

Multidimensional Aspects of Corporate Crime/Fraud and Violence in India: Some Regulations

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Abstract – The motivation behind this paper is to look at the multidimensional aspects, nature and impression of corporate frauds in India and their results in the business and monetary systems, and it features the developing issues with the goal that current legal and regulatory commitments can be re-imagined and organized. It was discovered that the regulatory system is frail, and there is critical need to rethink the part of inspectors. Coordination among various regulatory authorities is poor, and after each trick, there is a habitual pettiness. Reporting of fraud and publication of fraud anticipation policy are absent. Banks and money related establishments are incapable on due persistence, and there is an absence of demonstrable skill on the board and other official levels in organizations. This examination accept that fraud could be moderated by proactive and cognizant action by reviewers, and corporate officials will abstain from executing money related fraud regardless of weights from speculators, government securities controllers and exogenous market vacillations.

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INTRODUCTION

A corporation, being an assemblage of different stakeholders at the micro and macro levels, must be reasonable and straightforward to its stakeholders in every one of its transactions (Ramachandran, 2008). In a globalized situation, corporations need to get to assets and contend in a worldwide commercial center that basically requires that it must grasp and show moral direct to develop and flourish over the long haul. Late decades have seen the sharp increment in the covetousness of people and associations and have procured an inescapable nearness in our lives and society. Corporate frauds and offense remains a consistent component representing a danger both from the macro and micro perspectives of the economy. Progression process in creating economies has normally seen a progression of tricks nearly with sickening consistency. Corporate frauds have turned into a worldwide wonder with the progression of business and innovation.

In late decades, quickly developing economies watched a gigantic increment in corporate frauds, suggesting genuine conversation starters before the academicians, specialists and experts on the viability of corporate governance mechanisms, government direction mechanism and the part of corporate and individual morals. As of late, various investigations in the fund, financial matters and law writing have been led on the comprehension of motivating forces and

observing obstructions of corporate frauds and the escape clauses in the government control systems.

After each trick, the government and regulatory hardware have been reinforced to lessen the quantity of frauds that basically force a keep an eye on the nexus between the organization and experts and amongst banks and officials, which might be accomplished through more divulgences, by putting and settling duties on each gathering associated with the fraud.

Like other creating and some created nations, India is in the grasp of fraud, suggesting the requirement for a straightforward, moral and mindful corporate governance structure. The worldwide budgetary emergency amid the current past, alongside a portion of the huge corporation disappointments and frauds, has convincingly uncovered that while the corporate governance super structure in India is genuinely tough (ICSI, 2007), there are sure shortcomings that may have their underlying foundations in the ethos of individual business elements. KPMG Survey of 2006, 2008 and 2010 uncover a proceeded with tirelessness of corporate frauds and caution the nearness of fraud hazard in the business structures of huge and medium-sized associations including banks.

Corporate frauds have expanded at a high pace in India (Vivian Bose Commission of Inquiry, 1963; KPMG, 2010). The Securities and Exchange Board

of India (SEBI) presented (Prohibition of Insider Trading) Regulations, 1992, which was later changed in 2002 yet does not have transnational locale. SEBI ought to be given more powers and must be functioned as the Securities Exchange Council. It must gain the idea of a criminal court to implement criminal authorize against chiefs of outside organizations recorded in the residential trade, who are actively engaged with insider exchanging. Aside from SEBI, we have an assortment of regulations managing an assortment of fraud types and points of view.

In spite of receiving corporate governance and with the presence of various legislations and regulatory authorities, corporate frauds have turned out to be wild all through the nation. We endeavor to analyze the impression of corporate frauds in India and feature the rising issues with the goal that current legal and regulatory commitments to report fraud can be streamlined to guarantee consistence, consistency and straightforwardness of corporate tasks that can encourage the deliberate development of corporate India.

Large Corporations dominate the global business and are present in every sphere of our life. However, a corollary of this dominance is that large companies have stalled indulging in criminal activities, and considering the fact that they are not natural human entities, their activities criminal or otherwise are also not ordinary. Corporate crime has assumed dangerous proposition; particularly considering their' criminal behavior defies 'common reality'.

Developing countries face a major problem of corruption and bribery, especially among the public officials, and this has resulted in increased criminality in under-developed countries that are already burdened with huge debts from the International Monetary Fund. Therefore, the concept of corporate crime must be clearly defined so that it is possible to ascertain the extent of liability to be imposed on them. This is necessary if the motto of the civilized society has to be 'live and let live'.

India is not an unknown territory as far as corporate crimes are considered, hi fact, it is a serious contemporary concern due to multidimensional aspects involved in nature of such kinds of crime, given the number of corporate scams emerging everyday and threatening the overall economy and welfare of the state. Development of any country depends largely on the corporate sector, although the stability of the economy must not depend on its corporate sector. Corporate criminality⁵ seriously threatens the welfare of the society, considering its presence and impact in most aspects of social and community life, and the number of people it affects. As a result, corporate entities are in a position of causing massive physical and economic harm.

Corporate liability in the present context must be strengthened. The phenomenon of corporate criminality emerged primarily in the 20th century. In India, laws pertaining to corporate liability are being strengthened, particularly after the Bhopal Gas tragedy. However, it is still in a nascent stage. The traditional perspective towards crime never included corporate criminality. Business corporate has become a prominent part of the society. Considering the penetrative reach of the corporate in the various spheres of social existence, and the commercial outlook in our value systems, it becomes all the more important to ascertain the criminal liability of companies.

Laws are being designed to define various acts of companies as criminal if they are harmful for the society even if they are profitable for the business organization. Fraudulent activities and other intentional crimes, particularly in securities and healthcare are dealt under stringent prohibitive laws. Other criminal legislations, like the various environmental regulations, have been framed to ensure that firms adopt measures to rectify or prevent the harmful impact of their operations. Most legislation is enforced by combining both corporate and individual liability on companies indulging in wrongful activities. The moot question confronting the law enforcers is to find ways to impose structured criminal and civil sanctions against individual and corporate which may serve as a deterrent.

Indian market offers significant open doors for multinationals investigating inbound speculations and nearby organizations growing abroad. Entering India either through a joint wander, obtaining or building up a Greenfield nearness in India or uniting and extending current tasks will be a basic part of development for some worldwide associations. In the meantime, understanding the dangers in India is basic for the survival of business activities.

As per the Association of Certified Fraud Examiner's "Report to the Nations 2016" India positions second as far as casualty associations reporting the cases. The investigation demonstrates the basic requirement for controllers, business and in addition the venture group to survey the dangers radiating in the organizations. Today, in an inexorably interconnected world, digitization empowers organizations to be led in the wink of an eye. The digitization likewise helps mask the characters and maneuvers of individuals leading that business, in this way empowering fraud to end up more advanced and unavoidable. In this way, it is the ideal opportunity for associations to look at the part of corporate governance, especially of those engaged with forestalling and recognizing frauds.

Corporate Law and Criminal Law have customarily involved two distinctive legal circles. Albeit imperative exceptions¹ exist, the two fields truly created along discrete tracks. The current surge in corporate offense by officials has changed all that, and it is not any more unprecedented for the two tracks to cross and even to cover. The controls now share basic interests and it have to stop criminal unfortunate behavior and to energize law-withstanding behavior of business firms.

Presently, the Governments, appears to have perceived this new cover of corporate and criminal law in drafting the new regulations, which incorporates arrangements with respect to both corporate governance and criminal law. The Government fortified the regulatory approach and furthermore gave the Securities and Exchange Board of India Independently of the Government, the official branch mounted an uncommon criminal requirement exertion that additional work force, made undertaking forces², and for the most part gave huge assets to recognizing and indicting corporate crimes. Those consolidated endeavors have brought about, the same number of as people from various corporations and feelings of people.

CORPORATE CRIMINAL LIABILITY: HISTORICAL BACKGROUND

Generally a corporation couldn't be criminally at risk in light of the fact that the corporation was a legal fiction with no free will. In Anglo-American custom-based law Blackstone composed that a corporation can't perpetrate "treachery, or lawful offense, or other crime, in its corporate capacity"¹. In mainland common law this was additionally obvious after the saying "societas delinquere non-potesf. One must recognize the two diverse legal systems. However both the common law (e.g., France, Sweden, Denmark and Germany) and the precedent-based law autonomously developed from a standard of no corporate liability toward a rule that perceives that corporations can be liable of carrying out crimes in national and worldwide law.

Corporate criminal liability in both the precedent-based law and in common law advanced from perceiving singular criminal liability for wrongful acts of the corporation (first perceiving liability of executives, at that point of officers lastly of workers) until at long last perceiving the criminal liability of the corporation itself. This is a case of the contemporary pattern toward a meeting of the customary law and common law.

This development may have happened on the grounds that until the twentieth century the standard solution for crime was detainment, beating or execution. Clearly such disciplines couldn't be connected in any significant sense to a corporation. Be that as it may, discipline for crime now incorporates lesser

punishments, for example, fines, open administration, and other non-careeral cures.

Corporations can likewise be rebuffed for crimes by being denied the right to work with the government or even by disavowal of the organization's reminder and articles, of incorporation. Along these lines, as criminal discipline developed, the guideline of "no criminal liability" likewise advanced rationalistically into its inverse. On a basic level, corporations today are liable to criminal law in the precedent-based law, in non military personnel legal systems, and by augmentation in global law.

Despite the fact that it is broadly recognized that corporations are non-state actors (and hence too were not subject to universal criminal law like people), they would now be able to be at risk for crimes under global law. Perceived standard universal crimes incorporate robbery, slave exchanging, atrocities, crimes against mankind (that are a piece of systematic lead), genocide, and torment. In any event those crimes are liable to widespread ward and any state may rebuff them.

The United Nations Convention against Transnational Organized Crime characterizes assist worldwide crimes: interest in a composed criminal gathering, tax evasion, corruption, and obstacle of justices. State parties must set up criminal, common, or managerial liability for legal people (counting corporations) who carry out these crimes. Natural crimes and air theft might be amidst getting to be crimes under standard worldwide law.

The resulting exchange of the historical backdrop of criminal corporate liability gives a vital setting to understanding the topic of this part. It isn't planned to be a far reaching history of the stage around there of the law. That history has been broadly recorded under various legal systems.

The dialog underneath gives a comprehension of the setting of the precept of criminal corporate liability keeping in mind the end goal to comprehend the present regulation, the current Supreme Court corporate liability cases², and the restrictions proposed thus for criminal corporate liability. Further, this dialog outlines that the modern condition of criminal corporate liability owes more to the notable possibilities that prompted its creation, particularly the legal formalisms specialist to the corporation-as-individual analogy, and to the solitary setting of antitrust laws, than to a sound hypothesis of how authoritative criminal liability should be conceptualized uniquely in contrast to singular criminal liability. In a field generally laden with contradictions, even about the parameters of the

open deliberation, this is one recommendation on which almost all researchers concur.

CORPORATE FRAUD TYPES AND PROPENSITIES

Fraud is the utilization of false portrayals to increase uncalled for preferred standpoint and criminal misleading. The Internal Resources Service, Department of the USA of the Treasury, characterizes a corporate fraud as an infringement of the Internal Revenue Code and related statutes conferred by expansive, traded on an open market corporations and additionally by their senior administrators (IRIS, 2010). Corporate frauds, thoughtfully, is expansive and incorporates an assortment of criminal and common infringement. Likewise, corporate frauds have step by step turned out to be exceptionally mind boggling in nature .

A run of the mill fraud triangle cited in the writing has three noteworthy parts:

- (1) Opportunity – Sometimes alluded to as apparent opportunity, which characterizes the strategy for carrying out crimes or frauds;
- (2) Motivation – The weight or "need" that a man feels which could likewise be an apparent budgetary need, whereby a man firmly wants material products yet does not have cash or intends to gain them; and
- (3) Rationalization – The technique and mental process by which an individual can go to a comprehension in their psyche and to legitimize any act or acts that they partake in.

A portion of the factors and conditions that empower a person to have the open door incorporate – the information of the shortcomings of the organization's interior control systems, access to bookkeeping records or resources, absence of supervision, dishonest "Tone at the Top" and conviction that the individual won't get captured (Fraud Risk, 2009). In the wake of having opportunity and with the intention components of the fraud triangle having met, numerous need to and do support their actions as the last and last advance in the fraud triangle. There are the individuals, who have no compelling reason to support, and they realize what they are doing, and whatever the intention, they don't have to endeavor to conceal their criminal activity from their spirit. Justification can facilitate their blame and give the guilty parties the last prerequisite of the fraud triangle. Cited factors for defense incorporate poor pay, no or less acknowledgment, requirement for more cash, and so forth. Duffield and Grabosky (2001) have characterized fraud as an act including misdirection, (for example, deliberate bending of reality or deception or camouflage of a material fact) to pick up an uncalled

for advantage over another to secure something of significant worth or deny another of a right.

It happens when a culprit discusses false explanations with the purpose of defrauding a casualty out of property or something of significant worth (Vasiu and Vasiu, 2004).

Types-

Fraud can be classified into:

- Financial reporting fraud;
- Misappropriation of tangible assets, intangible assets or proprietary business opportunities; and
- Corruption, including bribery, gratuities, money laundering and embezzlement.

Resource misappropriation fraud includes taking money and different resources, and different plans are utilized to achieve this. Resources misappropriation incorporates money skimming, money burglary and robbery of stock or hardware, and shell-organization tricks.

Budgetary explanation fraud is a genuine risk to advertise members' trust in distributed inspected money related articulations. Capital market members expect careful and active corporate governance to guarantee the respectability, straightforwardness and nature of monetary data (Rezaee, 2005). Corporate undercover work is a danger to any business whose vocation relies upon data. The data looked for after could be customer list, provider assentment, personal prizes, examine archives or prototype gets ready for another item or administration. Organizations under the law and distinctive legislations make applications to the diverse authorities to conceal the frauds submitted by them.

The individuals who confer word related fraud have a tendency to have numerous comparable characteristics, yet they are not all very as simple to spot or as regular as suggested previously. Understanding what spurs workers to take from organizations is the way to identifying and forestalling inside fraud.

Dyck et al. (2007) demonstrate that frauds are uncovered by a few distinct mechanisms; examiners bring 15 for every penny of the frauds to light, and the likelihood of recognizing a fraud increments after a turnover of the outer reviewers.

Johnson et al. (2009) analyze the impact of official value pay on corporate frauds motivations. Beasley (1996) demonstrated that organizations that have

outside chiefs, are lesser likely in the classification of fraud firms contrasted with inside oversee ones.

DIFFICULTIES TO PROSECUTE CORPORATIONS UNDER THE CRIMINAL LAW

There was a time when corporate crime was just an insignificant part of legal considerations more of notional relevance. The reason was that there were not too many corporations in existence and their prosecution was rather difficult. An important consideration was that in case of criminal trials it was necessary to put in personal physical appearance. A company being an artificial person existing only in the eyes of law was unable to perform acts that it had not been authorized to perform, and so by its very definition, such acts would be ultra vires. Therefore, whether the company could perform or even support such acts was debatable. Furthermore, it was quite a challenge to determine the mens rea or 'a guilty state of mind' in a notional concept like a corporation. Most significantly though was the fact that company was an artificial person, and so punishments like imprisonment etc., were not possible.

Nonetheless, there are many criminal activities which a corporation can and unfortunately does get involved in, starting from workplace death and hurt to injury to a person and damage to the property of consumers and other members of the public. The lack of perception to associate the corporate image with such crimes has been¹¹ instrumental towards the abysmal rate of success in assigning liability for them and prosecuting them. The evolution of the concept of criminal liability of corporations is thus characterized by the relentless struggle of the legislature and the judiciary to overcome the problem of assigning criminal blame to fictional entities in a legal system based on the moral accountability of individuals.

However, there are many ways to categorize corporate criminal liability viz. Liability is only of those individuals committing the crime; company alone is to be held liable; or liability rests with both the individual as well as the company. For instance, a corporate vehicle may be used by an individual to commit a crime, wherein the liability definitely rests with the individual using the vehicle. It would be debatable as to the extent and nature of liability to be allocated to the corporate vehicle. Conversely, if it is only possible to identify the vehicle in particular situation, then to what extent will the vehicle be liable as a legal entity separate and independent of its manager or owner is again debatable. There are merits and demerits in each of the above discussed scenarios; the only point of consensus is that at least one entity must be held liable for the crime committed using the company's vehicle. Prosecution of corporations under

Criminal law is riddled with two types of hurdles viz., theoretical and practical.

LEGAL REMEDIES FOR CORPORATE CRIME IN INDIA

Writ Petitions-

The previous section has already discussed the wide ambit of Fundamental Rights provisions in Part III of the Constitution and their judicial expansion by the courts. If there is a violation of any of these Fundamental Rights, one may approach the Supreme Court or a High Court for redress. The Court "shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights"²¹⁶. The scope of remedial powers under this provision, itself a Fundamental Right, is quite wide.

Damages and Injunction-

The most commonly available and invoked legal remedy is to sue a company involved in human rights abuses for damages or compensation. This is generally done under tort law principles. But compensation can also be sought, as explained later, under writ petitions filed under Articles 32 and 226 of the Constitution, or under statutory provisions. Damages awarded by the courts under tort law may be "substantial" or "exemplary". While the former is aimed at compensating the victims, the latter seeks to have a deterrent effect. The Supreme Court in *MC Mehta v. Union of India (Oleum gas leak case)* proposed a new yardstick for measuring the quantum of compensation payable by a company involved in hazardous or inherently dangerous activity. The Court observed that in such cases the compensation "must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise".

However, as this observation was obiter dictum and not directly applied to the facts of the case, it remains to be seen if the courts in future would adopt it. As of now, damages awarded in "tort actions in India are notoriously low" and thus do not have much deterrent effect. This was, in fact, one of the reasons why the Indian government filed a suit against Union Carbide Corporation (UCC) before the US courts rather than in India. Although there is no express provision, it seems that the Indian courts may award

interim compensation pending the final outcome of the legal proceedings if a prima facie case for liability is made out. There is at least one clear precedent for such an award.

The District Court in the Bhopal gas leak case relied on its power under Section 94(e) and Section 151 (inherent power) of the Code of Civil Procedure and awarded Rs 350 crore as interim compensation to the victims.

Criminal Sanctions-

The Indian Penal Code (IPC), as well as other laws, envisages the possibility of companies being held criminally liable for certain wrongs. Sec 305 of the Code of Criminal Procedure 1973 (CrPC), which prescribes procedure for when a corporation or a registered society is the accused, also implies that companies can be prosecuted for crimes. It states that where “a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial.”

PIL and the expansion of *locus standi*-

The crucial question with writ petition is who has the requisite *locus standi* to file? The traditional position in India and other common law countries was that only *an aggrieved person, whose rights are infringed, has standing to approach the court*. But over the years, there has been a liberalisation of the standing rules with the evolution of PIL. PIL generally refers to litigation aimed at espousing a public cause rather than the interest of one individual. PIL differs from traditional litigation not only in substance but also form, procedure and available remedies. In most of the cases, PIL seeks to trigger a social change or protect the interests of disadvantaged sections of society.

Intervention by the National Human Rights Commission-

Although the Paris Principles²⁶² do not expressly mandate National Human Rights Institutions (NHRIs) to promote and protect human rights in the private sphere, NHRIs have the potential to be quite useful in redressing human rights violations by companies^{2^}. Among others, the Special Representative to the Secretary-General (SRSG) has recommended to governments to reconsider the current limited role of NHRIs and recognize that they could play an important role as a “state-based non-judicial” mechanism providing access to justice. The recent Edinburgh Declaration has also emphasised the important role that NHRIs “can play in addressing corporate-related human rights challenges, both as a body at the international level, at the regional level and individually at the national level”. The Edinburgh Declaration can be seen a step in the right direction in that it explicitly acknowledges multiple ways in which NHRIs can

enhance protection against corporate human rights abuses.

Administrative measures -

Companies generally operate within a vast corpus of statutes and regulations. They require approval or licenses from government authorities to conduct their business, must comply with standards set by the government and must make certain disclosure in relation to their affairs. If such operational regulations are breached by companies people directly aggrieved or NGOs can approach the relevant government agencies to take appropriate action against the defaulting business entities. We have already seen that Indian environmental laws in particular allow stakeholder activism in enforcing issues of public interests. The Freedom of Information Act may also be used to first acquire the relevant information and then seek remedial administrative measures such as cancellation of license.

CONCLUSION

The current system of deterring corporate crime and violence is weak and ineffective. Management that tolerates, permits, and even fosters a criminal culture is largely beyond the reach of the law because managers, executives and officers cannot be personally convicted absent evidence beyond a reasonable doubt that they acted with *mens rea*. This has imposed costly externalities upon our economy in the form of excess crimes and has harmed the social order, in general and in particular, the investor confidence, leading to an unnecessarily high cost of capital. Management should finally be held responsible for failing to insist upon lawful conduct.

The concept of corporate criminal liability is still in its emerging stage in India as well as globally. Although attempts are made in terms of legislations like Companies Act. 2013 to control and reduce corporate crime, the very definition and concept of corporate criminal liability is still at nascent stage. Corruption is an evolving menace that Indian government is trying hard to fight. Such offences are of the nature where not only individuals but the companies also need to share the liability.

It is still a matter of debate as to how effectively can laws and regulations control corporate behavior. The extent of strictness of such nouns and the most suitable approach towards corporate criminal liability is again debatable. As a result, most courts are trying to find most practical outcome under given circumstances, instead of adopting standardized approach. The legal provisions in their present shape are still ineffective in control many corporate crimes. The crimes are evolving and so is the need to define corporate criminal liability. Presently, it has been observed that companies are

not held criminally liable under most circumstances. Companies Act, 2013 are good effort towards improving corporate governance practices and making companies more responsible and answerable.

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