
Unleashing the factors of Corporate Crimes on Society – Indian Perspective

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Abstract

Corporate crimes and their impact on society are not new to this world. They are pertinent to this world from the time of existence of the very first corporations. This paper studies in detail about corporate crimes in various segments like the financial sector, environment, major banks containing legal entanglements for treachery to manipulate foreign exchange markets, automobile industry for safety violations, issues related to food and pricing. The various grounds for such delinquencies have been elaborately discussed and how the delinquencies are affecting our society in copious ways. This paper also lays emphasis to explore how far the companies, as well as their shareholders, are liable and responsible for such corporate crimes. The paper concludes with various recommendations to control corporate crimes so as to improve the quality of society's living conditions.

Keywords: *Corporate, Crime, Society, Impact, Regulations, International corporations' crimes*

Introduction

The most common form of business organization is a corporation, which is a creation of law. A company is called an artificial juridical person for the reason that, it is a person, who is being artificial with the obedience of the law, as well as ignoring to be a human. A person is said to be human when he complied with the law. However, the powers that a company possesses include only those, which are offered upon it by the

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Memorandum of Association (MOA), which is the charter of the company. A company can do anything like a natural person within the limits of the MOA.

Characteristics of a company include corporate personality, limited liability, transferability of shares, company a person, perceptual progression, his own wealth, the ability to charge and be charged, common seal, pledged constitutional rights, deed restriction, voluntary association for profit, separate management and termination of existence. Usually, a corporation is treated as a separate legal person, who alone is responsible for the debts it incurs and the only beneficiary of the credit it is owed. Common law countries usually honour this principle of separate individualism, but in exceptional situations of crimes being involved may pierce or lift the corporate veil.

Corporate crimes

Corporate crimes are not new to this world. They have been taking place in this world from the initial days that corporate entities were beginning to get established. That said, it is not an easy job to confine corporate crimes to one definition. As such, there are various definitions so far corporate crimes, according to various authors. "Corporate crimes are crimes committed in the course of otherwise legitimate working procedures in respectable organizations." [1]. "Corporate crimes are firm's act that violates the criminal law". It is also defined as the crime committed by, respectable or at least respected, business and professional men who belong to the upper class [2]. It is a crime committed for the corporate organization and not against it [3]. The Fraud Act, 2006, United Kingdom (U.K) defines corporate crime as an intentional dishonest act by management, employees or third party on or against a company to gain advantage or to cause harm or it. The Chartered Institute of Management Accounting (CIMA), 2009 defines corporate crime as an act that involves deception to other parties to make a personal gain for oneself dishonestly to create losses for others. Corporate crime is an exercise of dishonesty conducted to gain the advantage over others.

Review of literature

Individual frauds or corporate frauds are starting with the conflict of interest. These frauds are taking place when the individuals are unable to make good decisions on conflict of interest, which ruins the whole business perspective. [4]. Monetary law-breaking is purposively motivating the persons and develops in specific space and circumstances aided by informational weapons. Non-corporative terrains are providing a perfect background

through endorsing minimum tax maximum wealth to the creative criminal intellects. Large organizations are more likely to engage in crimes more than smaller ones. The relationship between prior performance and crime are strongest for corporate crimes. The corporate frauds, whoever are in executive positions, are making a strategy to achieve the business goals via illegal practices through the virtue of the indecency of choice in their decision making. [5]. It is suggested that throughout the area of corporate liability for crimes one issue which should never lose sight of, is that prevention is better than cure. Training and supervising employees are costly but the benefits, while perhaps unseen and unsung, are overwhelming in comparison with the dreadful publicity which, proves that not all publicity is good publicity [6].

Categories of Corporate Crimes

There are many types of corporate crimes just like many definitions are available for corporate crimes. The series of corporate crime may be different, but the result is either physical harm to gross financial destruction. Broadly we can say that there are corporate criminal activities, such as (a) between employees; (b) between the corporations; and (c) against the society. Crimes, which involve employees at different levels, called as professional crimes. Misappropriation, bribes and lack of transparency about business policy are treated as corporate crimes occurred between employees. dumping, price-fixing and bid pulleys etc. are falls under the crimes happen between the corporations. Investment frauds, health-hazardous activities, economic frauds, theft of information or physical things, security deceptions, tax fudging, manipulation of the stock market and insider trading are the crimes against the society. Another way that corporate crimes can be again divided is according to the nature of the crime committed, which includes crime resulting in physical harm and economic offences.

The National and International Status

Industrial disasters, that cost the lives of many like Bhopal gas tragedy is an example of corporate crime. Many lives are lost because of the corporate's negligence of occupational standards and safety standards. Another instance is where there can be cases of consumers being made victims of unsafe products. Engineering and Mechanical defects are very dangerous to handle. Companies, to save money and to cut product cost, sometimes, deliberately compromise on product safety. In many cases, the public is made victims of industrial pollution due to improper disposal of industrial waste. The effect of these

crimes remains even after years of happening. Uncivilized delinquency is also considered as corporate crime, which happens towards the employees, particularly whoever is working in the lower level – such as the shape of forced labour, getting work from children, forcing employees to work in merciless working conditions, denial of proper hygiene and no support of medical facilities among others.

Financial reports have to prepare to showcase the financial status of the company. The investors, creditors or other stakeholders rely upon such reports. Falsification of audits to mislead or play deception it may result in huge loss and are the biggest kind of corporate crimes. Day to day, the information must be shared between the employees and officials, sometimes even though it is confidential. This confidential information diverted for the benefit of the individual is called insider trading. The practice of insider trading mostly happens in share market transactions, to benefit a particular group on favoritism. The corporations benefit in terms of higher profits if they initiate an insider trader to manipulate the marketplace done through security.

The incidents which can have the shareholders and the stockholders devastated are misstatement in the catalogue, accountable 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, frauds on minority shareholders. The present trade crime upsurge revealed no cyphers of waning. British Petroleum (BP) compensated a record \$20 billion to resolve the outstanding civilian custodies involving the Deepwater Horizon catastrophe on top of the \$4 billion in preceding unlawful penalties, whereas Volkswagen is fronting larger accountability in association with its structure to shirk emission criteria.

Further many automakers and suppliers had to deal with hefty penalties for violating safety, containing a \$900 million fine and deferred criminal prosecution for General Motors, \$70 million for Honda, a civil penalty of \$200 million for Japanese airbag maker Takata, penalties of \$105 million and \$70 million for Fiat Chrysler. Banks such as the Citigroup, JPMorgan Chase, Barclays, Royal Bank of Scotland had to pay \$2.5 billion to the Justice Department of The United States (U.S) and \$1.8 billion to the Federal Reserve for conspiring to deploy foreign exchange markets. Anadarko Petroleum decided to pay beyond \$5 billion as charges for toxic dumping by Kerr-McGee bought by Anadarko. Johnson & Johnson subsidiary McNeill-PPC entered a guilty plea and paid \$25 million in fines and punishment for selling adulterated children's over-the-counter medications. Deutsche Bank was fined \$258 million for violations related to transactions on behalf of

countries like Iran and Syria and entities subject to U.S. economic sanctions. In a rare financial penalty in a food safety case, a subsidiary of ConAgra was fined \$11.2 million for distributing salmonella-tainted peanut butter [21].

Grounds for Corporate Crimes to Transpire

Just like many types of corporate crimes, there are also many causes of corporate crimes. Common causes include accounting problems and board oversights; failure to allocate responsibility for the prevention of fraud; development of modern technology; the absence of specific statutory provisions relating to the responsibility for fraud detection [7]; failure of regulatory agencies; poor internal regulatory practices; diversion of white-collar crime to civil court; worker's propensity to commit individual and corporate crime; low self-control [8]; competition [9]; temptation of organization to resort to illegal methods to achieve their objectives; poor performance of the corporations [10]; not serious consideration of the corporate criminal prosecutions [11]; tough Economic Times [12]; level of investor's beliefs about industry [13] among others. Taking accounting problems and board oversights into consideration, most of the recent emerging corporate scandals were a result of accounting problems and board oversights. It is the management, that is, the directors, who are responsible for ensuring that proper accounting records and statements are prepared and maintained.

Corporate crimes can be easily caused if there are internal accounting problems and board oversights. Failure to allocate responsibility for the prevention of fraud can be also be said as a cause, which enables scam. Tolerating the honesty as unavoidable, permitting notorious cases of fraud to go scot-free, discerning that security is too expensive or effectively enclosed by a fidelity rule, and the attitude, is part of it. The development of modern technology, which insists individuals to the wide use of computers, which stands as the reason for the problem not only being highly complex to operate but also an auditor is unable to operate with a single transaction entirely over the system. Obviously, it is highly complex to identify the fraud, which has happened through the computer. Naturally. The absence of specific statutory provisions relating to the responsibility for fraud detection is also responsible for corporate crimes. The circumstances of fraud are differing from case to case. As many cases settled and solved out of court that we can say that many cases are not going up to the court, where the scope of repetition of the same fraud is taking place. As an example, Britain's regulatory agencies failed to control institutions such as The Bank of England and Halifax Bank of Scotland (HBOS), which are entitled to huge financial frauds are not settled as on time. Some of the crimes like The Royal Bank of Scotland scandal can

happen due to poor internal regulatory practices.

Diverting white-collar crime to civil court generally results in diffident fines and very less retribution, when paralleled to the revenue and assets of guilt-ridden corporations and their capability to pay. This causes corporate crimes. Worker's propensity to commit an individual and corporate crime is also a cause of corporate crime. Sutherland's theory helps to explain why workers in an organization, especially in certain industries, possess a propensity to commit individual and corporate crimes. Sutherland rejected the encounter and social disorganization dimensions of his earlier versions of his theory. He proposed that certain characteristics play a key role in placing individuals in a position to behave unlawfully, including the proposition that criminal behaviour is learned through interaction with other persons, as well as interaction occurring in small intimate personal groups. Low self-control can also be a cause of corporate crime. Gottfredson and Hirschi's [14] self-control theory proposes that individuals commit crime because of low self-control. Except in rare cases of mass fraud such as in the Lincoln Savings and Loan debacle (the 1980s) or the more recent Enron scandal, not all elites within a given organization or industry will commit a crime. Competition can also be a cause of corporate crime. Economists have recognized the many virtues of competition since the time of Adam Smith. However, it has also been argued that competition may be problematic in some respects. One such claim is that competition may drive firms to engage in unlawful practices; "the keener is the competition, the higher is the pressure to reduce costs, and the more pervasive is corruption". The intuition is straightforward and compelling.

When some firms lower their costs by engaging in unlawful practices and competition is fierce, other firms must follow suit or else risk losing market share and potentially being driven out of the market. The temptation of the organization to resort to illegal methods, to achieve their objectives is also a cause of corporate crime. All organizations have a set of objectives to be achieved. They have to be achieved through straight methods. Some organizations use illegal methods to achieve their objectives. This can be a cause of corporate crime. The poor performance of corporations leads to corporate crime because corporations are expected to perform well. The main aim of running corporations is to make profits. Some corporations do not run as well as expected. This poor performance forces corporations to commit crimes. Hence it can be said as a cause of corporate crime. Non-Serious consideration of the corporate criminal prosecutions is a cause because; corporates nowadays do not take criminal prosecutions seriously. They commit crimes, employ the top lawyers, pay fine and continue to commit crimes. This is also a cause of corporate crimes. Tough economic times financially affect the organization and can force an organization

to commit a crime. Level of investor's beliefs about industry causes corporate crimes as fraud propensity increases with the level of investor's beliefs about industry prospect but decreases in the presence of extremely high beliefs.

Determining the Liabilities of Corporations

According to the common law, a corporation could not be held criminally liable for any crime committed by its member on behalf of the company under that individual's capacity but this idea has changed over time. First, it was agreed that a corporation can be held criminally responsible if it fails to fulfil its legal obligations and also for the inadequate manner in which it was performed. During the 20th century, the Supreme Court expressed its vague views on corporate crimes-

“It is true that there are some crimes which, in their nature, cannot be committed by corporations. But there is a large class of offences... wherein the crime consists of purposely doing the things prohibited by statute. In that class of crimes, we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. If it were not so, many offences might go unpunished and acts are committed in violation of law where, as in the present case, the statute requires all persons, corporate or private, to refrain from certain practices, forbidden in the interest of public policy.”

But when the court spoke about ‘crimes which in nature cannot be committed by the corporations it did not specify any crime and since then it has always been a point of debate if a corporation can be held criminally liable not just for the action of its agent but also for the wrongdoings done by its agents or members with the intention to commit a crime. Most federal criminal statutes apply to ‘whoever’ or ‘to any person’ who violates the law. In general language, a person refers to human being whereas in legal terms it has a broader meaning. The tax crime definition of person says that the term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. And in some cases, even governmental institutions are added to the list of persons.

According to English law, a company can be held answerable for an unlawful act or an error in two approaches. First, where the company is vicariously liable for the actions of its employees and the second approach is known as the *alter ego* doctrine. Under the first approach the company, which in the eye of law holds separate legal entity, is held legally responsible for an act performed by its employee, who like a natural person would have

been so liable. The so-called high-level officers act on behalf of the company and hence are imputed to the company. The company is not vicariously liable but personally and directly liable for the acts done by the senior officers on behalf of the company, which is an artificial body cannot perform major functions. A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation; the very ego and centre of the Personality of a corporation and under the second mode this agent will be held liable.

The difference between the two modes of liabilities is very apparent. Under the first mode, the company is liable for the behaviour of its employees, regardless of their position on the hierarchy table. While the second deals with the directing minds of the corporations. The distinction is often stated anthropomorphically as one between 'hands' and 'brain' and there is a growing jurisprudence concerned with which jobs in which companies fall within these categories. The degree to which a company can be held legally responsible for the wrongdoing of its employees is often decided by the court due to the complexity of the law. In maximum cases, a corporation is held responsible for the actions of the employee while he is carrying out his employment-related responsibilities but the extent of that responsibility is found out by the intention of the employee, scope of the action and the preventive measures taken by the employer. The employer cannot be held responsible for any felony committed by the employee that occurs outside the workplace and does not come under the professional capacity of the person or for any unpredictable criminal act that takes place in the business until the negligence of the employer is proved. Moreover, corporations cannot be put behind bars, they can only be fined, placed on probation, can be ordered to pay restitution, its property can be confiscated and can also be barred from engaging in any business activities [6].

While the criminal investigation on the corporation goes on the corporation enjoys certain constitutional rights that an individual has during prosecution. The corporation has the First Amendment that gives it the right to free speech, a Fourth Amendment that gives it a protection against unreasonable searches and seizures; it has the Fifth Amendment that gives it the right to due process and protection against double jeopardy; Sixth Amendment that gives it the right to counsel, jury trial, speedy trial and to confront accusers and to subpoena witnesses and finally the Eighth Amendment which provides protection against excessive fines. The corporation does not have the privilege against self-incrimination which is the Fifth Amendment [5].

It is now finally established that corporate employers, employees and officers can be seized criminally liable for any antisocial acts that they commit personally irrespective the corporation's benefits. Neither the employer nor the employee, who needs to respond for any individual wrongdoing, no corporate entity supports them. Beneath of theory of liability, a person is responsible for criminal violation irrespective of their knowledge of the criminal activity [15]. The theory of corporate personality is the alter ego of the stakeholders, who is unfairly getting to be punished for the actions done by frauds, where punishment must be equated to all situations of crimes.

Business representatives are worried about the innocent shareholders, who are ultimately paying the cost of fine, because of the crimes happening in corporations. The corporations are free to replace these managers' executives of higher truthfulness. According to some business representatives, most of the shareholders have less power, superior influence employed by councils of establishments such as pension and mutual funds which clutches a large meditation of shares. If there had been an activity without the knowledge of the shareholders then the shareholders can't be held liable. Owners of shares may be the theoretic stable holders, but for the reason, that of modification and the fraud concession, their acquaintance to securities fraud is pretty inadequate.

On the other hand, employees and trade creditors face a significant risk of securities deception, predominantly in focused industries, throughout investment booms or bubbles. Industries in which they make significant corporate-specific investments, and in industries in which exit is costly [4]. It can always be noted that the giant business criminals are treated more humanely than the 'orthodox' criminals and the complexity in the nature of various business make it difficult for the police to build a rigorous case against them. But then, this is an era where the enforcement of the law is being urged to remove the evil penetrators of corporate crimes and to make sure that they face a heavy risk of prosecution and imprisonment, parallel to the treatment that a murderer faces [6].

Conclusion

Corporate crimes are mostly effecting the capital markets of the country and losing the belief of depositors in the banks. Citizens are fearing to appear the financial institutions due to insecurity of their deposits, which gradually affects the economy. Corporate crimes not being socially accepted anymore is the biggest threat to the wrongdoers. Their crimes won't be glamorized anymore and the criminals will be regarded no better than the 'orthodox' criminals. As such many precautionary measures can be adapted to control corporate

crimes. Instituting appropriate fraud prevention measures within the organization to detect and prevent fraud is the best way to prevent crimes if the corporate crimes are committed by the employees, without the knowledge of the management. Voluntary corporate change is the best way to prevent crime because; the change comes from the corporates itself. The corporate decides that it does not need any profits by committing crimes [8]. Identification of the possible complications within the corporations and seeking clarifications, which decrease the possibility of criminality because problems within the organization are one of the main causes of corporate crime [8].

Increasing social responsiveness can be said as another way of preventing corporate crimes. If the company's responsibility to society increases, they would automatically refrain from committing crimes that cheat the public. Development of a single set of compliance, internal control, transparency systems can also decrease corporate crimes because it increases the difficulty to commit corporate crimes [16]. Increasing self-monitoring level also can greatly prevent corporate crimes [17]. Vigilance and innovativeness can also prevent corporate crimes from the organizations perspective [18]. Taking deterrence by punishment into consideration, increasing the level of punishment for crimes can reduce the number of corporate crimes [19]. Establishment of techniques by the government can also prevent corporate crimes. Taking additional disclosure into consideration, requiring additional disclosures can significantly reduce fraud [20].

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