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CORPORATE CRIMES IN INDIA: ITS IMPACT, LIABILITY AND PUNISHMENTS

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INTRODUCTION TO CORPORATE CRIME IN INDIA

Corporate criminality derives from commercial practices and while there have been banking incidents in past years, over the last two decades corporate crime has been in full swing. Modern industry has dramatically dematerialized and turned into augmented reality, which is, on the one side, a big advancement, however, on the other, it opens up a broad spectrum of space and provides ways to commit crimes in the finance sector. Nevertheless, the fundamental explanation for corporate criminality, irrespective of the state of the modern enterprise, stems from human ambition, namely the ability to obtain resources that are constrained by nature.1

The definition of corporate crime applies to actions performed to hurt or profit a corporation, which involves illegal activities ranging from different forms of theft, asset abuse, corruption, money laundering, tax evasion, forgery, to financial fraud. Corporate crime applies to actions committed by persons or companies that enable them to receive such advantages that they may otherwise not be allowed to access under normal business circumstances. Enterprises then turn to various forms of corporate crime to achieve their goals, or to allow people who are the authors of these crimes and who are interested in them to achieve their goals.

NATURE OF CORPORATE CRIMES

Corporate offences are commonly called as White-Collar Crimes. Corporate offences concerning workplace offences are often recognized. The difference between corporate crime and occupational crime is that while corporate crime applies to cases when company executives perform an illegal act for the good of the organization, in the context of work, the occupational crimes are perpetrated by actual workers against the organization itself or the corporate clients or buyers. The first problem that pops up as we struggle with 'corporate crime' is that the company is conducting corruption. This problem can be addressed by looking at the circumstances in which the activity of the companies creates serious injury and

1 Dr. Jelena Slovic, Assos. Prof. Snezana Mojsoska, Dr. Igor Pejovic, Financial Reporting as a Factor of Corporate Crime.
is far more than the typical offences perpetrated by people. Another notable feature of corporate crime is that while the criminal enforcement reaction to the offender crime is timely and violent, corporate crime is usually absent or moderate. Around the same moment, the careless reaction from the community often seems to diminish the severity of corporate crime. Corporate crime has now gained a modern definition that needs to be recognized and tackled if this evolving type of crime is to be regulated and combated.

**IMPACT OF CORPORATE CRIMES ON COMPANY**

The business may be the suspect when it comes to corporate corruption, but still a target of a scam. A certain community of managers or workers conduct corporate fraud, likely in conjunction with third parties, intending to secure certain benefits for the business and thereby gaining those benefits for themselves. Certain individuals from the organization, though, as well as the state and business associates are not involved in such operations because they pose as possible victims. According to a report, a vast percentage of companies engaged in corporate fraud struggle to rebound afterwards, while a limited number of businesses tend to rebound to a lesser or greater degree. The vaguest effect of corporate fraud would be a loss of the available capital and a deterioration of the assets of the company; while the more extreme outcome would be the collapse of the organization, all ways would have repercussions for certain market members.

**IMPACT OF CORPORATE CRIMES ON PARTNERS AND EMPLOYEES**

The company's failure is not a positive outcome from the economic point of view because this restricts the variety of commercial practices and can have various implications. Through dissolution, the corporation fails to operate, which allows workers to be left without their work and wages, and has an effect over the economy by decreasing individuals' buying ability and for immediate effects. Trade owners, insurers, and other investors are left without their receivables that cannot be recovered by a distressed enterprise, while customers are unable to purchase their products, thereby limiting their commercial operations before a remedy is sought. There are several losses imposed on the economy, relating above all to the loss of daily tax revenue from VAT, sales tax, social services, and other public revenues. Aside from getting a decreased revenue, the state will assume the responsibility of the

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2 Brian K. Pyne Susannah Tapp, *Corporate Crime*
unemployed that have been made redundant owing to the unemployment induced by corporate corruption that raises their social spending. A potential loss arising from both of the above is a decreased tax revenue owing to the diminished wages of the people left without their salaries and investors who have to cut their gains after paying off the receivables of the failed business.

**IMPACT OF CORPORATE CRIMES ON THE NATION**

Except for the aforementioned harm arising from corporate crime, there is another type of intangible loss that can have significant implications at the national economy level – it is the country danger that relates to the country's image and vulnerability to corporate crime. When an economic structure is in order, corporate crime is less prevalent, however, as long as the environment is not so well-organized, particularly while it is under the control of specific circumstances (crisis, transition), corporate crime is much more prevalent. Each national economy is involved in drawing as many investors as possible so that economic growth can begin and continue. In normal circumstances, investors are involved in spending their funds with reduced risk trying to increase their income. Investors who have gained money in the "gray economy" are still involved in recycling the capital and saving it at a reduced cost, and they are not even willing to consider an unreasonable danger of a disorganized economic structure. Nevertheless, some businessmen do not know for a disorganized market, as it enhances their income generated in the "gray market," so on the other side, the money laundering cycle is encouraged. Even, it also happens that investments in troubled economies are made through the money laundering cycle to remove or move such funds to a more secure economy in the next moment, and this applies to one-off investments without continuity purpose. If corporate fraud is a normal occurrence in a certain country, there will be no quality long-term investments and there would be a rise in questionable short-term investments, which does not lead to economic prosperity and development.

The investigative plan will concentrate on finding information, determining facts and responsibility, as well as defending it in a trial, to take care of the state and the company's long-term interests, and enable the corporation and continue its commercial operation. Not every corporation whose management has committed corporate fraud will go bankrupt, as it is not in anyone's interest; the priority of the state, shareholders, customers, staff, and others is to retain the firm, carry out its commercial operations and thereby periodically settle its liabilities.
CRIMINAL LIABILITY OF CORPORATES

In the present-day environment, the influence of business practices on culture is enormous. They not only profoundly impact people's lives through their day-to-day operations, but also several occasions in a devastating way that falls under the category of crimes. Following repeated accidents, the legislation has long been hesitant to enforce civil responsibility on companies. That was for essentially two factors: companies can't have the mens rea or the guilty conscience to perform an offence; and because businesses can't be incarcerated, the only possible recourse available is that of the penalty that fuses statutory responsibility with that of a civil one.\(^3\) In the early sixteenth and seventeenth centuries, the common assumption was that companies should not be found legally accountable. In the early 1700s, there were at least four barriers to corporate criminal responsibility. The first challenge was to assign actions to the company, a juristic myth. Courts and legal theorists of the 18th century treated corporate responsibility with an intense emphasis on corporate identity theories; a more realistic method was not established until the 20th century.\(^4\) The second challenge was that legal theorists did not accept that businesses could embody the intrinsic blameworthiness needed to conduct deliberate crimes. The third challenge was the ultra vires theory, according to which courts should not keep companies responsible for actions, such as murders, not specified for under their charters. Ultimately, the fourth challenge was the clear interpretation of judicial prosecutions by the courts; for instance, the judges wanted the convict to be personally taken to the court.\(^5\)

PROVISIONS WHICH ATTRACT CORPORATE CRIMINAL LIABILITY IN INDIA

Section 141 of the Negotiable Instruments Act, 1881.\(^6\) It states that any individual who has ever committed the crime shall be prosecuted for the illegal act and conduct of the company's business when some sort of crime is performed under Section 138 of the Negotiable Instruments Act.\(^7\) If the individual is the corporation itself then the business will be found

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\(^3\) Beck and O'Brien, *Corporate Criminal Liability: Corporate Criminal Liability*, 37 American Criminal Law Review 261


\(^6\) The Negotiable Instruments Act, 1881, § 141, The Gazette of India, pt. XVII sec. 4 (December 9, 1881).

guilty of the crime and will be kept responsible for damages and disciplined accordingly as in Balaji Trading Company v. Kejriwal Paper Ltd. and Another.\(^8\)

*Section 7 of the Essential Commodities Act, 1955*\(^9\) specifies the fines provided for under the Act. It states that if any individual violates any order rendered under Section 3 of the Act\(^10\) then he is liable to imprisonment for a minimum of three months and a maximum of seven years and is also liable to pay a penalty of any value in State of M.P. v. N. Singh.\(^11\) By this, it should be seen that it is not a compounding crime because it requires both incarceration and payment of a fine. And, according to the GENERAL CLAUSES ACT, 1897, the word "person" includes "any company or association or body of individuals, whether incorporated or not".\(^12\)

*Section 276-B of the Income Tax Act 1961:*\(^13\) The provision specifies of the inability to pay the tax deducted at source [TDS] Under the case of this clause, it triggers criminal action if some sort of contravention happens in the paying of TDS, which would result in serious incarceration, which would be a minimum of three months to a maximum of seven years, as well as a certain amount of penalty. This was declared by the court in the case of M.V. Javali v. Mahajan Borewell and Company.\(^14\)

Sections: 45, 63, 68, 70(5), 203, etc., of the Indian Companies Act,\(^15\) under which only the company's officers are responsible, and not the company itself; it is also mirrored in the Takeover Code. A company does not take into consideration the different provisions of the IPC that order forced incarceration as such a regulation cannot operate against the business. Those are the main laws deprived of essential legal considerations of their respective fields. On the other side, legislation has since evolved to the point that some certain laws and their corresponding criminal clauses place a penalty on companies when found guilty.

**CORPORATE PUNISHMENT**

Because of the constitutional inadequacy and absence of alternative ways of penalty that may be placed on companies, the courts have so far been willing to enforce just fine as a form of punishment.

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\(^8\) Balaji Trading Company v. Kejriwal Paper Ltd. and Another, 2005 (2) ALD Cri 162.


\(^12\) The General Clauses Act, 1897, § 3(42), The Gazette of India, (March 11, 1897).


The Feasibility of Fine

Fine is the most effective punishment in any part of the world and it is a punishment whose benefits are so clear and evident that we are proposing to require the courts to administer it in any situation; incarceration, travel, banishment, isolation, forced labour are not equally intolerable to all people. The condition is otherwise with good. When assessing a penalty, attention must be extended to the offender's pecuniary conditions and the extent and severity of the crime. The mullet which is ruinous to the labourer is quickly carried by a trader, and a wealthy zamindar is completely unfelt.

All the sections currently do contain fine as a means of penalty that can be levied on a company. This is the case for judgmental pronouncements on sentence dimension. Additionally, in its 41st Article, the Law Commission also talks of incorporating only fine as an extra penalty to be levied on businesses instead of penalties. According to the Judiciary, this conservative approach is based on the principle lex non-cogit ad impossibilia, which assures us that rule does not consider anything that cannot be done. This logic in itself demonstrates that the statute fails in the definition of corporate criminal responsibility from a non-holistic point of view. There is no question that the courts have been successful in shaping the definition of corporate criminal responsibility and have enforced the same on the convicts, but the best means to enforce penalties have been conceived of. It is now up to the government to create alternative methods of discipline and integrate them into the country's criminal justice program. There are other forms of sanctions as well which include fine: 16

a) Economic Sanction

These penalties may entail different styles of monetary and other measures that would inflict tremendous damages for the entire organization. The sanctions include the following. Corporate death or punishment for ending up in the specified area or situations of continuing illegal activity. Temporary business suspension for a specified time based on the severity of the act before conformity with the requirements may be assured. Rehabilitation of Crime victims. Section 357, CrPC, 17 empowers a court to enforce a penalty of fine or a punishment of which fine is a portion, in its discretion, among other items, to require an individual to pay restitution, out of the fine obtained, for any harm or damage done to him by the crime.


17 Code Crim. Proc. § 357.
b) Social Sanction

Goodwill, the heart, and essence are to every corporate entity. When that's gone the entire power falls to a stop. The word 'reputation' brings more than one definition with it. For companies, loss of credibility connotes both the feeling of guilt of the person and the heightened unwillingness of others to do business with the entity or businesses in the future, but a loss of integrity applies primarily to the hesitation of others, such as consumers and employees, to associate with the company in the future. For instance, general executives can be shamed by the insistence of their company. E.g., as applicable to companies, credibility applies to the highly favourable price a company with strong credibility may offer consumers for its goods or the cheaper salaries a 'healthy' business will pay but also recruiting workers.

CONCLUSION

Corporate crime is related to the actions of a company or staff working on behalf of a legally licensed or criminal organization. Commercial crimes are thereby perpetrated for commercial benefit or to damage some other person or corporate entity. Those crimes are carried out in a nice setting. They can often be used as a wide array of white-collar crimes. However, in business offences, illegal activity varies from the typical offences perpetrated by people. Corporate crimes are actions that are morally injurious or reprehensible and inflict political, physical, or environmental damage or injury to employees and the general public.

Corporate illegal activity is often assumed to be the product of the learning method from the companies' workings. This conduct is often due to significant societal and spiritual shifts. Unlawful methods may be implemented in an attempt to achieve objectives or goals. Additionally, there is the principle of neutralization where the action is intended to be explained under the specified circumstances. Lack of careful supervision may even facilitate illegal activity. Therefore, there are variables such as cost-benefit calculations, socio-economic changes, business framework, and criminal environment that are related to corporate criminal activity. There is corruption in the company itself in corporate regulation. Henceforth, the responsibility of the liable individuals must be set vicariously. The policy ought to be more explicitly specified in this recurrence.