

Recognise New Dimensions of Corporate Criminal Liability in National and International Perspectives

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Abstract

Corruption and bribery are widespread in developing nations, particularly among public officials, and this has resulted in greater crime in underdeveloped countries already saddled by massive debts. In white collar crime, corporate crime is also known as organisational or occupational crime. Corporate crime is done by the Corporation as a separate legal entity, and the Corporation is accountable and guilty for the conduct. Is a business employee accountable for the crime committed? In the example given in the question, under the idea of vicarious responsibility, the corporation, not the employee, is held accountable. Corporations have now become a fundamental part of our society, and with the growth of businesses, they have become a critical player in our economy. However, our society faces the risk of being exploited by these corporations, and they must be discouraged as well.

Keywords:-corporate crime, criminal penalties, corruption, e-commerce.

I. INTRODUCTION

A firm can only operate via human people, and a human individual who commits an offence on behalf of or for the benefit of a company is personally liable. The significance of incorporation is that it renders the corporation accountable in certain situations, as well as the human persons. Williams, Glanville 1 Simply put, a corporation is a group of people who come together to conduct business. A corporation is a legally recognised company. The evolution of the notion of corporate crime, which was coined by judges to solve the problem of criminal liability being assigned to imaginary corporations. The theory of respondent superior is the cornerstone of corporate crime. Our society's most crucial component is corporations. Corporations are controlled by natural beings, and these individuals' activities may be illegal in nature, but they may also result in economic and human losses to society. As a result, knowing the history, nature, and types of corporate crimes is crucial for a deeper knowledge of the subject. In the advent of technology, corporate crime, often known as white collar crime, has a negative influence on society.

History of Corporate Crime

The corporation is an organisational type that dates back to the 14th century and may only be constituted and authorised by the sovereign or by an act of parliament. The crown tried to strengthen the principles by encouraging organisations to get legal authorization. 3 Corporations grew formed in the sixteenth and seventeenth centuries as hospitals, universities, and other comparable organisations that were converted to the corporate form. The corporation was expanding as a joint stock company toward the conclusion of this time. This joint stock firm was particularly beneficial in promoting new industries. Corporations were founded as not-for-profit organisations in the beginning, but later in the seventeenth century, they became profit-oriented. Incorporated firms were founded in significant numbers around the end of the seventeenth century, but most of them were administered for the advantage of investors as well as employee profit, and most of them had a limited lifespan. 4 Because the investors lost money in the firm and were complicit in the wrongdoings. The British parliament, on the other hand, established separate legislation for corporate activity. The fundamental principle of criminal culpability is based on the Latin maxim *actus non facit reum, inconclusive mens sit re*. It suggests that in order to hold someone accountable, it must be demonstrated that an illegal act or omission was committed with a guilty mentality. During the early half of the twentieth century, courts began to hold corporations reprehensibly accountable in a variety of areas

where societal control was impeded without business culpability. Indeed, judges were soon eager to hold the company criminally liable for all wrongdoings save rape, murder, and other felonies.

II. CIVIL OR CRIMINAL PENALTIES FOR CORPORATE MISCONDUCT

Currently, the majority of countries believe that businesses can be penalised under both civil and administrative laws. Corporate crimes, on the other hand, are more contentious. In its 41st and 47th reports, the Indian Law Commission recommended that the punishment for criminal culpability be jail or a fine, and that the corporate be penalised, particularly for white collar offences. Unfortunately, these suggestions were ignored. Despite the fact that many Indian laws have provisions punishing fraud, corruption, bribery, insider trading, and other civil violations, there are no criminal statute provisions in place to punish the firm.

A company cannot be imprisoned, and the law was not altered to allow for prosecution for a crime punished solely by death or imprisonment. The fact that the penalty for violating a legislation was a fine or imprisonment, or both, does not make it inapplicable to a company, and a comparable rule only applies if the Act defining the crime allows for imprisonment if the fine offered is not paid. It's also worth noting that in 1972, our Parliament recognised the importance of this problem and proposed amending the IPC to include fines as an alternative to jail in cases where companies are involved. The Bill, however, did not pass and instead expired. As such a change in criminal law is a legislative role, the Parliament should carry it out as quickly as practicable. Sections 45, 63, 68, 70(5), 203, and other sections of the Indian Companies Act provide for criminal responsibility of corporations. Only the person who commits an offence, not the corporation, is accountable under this Act.

III. THE COMPANIES ACT OF 2013, INDIA'S NORMATIVE RECOGNITION OF CORPORATE CRIMINAL LIABILITY

India's legal governance environment, like its view of corporate criminal culpability, is changing. One recent example is the Companies Act of 2013. The legislation has been significantly changed in order to better manage and discourage corporate fraud and to standardise governance processes. This Act has specific rules that address common business crimes such as fraud and deception. The Act regulates frauds and prevents them from happening again by putting more accountability and responsibility on independent directors, auditors, and other watchdogs who ensure that companies follow the Companies Act and other legal rules. The Act also imposes personal liability on key personnel, auditors, and workers, among others. Industry experts and the legal community have praised the current Act since it is not only comprehensive but also rigorous, with actual sanctions that are useful in preventing fraud. Overall, it can be claimed that India's legal system is developing and adapting to the growing need to restrict and manage the multifaceted character of corporate crime.

Corporate Fraud Punishment

According to Section 447 of the Companies Act, fraud is defined as an act of omission or conduct those results in repercussions against the company's interest, as well as misusing or abusing his/her power as a result of his/her position. According to this Act, fraud is a crime punished by a minimum of six months in jail and a maximum of 10 years in prison. The fine provision must be less than the amount of fraud and can go up to three times the amount of fraud. The Act has shown to be helpful in combating corporate fraud and criminality. The Companies Law Committee received feedback that Section 447's scope was excessively broad, resulting in small breaches being penalised with harsh fines that are not compoundable. During the debates, it was also proposed that once the offence of fraud is established, it would be impractical to set a threshold for it to be penalised under Section 447. "The provision has the potential to be misused and may also have a negative impact on attracting professionals in the post of directors and, therefore, recommends that only frauds involving at least Rs. ten lakh or one percent of the company's turnover, whichever is lower, may be punishable under Section 447," the Committee said (and non-compoundable). Fraud that is less than the limitations and does not implicate a public interest may be treated differently and compounded since the expense of prosecution may surpass the amount involved."

IV. THE NATIONAL AND INTERNATIONAL STATUS

Corporate crime is demonstrated through industrial disasters that claim the lives of many people, such as the Bhopal gas tragedy. Many lives have been lost as a result of corporate carelessness on occupational and safety norms. Another example is when consumers become victims of dangerous items. Handling engineering and mechanical flaws is extremely risky. Companies make deliberate compromises on product safety to save money and reduce product costs. The public is frequently harmed by industrial contamination as a result of inappropriate waste disposal. Even after years, the impact of these atrocities may be felt. Uncivilized delinquency is sometimes referred to as corporate crime, and it takes the form of forced labour, child labour, forcing people to work in inhumane working conditions, denial of basic sanitation, and lack of medical care, among other things.

Misrepresentation in the catalogue, liability to compensate qualification shares, repayment of share submission money, deception in agreements, fake business conduct, unlimited liability under the memorandum, frauds in income tax payments, ruin labour legislation, and frauds on minority shareholders are some of the incidents that can devastate shareholders and stockholders. There were no signs of diminishing in the current trade crime upswing. In addition to the \$4 billion in previous unlawful penalties, British Petroleum (BP) paid a record \$20 billion to resolve outstanding civilian custodies relating to the Deepwater Horizon disaster, whereas Volkswagen faces greater accountability in connection with its structure to avoid emission criteria.

V. CORPORATE CRIME IN NEW DIMENSIONS

Every day, new types of frauds and crimes emerge, and most of the time, we are caught off guard. According to the Deloitte India Fraud Survey, India might see four frequent scams in the future owing to the rising tendency of employing high technology digital media in normal business models. Scams involving the media, e-commerce, cloud computing, and virtual currencies. The following are excerpts from the Deloitte India Fraud Survey, and the following information is based solely on the survey:

E-commerce Fraud

Currently, e-commerce is used in practically every industry, and many transactions are carried out through computer networks, the Internet, and other online media. The e-commerce business has been rapidly expanding and is now worth roughly INR 224 billion. In the next two years, it is predicted to roughly double in size. The travel business currently covers a large portion of the e-commerce arena, with transactions ranging from ticket bookings to hotel bookings to online shopping. In India, internet penetration is expanding, as is the ability to do business online. By 2014, it is expected that the overall number of Internet users would have surpassed 243 million. With a rising number of computers educated people who are also ideal prospects for online businesses, internet fraudsters have a lot of room to operate.

Cloud Computing Fraud

People are increasingly requesting and using internet access to their data and apps that might assist them. Desktop computers, smart phones, laptops, tablets, and other devices are used. Cloud computing is an excellent solution to this problem. Not only is the Indian younger generation embracing cloud solutions, but businesses are also using cloud access to share internal data quickly and simultaneously. This opens the door to a lot of internet scams. Companies may now utilise cloud technology to share and update data and documents while simultaneously viewing and utilising them from several places. People on the cloud may engage in real time for very little money. Because there are so many applications and uses for cloud computing, it has become a target for online fraudsters, putting the data exchanged on cloud computing at danger. Intellectual property, corporate data, and a variety of other data are all vulnerable to theft or misuse. Cloud computing has raised the possibility of identity theft, hacking, and other security issues.

Fraud on social media

Social media is a widely utilised and popular technology nowadays. It is being used by businesses to increase their exposure and popularity among the public. Companies may use social media to get closer to their consumers and communicate with them. Despite the fact that businesses have begun to use social

media as a strategic marketing and customer connection tool, they are still learning how it works. Although social media is extensively utilised by clients of all ages, genders, and locations, hackers may steal the data and use it against the advertiser. There are also additional hazards, including as unfavourable publicity and client data loss, which make it a dangerous and appealing environment for corporate crime.

Fraud involving virtual or crypto-currencies

A crypto currency is a digital or virtual money that is secured by cryptography. Bitcoin is a virtual money that is widely used on black market websites and is being investigated by US authorities. This digital money is built on complicated systems and networks, and it may be used to buy and sell products and services on a variety of websites. Crypto currency transactions include internet transfers, cellphone recharges, and a variety of online trading or exchanges for products and services. Unlike the manufacturing of actual money, which is regulated and monitored, crypto currency production is unregulated and readily manipulated.

VI. CONCLUSION

Corporate crimes, in my opinion, are the most prevalent evils in society. Loopholes in corporate crime should be addressed through a judicial strategy to have a greater influence on society. Corporate crime refers to crimes done by a business or an individual working on its behalf that are prosecuted and punished under the law. Corporate crimes should be sentenced in the legal provision in a more effective manner, and a revision is required. It has a negative impact on the capital markets. It has now become a menace to society in the current situation. Even when an employee acts on behalf of the company, the notion of vicarious culpability applies, and the crime should be treated as a serious offence by both the employee and the company. In such cases, the employee may be able to benefit.

VII. REFERENCES

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