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A Critical Study on Indian Law on Corporate Criminal Responsibility

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Abstract: Crimes perpetrated by corporations in the twenty-first century are posing an increasingly complex problem for the criminal justice system. A few vested interests that dominate the affairs of corporate entities utilise the corporate body to commit criminal crimes to maximise profit. To regulate its functions, a corporation is given a legal personality. Still, because it lacks a physical body and a mind of its own, it is difficult to classify it as criminal and impose criminal culpability on it. Infrastructural development, public health, and the environment are all negatively impacted by corporate criminality. It is not uncommon for corporations to be involved in a wide range of criminal activities, including embezzlement and tax evasion as well as benami property transactions. Modern criminal justice necessitates clear definitions of criminal liability for corporations, as well as the ability to hold them accountable. To ensure the well-being of society, the well-being of citizens and economic growth of a nation are all tied to a business climate that is free of regulation for corporations. A careful balancing act must be struck here between taking strong action against corporate criminals and protecting the legitimate activities of corporations. This article will examine the law governing corporate criminal liability in India.

Keywords: Corporate crime,Criminal Justice System,Natural person,Corporate criminal liability,Strict liability,Social wellbeing.

Introduction:

Crime and criminality, particularly socio-economic crimes, pose a severe threat to the state and the population and must be dealt with effectively. Corporate crime is an increasingly serious threat to modern society's well-being, a specific type of socioeconomic crime committed by corporations [1]. Due to the increased organisation of corporations and the appointment of experts and professionals, it is becoming increasingly difficult to identify and detect illicit activity. In the criminal justice system, it has long been held that only natural beings can commit

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a crime and be held liable for it since only natural persons have the physical and mental capabilities required to conduct a crime, be committed for trial, and be punished. However, the safety and well-being of society would be jeopardised if such a concept of criminal culpability were adopted. The general public lacks knowledge about the significant problems generated by corporate crime commissions and the terrible consequences of such commissions [2]. There is no response to corporate crime and no labelling effect on corporate crime. Traditional crimes, on the other hand, have a more unsettling effect on the general public and are viewed as real crimes. In addition, the majority of the population believes that corporations engage in legitimate business, manufacturing, marketing, and construction activities; in some cases, these activities may have broken regulatory rules, but these are usually viewed as skillful business activities rather than criminal acts. For the most part, illegal offences perpetrated by corporations are dealt with under administrative and civil law, rather than criminal law. Because corporate crimes are typically handled by law enforcement agencies other than the criminal justice system, the traditional definition of crime is not met [3]. One of the most important criteria for determining a criminal act's seriousness is the societal impact. According to this criterion, corporate crime is the most serious, posing the greatest threat to society's continued existence, the well-being of its citizens, and the public coffers. Corporate crime, by this standard, is a serious offence.

White-collar crime is defined by Marshall B Clinard& Peter C Yeager as corporate crime, however it is a specific type. White collar crime encompasses both occupational &organisational crime when viewed in its broadest sense. When a person of respectability commits a crime while doing his or her job, the term occupational crime is used. White collar crime, on the other hand, only refers to these kinds of crimes done while at work. The term "corporate crime" refers to criminal activity carried out in a coordinated, aggregated, and planned fashion for the benefit of a corporation [4]. Corporate crime (organisational crime) and white-collar crime (occupational crime) can both be committed by a person operating on behalf of a corporation, but only the person who committed the crime can be held liable. It is not just the doer's act but the act of the corporate body as a whole, and criminal culpability may be imposed for both. Employees who commit crimes for their own gain, regardless of their position within the company, are subject to the same rules as those who commit crimes for the benefit of the company as a whole [5].

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If criminal culpability is to be imposed on the corporate body or on the person who makes the decision and operates the corporate body, there is a major difficulty. In the Indian criminal justice system, both the corporation and the individuals responsible for making decisions and operating the corporate body are subject to liability. According to Indian penal code section 11, there is no distinction in criminal culpability between natural and legal persons. Since Section 11 of the Indian Penal Code allows for criminal liability to be imposed even on groups of individuals who have not formed a corporation, Indian law recognises criminal liability for both legal and illegal corporate entities, such as criminal organisations, terrorist organisations, and unlawful assemblies [6].

The Effects of Corporate Crime:

Most academics, bureaucrats, law enforcement agencies, adjudicators, legislators & general people are not interested in corporate criminality. People are afraid of being targeted by violent street crime, which is why all criminal justice strategies are centred on this type of crime and how to prevent it from happening in the first place. In terms of white collar crime, corporate crime is one of the five categories of suite crime that does not cause fear of victimisation and is generally perpetrated by deceit, making it one of the most crucial aspects of the crime. Only recently have some academicians emphasised that corporate crime is not only a criminal conduct, but also a severe threat to the well-being of the public at large, the nation, and eventually the entire world [7]. The general public believes that a corporation is merely a commercial entity and does not possess the physical and mental capabilities required to execute criminal acts. Generally speaking, the general public is unaware that organised crime is significantly more dangerous, scary, and detrimental than individual criminals. As corporations control resources, they can hire trained and expert employees; use means of communication and specific environments; develop convictions that corporations can only engage in economic activities and cannot engage in criminal activity.

Greed of those in charge of business entities does significant harm to the health, safety, and security of the general people. Corporate economic crimes have an impact on the entire country's economy, and in some situations, the entire world's economy as well. As corporations are involved in infrastructure and welfare projects, their misdeeds have a direct impact on the lives of the general public. Corruption, laundering, tax evasions, quasi of business ethics, and frauds

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perpetrated by corporations threaten the nation's financial stability. The public's health and well-being are put at risk by the production and distribution of poor goods and services. Corporate bodies have more resources, experts, and the ability to carry out criminal acts that pose a greater threat to the world at large, not just to a single country. The modern criminal justice system urgently needs proper and effective prosecution of corporate criminal culpability [8]. Corporate criminal culpability is a legal person's liability, not a corporation's liability. When referring to legal entities, the word "legal person" refers to those that have been constituted by law and engaged in lawful commercial activities. For the effective functioning of society, the requirements of its members, the creation of jobs, and the economic well-being of its citizens, corporate bodies & their business operations are essential. Business practises that harm the country and its people in more serious ways need to be dealt with more forcefully than others. Liability should not be imposed which could harm corporate operations and ultimately harm the business environment of corporations and society. This should be taken into consideration before taking action. Effective action against corporate organisations and responsible corporate officials must be balanced with encouraging legitimate commercial practices.

Traditional crime is committed against the individual, and only by legal fiction is it considered to be committed against society; the state represents society, and as a result, it is committed against the state, whereas corporate crime is committed directly against society, the general public, and the public coffers. Every time a crime against a corporation is committed, it has far-reaching ramifications for the general public. As a result of corporate collaboration, the price of a product may rise since consumers will be forced to pay more for it. When a company makes inaccurate or misleading assertions about its assets, it puts ordinary investors at risk of losing their hard-earned money. Defrauding the public purse, on which the entire development process depends, is the goal of tax evasion. An climate that encourages corruption is created by the Scam Commission and corrupt public officials, which has a negative impact on the country's development. Hoarding of important commodities has a negative impact on the public's ability to get the necessities of life. Substandard, bogus, and contaminated pharmaceuticals and food products can harm the health of the general population and result in the death of tens of thousands of people each year. In addition to harming the environment, noncompliance with pollution prevention regulations and the use of risky production processes in manufacturing

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facilities can result in the death or injury of countless people as well as serious health consequences.

How Corporate Crime Occurs:

It is a fact of corporate functioning that many corporate bodies stray from the normal business practises and commit violations of the law enacted to regulate business activities and do serious damage to public at large and the nation, and ultimately to the world at large, as a result. As a result, it becomes imperative to determine the causes of corporate crime. In order to effectively combat economic crimes perpetrated by corporations, legislation enactment and imposition of corporate criminal culpability require a thorough examination of the causes of corporate crime commission. Robert Merton's Anomie and Strain Theories along with Edwin H. Sutherland's Differential Association Theory explain the committing of crimes by those in charge of corporate affairs, which is also interpreted as a crime committed by the corporation itself. Everyone in the current period, whether they are a legal person or a natural person, is feeling the strain and stress of a goal and lawful means disparity (desires which have taken shape of passion). It is claimed that everybody may achieve financial success, but the reality is that not everyone has equal access to the resources needed to do so. It's difficult to achieve a goal when one's resources aren't aligned with that aim. Corporate entities are always goal-oriented because they are formed for a specific purpose. Disparity exists between business objectives and appropriate business methods for corporations as well. Profitability, competitiveness, and expanding the company's market share are all terms that can be used to describe the financial objectives of any organisation. Corporate success is inextricably linked to financial success. Maintaining success in the face of competition and expanding the market share of a well-established company is essential even if it is well-established. Strain forces a company to resort to illicit methods if it can't attain its aim through legal means. Inter-organizational and intra-organizational strain exist. There is a lot of inter-organizational strain because of the rivalry for profit and market share. Internal strain is caused by the competition between sub-units inside the corporate body, which results in internal performance pressure and ultimately leads to the practise of illegality.

There must be mental preparation for corporate crime commission including specialisation in illicit procedures for natural persons representing corporate bodies, not just pressure caused by a gap between corporate goal and means [9]. As part of his Differential Association Theory, Edwin

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H. Sutherland added white-collar crime to the list of behaviours that can be learned by interacting with others who already engage in it. Differential association is the root of all criminal behaviour, according to Edwin H. Sutherland, and white collar crime is no exception. 13 A corporate crime commission can be learned in a variety of ways, either directly or indirectly, by corporate leaders who are already engaged in corporate crime commission.

As a primary check on crime and criminality, public reaction serves as a key cause of crime and criminality both when it exists and when it does not. Punishment for harmful acts is enacted in accordance with public awareness and the need to safeguard the citizens. The majority of the public is unaware of the significant consequences of corporate misconduct, and merely thinks that corporations engage in commercial and manufacturing activities. Furthermore, citizens believe that corporations lack a physical and mental existence, and hence cannot be guilty of any crime. Corporations rarely commit crimes against individuals. If any crime is done, the general public assumes that company executives are to blame, and even if this is the fact, they believe that it will be a simple tax avoidance or irregular economic activity that can be dealt with by administrative, civil, and/or administrative regulation. Crimes committed by large corporations are more difficult to prosecute when the public isn't aware of them. As a result of the lack of public outcry against corporate criminality, the reputations of corporate organisations and those who manage them are not damaged. Furthermore, there is no public pressure on law enforcement authorities to initiate criminal actions against corporate bodies; if action is taken, it may be under civil, administrative, or taxation laws, and it can be demonstrated that for steps have been taken against the corporate body. Corporate entities and the individuals in charge of running them may find themselves in a situation where they can conduct crimes with impunity, knowing they will not face criminal culpability or damage to their reputation as a result.

An Overview of India's Corporate Criminal Liability:

In most circumstances, acts committed by corporations are either not covered by criminal law or criminal acts are only covered by civil, taxes, or administrative law if they are considered criminal acts. These kinds of measures are usually handled under a different type of law than criminal law in most cases. Criminal acts done by corporations are always criminal acts regardless of whether they are committed in breach of criminal law or if they are taken in accordance with criminal law or a different legislation. Society at large benefits from

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corporations' legal personality and various privileges under the law, hence they cannot be allowed to engage in conduct that could harm the general population.. Because corporations are motivated by profit maximisation at any costs, they commit crimes that cause more economic harm to society, the nation, and ultimately the entire planet. According to economic causation, economic objective and economic repercussions, corporate crimes are classified as economic crimes. Criminal culpability is the only way to effectively deal with risky and substantial corporate harm to society.

As a result, gathering evidence to prove criminal intent or knowledge is extremely difficult. Corporations are managed and business activities are carried out by seasoned and expert experts using current know-how. At the same time, it is imperative that firms and their human agents involved in corporate crime be punished in order to combat economic crime and safeguard society. For this reason, the strict responsibility rule is mandated, which presumes the presence of a mental element upon proof of the performance of an act banned by law. In addition to strict liability, the law also allows for absolute liability & imputed liability provisions for corporate criminal culpability. Evidence of an unlawful act is presumed to be committed when the burden of proof is placed on an alleged corporate body under corporate criminal law (actus reus) (mens rea). Rebuttal presumption and conclusive presumption are two types of mental element assumption. Strict liability is the nature of corporate criminal culpability when presumption is rebutted, while absolute liability is the nature when presumption is conclusive. While it's easy to think that corporate crime lacks a mental component, it's important to remember that this is a type of crime, and hence a mental component is required. The difference is that it doesn't have to be proven through the introduction of evidence, but rather must be presumed.

Whether criminal culpability should be imposed solely on the natural person, or on the corporate body as well, is a question that arises in situations where corporations use agents to carry out their economic activities. Because corporations lack both a mind and a physical body, natural persons can commit crimes that are just as destructive as those committed by corporations. Assuming that the crime was committed by a natural person, then criminal culpability can be placed on the corporate entity by proving a link between that natural person's actions and that of the corporate body. The corporate crime commission is dependent on the human agency of a criminal commission by a natural person. In order for a corporation to function, the minds and

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bodies of those who work for it must cooperate. While it is true that the "controlling and willing mind" of a person in charge of a corporation cannot be regarded as equivalent to the mind of the corporation as a whole, this is not how standard operating procedure treats corporations. This means that the criminal responsibility for the conduct of those in charge of the business affairs of a corporation might fall on the shoulders of those in charge of such operations, regardless of whether they are natural persons or corporate entities. Higher-ups in huge corporations often make the justification that operations are decentralised and that an employee committed a crime on his or her own and should alone be held accountable for it. In order to shield the company from criminal responsibility, it is common practise to argue that an employee committed the crimes but was not authorised to act on behalf of the company. If a crime was committed by an employee in his individual capacity, only he will be held criminally liable, but if the crime was committed by him as an employee of a corporate body, criminal liability will be imposed on the perpetrator of the crime, the person in charge of the company's affairs, as well as the company itself. Persons who supervise the business of a corporation are held liable for crimes committed by their employees, even if they were not directly involved in the crimes themselves. Constructive liability and vicarious liability are two types of this rule. There's a well-established norm in criminal responsibility that a person who commits a crime is solely responsible for his or her own actions. Imputed responsibility, on the other hand, is an exception; if an employee commits a crime related to the business dealings of the corporation, the corporation is also liable. Supreme Court settled the issue of whether or not a company can be prosecuted and sentenced for an offence for which the minimum punishment of imprisonment is stipulated, as in the case of Standard Chartered Bank v Director of Enforcement17 If the penalty for an offence is jail and the corporate entity lacks a body, it cannot avoid culpability. When both jail and fine are specified punishments for any offence, the corporate entity will only be fined. Penal sanctions may be imposed on natural individuals convicted of corporate crimes. Supreme Court ruled in Iridium India Telecom Ltd. v. Motorola Inc. that corporate criminality can be enforced even for those offences for which culpability is required. According to the court's ruling, the criminal intent of the company's "alter ego," i.e. the person or group of people who direct the company's activity, would be imputed to the corporation under the applicable attribution and imputation rule.

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Conclusion:

People no longer form corporations to carry out business operations such as manufacturing, providing services and marketing on their own in today's industrialised market-based society. Now corporations are formed by individuals to carry out these activities on their own. This affects the individuals, society, and nation as a whole; therefore, it is necessary to govern corporate bodies' activities. Corporate entities are treated as legal persons for the purposes of regulation of their actions. The criminal justice system is the most effective tool for controlling the behaviour of any individual. Criminal culpability is imposed on corporate entities and their workers for any conduct that have significant consequences for the general public, society, or the nation. As a result of corporate crimes, public health, national development, and financial well-being of the entire country are at risk, as well. The purpose of a corporation is to do business, and hence, it has a financial goal of making money. Market share increase is a necessity for profit, and it also serves as a company's primary purpose. It is possible that the existing legal measures will fall short of meeting the objective; in this case, adaptation is necessary. People in positions of authority in corporations are often under a great deal of stress, and this stress is a crucial factor in their decision to learn how to commit corporate crime by employing illegal methods.

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