

Corporate scams and crimes: liability and social implications under International law

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Abstract— These Corporate crimes are crimes that are committed in respectable organization during the course of its legitimate functioning. Corporate crimes can take many forms and can give financial, physical and moral damage to any person or organization. In today's era of global capitalism, advance technology development and increase in trade we can expect rise in these corporate crimes in future. Therefore, building effective mechanism for them is need of the hour. Crimes such as money laundering, privacy fraud, bribery, falsifying information on financial statements, embezzlement etc. are some example of crimes associated with the modern day multi-national giants. Should this detrimental behavior of various corporations be curbed by intensification of criminal justice? In this paper the author trying to focus on this pertinent issue and what are different measure to curtail corporate crimes with the help of remedies under international criminal justice system. Moreover, he prefers to foster social responsiveness of the organization that is complying with the social expectation by all the stakeholders of the corporation. Bearing in mind the European directives and other international standards as many countries have joined the facelift for this criminal wrong so that effective penal sanctions can be impose.

Index Terms— Bribery, Corporate crime, corporations, corporate criminal liability, embezzlement, money laundering, privacy fraud, social benefits.

CHAPTER 1

1. INTRODUCTION:

"Corporate crime kills far more people and costs, taxpayers, far more money than the street crime" Correctly stated by Anita Roddick.

Corporations have gained recent attention from all malpractices and scandals performed by them since the early part of the 21st century till now corporate crimes are not only performed against the government but also society at large. These corporations, in today's era, play a very dominant role in each one of our lives. Corporations now take credit for, and from, profit providing most of the food we eat, the clothes we wear, the communication system we use, the film we watch, the music we listen to and so on. That is the reason of what corporations will do will significantly affect our day-to-day tasks and as the natural and normal presence of these corporations is so overbearing. In this context, when such corporations are trying to overshadow the need of the society and duty to government and promote cooking books of accounts and other wrongdoings, this situation raises the issue of corporate crime.

Corporate crimes are also known as organizational crime, the origin of this concept can be traced from the broader concept of white-collar crimes which was first observed in social science by the American Criminologist Edwin Sutherland in 1939. Moreover, The Australian Criminologist defined

corporate crime as "The conduct of the corporations or the employees acting on behalf of the corporations that are prescribed and punishable under by law" 2. When any Corporation tries to take unfair advantage of its power and persuade all other stakeholders while benefiting themselves by breaching ethics such practices are termed as a crime in the eyes of law. These corporate crimes seem endemic to modern society as it not only affects the economy of the said state but also gravely impact the physical and mental health of a person associated with Criminal Corporation. Although the individual member of an organization mainly commits such corporate crimes, they have more structural roots, as the enabling and justifying organizational context in which they take place they have a definite role.3

1.1. Meaning of Corporate Crimes:

The first attempt to study the concept of organizational crime or corporate crime was initiated in 1949 by Edwin H Sutherland in his White-collar crime (Sutherland, 1949) and coined it in a speech to American Sociologist Association4. He defined white-collar crime as "Approximately a crime committed by a person of respectability and high social status in the course of his occupation"5. The legitimate distinction made between the two terms is that the white-collar crimes

2 See, John Braithwaite, *Regulatory Capitalism: How it Works, Idea For Making It*

Work Better, Edward Elgar Publishing (2008).

3 *The Organization of Corporate Crime: Introduction to Special Issue of Administrative Sciences*: Judith van Erp: 19 July 2018: pg 1: 3511 ZC Utrecht, The Netherlands;

4 Sutherland, *White Collar Crime*, 1st Ed. 1949.

5 book name corporate Crime by Peter Yeager pg 9 *The Nazi Hydra in America: Suppressed History of a century* by Glem Yeadon.

1 *the Corporate Criminal: Why Corporations Must Be Abolished* By Steve Tombs, David Whyte

which hurt the sentiments of the society by any guilty act committed by an individual or group of individual. On the other hand, corporate crimes are those crimes that hurt the sentiments of the society by any guilty acts which cause financial, physical and environmental harm committed by corporations and businesses against workers, society, government, and other corporations.

offender trait, modus operandi, and types of victims the offenses were committed against. Therefore, white-collar crimes or corporate crimes are crimes that are the inclusion of many underlying guilty acts performed by giant corporations and other organizations.

These organizational crimes are so distinctive than other crimes because such crimes not only affect a decent section of the society but also the business tycoons that are ruling the financial market globally. In very fewer cases people can recover their losses from happening of such contraventions. Recognition of corporate crimes are highly increasing, but corporate law violations are, on the whole, except for the reputed cases rarely gain public attention.⁶ Many such cases nowhere come in the category of serious nature. According to a corporate crime reporter, the FBI reported that in the year 1998 there 19000 Americans murdered along with 56000 Americans died due to work-related disease alone these were corporations-caused, asbestosis and black lung which sadly went unreported and unpublished. Further, deaths were the result of corporate pollution and manufacture hazardous consumer products.⁷ Corporate crimes today have taken a long way, which involves crimes committed by large entities that use illegal methods to obtain a goal. An industry, trade unions and even church hierarchy commit such Organizational crimes. Organizational crimes such as corporate lawbreaking are mainly committed by the board of directors (BOD), president, Chief executive officer, middle managers, and supervisor.⁸ These crimes recently have gained interest and attract the interest of a large number of sections in the society for the complexities of the corporation as well as several ways to violate the law.

In order to understand the mechanism of these corporate crimes, it becomes of utmost importance to first throw the light upon the factor of how these crimes are increasing with an unstoppable pace and what constitutes the reason for this hike.

1.2. Reason for the rise in Corporate Crimes:

White-collar crimes have crept into many sectors of industries whether it is money laundering, asset-stripping or undeclared taxes, these economic crimes on the corporate sector are pernicious.

According to Geis (1982) to come up with a definition or conception of corporate crime or white-collar crime there are several things, which should be taken into consideration. One is existing law; other factors include a determination of forms of harm, categories of

Back in the 1990s where the cases were mostly frauds involving business invoices. Now the cases are even bigger and the list is still inclusive. These Corporate crimes are steadily on the rise and due there is a rise in cost to the nation. According to the National Fraud Centre statistics, the cost of economic crime has risen from \$5 billion in 1970 to \$100 in 1990; According to their analysis, these economic crimes took a major inclination between the years 1970-2002 and are only expected to increase as occurrence become more frequent.

The reason for such a rise in corporate crimes is mainly technological advancement like the Internet has gradually contributed substantially to the rate of financial crime cases. Founder of the Association of Certified Fraud Examiners also stated "There are at least two reasons. Crime is largely a factor of age, and fraud is the crime of choice of the older perpetrator, so as the society ages, you have, and should continue to see, an increase in fraud cases." "A second reason is that the education level of society has come up in the last 20 years, and the message is clear in the mind of the better-educated public that if you want to commit a crime, fraud is the way to go," he added. "The take is better, and the punishment generally is less."⁹

There are enormous cases for corporate collapse and scandals, which led to a downfall in the economy of various nations and the world.

The United States has experienced twenty-one recessions in the twentieth century¹⁰. According to the Federal Bureau of Investigation in 2008 young Assistant US attorney across the country are currently cutting their teeth prosecuting dozens of individuals who made millions by providing a phony statement on mortgage applications¹¹

Economic frauds in 2000 and 2001, however, profits of some of the most admired Fortune 500 companies were revealed to have been purely ephemeral. The most common example is Enron, which was named by the "most innovative" company by Fortune magazine for six consecutive years prior to its collapse. Enron's profits were driven by cooking the books of accounts and creative

9 http://academic.udayton.edu/ClaraKim/101-articles/7-crime-deviance/rise_of_the_white_collar_crimes.html

10. The United States experienced recessions in 1900, 1902-04, 1907-08, 1910-12, 1913-14, 1918-19, 1920-21, 1923-24, 1926-27, 1929-33, 1937-38, 1945, 1948-49, 1953-54, 1957-58, 1960-61, 1969-70, 1973-75, 1980, 1981-82, and 1990-91. A History of Recessions, CNBC.com (Sept 4, 2007), online at <http://www.cnbc.com/idV20510977> (visited Apr 11, 2010).

11. See generally Federal Bureau of Investigation, 2008 Mortgage Fraud Report "Year In Review" (2009), online at <http://www.fbi.gov/publications/fraud/mortgage-fraud08.htm> (visited Sept 28, 2010); Peter Henderson, U.S. Mortgage Fraud "Rampant" and Growing--FBI, Reuters (July 7, 2009).

accounting, not by the sounding business model.¹² Another company namely WorldCom soon followed Enron into bankruptcy when it was revealed that it was using accounting tricks to grossly overstate its profits.¹³ Additionally, is the case of Bernard Madoff, the purveyor who made the largest financial fraud in American History. Over the course of the 2000s, he was able to run a \$65 billion Ponzi scheme.¹⁴ These are some examples that contributed to the most recent economic downturn.

In India, according to the data in the year 2015 by the National crime record bureau, there is a marginal increase in the number of economic offenses. In the last 10 years, the reporting of these economic crimes has doubled. The crime rate or the incidence of crime per 1,00,000 people, also shows a similar trend. For the economic offenses, the crime rate was 6.6 in 2006, which increased to 11.9 in 2015. There are many scams that India witnessed over the last two decades, which resulted in an economic downturn for India.

Therefore, there are many examples of corporate crimes that are rising at a great pace and impacting the economy of the whole world.

CHAPTER 2

2. TYPES OF CORPORATE CRIMES:

Hundreds of corporations commit crimes that have deleterious effects on society at large. These crimes create a great amount of massacre not only economically but also socially, physically and environmentally. The intensity of these crimes to affect the public is much more than street crimes and still, they are dealt with civil or administrative law. Organizational crimes have the capability to create significant destruction in all the sectors of society at the same time. Therefore, it becomes of utmost importance to understand different types of corporate crimes.

1.3. Crimes between corporations:

a) Price fixing: Price fixing is when two companies agree to sell a product at a set price. Generally, this is done to maintain profit margins. The following act is prohibited and illegal under antitrust of competition law. In 2013, Apple a renowned company for electronics was found guilty of price-fixing e-books with major online publishers. Further, in the year 2014, the government fined Bridgestone \$425 million for price-fixing in car parts.¹⁵

b) Bid Rigging: Bid Rigging is an illegal practice in which companies conspire to allow another one to secure contracts at raised prices. Bid Rigging is closely related to Price-Fixing and it also violates anti-trust laws and competition laws. In India, the Competition Commission of India (CCI) has imposed a cumulative penalty of INR120 million on 10 coal and sand transporters floated by Western Coal Field Ltd for bid-rigging¹⁶. In the last couple of years, CCI has aggressively prosecuted bid-rigging cartels.

1.4. Economic Corporate crime:

a) Fraud: Corporate fraud when any company deliberately changes or conceals the information in order to make it look healthy. According to Internal Resource Service (IRS) " Corporate Fraud in violation of Internal Revenue Code and related statute committed by a large corporation."¹⁷ These frauds are the result of mismanagement in the companies, which severely affect the economy of the country, and thus they need special treatment. Moreover, the report of *Vivian Bose Commission of Inquiry* into the affair of Dalima-Jain group of companies 1963 highlights how these giant corporations commit fraud, falsification of accounts, cooking books of accounts for personal gains and tax evasion¹⁸. According to the Economic Crime and Fraud Survey 2020, 47% of the companies experienced fraud in the past 24 months also, 6 is the average number of frauds reported per company. In India provisions such as Sec 397 and 398 in the Companies Act, 1956 which provides that any member can complain to NCLT in cases of oppression and mismanagement. In **Enron Scandal: A corporate fraud in America**¹⁹ surfaced in 2001 when it was revealed that America's 7th largest company was involved in corporate corruption, fraud and insider trading. Enron's shareholders lost \$74 billion leading up to its bankruptcy and unemployment. Enron CEO Jeff Skilling was sentenced to 24 years for the biggest corporate crime in history. Another landmark example, in India, **Satyam Scam: India's Enron case**²⁰ in, this case, Satyam which was India's 4th largest IT company did corporate scandal of Rs 7000 crore by falsifying company's accounts. Ramalinga Raju sent off an e-mail confessing the truth of inflating cash and bank accounts to SEBI.

i) False information/advertisement: When any company tries to provide false information to the general public or the government the said offense is also punishable under Companies Act. Section 7(5) provides

¹² For an overview of the Enron scandal, see generally Bethany McLean and Peter Elkind, *Enron: The Smartest Guys in the Room* (Portfolio 2003).

¹³ For an overview of the WorldCom scandal, see generally Lynne W. Jeter, *Disconnected: Deceit and Betrayal at WorldCom* (Wiley 2003).

¹⁴ For an overview of the Madoff fraud, see generally James Bandler, Nicholas Varchaver, and Doris Burke, *How Bernie Did It*, 159 *Fortune* 10 (May 11, 2009).

¹⁵ <https://www.thebalance.com/price-fixing-types-examples-why-it-is-illegal-3305955>- Kimberley Amadeo (2019) 8:00 pm.

¹⁶ *Western Coalfields Limited v. SSV Coal Carriers Private Limited*, Case No. 34 of 2015

¹⁷ <http://www.irs.gov/compliance/enforcement/article/>

¹⁸ 6 Government of India introduced VDIS (Voluntary Disclosure of Income Scheme), 1997 to unearth Black money on the recommendations of Wanchoo Committee appointed in 1990

¹⁹ 5 Brian Roach (2006). "Business and the environment"

http://www.eoearth.org/article/Enron_Corporation and Joseph M. Schwartz>

²⁰ Corcoran, Elizabeth (2006). "Back-office charity" (Reprint) *Forbes*

that furnishing false information or suppressing material information is punishable under section 448.

ii) **Corruption/Bribery:** Corruption misrepresents market and creates unfair competition. In the case of **National Sports Exchange Ltd**²¹, the scandal was a planned corruption perpetrate in the commodity market. The scam was estimated to be Rs 5600 crore. Therefore, to protect the nation from corruption by these corporation's parliament passed Anti-Corruption laws like Prevention of Corruption Act (1988).

b) **Money laundering:** Money Laundering is the act of converting money from illegal to legal one. These illegal activities involve fraud cheating etc. it is generally linked with corruption as it is mostly done to hide corruption. In **Common Wealth Games Scam 2010**²² where the misappropriation of total Rs 70000 Crore fund happened and the event resulted in shame of the country. Another case of **2G Spectrum**²³ that resulted in a scam of total Rs 176000 Crore by the political and private officials under United Progressive Alliance. In India Prevention of Money Laundering Act, 2002 forms the core legal framework to fight Money Laundering and provides freezing seizure and confiscating of the proceeds of crime.

c) **Embezzlement:** Embezzlement is also known as employee theft. It is an act of someone wrongfully appropriating funds that have been entrusted to their case but owned by someone else. According to the Bero Group over half of the money taken by the embezzlers does not recover.²⁴ In the case of **Punjab National bank 2018**²⁵ where a total of Rs 11,400 Crore (\$2.24 billion) of taxpayer money has been illegally transferred overseas to selected consumers.

d) **Manipulating stock market:** Companies gain huge profits by manipulating the security market. Generally wrong and misleading information is posted and spread to for an increase or decrease in the stock price of the company's share. Huge ripple effects are faced within the minutes of manipulation. In the landmark case of **Harshad Mehta**²⁶ who was known as "big bill" used Ready Forward (RF) deal and fake Bank Receipts (BRs) to manipulate stock market which rose the share price of Associated Cement Company (ACC) from Rs 200 to nearly Rs 9000.

e) **Insider trading:** Insider trading means when a person buys or sells stocks based on information not

available to the general public. In almost every case of corporate fraud insider trading is the essence.

1.5. Crimes resulting in physical harm:

a) **Industrial Catastrophe:** Industrial disaster is an aspect that gives direct physical harm to many people whether or not they are associated with the industry. A random slip at any stage like handling, manufacture, processing, storage or disposal can harm the general public. Many industries work with hazardous substance and any negligence or dereliction of duty during any stage can lead to great damage to the surrounding atmosphere.

1.6. Human rights violation:

i) **Violation against workers:** According to a report, 6 million workers injured on the job in the US. Further, around 10,000 people die in the workplace from the injury and 10,000 from other long-term occupational diseases. Managers and executives in the corporation are liable for this vast majority of deaths because they have violated health and safety measures. The lack of adequate standards results in a large number of accidents in the workplace.

ii) **Violation against consumers:** There can be a defect in a product of a company majorly because of handling, design or manufacturing defect. These defects violate consumer rights, which are guaranteed by the law. These unsafe products directly harm consumers who have not foreseen the danger. National Statistics (London) in its report published in 2002 stated that almost 2.9 million people get injured due to accidents by these unsafe products. Consumers purchase a product with a bona fide intention while such companies, on the other hand, do nothing but compromise on product safety to earn extra profit margin and cut product cost. In parlance to this, the concept of consumer protection was for the first time introduced by Jhon Fitzgerald Kennedy, the 35th President of the United States on 15th March 1962. Moreover, an organization was established in the year 1960 namely, International Organization of Consumer Unions (IOCU) by national consumer organizations to start a cross-border campaign and spread knowledge on unfair trade practices by various corporations and to curb the issue of unethical and unsustainable behavior of these corporations against consumers and government. Consumer International has over 250 members organization in 120 countries. These members are independent consumer organizations. It is also a forum of US and EU consumer organizations.

b) **Breaching regulatory provisions:** There are many industries, which at times does not abide by the statutory provisions of the country and given rules and regulations are directly liable for breach of law.

1.7. Environmental Corporate crime:

21 *National Spot Exchange Limited vs National Spot Exchange Limited* on 10 September 2014 SUIT (L) NO. 870 OF 2013

22 *Suresh Kalmadi v. VK Verma* CBI, 109 (2003) DLT 494

23 *CBI V. A Raja and others*, CBI (04)/PMLA

24 *The Litigator's Damages Blueprint: The Pragmatic solution* –Richard F. Bero

25 <https://www.sbs.com.au/language/english/rs-11-000-crore-embezzlement-scamal-hits-india-s-public-sector-bank-shamsherKainth> (2018) 9:00 Pm

26 *Harshad Mehta v. CBI* (1992) (24) DRJ 393, ILR 1993 Delhi 274

a) **Corporate Pollution:** Corporations have "Nobody No soul" which can be catch hold for violations of environmental law. Today preventing corporations from carrying out pollution has become a necessary issue to protect the environment as well as enforcement of various provisions in environmental law. This sounds good to the ears if enforcement of the law would have been as easy as legislating it. These large corporations are a serious threat to the environment which has been demonstrated by Friends of the Earth International (FOEI) in a study which stated that Exxon Mobil has caused 4.7 to 5.3% of all man-made carbon dioxide emission across the globe and a large fine of \$125 million was imposed to settle the case.²⁷ Unfortunately, we do not have such a statistic India where the level of pollution caused by industrial corporations can be ascertained. Although there are numerous crimes enumerated in the Environmental protection Act 1986 violation of which is punishable. In the landmark case, The Bhopal Gas Leak Disaster²⁸ where due to gross negligence of the corporation's life of a large number of people was put at stake and at the same time is lost. There are countless examples of corporate pollution globally and the impact of the same may get diminish within a few days but long-enduring imprints are visible for years to come.

b) **Hazardous activities without precaution:** There are many activities by corporations, which are hazardous. They largely harm water, air, animals and other aspects of the environment. European Union through its agency of health and safety reported in 2009 that biohazards, radiations, etc. result in substantial loss of life. The National Environmental Tribunal Act, 1995 was passed by the Indian government to provide strict liability for damages arising out of any accidents occurring while handling any hazardous substance. Agrichemical industries that trade in pesticides are so hazardous that they are banned in many countries.²⁹ Moreover, petrochemical firms use many hazardous methods for carrying their business activities and later on these industries use a "greenwashing" mechanism to fool the general public and regulators.³⁰ In the case of Bhopal Gas Tragedy³¹ where the chief justice P.N Bhagwati said that "an enterprise engaged in hazardous activities or inherently dangerous activity that harms anyone on account of accident for example in case of escape of toxic gas the enterprise is strictly liable for compensation of the victims" this rule was

derived from **Ryland v. Fletcher**³². Therefore, dealing in hazardous activities without precaution can create a negative impact on the environment as well as lives of each individual and that is the reason why every industry working with hazardous substance or the process of production involves hazardous means, in that case they should take extreme care and precautions so that they do not harm the environments and create remote negative impact of their production on society at large.

CHAPTER 3

2. CORPORATE CRIMINAL LIABILITY.

2.1. Corporate criminal liability in international law:

Historical overview of corporate criminal liability: In the past, during the 1990s many efforts have been made to introduce the concept of corporate criminal liability at the international level mostly because of numerous cases in national jurisdictions. Notably, in the year 1998 Rome Conference for the establishment of the International Criminal Court attempted to include liability of corporations in the jurisdiction rationed personae but remained unsuccessful to find necessary support by state representatives.³³ Many French diplomats submitted a proposal to extend the court's jurisdiction and include legal entities "if the crime was committed by their officials". Unfortunately, the French delegates later withdrew the agreement as to the proposal only limited to private corporations. Therefore, this issue has sparked a great debate in society for holding corporations criminally liable. Recent developments demonstrate more openness for recognition of the concept of corporate criminal liability.

2.1.1. Current situation:

Recently, two major initiatives were taken in the history of corporate criminality. Firstly, in June 2014 Malabo Protocol by the member states of African union adopted a protocol though it is not in force, amends the statute African Court of Justice and Human Rights to extend the Court's jurisdiction and include corporations for possible defendants. Another, an attempt was made in 2016 of a specific provision of on corporate liability in the draft Article of Prevention and Punishments of Crimes against Humanity. Currently, it is in consideration by the UN International Law Commission. Nevertheless, its adoption in the first reading is in itself signifies major development.³⁴

³² (1968) LR 3 HL 330

³³ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
Rome, 15 June - 17 July 1998, Volume I

³⁴ [https://lawofnationsblog.com/2018/03/13/corporate-criminal-liability-international-law/Corporate criminal liability under international law, Alessandra de Tommaso, On March 13, 2018](https://lawofnationsblog.com/2018/03/13/corporate-criminal-liability-international-law/Corporate%20criminal%20liability%20under%20international%20law,%20Alessandra%20de%20Tomaso,%20On%20March%2013,%202018)

²⁷ Adler & Lord, *supra* note 1, at 784 (quoting Keith Schneider, \$1.1 Billion for Valdez Oil Spill: A Bargain?, N.Y. TIMES, Mar. 17, 1991, sec. 4, at 5).

²⁸ *Union of India vs. Union Carbide Corporation*, (1986) 2 Comp L.J. 169; M.C.

Mehta vs. Union of India, (1986) 2 SCC 176.

²⁹ *Corporate Bodies and Guilty Minds: The Failure of Corporate Criminal Liability*,

Chicago: The University of Chicago Press, 2006, on page 164.

³⁰ Laufer, William S., *Corporate Bodies and Guilty Minds: The Failure of Corporate*

Criminal Liability, Chicago, The University of Chicago Press, 2006, on page 103.

³¹ M.C. *Mehta v. Union of India* AIR 1987 SC 1086

2.1.2. Judicial trend:

When the legislature was critically analyzing the importance of corporate criminal liability under international law judiciary at the same time taking advantage of inherent and highly flexible contempt power gave a landmark decision. Relying on Tribunal's inherent power, the appeal panel of Special Tribunal for Lebanon decided two pertinent cases, *New TV S.A.L.*³⁵ and *Akhbar Beirut S.A.L.*³⁶ and stated that Tribunals have jurisdiction over corporations for the offense of contempt. Notably, it was also decided that despite the absence of clear provision they are explicitly granting such jurisdiction. It is for the first time in history an international criminal tribunal declare jurisdiction over entities or legal persons. Moreover, these decisions that hold corporations liable are also very significant for the concept of the human rights violation.³⁷

2.2. Corporate Criminal Liability: Indian position

Section 2 of the Indian Penal Code, 1860 provides that every person under this code shall be liable to punishment under the code. Thereafter, Section 11 defines a person including 'any Company or Association or body of persons, whether incorporated or not'. Indian Courts have inherited the identification approach from England. But a corporation cannot be punished for various offenses in which punishment is imprisonment because it is an artificial person.

The sentencing of a legal person: In the landmark case of **Assistant Commission vs. Velliappa Textile Ltd.**³⁸ Supreme Court held that a corporation cannot be imprisoned nor they can be prosecuted for any offense that is punished with imprisonment under IPC as they are a legal entity and sentencing imprisonment is completely impossible. Another case, *Standard Chartered Bank vs. Directorate of Enforcement*³⁹ overruled the earlier decision and stated that a corporation cannot be set free merely because imprisonment cannot be imposed, in such cases they should be punished with fine. In *Iridium India Ltd. Vs. Motorola Incorporated*⁴⁰ it is explicitly that corporations have the same liability as an individual according to the provisions. Therefore, corporations should be punished similarly. If corporations cannot be punished for certain acts then the authority acting on behalf of it should be

punished. The following argument was supported in the case of *Anil Hada vs. Indian Acrylic Ltd.*⁴¹ But this was overruled in the landmark case of **Aneeta vs. M/s Godfather Travels & Tours**⁴² Supreme Court, in this case, stated that prosecution against employees or employers is not maintainable. Vicarious liability occurs only when there is prosecution against the firm. Therefore, for the applicability of the doctrine of criminal liability, there should be means *reus* (guilty intention) of benefiting corporations illegally should be present.

2.2.1. Law Commission and various committees of India on punishing of Corporations:

Law Commission in India tried to resolve the issue of punishing corporations to some extent. The proposed Indian Penal Code (Amendment) Bill, clause 72(a) provides that "when an offense is punishable with imprisonment and punishment is not fine and the offender is a company then the courts should sentence such offender fine only". The Law Commission in its 41st report in paragraph 24.7 recommended the above provision should be made in IPC.⁴³ Again in its 47th report on the 'Trial and Punishment of Social and Economic Offenses,' it emphasized to impose fine on companies where imprisonment is not possible as a company has no physical body and traditional punishments might prove ineffective. Moreover, some committees, for an instance, Madhava Menon Committee and Malimath Committee have also made a relevant contribution in relation to the introduction of sentencing guidelines⁴⁴. Therefore, though there is not much development but organs of government are working in this matter.

CHAPTER 4:

3. CORPORATE CRIMINALITY: IMPACT ON SOCIETY

Corporate social responsibility: Corporate Criminality is a relatively new phenomenon in the world that leaves a grave impact on each individual and the society at large. Individuals have expectations from companies, as they have become an essential part of society. Corporate social responsibility and ethical behavior towards society have become a vital role for any businessmen to maintain the dignity and integrity of their business. The time has long gone when the motive of business was just profit, in today's era every business which is running in the market is expected to work in parlance for the betterment of the society. For instance, several companies in different countries across different sectors are pitching in to help government and society in this deadly situation or COVID-

⁴¹ 1999 Supp(5) SCR 6

⁴² *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661
⁴³ Suggesting a change in IPC, e.g., as Section 62 in Chapter III relating to punishments.

⁴⁴ *The State of Punjab vs. PremSagar and Others*, (2008) 7 SCC 550, at p.552

³⁵ *Decision on Interlocutory Appeal concerning personal jurisdiction in contempt proceedings, New TV S.A.L. and Al Khayat (STL-14-05/PT/AP/AR126.1), Appeals Panel, 23 January 2015 (hereafter, 'New TV S.A.L. Appeal Decision'),* pg 91

³⁶ *Decision on Interlocutory Appeal concerning personal jurisdiction in contempt proceedings, Akhbar Beirut S.A.L. and Ibrahim Mohamed Al-Amin (STL-14-06/PT/AP/AR126.1), Appeals Panel, 23 January 2015 (hereafter, 'Akhbar Beirut S.A.L. Appeal Decision').*

³⁷ *The New TV S.A.L. and Akhbar Beirut S.A.L. Cases at the Special Tribunal for Lebanon: Nadia Bernaz, Journal of International Criminal Justice* 13 (2015), pg 313,330, DOI:10.1093/jicj/mqv014

³⁸ (2003) 11 SCC 405

³⁹ AIR 2005 SC 2622

⁴⁰ 2004 (1) MnlJ 532

19 or Coronavirus pandemic for making masks, sanitizers and to help people at large. But there is an aspect of this concept where these corporations violate the human rights of individuals at large. These violations take place when companies try to manipulate consumers, harm environment, unfair use, etc. are some examples used by companies to gain an ample amount of profit by illegal means, therefore, violates human rights. Hence, the need of the hour is a legal mechanism which can hold corporates accountable for its malpractices.

US and EU standards:

Since the 1990s the impact of business operations especially Multinational Corporations upon human rights has attracted a significant amount of attention to international law. Earlier, two separate attempts by the drafting in 1982 of the United Nations (UN) Code of Conduct for Transnational Corporations and other Business Enterprises⁴⁵ were made but they remained unsuccessful. Later, the latest attempt by the UN Guiding Principles on Business and Human Rights, which was endorsed by the UN Human Rights Council in 2011, appears to have been more successful.⁴⁶ These actions at the international level influenced other remarkable initiatives at the regional level. Some of them are, Redrafting of Organization of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.⁴⁷ Moreover, the European Union Commission revamped the definition of Social Responsibility, which breaks voluntarism, and more firmly embrace a Human Right Approach.⁴⁸

While these above-mentioned initiatives do not have any direct impact or remedies for victims in the case of human rights violations. The victims of corporate human right violation are largely facing by many loopholes amongst which the key issue is the abuse of while accessing justice. It is very difficult for them to bring a claim against such multinational giants in their domestic countries because most of the times state itself can be the main perpetrator of abuse⁴⁹. In the case of Doe Vs. Unocal⁵⁰ where the allegation against oil companies Total and Unocal for their involvement in Human Rights Violations in complicity with the military regime in Burma was brought forward in

the United States, France, Belgium where it was seen that government is itself involved in the abuse of the process. Moreover, it is also pertinent to note that if the state is not perpetrator then there are many other dimensions like corruption, poverty, bribery, etc. which result in the prevention of justice to the victims. Therefore, despite many issues and development, there is no international mechanism to deal with corporate human rights abuse. The fact that justice can be administered neither in the country where the violation has occurred and nor at the international level gives rise to a gap between the criminal justice system and justice.⁵¹

In the case now TV S.A.L.⁵² and Akhbar Beirut S.A.L.⁵³ finally, the court relied upon corporate accountability in future business and human rights litigations. From the human rights development perspective, this development was overdue in the history of human rights and social responsibility. These judgments made history as the international breakthrough in the field of human rights protection has been always dreamed off.

CHAPTER 5

4. CONCLUSION AND OBSERVATIONS:

With the development in society, corporations have attached to the life of each individual. Several corporations try to take advantage of their position nowadays to gain extra profits by using illegal means against society. With an increase in globalization, every company has become powerful in itself and tries to suppress as well as harm society by its illegitimate functions. But often they forget that the only pillar to their success is public itself and if it can raise any company to heights then it can also pull it to the ground.

Finally, after discussing all the dimensions of corporate crime and its social-implications it can be asserted that these crimes have a negative impact on society at large and affect much more than the street crimes in today's era. Effective dealing with these crimes requires a collective endeavor of both national and international authorities. The existing standards for assessing corporate criminal liability are universally criticized for being unrealistic and impossible to impose liability other than fines on corporations as they are just an artificial person/legal person more specifically, it is just an entity without life.

⁴⁵ UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003. The UN Commission on Human Rights eventually adopted a decision in which they asserted that the Draft Norms had 'no legal standing' (UN Commission on Human Rights, Decision 2004/116, 'Responsibilities of Transnational Corporations and Related Business Enterprises concerning Human Rights', 20 April 2004).

⁴⁶ UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31

⁴⁷ OECD Guidelines for Multinational Enterprises (OECD, 2011).

⁴⁸ European Commission, COM(2011) 681 final, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', 25 October 2011, at 5.

⁴⁹ G. Skinner, R. McCorquodale, and O. De Schutter, 'The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business', Report on Extra-territorial Obligation and Access to Judicial Remedies of the International Corporate Accountability Roundtable, CORE and European Coalition for Corporate Justice, 4 December 2013

⁵⁰ See Doe v. Unocal (395 F3d 932 (9th Cir. 2002), webpage <http://burma.total.com/myanmar-en/oil-and-gas-in-myanmar/oil-and-gas-in-Myanmar-900130.html> (visited 10 March 2015).

⁵¹ Skinner, McCorquodale and De Schutter, *supra* note 49

⁵² Decision on Interlocutory Appeal concerning personal jurisdiction in contempt proceedings, New TV S.A.L. and Al Khayat (STL-14-05/PT/AP/AR126.1), Appeals Panel, 23 January 2015 (hereafter, 'New TV S.A.L. Appeal Decision'), pg 91

⁵³ Decision on Interlocutory Appeal concerning personal jurisdiction in contempt proceedings, Akhbar Beirut S.A.L. and Ibrahim Mohamed Al-Amin (STL-14-06/PT/AP/AR126.1), Appeals Panel, 23 January 2015 (hereafter, 'Akhbar Beirut S.A.L. Appeal Decision').

These standards majorly rely upon vicarious liability by imputing corporate agents for the crimes committed by the corporations.

Therefore, for the betterment of society, controlling these unfair acts by corporations is the need of the hour. The promotion of ideas of ethical conduct and social responsibility is the only technique to gain control over this crime. Good corporate governance is the foundation of a successful business that is very important to understand these days. Maintaining the trust of society is an important motive as increasing profit margin because ultimately it is the public that helps a business to become successful. Today, the role of the judiciary is much more vital than the legislature in determining the veracity of each corporate crime case.

The only judiciary has the key to ascertain these cases by lifting the corporate veil in such a way that justice can be administered in the society by upholding the concept of corporate criminality by spreading the idea of good corporate governance, with the reasonable transparent procedure of corporations to detect these crimes easily and also impose strict legal implications on these corporations and corporates agents involved in this crime.

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