

Criminal Liability in Corporate Governance: A Study of White-Collar Crimes

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Abstract - *The criminal justice system is facing a growing number of instances of corporate misbehavior in the twenty-first century. In order to maximize their own personal gain, some entrenched interests that dominate corporate operations utilize the corporation to commit illegal crimes. Companies are granted legal existence so they may be governed by the law. However, it becomes difficult to hold a corporate body criminally accountable due to the absence of a physical body and mind in a corporate organization. Damage to ecosystems, human health, and the advancement of necessary infrastructure may result from unethical business practices. In today's criminal justice system, it is essential to properly formulate criminal justice activities and to effectively enforce corporate criminal responsibilities. Freedom of commerce, a friendly business climate, and little regulation of corporate organizations are crucial to the economic well-being of society, the prosperity of citizens, and the growth of nations. In order to improve society via the determination and enforcement of corporate criminal culpability, it is vital to strike a balance between being tough on corporate crimes and being careful not to impede legitimate business activity. This presentation will provide an analysis of the Indian law concerning corporate criminal responsibility.*

Keywords: *White Collar Crime, Deception, Conventional, Transnational, Economic, Offence, Corruption, Illicit, Activities, Money, laundering, scams*

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INTRODUCTION

Like a worldwide pandemic, white-collar crime has affected both established and emerging countries. This pervasive white-collar crime has slowed India's growth as the world's biggest democracy strives to become an economic superpower. White collar crimes, unlike violent street crimes, are committed by respected corporate executives and come under the category of financial crimes (Sutherland 1939). India bears the enormous social and economic burdens of white-collar crime, which includes activities such as food adulteration, high-level bribes, and money laundering. Not only does it cost money, but it also undermines public confidence, does more harm than regular crimes, exacerbates inequality, and threatens the very ethics of a pluralistic country. While avarice and institutional weakness are the usual culprits fuelling this crime wave in India, the lack of strong opposition and ethical grey areas surrounding elite deviation also play a role. An increase in the potential for international crimes is a direct result of the proliferation of digital technologies. India is paradoxically awash with white-collar crimes despite its reputation as a haven of opportunity and progress in the modern era. In the midst of revolutionary growing pains, the world's biggest democracy, India,

is experiencing a turbulent white-collar crime environment, which this research paper depicts. In order to put a stop to this corruption epidemic without destroying India's growth engine, this analysis examines key instances, effects, the cause of it all, and policy answers. Stronger integrity institutions, changes to increase openness, technology protections, and a resurgence of ethical discourse in all sectors of society and in the public mind may always mitigate the effects of modernity's potential rise in white-collar crime. In order to usher in a new age of equitable prosperity that benefits everyone, India must triumph over white-collar crimes, which threaten human development and economic progress.

When proving criminal responsibility for a corporation, the idea of "responsible superior" is vital. It means that a business might face consequences for the actions of its workers and representatives. In addition, businesses, organizations, and unincorporated bodies of people are all considered "persons" under Section 11 of the Indian Penal Code, which also applies to individuals. Companies may be held responsible for their activities because they have their own

character and legal personality, which is independent from their members. It includes the idea that a business, not just its people, may face criminal charges and other legal ramifications for engaging in illegal acts. Secondly, they contend that the company's investors and consumers end up bearing the brunt of the retributive consequences, such as fines and penalties, which unfairly affect innocent persons due to the conduct of the business.

Businesses run by natural people who exhibit all the traits of sober, civilized humans are known as corporations. Despite this, it is an unfortunate reality of corporate life that some corporations break the rules meant to govern their operations, wreaking havoc on the public, their country, and the world at large. When this happens, it's critical to find out why corporations commit crimes. Everyone in the contemporary world, whether a natural or legal person, is under pressure and stress because there is a mismatch between their aspirations and the lawful methods at their disposal.

Despite claims to the contrary, there is a significant social stratification when it comes to the chances available to achieve financial success. Discord arises as a result of this misalignment of goals and methods. Since all corporations begin with a mission, it follows that all corporations are goal oriented. Even for corporations, there is a chasm between their stated aims and the legal methods by which they want to achieve them. Profitability, competitiveness, and increasing market share are some of the financial objectives of every corporation. A company's bottom line is directly related to its level of success. It is essential for a corporation to remain competitive, increase earnings, and grow its market share even after it has achieved success and established itself. The pressure forces a business organization to resort to unethical practices when acceptable methods of achieving the objective are exhausted. There is strain both inside and across organizations. When businesses compete with one another to increase their market share and profit margins, this is known as inter-organizational tension. Internal performance pressure and, eventually, unlawful activity, emerge as a result of intra-organizational tension caused by rivalry between sub-units inside the corporate body.

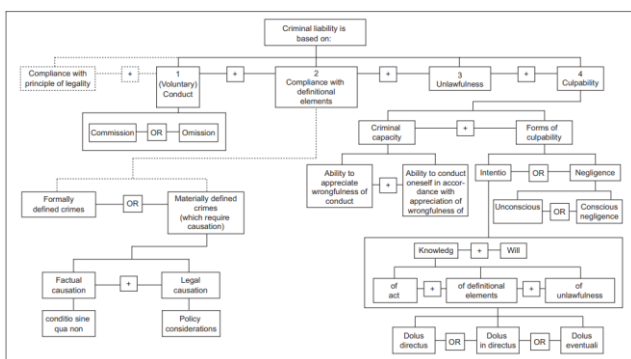


Figure 1: Criminal Liability

LITERATURE REVIEW

Arlen, Jennifer. (2012). The current system of corporate criminal responsibility in the US, focusing on companies with non-domestic ownership. It demonstrates that ideal corporate culpability differs in structure and function from individual criminal liability. The chapter contrasts traditional economic models of vicarious liability and analyses of corporate criminal liability, arguing that the fundamental goals of corporate liability and optimal structure are different. It suggests that businesses should not face severe criminal liability for their workers' actions, but should instead exclude corporations from criminal responsibility through monitoring, self-reporting, and cooperation. The chapter also disproves the classic view that states should lower corporate criminal liability to match market sanctions and individual criminal liability. It argues that even companies practicing perfect law enforcement should still be subject to residual civil liability.

Benson, Michael & Kennedy, Jay & Logan, Matthew. (2016). The chapter provides a concise overview of the problems, difficulties, and potential solutions related to the measurement of white-collar and corporate crime. It lists the various data sources on these crimes and explores the fundamental conceptual and practical concerns with these constructs. It goes on to talk about how each data source is strong and weak. Corporate crime and white-collar crime are similar concepts, but they are distinct from one another and pose different measuring challenges. Hence, they are addressed independently in this context. Improvements in computer technology and a resurgence of federal interest in the issue of white-collar crime have opened the door to new possibilities for measurement.

Marino, F. & Roberson, Cliff. (2013). The annual cost to the US economy of white-collar crime exceeds \$300 billion. One in three Americans will fall prey to it at some point, which is a very high rate. Those who are guilty of these acts may claim there were no victims, but the people who were really hurt would disagree. White-Collar and Corporate Crime: An Introduction gives.

Brickey, Kathleen. (2012). Anglo-American law has effectively upheld the concept of corporate criminal responsibility for wrongdoing for over a hundred years. Following an analysis of the phenomenon's theoretical and historical foundations as well as the retributive and deterrent arguments in favor of holding corporations criminally liable, this article delves into the policies and practices of the Justice Department concerning the prosecution and punishment of corporate crime.

Neira, Ana. (2014). Investigating white-collar crimes is particularly challenging. U.S. prosecutors, who act in accordance with the concept of

opportunity, have wide latitude to coerce businesses into cooperating, because companies do not have the same procedural protections as people. Companies in many European nations have the same procedural protections as charged people, and prosecutors are not allowed to make arrangements for the filing of charges due to the concept of legality. Corporate criminal responsibility may therefore constitute a roadblock to criminal inquiry in Europe due to the significant disparities between the American and European procedural systems, notwithstanding its usefulness in the US.

WHITE COLLAR CRIME & CORPORATE CRIMINAL LIABILITY

Edwin Sutherland used the phrase "White Collar Crime" first; his focus was on transgressions perpetrated by members of the higher socioeconomic class. Although white-collar crime is more often linked to the upper class, it does have certain similarities with corporate crime. Illicit actions inside the business realm are at the heart of both kinds of violations. But when it comes to who gets what, they're different. The victims of white-collar crimes are often people, whereas the perpetrators of corporate crime are often businesses. It is clear that "White Collar Crime" is a more general phrase that includes "Corporate Crime" when looking at the connection between the two. The difference between the two types of crimes is that white-collar crimes are "acts that are both socially harmful and morally reprehensible, committed by individuals or groups in authoritative positions within corporations and businesses, with the intention of personal gain at the expense of the company and the organizations they represent." Meanwhile, what we call "corporate crimes" are the immoral and damaging things that companies do to other people and places, such as their workers, customers, ecosystems, competitors, the government, or even other nations.

For financial or personal benefit, people, corporations, and even government entities engage in white-collar crimes, which are defined as criminal operations that do not involve violence. White collar crime is defined as "lying, cheating and stealing" on the FBI website. Because of the advanced technology methods used to disguise the often-complicated transactions involved in white-collar crimes, their prosecution may be challenging.

The Commerce Clause of the United States Constitution grants the federal government the authority to regulate and prosecute individuals who commit white-collar crimes. Several federal agencies work together to enforce laws against white-collar crimes. Notable among these organizations are the following: U.S. Customs, the Secret Service, the SEC, and the FBI. Annually, white-collar crime damages the US economy more than \$300 billion, according to the FBI. In addition, there is growing evidence that white-collar crime contributes

financially to terrorist organizations; as a result, both the domestic and foreign communities have an incentive to crack down on these offenders.

When it comes to contemporary instances of corporate fraud and insider trading, none are more infamous than Enron. Executives at Enron were able to profit handsomely from the sale of their shares in the weeks and days leading up to the company's bankruptcy by "cooking the books" and significantly inflating the value of the stock. As a result, Enron workers saw their life savings evaporate and investors suffered massive losses. Sarbanes-Oxley, enacted by Congress in 2002 in response to the Enron and other corporate scandals, enhances scrutiny of company boards, and imposes harsher penalties for fraudulent activities; it also mandates stricter standards for all public corporations. In 1934, the Securities and Exchange Act made it illegal to trade on inside information. This practice occurs when individuals with access to non-public information about a firm, such as officials, directors, and employees, trade the public securities of that company. They then buy thousands of shares of Company A stock before the news is made public. Quite recently, a pharmaceutical firm called ImClone was involved in a high-profile lawsuit involving insider trading. Martha Stewart, who was informed by the CEO's buddy who was a broker and sold her shares as well, was found guilty of perjury for lying to federal authorities and sentenced to prison for insider trading.

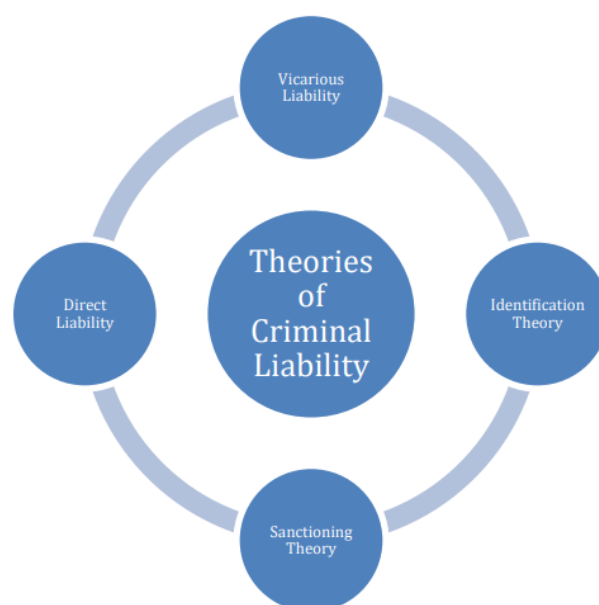


Figure 2: Theories of Criminal Liability

CRIMINAL LIABILITY OF CORPORATIONS UNDER INDIAN STATUTES:

Companies Act, 2013: Corporate responsibility and oversight are firmly established under the Companies Act, 2013. Provisions for individual

culpability of officials and fines and punishments for violations by corporations are included in it.

Money Laundering Act, 2002: The corporation and its directors are subject to vicarious criminal responsibility under this statute, which deals with money laundering crimes. It sets forth fines and jail time for anyone found guilty of such crimes, among other things.

Environmental Protection Act, 1986: This law, passed to protect the environment, makes businesses fully responsible for any damage they do to the environment. Companies are held financially accountable for any infractions, highlighting their need to repair harm done to the environment.

Prevention of Food Adulteration Act, 1954: This Act, which seeks to prevent food adulteration, establishes personal liability for corporate wrongdoing and puts the weight of evidence on the accused. It plays a crucial role in safeguarding consumers and guaranteeing the safety of food.

Securities Exchange Board of India Act, 1992: While this Act does provide SEBI the power to investigate and penalize securities market violations, it evades the issue of corporate criminal responsibility. Corporate wrongdoings may be traced back to the actions of its directors, executives, or workers.

CORPORATE CRIMINAL LIABILITY IN INDIA

The criminal code does not often address harmful activities perpetrated by corporations, and even when it does, the statute will often cite related civil, taxing, or administrative statutes. Whenever this occurs, measures to prevent further damage are often enforced via channels other than criminal law. It makes no difference whether an act is done in violation of criminal law, within the terms of criminal law, or under any other law; what matters is that it is detrimental and performed by a corporate body. Since corporations have separate identities and are granted certain privileges by law for the common good, it would be irresponsible to allow them to engage in activities that may endanger society as a whole.

Companies commit crimes because they are economically motivated to do so; their goal in committing crimes is to maximize profits at whatever cost; and the larger the economic damage to society, the country, and the globe as a whole as a result of their crimes, the more committed the crimes will be. Crimes committed by corporations are classified as economic crimes due to the economic nature of their causes, their objectives, and the effects of their actions. The only way to effectively address such grave and destructive business actions is to impose criminal culpability. Collection of evidences to establish purpose or knowledge in relation to criminal commission is particularly tough since corporate entities are run and commercial operations are

handled by skilled and expert experts in a planned and organized way using current know-how. Concurrently, penalizing businesses and the human agency participating in corporate crime is vital for resolving the issue of economic crime and protecting society.

The onus of evidence is now on the accused business body under corporate criminal statutes, which also include a presumption clause about the guilty mental element (*mens rea*) and the *actus reus*, or forbidden act conduct. The application of rebuttal or conclusive presumption to mental elements is not always the same. Corporate criminal responsibility is strict liability when the presumption is rebuttal and absolute liability when the presumption is conclusive. It is important to clarify that corporate crime is a type of crime in and of itself, and that the mental element is necessary for such a crime the only difference being that it is presumed rather than proven through the introduction of evidence. This helps clear up any confusion that may arise.

When corporations use agents who are themselves natural people to conduct business, the question of who should bear the brunt of criminal charges arises: the individuals involved, the corporation itself, or both. Because corporations lack a conscious mind and a physical form, they are just as capable of committing crimes as any other individual. Criminal responsibility may be imposed on corporate bodies when it has been determined that a crime was committed by a natural person and after it has been shown that there are links between the crime, the natural person, and the corporate entity. Crimes committed by natural persons working as human agents of a corporate organization constitute corporate criminal commission. A corporation is only as good as the people who work for it, both mentally and physically. Traditional corporate practice holds that an organization's decision-making is guided by the "controlling and willing mind" of its leader. However, it is important to note that a company cannot be considered to have its own thoughts just because an individual works for it. Thus, when those in charge of a corporation have *mens rea*, or knowledge, the crime may be committed by either the corporation itself or a natural person, and those in charge of the corporation can be held criminally accountable.

CONCLUSION

Natural persons now form corporate bodies to carry out commercial activities such as manufacturing, service provision, marketing, and so on because it is impossible for an individual to engage in all of these roles in today's industrialized, business-oriented, market-based society. Since corporations affect individuals, communities, and nations by their deeds, oversight of their operations is necessary. A corporation may be regulated by establishing it as a legal entity. The criminal justice

system might be the most effective means of controlling an individual's behavior. Businesses and their employees face criminal charges when their actions significantly harm the public, society, or nation.

Criminal acts perpetrated by corporations or the individuals with control over them are known as "corporate crimes," and they pose a significant threat to national security, economic growth, and public health on a global scale. When people get together to create a corporation, it's usually with the intention of making a profit. Expanding the company's market share is essential to making a profit and is also one of the main objectives. When the available legitimate measures are insufficient to accomplish the aim, adaptation becomes necessary. A key reason of learning how to conduct corporate crime is the pressure that those in charge of a company's affairs experience, which in turn motivates them to learn how to utilize illegal methods to accomplish their goals. It is essential that both the general public and the perpetrators of criminal acts recognize that their actions constitute illegal and wrongdoing in order to effectively address any crime issue. The people will only respond and assist law enforcement when they see an act as criminal. The only way for a person engaging in criminal behavior to change is for him to accept responsibility for his actions. To the general public and those in charge of a corporation, illegal activities committed by the corporation are no different from lawful and competent business practices. Not only must such actions be criminalized, but they must also be punished effectively if we want to alter the general public's perception of them. We must take all necessary steps to ensure that these actions are marked as criminal offenses.

Corporate wrongdoing clearly has far-reaching effects on society at large, both domestically and internationally. Penalizing businesses and the individuals inside them who commit corporate crimes is crucial for addressing economic crime and safeguarding society. The availability of jobs and the economic development of the nation are guaranteed by the proper functioning of corporate entities. There has to be a balance in the punitive measures used against corporations since in this case, too harsh measures might have unintended consequences for society.

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