

## CORPORATE CRIME - A CRITICAL ANALYSIS

Arya Krishnakumar & Sreeparvathy K Shaji<sup>1</sup>

### Abstract

*White-collar crime is now common in almost all occupations and professions in our country. Reportedly coined in 1939, the term white-collar crime is now synonymous with the full range of frauds committed by business and government professionals. These crimes are non-violent crimes committed by people through false activities who are able to access huge sum of money for attaining high financial gain. As a sub-category of white-collar crime, corporate crime has been defined by many eminent personalities all around the globe. The punitive model of corporate crime control has support from both sides of ideological spectrum. The reason behind this confluence, however, differs from side to side. The criminal justice system is now playing a larger role in eliminating the corporate crime from our country. Champions of this position claim that criminal process offers a greater deterrent for corporations and managers than other control mechanisms. Our paper would like to throw light in the minds of the reader by raising the following questions;*

- *What are the impacts, the corporate crime has caused in our country?*
- *How the criminal law is useful in controlling the corporate misconduct in our country?*
- *What are the steps taken by the government in wiping out the brain behind the corporate crimes?*

*The goal of this paper is to address, in detail, the concept of white-collar crime and corporate crime, its impact on our society, how it can be controlled and eradicated.*

**Keywords:** White-collar crime, Criminal law, Corporate crimes, Corporate misconduct

---

### PREFERRED CITATION

---

- Arya Krishnakumar & Sreeparvathy K Shaji, Corporate crime - A critical analysis, *The Lex-Warrier: Online Law Journal* (2019) 9, pp. 383 – 393, ISSN (O): 2319-8338

---

<sup>1</sup> 9<sup>th</sup> Semester Students of Law, School of Legal Studies, CUSAT.

## INTRODUCTION

Edwin Sutherland introduced the term white-collar crime in 1939 as “a crime committed by a person of respectability and high social status in the course of his occupation”. There are many types of white-collar crime like cybercrime, corporate crime, money laundering, fraud etc. They all typically involve crime committed through deceit and motivated by financial gain. Since white-collar crime are linked to professional and elite class the corporate crime have link to white-collar crime. Corporate crime refers to criminal activity by persons on high social status and respectability who use their occupational position as a means to violate the law<sup>2</sup>. Braithwaite offers the simplest definition: corporate crime is the “conduct of a corporation, or of employees acting on behalf of a corporation, which is proscribed and punishable by law.”<sup>3</sup>

Three key ideas are captured in this definition. First, by not specifying the kind of law that proscribes and punishes, Braithwaite accepts Sutherland’s argument that illegality by corporations and their agents “differs from the criminal behaviour of the lower socio-economic class principally in the administrative procedures which are used in dealing with the offenders.”<sup>4</sup> Thus, corporate

crimes not only includes acts in violation of criminal law, but civil and administrative violations as well. Second both corporations and their representatives are recognized as illegal actors. Which or whether each is selected as a sanction target will depend on the kind of act committed, rules and quality of evidence, prosecutor preference, and offending history, among other factors.

Finally, Braithwaite’s definition specifics the underlying motivation for corporate offending: overall, illegality is not pursued for individual benefits but rather for organizational ends. Thus, in order to maintain profits, manage an uncertain market, lower company costs, or put a rival out of business, corporation may pollute the environment, engage in financial frauds and manipulations, fix prices, create and maintain hazardous work conditions, knowingly produce unsafe products, and so forth. Managers’ decisions to commit such acts may be supported by operational norms and organizational subcultures.<sup>5</sup> Corporate crimes and white-collar crimes are similar involved with business. The difference is that corporate crime benefit the corporation and white collar crime benefit the corporation.

<sup>2</sup> Edwin Sutherland, white-collar crime (New York: Dryden press, 1949).

<sup>3</sup> John Braithwaite, corporate crime in the pharmaceutical industry (London: Routledge and Kegan Paul, 1984), p.9.

<sup>4</sup> Sutherland, white-collar crime, p.9.

<sup>5</sup> *James v. Coleman*, the criminal elite (New York: St. martin’s press, 1989)

## HISTORY OF CORPORATE CRIMES

The official history of corporate or white-collar crime dates back in 1939. Edwin H. Sutherland first coined the term in his address to the American sociological society in Philadelphia in an effort to distinguish between these type of crime and street crime.<sup>6</sup> Sutherland sought to spur research on crime in the upper classes. Before his seminal speech, few studies looked for an empirical relationship between crime and higher socio-economic classes. Most research and criminological theories showed that crime was related to, and had a high incidence with in, lower socio-economic classes.

This speech was also an attempt by Sutherland to gain support for the idea that both types of criminality could be explained by his “differential association theory”. Sutherland (1940) believed that the “white collar criminal” was not much different from the street criminal. He stated “that a description of white collar criminality in general terms will also be a description of the criminality of the lower class “. Sutherland believed that the only difference between white collar and lower-class criminals was in the “implementation of the criminal law which segregates white-collar criminals

administrative from the other criminals (1940, 12).

Throughout his works on white-collar criminality, Sutherland gave several varying definition of the term; however, the most frequently cited is from his book white-collar crime, in which he conceptualizes white-collar crime “approximately as a crime committed by a person of respectability and high social status in the course of his occupation” (1949).<sup>7</sup> Since this initial formal definition by Sutherland, there has been much debate about the meaning, definition, and application of the term white-collar crime. With these debates stemming from definition and conceptual concerns, as well as lack of data, white-collar crime research failed to generate the interest that Sutherland was trying to stimulate.

Although today the general public is more concerned than ever before about the quality of life that we live, the water we drink, the air we breathe, the safety of the product we use and even the safety of power savings and stock portfolio for the retirement, we remain more fearful of being the victim of a heinous predatory act public outcry, political agendas and therefore the trust of our criminal justice system focuses more on detection, apprehension and correction of those

<sup>6</sup> Sutherland, white collar crime, 1<sup>st</sup> Ed. 1949.

<sup>7</sup> Id., p. 9.

engaged in "crime on the streets" rather than those engaged in "crimes in the suits".

## IMPACT OF CORPORATE CRIME IN INDIA

Corporate crime includes a variety of law violations by individuals or groups that hold significant positions in our society, violations that can have a serious impact on society. This assertion is especially true of corporate misconduct, which can not only jeopardize the safety, health and welfare of citizens but can also impact social attitudes on corporate misconduct, corporations and corporate leaders. An examination of the impact of corporate misconduct on society merits an investigation of at least some of the factors that impact the frequency of such conduct.

The impact of corporate crime seems to be very serious when on 19 July the supreme court of India ordered the government to pay a remaining \$325.5 million (15.03 billion rupees) due to Bhopal gas tragedy victims. The US based union carbide company, now owned by Dow chemical co., paid dollar for 70 million in compensation to victims in 1989. But distribution of most of that money was held up by bureaucratic disputes over the categorisation of victims. At last on 19<sup>th</sup> July the victims or their representatives got justice 20 years after the tragedy took place.

The cause of Bhopal gas tragedy was extreme corporate malfeasance. There are number of corporative crimes that have come in light now a days. One of the major havoc that is created in the present time is because of mysterious disappear of corporation. Of the 5651 companies listed on Mumbai stock exchange 2570 have vanished it mean that one out of two companies come to the stock exchange to raise crores of rupees from the investors loot and run away. Even big names like home trade came up with huge publicity stunts but after arising money vanished.

About 11 million investors have invested Rs. 10000 crores in this 2750 companies. We have securities exchange board of India, RBI and department of companies affairs to monitors to stock exchange transactions but none has documented the whereabouts of these 2750 odd companies suspended from the stock exchange. Many of the promoters and merchants bankers who are responsible for these are roaming scot-free. The market regulators and stock exchanges are unable to penalize them or recover their funds. The regulators have been able to identify only 229 of 2750 vanishing companies so far.<sup>8</sup>

Corporations also commit a number of crimes against their own workforce. With increasing globalization workers find themselves being pushed against the wall and

---

<sup>8</sup> <https://www.papermasters/impact-white-collar-society.html>

shrinking revenues for redressal. Trade unions are fighting with the reality of workers suicide and growing unemployment and the worker's families are struggling to get over their misery, leave alone fight for dues from faceless management.

The government across the world have given a free hand to corporations to exploit the natural and community resources, while depriving the common people of their right on these resources. For instance, in India, corporation at Ellor, Kodaikanal, Gujarat, have not only destroyed the water and land resources in these areas, but also impoverished communities by degrading their livelihood resources and health. All these communities suffer from disasters similar to Bhopal inaccessible to clean and safe drinking water was found to be major problems in all these areas. The companies either pollute the water resources to an extend where it is more portable or over exploit it till the water table goes down and dry up the wells. A befitting example could be of coca cola bottling plant in Kerala where the company extract excess amount of water level has gone very low and the nearby villages are suffering from scarcity of water.

Adulteration and contamination of food items also have prominent place in the list of corporative crimes. Last year a PIL was filed by a Delhi based NGO, Srishti, which focused on food safety and quality. Also,

have anyone noticed that how much the convicted corporations are involved into dirty games of politics. These corporate criminals give huge sums of money to the political parties in return of favours from these parties. Who suffers the most is the common man including the shareholders and workers.

### **ROLE OF CRIMINAL LAW IN CONTROLLING CORPORATE MISCONDUCT**

The question of the proper role of criminal law in our society, particularly with regard to the enforcement of norms governing business, is a very old topic. The modern debate is largely driven by the rise of the regulatory state, which imposed new substantive norms on economic activity and developed a range of novel procedures and remedies to enforce them. Edwin Sutherland, who invented the concept of "white collar crime," questioned the distinction between criminal and civil remedies in defining his subject, pointedly noting that much of the corporation misconduct the catalogued had been dealt with by administrative procedures and fines, and not by the criminal charges and incarceration utilized against traditional offenders. Sutherland's sociological analysis tended to treat the prevalence of administrative remedies as evidence of the power of the business classes to protect

themselves from the full force of the criminal sanction utilized against others. Section 11 of Indian Penal Code, 1860 define person. It reads “the word person includes any Company or Association or a body of persons, whether incorporated or not.”<sup>9</sup> Further section 2 of the Code provides that “Every person shall be liable to punishment under this Code.”<sup>10</sup> Thus, section 2 of the Code without any exception to body corporate, provides for punishment of every person which obviously includes a Company. Therefore, by reading of these two provision concept of corporate criminal liability can be derived, though it is not the sole legislation which provides for the punishment of corporate body, Companies Act, 2013, Income Tax Act, etc.<sup>11</sup>

The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951., The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002.

## **Twin Model of Corporate Criminal Liability**

### **A. Derivative Model**

This model is individual centred model. It derives to attach the liability to the corporation only because an individual connected to the corporation incurred some liability for which the individual is to be punished, but since it is connected to the corporation the liability is put on the corporation to having that individual with it and letting it incurred some liability.<sup>12</sup> Derivative model can be understood in two sub-categorises: 1. Vicarious Liability; 2. Identification Doctrine.

#### ***Vicarious Liability***

The concept of vicarious liability is based on two Latin maxims- ***first, qui facit per alium facit per se***, it means that he who acts through another shall deemed to have acted on his own, and ***second, respondent superior*** which means let the master answer. In ***Bartonshill Coal Co. v. McGuire***<sup>13</sup>, Lord Chelmsford LC said: ***‘every act which is done by an employee in the course of his duty is regarded as done by his employer’s***

<sup>9</sup> Sec 11 of Indian penal code, 1860

<sup>10</sup> Sec 2 of Indian penal code, 1860

<sup>11</sup> <https://blog.ipleaders.in/corporate-criminal-liability-in-India/>

<sup>12</sup> Sumit Baudh, corporate liability, the student advocate (vol.10), 1988, pp. 45-46.

<sup>13</sup> *Bartonshill coal co. v. McGuire*, (1853) 3 Macq 300.

*orders, and consequently is the same as if it were his employer's own act.'*

Vicarious liability generally applies to civil liability but Massachusetts court in *Commonwealth v. Beneficial Finance Co.*<sup>14</sup>, held three corporations criminally liable for a conspiracy to bribe, the first company, for the acts of its employee, the second, for the act of its Director, and the third, for the acts of the Vice-President of a wholly owned subsidiary. The Court seemed to believe that corporate criminal liability was necessary since, a corporation is a legal fiction comprising only of individuals. US courts are not the only courts, which have incorporated the concept of vicarious liability in the cases of criminal liability, but now this model has been rejected considering it to be unjust to condemn one person for the wrongful conduct of another.<sup>15</sup>

### **Identification Doctrine**

This doctrine is an English law doctrine, which tries to identify certain key persons of a corporation who acts in its behalf, and whose conduct and state of mind can be attributed to that of the corporation. In case of *Salomon v. Salomon & Co.*<sup>16</sup> House of Lords held that *corporate entity is*

*separate from the persons who acts on its behalf.* The Courts in England had in various judgments like *DPP v. Kent & Sussex Contractors Ltd*<sup>17</sup> and *R v. ICR Haulage Ltd.*<sup>18</sup>, ruled that the corporate entities could be subjected to criminal liability and the companies were held liable for crimes requiring intent. Judgment like these led to the promulgation of 'identification doctrine'.

As to the liability of these key persons who act on behalf of company, it was held in *Moore v. Brisler*<sup>19</sup> that *the persons who are identified with the corporations must be acting within the scope of their employment or authority. The conduct must occur within an assigned area of operation even though particulars may be unauthorised.* It will be wise to infer that identification doctrine is narrower in scope than the vicarious liability doctrine, instead of holding corporation liable for act of any employee, identification doctrine narrows it down to certain persons.<sup>20</sup>

### **B. ORGANIZATIONAL MODEL**

Unlike derivative model, which focuses on individual, organizational model takes

<sup>14</sup> Scoff Massachusetts, 1971 360 mass 188, CfWR Lafare, modern criminal law (west publishing co., 775.

<sup>15</sup> *State of Maharashtra v. m/s syndicate transport co. (p) ltd.* AIR 1964 bom 195.

<sup>16</sup> *Salomon v. Salomon & co.*, 1897 AC 22: (1895-99) all ER Rep 9 (HL).

<sup>17</sup> *DPP v. Kent & Sussex contractors Ltd.*, (1944) 1 All E.R.119.

<sup>18</sup> *DPP v. Kent & Sussex contractors Ltd.*, (1944)1 All E.R. 691.

<sup>19</sup> *Moore v. Brisler*, (1944) 2 All ER 515.

<sup>20</sup> Smith and Hogan, criminal law 178 (1992)

corporation into consideration. Offences require mental state (*mens rea*) to commit a crime along with physical act (*actus reus*), but the problem that arises while holding corporations criminally liable is how a corporation which is juristic person could possess requisite mental state to commit a crime.

Derivative model was one way to attribute mental state to corporation. Other way could be by proving that there existed an environment in the corporation which directed, tolerated, led-on, and even encouraged the non-compliance of specific law which made it offence.<sup>21</sup> Moreover, physical act that too is required to complete the requirement of commission of an offence can be derived rather be proved from the act of its employees, officers, directors, etc. Thus, culture of a corporation is to be seen while determining its criminal liability.

Corporate culture may help for commission of an offence requiring mental state by- firstly, providing the environment or necessary encouragement that it was believed by the offender working in the corporation that it was perfectly alright to commit that offence, or corporation has psychologically supported the commission of offence; secondly, it is quite possible that the corporation created an environment which

led to commission of crime. Both ways it was the corporation and its working culture that let the offence committed.

### **STEPS TAKEN BY GOVERNMENT TO CONTROL CORPORATE CRIME**

The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, corporate misconduct credit card fraud etc. In case of corporate crime several steps have been taken by the government of India to tackle this problem. SEBI had provided various regulations in the field of corporate sector for the prohibition of unfair trade practices and various corporate misconduct.

In order to tackle with computer-related corporate crimes, IT Act<sup>22</sup> has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions. The government of India on 26<sup>th</sup> may 2015 taken a step towards addressing some of the concerns under the companies act by amending it. There by now the officials can report the fraudulent activities occurring in the organization to the auditor while auditing. So it seems to be the latest step from the part of the government for wiping out the corporate crime

---

<sup>21</sup> Criminal law officers comm. Of the standing comm. Of attorneys general, Austl., model criminal code:

chapter 2, general principles of criminal responsibility sec. 501 (1992).

<sup>22</sup> Information technology Act 2000.



There are some measures to deal with corporate crimes. Some of them are, creating public awareness of crimes through media or press and other audio-visual aids and legal literacy programmes. Special tribunals should be constituted with power to sentence the offenders for at least 5 years and conviction should result in heavy fines rather than arrest and detention of criminals. Unless the people will strongly detest such crimes, it is not possible to control this growing menace.

### SUGGESTIONS

1. Public awareness must be provided regarding corporate crime and its resulting impacts. Corporate criminals must be outnumbered socially. Awareness building programs have to be undertaken by the Govt. regarding corporate crime and the commission of those crimes must be brought to the public through media communications.
2. Separate commission has to be established for punishing the corporate offenders
3. Separate special sophisticated investigating agency has to be established to investigate the corporate offences. Prosecution and the judges must be trained regarding corporate crime, its detection and prevention
4. Penalty for the corporate crimes must be exemplary and harsh. New forms of penalties must be introduced which is required for deterrence as fine cannot deter all corporate in all cases. The gravity of each of these punishments should vary with the gravity of the act committed. Seizing the company properties and barring the company from functioning can be effective punishment.
5. Fine for the crimes should be two or three times the amount of damage caused or illicit gains obtained by the corporation. Fines should be such that can remove all the harms caused to the people by the company as long as it takes.
6. Strengthening the internal policies of the corporations for compliance. For example a code of ethics must be set and implemented, violation of which will lead to different types of sanctions.
7. Audit committees of the corporations must be manned by independent individuals who are not in the management of the corporations.
8. Fostering a culture of respect for the law within corporations and creating internal controls to prevent

misconduct. Creating a law abiding atmosphere within the corporation.

9. Incorporating more ethical education at the business schools
10. The Government must spend more resources to prevent and punish corporate crimes. Upgraded technology must be utilized in this regard. Investigative and inquiry authorities need to have some skill and knowledge.

## CONCLUSION

Finally, after discussing extensively about corporate crime and its socio-economic implications, it can be asserted that dealing with such crimes and criminals would not be easy and it requires collective endeavour to remove this pest. In the context of organizational behaviour criminal law is the ultimate deterrent.<sup>23</sup>

In his second Fireside Chat, May 1933 Roosevelt declared that “government ought to have the right and will have the right...to prevent...unfair practice by industry.”<sup>24</sup> The crimes persist because crime pays. Harder sanctions are therefore needed, including prison sentences for CEOs and other senior executives. Criminals and their organisations should consider carefully whether they find it

ethically acceptable to receive money that may have been partly been earned by crimes that are harmful to the public.

Apart from fine, other sanctions can be effectively applied against the corporations. One way to control their power and to reduce the harm that they cause is by controlling their misbehaviour through effective sanctions. The role of criminal law is to bring corporate power to face criminal conviction for wrongdoing by making society aware of their crimes and by properly deterring them from committing crimes. Gilbert and Russell advert to the harm that transnational crimes inflict on developing countries, and in their seminal work, “Globalization of Criminal Justice in the Corporate Context” they call for an international control of corporate crime as a matter of global justice.

There is no doubt that the only way to control corporate criminality, especially transnational criminality, is to deal with such issues globally. However, for this to happen, a large number of countries, especially developing countries, need to be aware of corporate crime and, most importantly, aware of the effectiveness of criminal law to control such deviance.<sup>25</sup> When a crime has led to the deaths of many people, we should

<sup>23</sup> Gottschalk, Petter, “white collar crime: detection, prevention and strategy in business enterprises”, 2010, universal publishers, p.17.

<sup>24</sup> Etzioni, Amitai and Mitchell, Derek. 2007 “corporate crime”. In Henry N. Pontell and Gilbert

Geis (eds.), international handbook of white collar crime and corporate crime.

<sup>25</sup> Ibid, p.53.

view it as a crime against humanity. Whether hundreds or thousands of people are killed for personal gains by arms or by pills should make no difference for our perception of the misdeed.

The regulatory agencies are to be invested with the power of enforcement to prevent the corporate crimes. Corporate crime has existed for decades and will likely continue for years to come. Nevertheless, by seeking new approaches to prevention we might be able to limit the extent to which corporate crime impacts society and lessen the likelihood that innocent men and women are victimized. Judges must be honest and well acquainted with the technicalities of the corporate affairs.

Lawyers must act with integrity for truth and justice and not only for money. Corporate crime is serious crime, which has tremendous effects and impacts on economic stability and social security at both domestic level and international level. Therefore, it is incumbent upon the State to impose efficient and appropriate criminal liability upon a legal person as well as its representatives who are the soul and the mind of such corporations and are actually the persons operating the business of the corporations. Since corporate crime is usually economic crime, the laws in relation to economic crime need to be flexible, up to date and in advance of the criminals.