

Jurisprudential Delineation of Corporate Criminality

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ABSTRACT

In present time, corporate governance is a buzz or comprehensive word in the business and corporate domain. A company is deliberated as social institution, networking with society in many ways and touching its citizen's life. The need to govern these institutions in a rational manner is the concern of all cognizant, citizens – shareholder's employees, creditors, customers and government. The actual essence of corporate governance is laid upon the principles of transparency, accountability, fairness and responsibility. The application of these principles is universal in nature. The notion may be complex but the principles are basically simple and direct stimulating a good blend of legislative and ethical framework. The secret of corporate governance practice is to set a goal for attaining the highest standard of good governance, meticulously pursue it and thereby maximize value for the shareholders, customers, employees, general public and last but not the least, the government¹.

Objective: To inspect and analyses the growth and implementation of corporate governance models in the diverse legal system and to make a comparative analysis about them.

Key Words : Fraud, Corporate Crime, Punishment, Justice

INTRODUCTION

Corporate governance is not limited to the organization or profession. Its domain encloses the society by holding a balance between economics social goals and between individual and communal goals. The governance framework is there to reassure the effective use of resources and equality to require accountability for the stewardship of human wealth. The target is to align as nearly as possible the individual, corporation and society. The incentive for state is to strengthen their economics and discourage fraud and mismanagement.

Corporate crime is interchangeably used white color crime; however, the latter term has more of an individualistic connotation. As of the individual connotation

carried in the label white color crimes, the expression corporate crime is preferable since it makes it easier to recognize corporation as the agents of the misconduct and consequently as the proper entities that would be held responsible for the act. Corporate crime can be understood as a category of organizational crime².

Corporate crimes are those socially injurious and blameworthy acts, legal or illegal, that cause financial, physical, and environmental harm, committed by corporations and business against their workers the general public, the environment, other corporations and business, the government, or other countries³.

Corporation as a foundation of crime:

It is debated many a times; whether or not it is

1. These words have been extracted from one of the speech of Sir Adrain Calbury, delivered in India during his visit in year 2000
2. Singh, Dr. Vijay Kumar, Corporate power to corporate crimes: Understanding Corporate Criminal liability in India (Satyam Law International, New Delhi 2013)
3. Frank Nancy and Michael Lynch, corporate crime, corporate violence: A Primer, Harrow & Heston (1992) at Page 17

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practical to hold accountable for crime a non-natural person such as a corporate body (person) which contrasting a natural person, is not capable of thinking for itself or of crafting any intention of its own. It is also predicted that the actual idea of fault and blame worthiness is born in the concept of criminal responsibility of a corporate assumes personal responsibility. This is component which an abstract entity such as a corporate body lacks. The corporate body being a frictional body does not have a physical presence and it does not think for itself. All the actions that is taken or the acts that it undertakes and the intelligence that goes behind these acts is done for it by its directors or employees. This supports the view that guilty servants of the corporate should be punished. The situation is otherwise difficult when the guilt has to be fixed on some one.

Corporate criminal liability versus individual liability:

In concentrating or corporate criminal liability, there is the hazard of overseeing individual fault and responsibility⁴. The difficult of non-prosecution of individual agents of the companies for the offences committed on their behalf had become progressively evident. However, the theory of corporate culture, corporate fault, and corporate personhood, may be established; it would be person who would act. The query thus stands up as to whether the individual offenders (corporate directors, officers, managers and employees) should be accused along with the company or separately or may be left out. Furthermore, the problem gets complex with the nature of the corporation, for example in a small company it is easy to find the individuals liability than a big conglomerate with web of subsidiaries. Thus the question is “are we falling back to the directing mind and will/attribution/identification test even post meridian.

Liability on corporates:

As per the theories propounded by the jurists and

practice and adopted by the common law countries, the rule is that a corporation will be criminally liable for the illegal act of his employees if the employees are acting within the scope of their authority and their conduct benefit the corporation⁵. A corporation may be held criminally responsible for the criminal act of his employee if:

1. The illegal act was committed while the employee was acting within the scope of employment.
2. The employee conduct was undertaken, at least in past, for the benefit of the corporation⁶.

The further question is whether corporation can be identified as wrongdoer when the wrongful act is committed in violation of corporate policies and scope. The court finds that the corporation can also be criminally liable even in cases where an employee’s conduct violates corporate policy⁷.

The courts observed that when an employee violates express instructions of supervisors or policy manuals the corporation is not absolved from criminal responsibility, even when steps of procedural safety were taken up by the company⁸.

Rather it was held that corporate rules and policies cannot define the scope of employees authority so as to shield the corporation completely from all criminal liability⁹.

Thus a corporation is a fictitious entity that acts through its various agents; therefore to hold a corporation criminally responsible for the illegal behavior of an employee, the illegal conduct must have occurred within the scope of employment¹⁰.

Situational conditions of corporate liability:

The situational condition of corporate liability may be classified as following:

Behaviour of employee:

In this issue the court has formulated their own title books for fixing the criminal liability of the firms for the misconduct of an employee or the employer or the

4. Gobert James and Maurice punch, Rethinking Corporate crime, Butter worths : Lexis Nexis (2003) at Page 253.

5. United States v. MacDonald & Watson Waste Oil Co., 933F2D35, 42 (1st CIR 1991)

6. United States v. Sun-Diamond Growers & Cal 138 F 3d 961, 970-71 (D.C. CIR 1998)

7. United State v. Hilton Hotel & corp. 467 F2d 1000, 1004 (9th CIR 1972)

8. Standard Oil co. v. United States 307 F 2 nd 120, 127 (5th CIR 1962)

9. Ibid

10. New York cent. & Hudson River R.R. co. v. United States, 212 US.481 (1909)

company itself as there is no comprehensive statute to deal with it. The court in the past decade observed that for a corporation to be criminally liable, the employees conduct must be for the corporation¹¹. A corporation is considered to have received a benefit of the employee engaged in criminal conduct with the intent to benefit the corporation. Moreover, an extent to benefit the corporation does not have to be sole, or even primary motivation for the employee's conduct¹².

Personal gains:

The benefit requirement is satisfied even when the employees conduct is performed for his or her own personal gain, and the corporation somehow benefit from the conduct as well¹³. For example one such case involved as a convicted corporation arguing that it should not have been held accountable because the criminal liability was intended solely to benefit the employee in his own personal quest to climb the corporate ladder. The argument cannot be as the corporation could still receive benefit in the light of the fact the employee's promotion is conditioned on success of the corporation.

Hierarchy of employment:

As to the limitation that the employee must be acting within the scope of their actual or apparent authority. The position of authority means that he should be in a position of decision making. The Americans Jurisprudence profound that even a single low level employees criminal conduct can be sufficient to trigger criminal liability on the part of corporation. Moreover, it may not even necessary to find that the identity of the same criminal employee in order to find the employee's guilt¹⁴.

Criminal conduct:

An employee will be criminally liable for the actively and directly engaging in criminal conduct¹⁵. A corporate employee cannot hide from criminal liability merely by claiming the conduct occurred during the scope of employment¹⁶.

Criminal conspiracy:

A conspiracy occurs when two or more person agree to commit an offense, and one of those person takes an affirmative act in furtherance of the goals of the conspiracy¹⁷. In prosecuting a scheme that involves separate roles for co-conspirators, there is no need to prove that each participant directly interacted with each of the other conspirators¹⁸. It is also not required to prove that each co-conspirators knew all the details of the agreement and participated in all of its operations or joined the agreement at the same time, or become aware of all the activities of the other participants in the agreement¹⁹.

Doctrine of Responsible Corporate Officer (RCO):

The Responsible Corporate Officer Doctrine originally emerged from the US Supreme Court case of United States v. Dotter-Weich²⁰. Approximately 32 years later, the Supreme Court reaffirmed the existence of the RCO doctrine in the landmark case of United States v. Park²¹.

In both cases, the court held that a corporate officer could be liable for the criminal act of the corporation, despite the officer never have been aware of the criminal conduct at issue (*i.e.*, despite the officer having no guilty mind, or in other words, no mensrea²². In Park case, the court noted that a corporate officer cannot be convicted

11. BassiAbhinandan, corporate criminal liability. An analytical study with special reference to penal law in India Page 175-185
 12. Standard Oil co. v. United States, 307 F 2nd 120-127 (5th CIR 1962)
 13. Ibid
 14. Arthur Andersen LLP v. United States, No h-02-121 (SD. Tex 2002)
 15. United States v. Rodgers, 624 F 2nd at Page 1308
 16. C&.moss v. Ole south Real estateInc, 933 F 2nd 1300-1312 5th Cir 1991
 17. 18 US.CA/ 371 West 1996
 18. United States v. Elam, 678 F 2nd 1234-1247 5thcir 1982
 19. United States v. Alvarez, 625 F 2nd 1196, 1198 5th Cir 1980
 20. 320 US 377 64 sct 134 (1943)
 21. US 568 95 sct. 1903 (1975)
 22. United States DotterWeich, 64 sct. At 136

under this doctrine merely because of his or her position within the company²³. A relationship must exist between the officers corporate functions and the conduct in question to such a degree that the officer is not only responsible for solving the problem, but also under an affirmative duty to implement measures that will ensure that violations will not occur.

In this regard the Indian position, where the apex court has ruled that the officer can only be roped in when there is sufficient incriminatory evidence against him or it is provided so in the statute²⁴. The statutory position as contained in different Indian enactments in a similar manner preclude defense to the concerned person by proving that contravention took place without knowledge or that he exercised all due diligence to prevent such contravention.

Conclusion:

To conclude, it can be believed that as a matter of

public policy it is great importance that company should comply with the regulations of the land. Corporate criminal liability is extensively regarded as an essential part of the legal system to regulate corporate misconduct. Nowadays in many jurisdictions criminal sometimes is commonly used as a system of regulating corporate misconduct. But it has failed to accomplish its purpose of deterring and preventing corporate crimes. A thorough inspection of the case laws indicates that convictions against corporations are difficult to achieve. Some of the problems faced is the principles of attribution of mens rea, identification of the officer in default, once the prosecution succeeds in obtaining a conviction, imposing proper punishment to fit the crime is also problem. In the absence of any noteworthy development in the law relating to corporate criminal liability, there would be no jurisdiction for imposing criminal liability on corporation.

23. United States v. Park 95 sct at 1908

24. Sunil Batra Mittal v. CBI (2015) 4 SCC 609