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CORPORATE CRIMINAL LIABILITY AND SANCTIONS IN INDIA

BY P KRISHNA ARJUN*

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Abstract:

In the modern day world, the impact of activities of corporations is tremendous on the society. In their day to day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the category of crimes. Corporate crimes are considered to be general varieties of the white collar crimes. Corporate crime in the broadest sense of the word is an act which not only provides certain benefits to the perpetrators, but also has its victims and damage which can be bigger than the benefits obtained.

Despite so many disasters, the law was reluctant to impose criminal liability upon corporation for a long time. This was for basically two reasons that are: That corporations cannot have the mens rea or the guilty mind to commit an offence; and that corporation cannot be imprisoned, the only other remedy being left is that of fine which merges criminal liability with that of a civil one.

A corporation cannot be imprisoned and was not amended to prosecution for a criminal offence which punishable by death or imprisonment. However, the fact which was that the penalty provided for the of a statute was fine or imprisonment, or both in, which does not render it not applicable to a corporate the similar rule applies only where the statute creating the offence provides for imprisonment if the fine is not paid.

Fine is the most common punishment in every part of the world and it is a punishment the advantages of which are so great and obvious that we propose to authorize the courts to inflict it in every case; Imprisonment, transportation, banishment, solitude, compelled labour are not equally disagreeable to all men¹.

*Research Scholar, Faculty of Law, Osmania University, Hyderabad

¹ <https://www.legalserviceindia.com/article/1101-Corporate-Criminal-Liability---An-Analysis.html>

In addition there are factors like cost benefit considerations, socio-economic developments, organizational structure and criminological market which are attributed to corporate criminal behaviour. In the corporate control there is criminality of the corporation itself and also the liability of the responsible persons which can be vicariously fixed. Law in this repeat needs to be more clearly defined.

Full Paper:

Corporate crime is a rather broad concept and it refers to different types of frauds and abuses related to business. The concept of corporate crime refers to acts committed to harm or benefit a company and includes criminal acts ranging from different types of frauds, misuse of assets, corruption, money laundering, tax evasion, forgeries, to fraudulent financial reporting. Corporate crime refers to acts perpetrated by individuals or companies which enable them to obtain certain benefits which they would not be able to obtain otherwise in regular business circumstances. Therefore, companies resort to different types of corporate crime in order to reach their goals, or to enable individuals who are creators of such acts and who are involved in them to reach their aims.

Corporate crime is an activity carried out “on behalf of and for the benefit of the company” by individuals who in that way promote their personal interests, so in that situation the company interests and individual interests are integrated². However, when personal interests overpower the company interests and when individuals strive to fulfil only their personal interests which may cause damage to the company, so in that situation the company is seen as a victim and the damaged party. Therefore, corporate crime acts are a creation of an individual or a group of people who can use their professional competencies to reach the goals of the company, hereby they appear as perpetrators and beneficiaries of the fraud. However, we should not neglect the fact the persons who are creators and perpetrators can equally use their abilities to harm the company and for their personal benefit.

Looking the matter from criminological perspective, the criminal behaviour in corporate crimes it is altogether different from the traditional crimes committed by the individuals. The

² <https://www.legalbites.in/analysis-of-corporate-crime/>

criminological theories have developed in different settings by placing the behaviour of the individual as an individual in focus and not in the organisational structure. Still these are the acts and activities of individuals in the corporate crimes which are attributed to the corporation.

As such there is no separate branch of criminology dealing with corporate. The criminal behaviour of corporations is tried to be understood by applying the existing theories applicable to individual delinquency³. However, there is a need to analyse the corporate crime and criminal behaviour in the new setting in which corporations operate.

Another significant aspect of corporate crime is that while the response of the criminal justice to the individual crime is prompt and aggressive it is lacking or mild to the corporate crime. At the same time oblivious societal response also trends to minimize the seriousness of the corporate crime. Therefore corporate crime has acquired a new meaning with required be understanding and addressing, if we are to control and combat this emerging form of criminality.

Criminal Liability of Corporates

In the modern day world, the impact of activities of corporations is tremendous on the society. In their day to day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the category of crimes. For instance, the Uphar Cinema tragedy or thousands of scandals especially the white collar and organized crimes can come within the categories that require immediate concern. Despite so many disasters, the law was reluctant to impose criminal liability upon corporation for a long time. This was for basically two reasons that are:

That corporations cannot have the mens rea of the guilty mind to commit an offence; and that corporations cannot be imprisoned, the only other remedy being left is that of fine which merges criminal liability with that of a civil one.

³ https://us.sagepub.com/sites/default/files/upm-assets/104796_book_item_104796.pdf

These two obstacles were in the late 20th century and very early 21st century. The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable. In the early 1700s, corporate criminal liability faced at least four obstacles. The first obstacle was attributing acts to juristic fiction, the corporation. Eighteenth century courts and legal thinkers approached corporate liability with an obsessive focus on theories of corporate personality; a more pragmatic approach was not developed until the twentieth century. The second obstacle was that legal thinkers did not believe corporations could possess the moral blame worthiness necessary to commit crimes of intent. The third obstacle was the ultra vires doctrine, under which courts would not hold corporations accountable for acts, such as crimes, that were not provided for in their charters. Finally, the fourth obstacle was courts' literal understanding of criminal procedure; for example, judges required the accused to be brought physically before the court.

Various Provisions Which Attract Corporate Criminal Liability In India

Section 141 of the Negotiable Instruments Act, 1881⁴. It states that when any sort of offence committed under Section 138 of the Negotiable Instruments Act, then every person who ever have committed the offence shall be charged for the criminal act and conduct of the business of the company. If the person is the company itself even then the company shall be held to be guilty of the offence and shall be held liable to be proceeded against and will be punished accordingly. *Balaji Trading Company v. Kerjriwal Paper Ltd. And Anr.*

Section 7 of the Essential Commodities Act, 1955⁵. Section 7 states about penalties under the Act. It states that if any person contravenes any order made under Section 3 of the Act then he shall be liable to imprisonment to a minimum of three month and maximum of seven years and will also be liable to pay a fine of certain amount. *State of M.P.v.N. Singh*

⁴ The Negotiable Instruments Act, 1881

⁵ The Essential Commodities Act, 1955

By this it can be seen that it is not a compoundable offence as it attracts both imprisonment as well as penalty provision. And the term “ person” includes “individuals as well as corporations and companies” as per the General Clauses Act, 1897⁶.

Section 276-B of The Income Tax Act, 1961⁷. The section states about the failure to pay tax deducted at source [TDS] In case of this section it attracts criminal liability if any sort of contravention occurs in the payment of TDS then it will lead to rigorous imprisonment which will minimum of three months and maximum it may extend to seven years and also certain amount of fine will be levied. M.V. Javali v. Mahajan Borewell & Co.

Sections. 45, 63, 68, 70(5), 203, etc of the Indian Companies Act wherein only the officials of the company are held liable and not the company itself; it is also reflected through the Takeover Code.

The various sections of the IPC that direct compulsory imprisonment does not take a corporate into account since such a sanction cannot work against the corporation.

These are the major statutes in their respective field that are devoid of necessary legal aspects. On the other hand, law has also developed to an extent with regard to certain other statutes and their respective penal provisions wherein a fine has been imposed on the corporations when they are found to be guilty.

Corporate Punishment

Till now, the Courts have been able to impose only fine as a form of punishment because of statutory inadequacy and lack of new forms of punishments which could be imposed upon corporates.

The Feasibility of Fine

⁶ The General Clauses Act, 1897

⁷ The Income Tax Act, 1961

Fine is the most common punishment in every part of the world and it is a punishment the advantages of which are so great and obvious that we propose to authorize the courts to inflict it in every case... Imprisonment, transportation, banishment, solitude, compelled labour are not equally disagreeable to all men. With fine the case is different. In imposing a fine it is necessary to have regard to the pecuniary circumstances of the offender, as to the character and magnitude of the offence. The mullet which is ruinous to the labourer is easily borne by a tradesman and is absolutely unfelt by a rich zamindar.

Towards New Reforms

Presently, all the sections include only fine as a form of punishment can be imposed on a company. So is the case with judicial pronouncements on the aspect of sentencing. In addition to this, the Law Commission in its 41st Report⁸ also speaks of introducing only fine as an additional punishment to be imposed upon corporations in lieu of fines. This restrictive thinking, according to Courts is based on the maxim 'lex non cogit ad impossibilia' which tells us that law does not contemplate something which cannot be done. This reasoning in itself shows that the law lacks in a non-holistic viewpoint in the concepts of corporate criminal liability.

The Courts have no doubt been efficient in evolving the concept of criminal liability of corporate and have imposed the same on the convicts but the only way of imposition that has been thought of is by way of fines. It is now for the legislature to evolve new forms of punishments and incorporate them in the criminal justice system of the land. The legislature may take the following suggestions.

These other forms (including fine), can be classified into the following major heads:

- Economic Sanctions
- Social Sanctions.

⁸ <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-india-report-no-41-code-criminal-procedure1898-vol-1>

These sanctions are all designed keeping in view that deterrence is the ultimate objective of penal law making companies liable since other accepted theories like reformation cannot be introduced where a juristic mind is concerned.

Economic Sanctions: these sanctions would include various kinds of monetary and other forms which would cause huge losses to the company as a whole. Apart from fine, they can include the following:

- Corporate Death or order for winding up only in cases of continuous criminal behaviour in the given field.
- Temporary closure of the company for a given period depending upon the gravity of the act till the time compliance with norms can be ensured.
- Rehabilitation of victim of crime.
- Section 357, CrPC, empowers a Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence.

Social Sanctions: Goodwill, for anybody corporate is its heart and Soul. Once, that is lost, the entire strength comes to a standstill. The term reputation carries with it more than one meaning. For individuals, reputation loss connotes both the individuals sense of shame and others increased reluctance to do business in the future with the individual or corporations, however, reputation loss refers only to the reluctance of others, such as customers and workers, to deal with the corporation in the future. Of course, the managers of the corporation may feel shame about their corporation's conviction. As applied to corporations, reputation refers, for example, to the super competitive price that a firm with a good reputation can charge customers for its products or the lower wages that a good employer can pay while still attracting workers.

Conclusion

Corporate crime is referred as the conduct of a corporation or employees acting on behalf of a corporation which is prescribed or punishable in law. Thus corporate crimes are committed for corporate gain or to bring harm to any other person or body corporate. Such crimes are committed in a quite environment. These are also considered to be general varieties of white collar crimes. However the criminal behaviour in corporate crimes to different from the traditional crimes behaviour in corporate crimes to different from the traditional crimes committed by individuals. Corporate crimes are socially injurious or blameworthy acts which cause financial, physical or environmental harm or harm caused to the workers and the general public.

It is believed that corporate criminal behaviour is also a result of learning process form with the working of the corporations. This behaviour is also attributed to major social and moral change. In a pursuit to meet targets or goals there could be adoption of unlawful means. Further there is neutralization theory where in the given circumstances conduct is tried to be justified. In addition there are factors like cost benefit considerations, socio-economic developments, organizational structure and criminological market which are attributed to corporate criminal behaviour. In the corporate control there is criminality of the corporation itself and also the liability of the responsible persons which can be vicariously fixed. Law in this repeat needs to be more clearly defined.