



CORPORATE CRIMES – THEIR IMPACTS AND STEPS TO CURB THEM

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ABSTRACT

“The practitioners of evil-the hoarders, the profiteers, the black marketeers and speculators- are the worst enemies of our society. They have to be dealt with sternly. However well placed, important and influential they may be. If we acquiesce in Wrong doing, people will lose faith in us”

– Dr. RadhaKrishnan.

Corporate Crime is also known as Organizational or Occupational crimes, in White collar crimes. Corporate as a separate legal entity differs from a natural person. It is crime committed by the Corporation and they are liable and guilty for the act. Can an employee of the corporation be held liable for the crime committed in the organization? In the preview of the question, under the concept of vicarious liability, Corporation is held liable and not the employee. Corporations have currently become an integral part of our society and with development of firms; they need to become vital actor in our economy. Our society runs within the risk of obtaining exploitation by these corporations and so they must be deterred too. The problem of company crime is exclusive, complicated and attributable to many reasons, the first one being the character of company form. The present paper discusses about the History, nature and type of corporate crime, Liabilities, Suggestions to curb them.

KEYWORDS: Corporate crime, Crime, White Collar Crime

I. INTRODUCTION

Corporate criminality has become a global incident with the advancement of commerce and technology like any other country; India is equally in the grip of corporate criminality. Corporate crime, in India is thriving every day in new forms. The problem of corporate crime is very serious in India. Business communities of the country of large and small merchants are basically dishonest. Nowhere in the world businessmen get prosperous so quickly as they do in India. Hoarding, profiteering and black marketing of essential commodities traders have become a chronic problem for the government.

The Sathanam committee report in its findings gave a glowing picture of white collar crimes committed by persons of respectability such as businessman, industrialists, contractors and suppliers and also the corrupt public officials.

II. OBJECTIVES

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

2. To suggest the measures to curb them.

III. HISTORY OF CORPORATE CRIME

The corporation, an organizational form, was established in the 14th century. 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 organizations to become legally authorized. 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 budding 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 corporations 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 and



most of them had a short span of life. Because the investors suffered losses in the business as 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 done through with guilty mind. During the first twentieth century, the court began to carry the companies reprehensively liable in varied areas within which the social control would be obstructed while not making companies liable. Indeed, courts were before long eager to carry that the corporation was reprehensively chargeable for all wrongs except rape, murder and dissimilar crimes.

IV. NATURE OF CORPORATE CRIME

Corporate crimes are considered to be broad varieties of the White Collar Crime. Corporate crimes are also known with allusion to occupational crimes. The difference between corporate crime and occupational crime is that whereas corporate crime refers to situations in which corporate managers entrust a criminal act for the benefit of the corporation, the occupational crimes are committed by individual employees not in favor of the corporation itself or the customers or consumers of the corporation, in the course of employment. When we deal with 'corporate crime' the first question that emerges is whether the corporate actually commit crime. This question can be answered by looking at the situations in which substantial damage is caused in the operation of the corporations which is much more than the traditional crimes committed by individuals.

Looking at the matter from criminological perspective, the criminal behavior in corporate crimes is altogether different from the traditional crimes committed by the individuals. The criminological theories have developed in different settings by placing the behavior of the individual as an individual in focus and not in the organizational structure. Still these are the acts and activities of individuals in the corporate crimes which are attributed to the corporation.

As such there is no separate branch of criminology dealing with corporate. The criminal behavior of corporations is tried to be unstated by applying the existing theories applicable to individual delinquency. However, there is a need to analyze the corporate crime and criminal behavior in the new settings in which corporations operate.

Another significant facet of corporate crime is that while the response of the criminal justice to the

individual crime is timely and aggressive, it is lacking or gentle to the corporate crime. At the same time oblivious societal retort also tends to minimize the seriousness of the corporate crime. Therefore corporate crime has acquired a new connotation which is required to be understood and addressed, if we are to be in charge of and combat this emerging form of criminality. The typical features of corporate crimes are distinguished from the related areas of criminality in the following discussion.

V. TYPICAL FEATURES AND TYPES OF CORPORATE CRIME

There are wide series of corporate crimes which otherwise contain certain archetypal features. The corporate crimes are generally committed within unspecified configuration of action and communication and within a frame work of generally permissible activity. They are, therefore, not easy to detect and are characterized by their low visibility. The further feature is that in many cases there is no individual contact between offender and the victim and is described as delinquency of space. There may not be an individual sufferer in many cases. The collective victims could be other corporations, agencies, the State or the society in common. Corporate crime is also considered to be a significant part of the economic crimes. Because of the peculiar characteristic complaints against the corporate do not generally come from individuals but are only revealed when there are certain inquiries or investigations by the law enforcement agencies.

V.I White Collar Crimes and Corporate Crimes

Edwin Sutherland introduced the terms 'White Collar Crime'. Mainly Sutherland brought into focus the arena of criminal acts which are committed by the people in upper class of the society in contrast to the belief that the criminal acts are only committed by persons belonging to lower stratum of the world. Since white collar crimes are linked to professional and elite class, the corporate crime has a link to white collar crime. The corporate crime deals with a company as a different entity. It benefits the corporation as an intact which may include investors and individuals in the high situation in the company. White collar crime and corporate crimes are alike as both are involved with business. The difference is that white collar crime benefit individual and corporate crime benefit the corporation. Corporate crime as generally understood is committed through responsible executive of the corporation for the benefit of the corporation within the structure of corporate activities. In a way corporate crime is akin to white collar crime. The theory of white



collar crime was propounded by Edwin Sutherland to state that it a crime committed by the person of respectability and of high social standing in the course of his occupation. Sutherland has drawn the concentration to the development that crimes are also been committed by members of upper class for economic gains and are different from those traditional crimes. When we discuss white collar crime in relation to corporate crime we can discover that term 'White Collar Crime' is wider and it can include 'Corporate Crime.' It is asserted by Sutherland that corporate crime is a large scale version of white collar crime, because it involves people of high class society, committed in the path of their occupation. The two forms of crime overlap each other because they all occur within similar environments in which incentives are high for an individual or group to connect in bribery, money laundering, inside trading, forgery and embezzlement etc. Presently corporations center on prevention of white collar crimes through their policies and procedure. In view of the detrimental consequence of corporate crimes as financial, reputational etc., there is need for detailed policies and procedures for prevention and detection of corporate crimes.

To draw a distinction between corporate crime and white collar crime it is said white collar offences are those 'socially injurious and blameworthy acts' committed by individuals or group of individuals who occupy decision making position in corporations and business and which are committed for their own personal gain against the business, and the corporations that engage them. On the other hand corporate crimes are those which are socially injurious or blameworthy acts, those cause financial, physical or environmental harm committed by corporations and business against their workers, the general public, the environment, other corporations and businesses, the government or other countries.

V.II CORPORATE CRIMES AND OCCUPATIONAL CRIMES

Individuals or small groups in connection with their jobs commend occupational crime. Examples are embezzlement, theft, tax evasion, manipulation of sales, fraud etc. by employees for their own advantage. Corporate crimes are committed by collectivities or aggregate of discreet personality on behalf of the corporations. As such individuals or groups hand over occupational or elite crimes for their own rationale or enrichment, rather than for enrichment of the organization on a whole. Corporate crime is rather committed at the advanced level of corporation. For example at the Managerial stage or other responsible

position and the occupational crimes could involve employees at all levels.

In corporate crime both organizations and individuals may be illegal actors and could be liable for their criminality. Occupational crimes can be labeled as crime in opposition to the organization. As such corporations become victims of crime when they suffer a loss as a result of an offence committed by anyone including employees and managers. On the other hand corporations become perpetrators of crime when managers or employees obligate financial crime within the framework of legal organization.

In the criminological context the occupational crime are linked to individualistic approach to feature the criminality. The corporate crime may be attributed to system breakdown. *Marshall Clinard* and *Richard Quinney* have suggested that the term 'White Collar Crime' be replaced by two constituent terms – 'Corporate Crime' and 'Occupational Crime'. The first category is meant to include offences committed by corporations and their officials for the benefit of the corporation. The second kind of crime is defined as that which is committed 'in the course of activity in a legitimate occupation' and is meant to apply to offences involving persons at all levels of the social formation.

V.III STATE CORPORATE CRIME

State corporate crime is a notion which refers to crimes which are committed in relationship with policies of the State and the policies and practices of commercial corporations. State corporate crime is distinguished from corporate crime which refers to deviance within the framework of corporation and by the corporation. It is also diverse from political crime which is directed at State. It is also not 'State Organized Crime' which is crime committed by Government association. The infrastructure of law and commerce is provided by government of each State in which the corporations wish to trade, and there is inevitable connection between the political and commercial interests. All States rely on business to make available an economic base consistent with each government's political policies. Without supportive policies for economic activities, businesses will not be profitable and will not be able to provide the economic support that the State desires. In some cases the symbiosis may show the way to crime. There acts include all 'socially injurious acts' and not merely those that are defined by the home jurisdiction as crime. Harper and Israel commented that 'societies create crime because they construct the rules whose transgression constitutes crime'. The State is a major player in this process. *Snider* said that capitalistic States are often unwilling to pass laws to control large corporations, because this



might threaten profitability and these States offer enormous considerable sums to pull towards you regional or national inward investment from large corporations. They may give preferential tax concession, loans and subsidies etc. In the circumstances there would be an intricacy to put into effect local laws against pollution, health, safety, monopolies and repayment of debt etc. This approach of the State may provide room to organized crimes, corruption and other grave offences.

V.IV CORPORATE CRIMES AND ORGANIZED CRIMES

The organized crime generally involves illegal road activities such as kidnapping or cross border operations like drugs trafficking whereas corporate crime involves 'clean jobs' like manipulation of accounts, insider trading, misappropriation of funds, tax evasion etc. The points of similarity can be the prerequisite of some degree of financial, social or political influence for successful operation. Both types of crime are thriving for money. It is viewed that corporation are better organized, are wealthier and get benefit from economy of scale in corruption. Corporations are better placed to manipulate politicians and media. By making use of large grants, generous campaign contributions and influential lobbying organizations, they may push law changes and legal reforms that benefit their illegal activities. These offences are carried out with planning and discreetly. Further both corporate crime and organized crime can have global impact and thereby pose difficulty in detection and prosecution. There can be money connection between corporate crime and organized crime. The perpetrator of organized crime needs to clean the money that they got through unlawful activities. They may set up lawful business activity through corporations for the reason of money laundering. Therefore, corporate crime may speak about organized crime. The prevalence of these crimes is due to availability of chance to commit crime and absence of deterrence. Organized crime like corporate crime has an effect on the society at large, that is, no specific individuals are singled out as victims.

The points of difference are that organizational structure of corporations is official where as in organized crime those are informal hierarchies in which members, usually family members, inhabit ranks that determine their duties. The cluster in organized crime functions in secretive manner whereas corporation activities are legitimate and publically known businesses. Whatever illegal activity is carried on in the corporate crime, it is in the guise of legitimate acts of the corporations. Speaking generally, corporations may

commit business crimes whereas illegal organizations are in the business of committing crime.

*Goroupa*¹⁹ brought out the dissimilarity between corporate crime and organized crime by saying that organized crime is carried out by illegal organization with no officially authorized status. Criminal market is their primary market and legitimate markets are secondary markets. Whereas corporate crime is committed by legal entities with legal status, the legitimate market is their primary market and illegal market their secondary market.

VI. CONTRIBUTING FACTORS

Of all the factors, the fiscal and industrial growth throughout the world has perhaps been the most probable reason of increase in white collar crimes in recent years. The changing socio-economic scenario of the society coupled with augment in wealth and prosperity has furnished opportunities for such crimes commenting on the growing frequency of white collar crime in India. The law commissions in its Twenty Ninth Report Observed that modern scientific and technological developments and monopolistic trends in commerce world have led to massive increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measures. On the part of government to control means of production and distribution so as to sub serve the common good. The contravention of such regulatory measures generally gives rise to white collar criminality or Corporate Criminality.

Marshal B. Clinard asserted that the trouble of white collar criminality or corporate criminality has its roots in Competitive business society which tries to expel their rival competitors in order to make huge profits. Sometimes such crimes may also be committed merely for the sake of retaining survival in the competitive business. To illustrate, though there is a prescribed code of ethical conduct for the practicing lawyer but since the very nature of their profession involves the spirit of combat and competition, they often way out to unlawful tactics such as concealment or misrepresentation of facts, which if detected is punishable under the decree. Another example, the private educational institutions in India which receive public aid grants furnishes false accounts simply for the sake of retaining their existence. Likewise, the members of industrial and business class who enjoy high status in the society have a tendency to suppress their real profits by Furnishing false fabricated accounts of their income and property in order to claim tax exemptions or avoid payment of heavy taxes. One more reason for the multiplicity of white collar crime is relatively lofty



socio-economic status of white collar criminals. They belong to an influential group which is powerful enough to handle their occupation fact fully and persons affected there by hardly know that they are being victimized.

Moreover, the public in general is also somewhat apathetic to such crimes thus causing obstruction in prosecution and punishment of white collar criminals. It is often alleged that criminal law administrators and Judges being members of higher strata of the society, are generally sympathetic towards white collar criminals while dealing with them. But there seems no justification in this declaration. If this allegation is based on the large numbers of acquittals of white collar criminals it may be pointed out that it is not because of the compassion of judges for those criminals but because of the lean line of demarcation between criminality and immorality involved in white collar crimes.

The recent developments in information technology particularly during the closing years of the twentieth century have added new magnitude to white collar criminality. There has been unprecedented expansion of new variety of computer dominated white collar crimes which are commonly called as cyber crimes. These crimes have become a subject of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the precise nature of these crimes, they can be committed anonymously and far away from the victim without physical presence. Farther, cyber criminals have a key advantage. They can use computer technology to inflict damage without risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber crimes with the increase in new internet websites. Those who are affected by cyber crimes are banking and financial institutions, energy and telecommunication services, transportation, business, industries etc....

VII. ROLE OF ECONOMIC DEPRESSION

Due to rapid industrialization and urbanization in the advancement of the technology, the corporate crime has been increased and in most of the developing countries, it results in erroneous economic depression. The state in present scenario, the crime inducing should be reduced and prevented by the best formulated with policy implementation. Our country has several hazardous risks. These throw light in the residential area which can be termed as potential high risk areas. 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 in compliance of legal process and reduce criminal conduct.

VIII. SUGGESTIONS

- There should be effective enforcement of punishment ranging from compulsory winding up and direct compensation orders.
- When the court takes necessary steps for dissolution of corporation, no rights in order that shareholder and directors should not reincorporate.
- In certain circumstances, in addition to imposing a sentence, it should consider best achievable objectives of sentencing.
- Corporate crime is universal problem. There should be an international law, agreement in compliance for all.

IX. CONCLUSION

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

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