



CORPORATE CRIMES: A BACKLASH AGAINST THE ORGANIZATIONS

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ABSTRACT

Corporate crime, one of the types of white collar crime refers to the criminal practices by a group of people or association often done on the behalf of the corporation to feather one's own nest. Corporate crime emerges from the business practices and while financial scandals have existed in previous centuries, corporate crime has been in full swing in the last two decades. Modern business has dramatically dematerialized and turned into augmented reality, which, on the one hand represents a major breakthrough, but on the other hand, opens up a large area and provides avenues for committing crimes in the field of finance. However, irrespective of the state of modern industry, the fundamental explanation for corporate crime derives from human greed, mainly the desire to acquire resources that are scarce by nature. While bloods in the streets continued to capture the newspaper headlines, the crime in the suit has remained unnoticed due to the lesser intensity of direct harm; ironically the magnitude of the losses suffered from corporate crimes involving the manipulation in accounting records, investment scams, misappropriation of assets, debt hiding etc is much higher which not only dents the company's reputation, but also hinders the growth of the nation's economy. Although the government has introduced several legislations to this menace but unfortunately,

the offenders mock the legislation and never failed to discover the loopholes.

INTRODUCTION

The world of capitalism has been rightly portrayed as a system owned by the tycoons compromising the health and security of the general civilians for corporate gain. The era of 20th century was rife with avarice and crimes. The advent of technological invasion and growth has resulted in the acceleration of the crime rate, which not only included the indulgence of individuals or group of people, but also of the corporations, which have been given a free hand to deploy both natural and human resources. Such crimes committed on the behalf of the corporation are defined as corporate crime. Corporate scandals include insider trading, embezzlement, money laundering, investment scams, adulteration etc which has successfully dissolved the modern era into corruption and cupidity.

A GLIMPSE ON CORPORATE SCANDALS IN INDIA

The modern era has innumerable corporate scandals that have come into the light of the masses. One of the big tragedies occurred in recent times was the mysterious vanish of many companies, implying that the primary objective of these companies was to raise funds, loot the investors and abscond in the future.¹ The exponential growth of Internet technology has also escalated the evolution of online manipulation techniques. The Law Enforcement Committee on Securities and Exchange and criminal prosecutions demonstrate that the offenders use a simple way to exploit financial markets for personal enrichment. Either they typically disseminate

¹Sanmiha, An Analysis on Corporate crimes, Legal Bites (31st May 2017)

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



inaccurate or misleading facts through so-called 'pump-and-dump' schemes that induce a sharp spike through non-demand stock values or shareholdings in firms that do not have substantial assets or leading activities. After this, the shares are sold immediately in these companies, so that they can make substantial gains until a stock price falls to usual low rates. The corporate corruption is so heavily ingrained in the capitalist structure that it has almost become a prerequisite to carry the business. Throughout these corrupt countries, several State-owned firms often build shell companies that encourage third parties to squander corporate assets or revenues. Often they use the dividends which are either paid to the shareholders or used in the organizational growth and development. As a result, stakeholders in the business do not get what they rightfully deserve. Exaction and bribery are the forms of back-room tax that demoralizes both businesspeople and investors. It dissuades investors and thus destroys the potential of a nation to grow and develop.

The dysfunctional corporate structure and managerial opportunism has contributed to the manipulation of financial statements. The allegations of corporate misconduct involve artificially inflated earnings, capital expenditure, lack of proper revenue recognition and the inappropriate use of off balance sheet. Legally approved commercial practices often generate a substantial amount that is above public scrutiny in compliance with tax avoidance laws. Too often bureaucratic regulations also offer opportunities to conceal the true status and stay out of the magnitude of one's actions disclosed and taken into account for. Increased globalization and economic liberalization have an influence on foreign

trade, which provides specialized equipment offering a platform to reduce tax expenses in adherence to the various tax laws of the different countries. International trading among multinationals has accelerated the abuse of transfer pricing, which has led to the depletion of major wealth in developing countries like India.

Many reputed companies have also been indulged in the manipulation of accounts by overstating the assets and understating the liabilities or through fictitious transactions and accounting to boost the company's profits, to portray a better financial position for tempting the investors and shareholders.

Investors' capital has been massively lost as a result of fraudulent practices culminating in bankruptcy files of international corporations around the world. The market regulators and stock exchanges are not in a position to penalize or recover their assets due to which the promoters or the merchant bankers responsible for these scandals are roaming unscathed.

In 2014, the prime minister of India had formed a special committee to address the problem of black money, investigations and prosecution of high profile cases of tax evasion. The hybrid approach to curtail black money production from regulatory and legal operations comprises multiple elements, such as diverting the disincentives from Voluntary Compliance like tax rationalism, lowered transaction rates for enforcement and administration, greater economic liberalization, etc; economic transformation by reforming the financial sector, bullion and jeweler industry, stock-market, mining and granting natural resources property rights, equity trading, non-profit organizations, private sector, etc. in vulnerable sectors; efficient reliable deterrence like the



incorporation of data bases leading to efficient intelligence by way of surveillance services approaches to improve the framework of direct tax administration & prosecution; improved flows of information, tax- revenue overseas units, international taxes and transfer pricing etc; and the supportive policies like public awareness and support, strengthened accountability of auditors, security of whistleblowers and witnesses, need to enter multinational projects to use channels, need to fine-tune applicable laws and regulations, etc..

The government has also taken other progressive steps like Benami Transaction (Prohibition) Act, 1988, Prevention of Money Laundering Act (PMLA), 2002, Judicial Standards and Accountability Bill, 2010, Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, Electronic Delivery of Services Bill, 2011, Grievance Redressal Bill 2011 Public Procurement Bill 2012 Citizens' Lokpal and Lokayukta Act, 2013; to restore the faith on the legislature for curbing the corporate scandals but despite the stringent legislations but the offenders never fail to trap and swindle their investors and shareholders.

There are many instances which have revealed the true lights of many companies. A befitting example would be of the infamous Speak Asia Scam of 2011, where the investors were guaranteed quadruple of their principal income in a year. Around thousand crore rupees were invested in this scam. A criminal case was filed against the firm in 2011, but it was not fruitful enough as

the panelists didn't refund a single penny till date; moreover, there is not any conviction as the management couldn't be traced yet. Another such catastrophe was the indelible Sahara Scam, where the two subsidiaries of Sahara Group had blatantly violated the law by issuing funds through optionally fully convertible debentures (OFCD) of Rs 24000 crore from more than 2 crore investors without the permission of SEBI or Registrar of Company. After being exposed, it was not only banned from issuing OFCD, but also was ordered to return the funds with an interest of 15%. ²The directors of Sahara Groups were arrested and a case of Money Laundering was filed against it.

SCANDALS AND DIRTY POLITICS.

Ironically, the politicians and the government were also involved in such dirty scandal which is quite evident from the 2G scam, which was carried by the telecom minister, A. Raja, which was about the authorization of a unified access service. The former Telecom Minister A Raja has circumvented standards at all rates and carried out the suspicious scam. The Telgi scam of 2002 also revealed that Abdul Telgi was backed with government support from various departments in the procurement and sale of high security stamps. The Adarsh housing society scam of 2011 is another instance exposing the true colors of the dirty unleashed politics. Under this scam, the members allotted flats to themselves in that society far less than the market rates. Not only this, but also the politicians and the bureaucrats failed to abide the norms concerning land ownership, zoning and floor space index. Although the Central

² Harleen Jabbal, The Sahara Scam, Slide share (20 March 2018)

<https://www.slideshare.net/harleenjabbal13/the-sahara-scam>



Government has not only introduced various policies and legislations but has also implemented demonetization, Goods and Service tax (GST) etc to win the battle against these scandals but the offenders often light up an escape route.

SOCIAL OBLIGATIONS VS ESCALATION OF REVENUES

While the wrangles and rage over the corporate scams concerns about the interest of the shareholders, the neglected employees or the workers continue to become the prey of these scams. They are often pushed against the wall to grapple with the shrinking revenues at the cost of their employment. The employees, especially in the private sectors, are not only burdened with the stress of overtime but also with the irrational targets set by the employer to spike up the revenues of the organizations. There are many such instances of the public sector undertakings where either the raw materials are deficient due to the inappropriate location or the machinery imported are either defective or unproductive, which highlights the recklessness and lavishness of the management which ultimately worsens the plight of the laborers. For instance, Bombay Textile mill strike of 1982 has snatched the employment of over 150000 workers³. Not only this, but also the wages of the jobless employees was being disposed. The trade unions grappled with the reality of workers' suicide and rising unemployment and the workers' families strived to overcome their sufferings caused by the faceless management.

³ Hub Wan Wersch, Unveiling the build up to Bombay's textile mill strike at 1992, WIRE (16TH MAY 2019) <https://thewire.in/books/mumbai-textile-mill-workers-strike>

Another major mishap was the case of world's infamous industrial disaster i.e. the Bhopal gas tragedy of 1984, where the UCC's Sevin production plant was built in Madhya Pradesh to capitalize on the large and growing Indian pesticide market. The leakage of Methyl Isocyanate caused the death and physical impairment of thousands of victims. ⁴The gas was so heavy and dense that it filled their lungs, essentially drowning them. Over 2,000 animals were poisoned, impaired and infected by the gas; most of them were the livestock that people relied on for food. The implementation of this project simply highlighted the double standard of the multinational corporations operating in developing countries.

Unfortunately, the food industry is also battling against adulteration, misleading claims on labels, fake brand narratives etc leading to erosion of consumer's trust and confidence from the system, sector and the nation at large. It eventually leads to a loss of wealth and reputation of the businesses. Ironically, our recollection of food scams and human misery fades with the death of the memories and the offenders roam scot free. The dramatic growth of the controversies in the food sector calls for stringent actions like routine disclosure of all the pertinent information to the public about the product composition and environmental emissions. Commercial confidentiality should not overshadow the public interest to identify the risks and liabilities involved with corporate production. If a company has become part of the public domain, no constraints should be imposed on public access to environmental

⁴ Deepika, Legal Aspects of Bhopal Gas Tragedy, Legal Service India, <https://www.legalservicesindia.com/article/373/Legal-Aspects-of-Bhopal-Gas-Tragedy>



and health records on account of corporate confidentiality. Once a product enters the public domain there should be no restrictions on public access to information relevant to environment and health on the basis of commercial secrecy. If a company has become part of the public domain, no constraints should be imposed on public access to environmental and health records on account of corporate confidentiality. Corporate responsibility shall be promoted through environmental management accounting and environmental reporting management which offers a transparent, accurate report on the environmental and social implications of the companies.

CONCLUSION AND SUGGESTIONS

The buoyant broadening of these scandals calls for stringent regulatory actions against the rampant prospects of the corporate scandals. The law enforcement agencies have many ways of combating corporate scandals but the perpetrators never fail to discover the loopholes. The battle against such crimes can be won through the fostering of awareness and reinforcement of the moral compass among companies and their workers by enforcing appropriate laws and regulations in a timely manner. An efficient corporate surveillance system should complement this through internal compliance programs and regulatory requirements either by the Company Commission and Securities Commission or its equivalent. In addition, well-trained law enforcement authorities and prosecutors should vigorously administer these laws whether they are potentially detrimental. In this regard, while sustainable enforcement against corporate crime is necessary to maintain strong deterrence and public trust in the financial markets, compliance should be treated as the measure

to boost internal security rather than a potential replacement for internal surveillance.

The liability of the corporations should not be restricted to the national jurisdiction, rather to safeguard the basic human rights like the right to life, the right to safe and healthy working conditions, the right to a safe and healthy environment, the right to receive compensation for injury and damage, the right to information and the right of access to justice by individuals and by groups; the liability must be imposed beyond the domestic jurisdiction and should include the responsibility for environmental contamination and restoration. Enforcement and compliance of such rights should also be upheld and maintained by the corporations and the states.

REFERENCES

- <https://www.ijlmh.com/wp-content/uploads/2019/04/A-Study-on-Corporate-Crime-in-India.pdf>
- <https://corporate.cyrilamarchandblogs.com/category/white-collar-crime/>
- <http://www.sascv.org/ijcjs/angira.pdf>
- <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/696380/corporate-frauds-analysis>
- <https://www.ssrn.com/2973719>
