23-C of the *Foreign Exchange Regulation Act 1947*.

Judicial response; post 1990s period

The Supreme Court of India in *Radhey Shyam Khemka v. State of Bihar* faced a unique question that any irregularities and disturbances in the matter of shares by the officers of the company have to be dealt with under the *Companies Act* instead of *IPC*.

Judicial response; post 2000 period

The beginning of the 21st century is a period of boom for Indian companies. The Indian economy showed growth at around 9 percent of GDP. Indian companies began to make their mark globally and their business and profits grew manifold. The Indian government liberalized its industry, tax and export and import policy to encourage companies. In the end Western countries accepted India's potential and started investing in Indian companies. However, equally the people of India experienced the other face of the company that it too is like a natural person, who is not eligible to commit many crimes for his own selfishness. Clearly the role of the judiciary becomes very important to see that the guilty company should not go unpunished and harm the nation and the people.

In *Assistant Commissioner, v. Velliappa Textiles Ltd*, the Division Bench of the Supreme Court of India was again to address the issue first decided on whether the company could be prosecuted for the offenses which could lead to mandatory imprisonment and the company can be held responsible for the *mens rea*.

Judicial response; post 2010 period

Thousand crores of Indian investors were cheated by the American company. The investors apparently filed a criminal complaint against the USA Company. However, the High Court of Bombay quashed that complaint through its criminal jurisdiction on the grounds that the company couldn't carry out a crime of fraud. The stakes were high, so the case again came up before the Supreme Court for determination of corporate criminal liability. This will continue until the judiciary decides the matter in larger perspective by meeting certain criteria by which corporate criminal liability will be decided. Finally, the Supreme Court of India chose to arbitrate the issue upon the objective standards as opposed to businesslike and specially appointed premise in *Iridium India Telecom Ltd v, Motorola Inc.*

Conclusion

In the present time corporations are carrying out hazardous activities at large scale. With globalised multinational corporations with huge capital are in dominating position. As such there is a need to strengthen the corporate criminal law to meet the new situations.

Today, corporate criminal liability is a subject of worry for a wide scope of groups crusading on issues including human rights, condition, improvement and work. Corporate crime carried out on all landmasses over a scope of mechanical exercises in different sectors (e.g. chemicals, forestry, oil, mining, genetic engineering, nuclear, military, fishing, etc.) clearly required greater control, monitoring and accountability of Corporate activity in the global economy. Legal system in general and criminal justice system in particular have not been fully capable of keeping pace with the new developments. There are gaps and lack of uniformity in the different system to handle the corporate crime.

Criminal corporate liability is held to be applicable to India by the Supreme Court by following the identification theory. Necessary *mens rea* is imputed to the corporation from its directions or agents. However, the vicarious liability of directors is not accepted for corporate wrong, unless directors are independently at fault. This raises the question that how could be possible to sustain the complaint against the company in the absence of offence made out against individual.

As this research has tried to point out, the field of corporate criminal liability is a multi-faceted issue. There are no simple solutions to the problem. Some countries have to overcome constitutional hurdles, while others are faced with problems of implementation of international documents. Another question is whether corporate liability should be criminal in nature, or whether the unique circumstances of punishing a corporate entity merits different approach. It is apparent that action should be taken in the field of corporate criminal liability, and it also seems clear that a singular approach will not be sufficient to deal with either the conviction of corporations, or the sanctioning of corporations.

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