

ANALYSIS OF DECRIMINALIZATION OF CORPORATE OFFENCES

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1. Definition of corporate offences:

Decriminalization of corporate offenses refers to eliminating or reducing criminal sanctions for certain types of corporate misconduct. It has been a topic of discussion and debate among legal scholars, policy makers, and society for many years. The objective of decriminalization is to differentiate between serious criminal activities and less severe regulatory violations, which can be resolved through civil penalties or administrative sanctions. This essay will delve into the concept of decriminalization of corporate offenses and the implications it has on the legal system and society as a whole.

Corporate offenses are committed when corporations violate statutory and regulatory requirements, such as tax laws, environmental regulations, anti-trust laws, and health and safety laws. These offenses are usually punishable by criminal law, which can result in imprisonment, fines, and other criminal sanctions. However, there are concerns that applying criminal sanctions to all types of corporate misconduct may be counterproductive or disproportionate, as the criminal justice system is not always equipped to deal with complex commercial disputes and regulatory violations. Moreover, criminalizing all corporate misconduct may fail to provide appropriate remedies to victims of corporate wrongdoing and to deter companies from engaging in less severe misconduct.

Decriminalization of corporate offenses aims to modify the current legal framework by redefining the scope of criminal liability for corporations. This could involve making certain types of corporate misconduct subject to administrative sanctions or civil penalties rather than criminal liabilities. For example, minor environmental violations like pollution might lead to administrative penalties rather than criminal charges. In cases of more serious misconduct, such as bribery, corruption, or fraud, the criminal law will remain applicable and enforceable.

There are several reasons why decriminalization of corporate offenses can be beneficial:

Firstly, it can reduce the burden on the criminal justice system by freeing up resources to focus on more serious and violent crimes.

Secondly, it can facilitate compliance with regulatory requirements as administrative penalties are less severe compared to criminal convictions, which can have far-reaching consequences for a company.

Thirdly, it can create a more proportionate system of justice by distinguishing between different types of corporate misconduct that are harmful to the public and require different degrees of punishment.

However, there are also potential downsides to decriminalization of corporate offenses. Critics of this approach argue that it might lead to a culture of impunity in which corporations are more likely to engage in wrongdoing due to the reduced risk of criminal liability. This can also lead to a decrease in public confidence in the legal system.

The, decriminalization of corporate offenses is a multifaceted concept. While it can reduce the burden on the criminal justice system and encourage more compliance by making penalties more proportionate, there are also concerns about the potential risks that it creates to less severe corporate misconduct. As a result, it is crucial to consider and implement such changes cautiously and strive towards finding a balance between criminal and civil laws to tackle corporate wrongdoing effectively.

2. Types of corporate offences

Corporate offences refer to unlawful actions or omissions that an organization may commit, which are contrary to legal requirements, regulations, or codes of conduct. These offenses can result in criminal and civil penalties, as well as damage to the reputation of the company. Here are some of the most common types of corporate offenses:

- A. Fraud:** This involves deliberate deception, dishonesty, or misrepresentation of information with the intention of benefiting the company or harming others. Examples of corporate fraud include misappropriation of funds, false financial reporting, insider trading, and Ponzi schemes.
- B. Corruption:** This refers to bribery or other illegal acts of influence on government officials, clients, or suppliers in exchange for favors or gains. Corporate corruption undermines fair competition, public trust, and economic growth. It can also involve money laundering, embezzlement, and kickbacks.
- C. Environmental offenses:** These involve violations of regulations designed to protect the environment and public health from hazardous activities. Common examples of environmental offenses include illegal waste disposal, pollution, and emissions. Companies are responsible for ensuring that they comply with environmental laws and regulations.
- D. Anti-trust violations:** These refer to unlawful practices that restrict competition in the marketplace, such as price-fixing, bid-rigging, and monopolization. These practices can harm consumers, suppliers, and other competitors and lead to reduced innovation and higher prices.
- E. Occupational health and safety (OHS) offenses:** These involve breaches of OHS regulations, which can lead to serious harm or injury to employees or other people on company premises. Common violations include inadequate safety measures, poor working conditions, and failure to provide necessary training.
- F. Intellectual property (IP) offenses:** These involve infringement of IP rights, such as patents, trademarks, or copyrights. Companies need to respect the intellectual property of others and protect their own IP assets from being stolen or misused.

Hence, the corporate offenses can have serious consequences for both the company and its stakeholders. It is important for companies to ensure that they comply with all legal requirements and ethical standards to avoid engaging in harmful practices that can damage their reputation and face legal sanctions. By adopting good corporate governance practices, companies can reduce the risk of committing unlawful activities and enhance their reputation and credibility among customers and investors.

3. Arguments for Decriminalization of Corporate Offences

Decriminalisation of corporate offences has been a topic of much debate among legal scholars, policymakers, and the general public. While some individuals believe that all corporate misconduct should be criminalised, others advocate for the decriminalisation of certain corporate offences. This essay is going to discuss the arguments in favour of decriminalising corporate offences.

Firstly, arguments for decriminalisation of corporate offences argue that criminalizing every corporate misconduct may result in a burden on the criminal justice system and lead to the focus being shifted away from more serious crimes like homicide, sexual assault, and drug offences. This argument is based on the notion that civil and administrative penalties, such as fines and revocations of licenses, can be sufficient in deterring and penalising less severe regulatory infractions committed by organizations. These penalties, when enforced properly, can provide a more efficient and quicker means of resolving violations of technical regulations, which are often too complex for criminal courts to interpret and adjudicate.

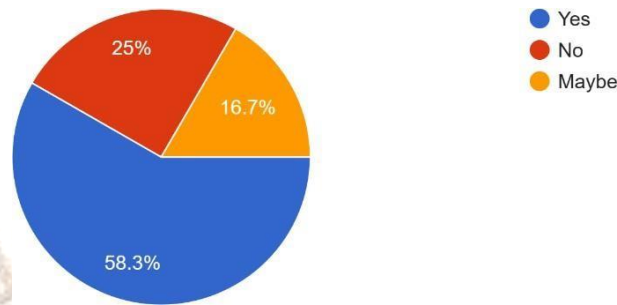
Secondly, decriminalisation of corporate offences may help to encourage more compliance with regulatory and legal requirements on the part of corporations. When criminal liability is the only means of punishing violations, it may create a "culture of fear" in which corporations are reluctant or hesitant to report potential wrongdoing or engage with regulators. This can be detrimental to corporate transparency and accountability.

Decriminalisation can help to establish an environment of cooperation between regulators and regulated industries, promoting more efficient and less adversarial interactions.

Thirdly, decriminalisation can create a more proportionate criminal justice system when it comes to corporate offences. Decriminalising certain violations can ensure that there is a fair and appropriate level of punishment for a particular offence. It can avoid cases where minor crimes warrant severe sanctions that are disproportionate to the offence committed and that would have a negative impact on the company and its employees.

Lastly, it can reduce the confusion around the principles of innocence and guilt as they relate to corporations. In the context of criminal justice, it is difficult to establish criminal liability for a corporation. The burden of proof is high, and it is unusual for a corporation to be charged and convicted. This raises serious questions about whether it is just or fair for corporations to be held criminally liable. Decriminalisation would create a system that distinguishes between serious and minor offences, thus defining the types of offences that should carry criminal penalties.

The arguments advocating for the decriminalisation of certain corporate offences provide compelling reasons for reassessing our present system of punishment. While some may argue that these types of offences are too serious to be treated as regulatory violations, the benefits of decriminalisation can mean more efficient regulatory outcomes, greater compliance with legal requirements, and more proportionate punishment for corporations.



Pie Chart No.4 – requirement of decriminalizing of corporate offences¹

¹ Annexure 4

The world in and around full of new and innovative technologies, even though there are regulations binding on the people, they do consciously or unconsciously commit the wrong. Some of the wrongs are harmful, not physically but in monetary terms. But when some wrongs that are not of that harm they should be shown some deficiency and leancy. And for that purpose there is requirement of decriminslizing of corporate offences.

4. Arguments against Decriminalization of Corporate Offences

The decriminalisation of corporate offences has been a controversial issue for years, with some advocating for a more proportionate approach to justice, while others maintain that certain punishments and regulatory systems must be applied consistently and uniformly to deter continued corporate misconduct. This essay is going to discuss the arguments against the decriminalisation of corporate offences.

One crucial argument against decriminalisation of corporate offences is that it may lead to a culture of impunity, where corporations take advantage of regulatory gaps or the blurred line between criminal and regulatory sanctions, resulting in an increase in illegal and harmful activities. When companies are aware that they will receive a lesser punishment than if they were criminally prosecuted, there may be a greater likelihood that they will continue to engage in illegal or unethical behaviour. Officials who do not want to be criminally charged may not inform regulators of fraud, abuse of power, or other conduct, as they may not want to get other employees involved or go through the stress and expense of a trial. The fear of severe criminal consequences may be the only deterrent that prevents unrestrained corporate misconduct.

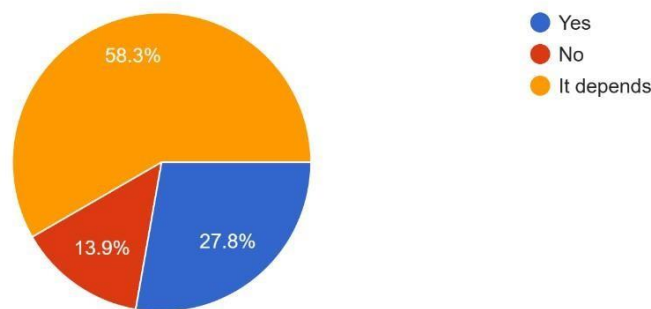
Secondly, some critics of decriminalisation argue that administrating less severe, administrative or regulatory sanctions, rather than criminal sanctions, for corporate misconduct may not be enough to bring about corrective measures or incentives for those who transgress the law. Criminal sanctions are intended to serve as both punishment and deterrence, which means they must be severe enough to convey a strong message, promote accountability, and comport with the seriousness of the civil infraction. In contrast,

regulatory sanctions, such as fines, suspensions, or restrictions, are often seen as a mere cost of doing business, sometimes cheaper than disclosing and avoiding the conduct that prompted them. The threat of criminal sanctions must also be present for corporations to know they are operating under scrutiny and must apply all necessary monitoring steps to prevent future missteps and avoid the tarnished reputation that comes with criminal convictions.

Another argument against the decriminalisation of corporate offences is that it may lead to the unfair treatment of individuals. When offences committed by corporations are decriminalised, the behaviour of white-collar offenders seems to be depreciated and belittled, rather than facing the same humiliation as most "street" criminals. The criminal law's primary role is to denounce unacceptable behaviour, regardless of the type of perpetrator or the ill-begotten gains. Corporate offenders are sometimes shielded from any dishonourable or unwanted attention compared to individual defendants who endure the discrimination and disfavour associated with criminal convictions.

Lastly, failing to criminalise certain corporate offences could create an incentive for companies to engage in illegal actions that, while officially decriminalised, harm others economically, socially, and otherwise. Firms may engage in behaviour that may be harmful if discovered, such as exploiting trade secrets, discriminating against minority employees, or avoiding taxes. Companies developing sophisticated methods to cover their tracks may use decriminalisation as a sort of roadmap for undetectable crimes, which can harm consumer trust, stifle the economy and violate basic moral principles.

Are there any potential benefits to Decriminalizing certain corporate offences?
36 responses



Pie chart no. 5- Potential benefits to decriminalize corporate offences

According to the research done by the researcher via interview as well as online questions circulated, the public opinion is that even though decriminalization take place it is upto the corporation as the opinion is it depends, i.e. the corporation can find some loopholes in the system for their easement. This is one of the points where the hypothesis of the researcheris been partially proved.

(a) Potential Drawbacks to decriminalization:

The decriminalisation of corporate offences is a contested topic that warrants a complete consideration of all pros and cons. It may provide a solution to alleviate the strain on the criminal justice system and contribute to more efficiency in regulatory enforcement. However, the risks of creating a culture of impunity, reducing the weight of wrongdoing, potential unfair treatment of individuals, and the potential for unchecked and harmful corporate behavior must be carefully considered. It is crucial to seek a balance and ensure

punishable actions are treated proportionally and justly in a manner that promotes corporate accountability, ethical behavior, and integrity.²

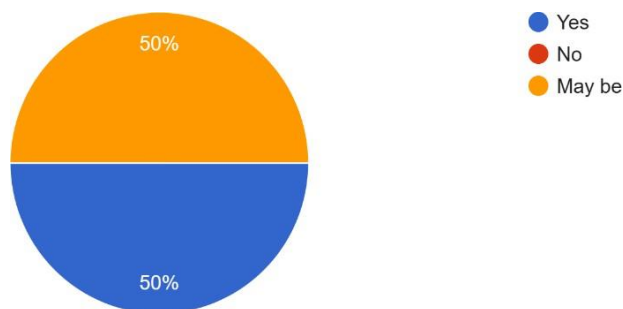
5. Implications of Decriminalization of Corporate Offences

The implications of decriminalizing specific corporate offenses can be both positive and negative. Some of the potential implications are:

- i.Reduced costs for corporations: Decriminalization can lower the costs for corporations by reducing the penalties and fines for specific offenses. This can lead to cost savings for corporations, which could translate into lower prices for products and services.
- ii.Limited deterrence: Decriminalizing some corporate offenses may limit the deterrence effect that criminal sanctions have on the behavior of corporations. With reduced penalties, corporations may be less likely to avoid certain practices that have been deemed harmful to the public.

² Appendix 4

- iii.Reduced government revenue: Decriminalization can also reduce revenue collections for the government in terms of fines and penalties collected from corporations. The government may have to find alternative ways to finance their activities or cut back on programs.
- iv.Increased compliance: Decriminalization may encourage corporations to become more compliant with regulations because of greater clarity on what is considered legal or illegal behavior.
- v.Preservation of corporate reputation: Decriminalization of certain offenses can help preserve a corporation’s reputation and avoid the negative publicity associated with criminal charges.
- vi.Negative perception: Decriminalization of certain corporate offenses can also lead to the perception that corporations are being given preferential treatment over individuals for similar charges.



Pie Chart No.6 – Impact of Decriminalization on the way corporates operate³

The implications of decriminalizing certain corporate offenses depend on the specific offenses in question, the level of enforcement of regulations and how the legal and the financial systems respond to the change. The impact of decriminalization may affect the corporation if they were at the adverse side and it would not impact the corporation if they were on the good path.

³ Appendix 4

6. Summary

Some notable cases related to decriminalization of corporate offenses include:

i. SFO v ENRC [2018] EWCA Civ 2006⁴:

This case involved the Serious Fraud Office's attempt to compel Eurasian Natural Resources Corporation (ENRC) to produce documents as part of an investigation into alleged fraud and bribery. The court ruled that documents produced during internal investigations conducted by law firms were protected by legal professional privilege, which limited the scope of the investigation.

ii. R v Skansen Interiors Ltd [2019] EWCA Crim 7⁵:

This case involved a construction company that had been charged with fraud in relation to its tax affairs. The court ruled that the company's actions were not sufficiently serious to warrant criminal prosecution and instead imposed a fine.

iii. USA v Hodge et al. [2020] UKPC 18⁶:

This case involved a group of individuals who had been convicted of various offenses related to insider trading. The court ruled that the individuals were not guilty of insider trading and that the law relating to insider trading was too broad and uncertain.

⁴ Paul Noble, *Mishcon de Reya, ENRC v SFO* {2018} Civ 2006: the court of appeal widens the scope of legal professional privilege, October 2, 2018, available at <https://www.mishcon.com/news/publications/tax>, last seen on 09/04/2023

⁵ R v Skansen Interiors Ltd, Southwark Crown Court (2018)

⁶ USA v Hodge et al. (2020)

Here are a few recent cases in relation to the decriminalization of corporate offenses in India:

1. In *Re:Expeditious Trial of Cases Under Section 138 of the Negotiable Instruments Act, 1881*, (2021) 4 SCC 305⁷ - In this case, the Supreme Court of India directed that cases related to dishonor of cheques be resolved expeditiously and that courts should not resort to coercive measures such as arrest and detention of the accused.
2. *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2019) 2 SCC 609⁸ - In this case, the Supreme Court of India held that willful default by a company should be treated as a civil offense rather than a criminal offense. The court held that criminal proceedings should be initiated only in cases where there is evidence of fraud or cheating.
3. *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17⁹ - In this case, the Supreme Court of India upheld the validity of the Insolvency and Bankruptcy Code, 2016, and held that the code provides for a resolution mechanism that is time-bound and effective. The court also held that the code does not violate the fundamental rights of the debtor or the creditor.
4. *State of Gujarat v. Utility Users Welfare Association*, (2020) 4 SCC 43¹⁰ - In this case, the Supreme Court of India held that the Gujarat Electricity Regulatory Commission does not have the power to impose criminal penalties for non-payment of electricity bills. The court held that such penalties should be imposed only as a last resort, and that civil remedies should be exhausted before resorting to criminal proceedings.

It is important to note that while these cases are related to decriminalization of corporate offenses, they do not necessarily involve a complete decriminalization of such offenses. The courts have taken a nuanced approach, and have held that criminal penalties should be imposed only in cases where there is evidence of deliberate or will full violations of the law.

⁷ (2021) 4 SCC 305

⁸ *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2019) 2 SCC 609

⁹ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17

¹⁰ *State of Gujarat v. Utility Users Welfare Association*, (2020) 4 SCC 43

The judiciary plays the major role in determining the corporate criminal liability as there are certain cases which shows what are the problems which judiciary faced in determining the criminal liability in corporation and what are its observation the below mentioned cases are being critically been analyzed. *Standard Chartered Bank and ors. V Directorate of Enforcement And ors*¹¹. The appellant went to the High Court of Bombay to contest the notices issued to them under Section 50 read with Section 51 of the Foreign Exchange Regulation Act, 1973. According to the appellant, Section 56 of the FERA Act prevented it from being prosecuted for the crime. The appellant filed an appeal against the Division Bench of the Bombay High Court's judgement from November 7, 1998, in which the appellant argued that because the FERA Act's Section 56(1)(i) stipulates that the minimum punishment for violating the provision is imprisonment for a

term that shall not be less than six months and a fine, no criminal proceedings can be brought against the appellant-company. Questions being asked right now include whether a corporation or other corporate entity might be held accountable for acts for which imprisonment is a necessary penalty and if, in the event that incarceration and a fine are both required, the court could only impose a fine on the guilty party.

Judgements

K.G. Balakrishnan, Arun Kumar, J., and D.M. Dharmadhikari¹² expressed the majority opinion, which read: "In every case where the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only." There were also citations to Craies on Statute Law and Maxim *lex non cogit ad impossibilia*, which said that the law must be observed primarily with regard to intent and not merely solely on interpretation. Furthermore, it is fair to conclude that the parliament intended for it to be modified in the unlikely event that events were impossible.

¹¹ AIR 2005 SC 2622

¹² Standard Chartered Bank & Ors., etc. Vs. Directorate of Enforcement & Ors., etc., Civil Appeal No. 1748 of 1999, May 5, 2005.

Analysis

B.N. Srikrishna, J. mentioned that legislative intent was what was important and that the construction of statute only advances the intent. The maxim '*lex non cogit ad impossibilia*', is also referred which conveys that the court cannot order the execution of an impossible event. Thus after this case it has been established that a corporate cannot claim immunity from punishment claiming that it does not possess the required mens rea for committing offences. The idea that a corporation cannot be made liable for its crime has been rejected since this case. *Sunil Bharti Mittal vs CBI*¹³

For anomalies in the issuance of licences in the 2G band and spectrum allocation, CBI ordered investigations into three businesses, Bharti Cellular Limited, Hutchison Max Telecom (P) Limited, and Sterling Cellular Limited, and filed charges against them before the judge. The judge ruled that in addition to the corporations themselves, the leading directors of the firm must also face individual charges. The main question was whether or not the theory of attribution could be used to determine if the company's accountability could be placed on the person or people in charge of its business.

Judgement and Analysis

The Court reiterated that the "Criminal Intent of the person(s) controlling company can be imputed to the company based on the principle of "Alter-ego", however, the reverse application of this principle is not permissible. If the company is accused, then the directors cannot be automatically assumed to be guilty and they can be prosecuted only if the evidence showcasing their malicious intent, roles and involvement in the crime is adequate or if the statute provides for specific vicarious liability of directors of the acts of the company by way of a legal fiction (deeming provision). Two directors were summoned as the directing will

and mind of the company but the judge reversed saying they were brought up by the magistrate without any incriminating role assigned to them. So, the case was dismissed.

¹³ (2015) 4 SCC 609

- Iridium India Telecom Ltd. v. Motorola Inc.¹⁴

When Iridium India Telecom Ltd. sued Motorola Inc., the issue of penalising a corporation was raised once more in front of the Supreme Court. According to Section 420 of the Indian Penal Code, the complaint alleged cheating and criminal conspiracy, and it was almost 35 pages long. The respondent's Board of Directors refused to accept the proposal after it was presented to them, and the appellant argued that this demonstrated the respondent's deceptive nature. However, the high court ruled that the Board of Directors of the respondent as a corporate body lacked the necessary mens rea to engage in the fraudulent act. Additionally, it was maintained that corporations must be held accountable for certain criminal actions under the laws of every state in the globe. The respondent disputed that the project's success was not guaranteed and that the respondent was not the controlling appellant. It stated that the appellant could not prove that the company's intents were dishonest since assurances were given to subject-matter specialists who were qualified to assess the project's dangers. The company did not have the required mens rea for the crime, according to the other defence.

Judgement

The Supreme Court reiterated the legal position on two counts:

(i) the scope of jurisdiction of the High Court in quashing criminal proceedings under Section 482 of the Criminal Procedure Code; and the fact that companies can be prosecuted for offences involving mens rea. The Honourable Supreme Court additionally concluded that Appellants were entitled to the chance to prove that Respondent and its representatives knew the claims were false at the time they were made. The High Court's ruling was overturned, and it was declared that a corporation would be held accountable for its crimes and could not claim immunity since it lacked the mens rea necessary to conduct crimes. The Supreme Court allowed the prosecution of the respondent setting aside the sentence given by the high court.¹⁵

¹⁴ (2011) 1 SCC 74

Civil or Criminal Punishments to Corporates -

When we talk about punishments for corporations which in most of the times are punished under the civil as well as under the administrative law even though corporate crimes are one of the most controversial issues. The penal statutes prescribing the punishments have not been able to make any distinction for the offence which could otherwise be the same for an individual and the corporation, The problem and matter with regards to punishment which came under scrutiny in the case of Assistant Velliappa Textiles Ltd and ors¹⁶ where the court observed the criminal liability cannot be imposed upon the corporations where the punishment for the offence also prescribes imprisonment. The Law commission of India in its 41st and 47th report did suggest the punishments for criminal liability which is either imprisonment or fine as in most cases the corporate should be fined in relation to the white collar crimes¹⁷ but, sadly the recommendation never get through even though we have many provisions under the Indian laws which deals with the matter of corporate crimes like fraud, bribery, insider trading etc. which in most cases are punished under civil regulation but no penal regulations are been incorporated which punish the company¹⁸.

The main issue which has been faced today is that corporations cannot be imprisoned as they were not been amended to any prosecution for a criminal offence as in most cases the corporates even though fine or compensation been paid which is one of the easiest ways to get away from any criminal prosecution or imprisonment the reasons are for corporations who are economically wealthy and continue to grow for them it not much to pay little compensation or fines in case of any violation of statutes and committing any crime however bad the it affect the society at large .

¹⁵ Ibid

¹⁶ AIR 2004 SC 86

¹⁷ Law Commission of India, 41st Report on Reform of Judicial Administration Pertaining to the Code of Criminal Procedure, 1973 (September 1969)

¹⁸ Akhil Mahesh, "Corporate Criminal Liability", National University of Advanced Legal Studies Kochi (2015) available at <https://www.lawctopus.com/academike/corporate-criminal-liability/> last seen on 14 march 2023

It was additionally worthy to say that our Parliament has additionally understood this issue associate degree projected to amend the IPC during this regard by together with fine as an alternative to imprisonment where corporations are involved in 1972. However; the bill was not passed by parliament.

There are certain mechanism or law mostly civil regulation which determine the liability of the corporation and punishments are given under section 45,63, 68,75(5),203 under the companies act but there are no effective mechanism which can punish or prosecute the corporation itself as most of the times only individuals who commit crimes or offence held liable and most of the cases of corporation are been dealt under these civil regulation as mostly they get away from any criminal prosecution or punishment which usually been given to criminal offender which shows the real problem in the current legal system.

Satyam scandal lifting up of corporate veil

Lifting up of corporate veil is a doctrine used to identify the real people who have committed the crime and claim immunity by using the company's name. The court will not allow the use of the corporate name and it will go through the process of lifting of corporate veil where all the names of the directors, members and shareholders should be identified and they will be prosecuted accordingly. This doctrine is divided into two theories: Alter ego and Instrumental theories. The alter ego theory gives that a distinction exists between the shareholders and the company while the instrumental theory finds out the methods in which the shareholders use the company for their personal benefits. The court does not easily issue orders to remove the corporate veil and only does when it becomes absolutely necessary.¹⁹

Case and Judgement

Satyam Computer Services was the fourth largest software firm in India before its infamous scandal. The infamous Satyam Scan first became visible to the public through a letter from the CEO himself to SEBI and later investigated in detail by CID and other departments. It was revealed that the balance sheet as on Sept. 30 2008 was heavily manipulated and was carrying fictitious cash and bank balance that did not exist. The books were overstated by 5000 to 6000 crores leading to inflated stocks that helped the management earn money. After the revelation, Ramalinga Raju was taken into police custody and the Raju brothers along with the CFO of the company, Srinivas Vadlamani have been arrested.

The above cases show the crimes which the corporation are committing and how much it is influencing the society at large mostly in negative way and violating the legal system. Also how the court faced difficulty in determining or attributing the criminal liability on corporations as they observe that the individual or corporation can only be held liable if there is sufficient evidence of the active role criminal intent the second was when the statute specifically imposes the liability. The court mostly attribute criminal liability on corporations based on the principles of vicarious liability and use the tool of mens rea and actus rea.²⁰

¹⁹,LexForti Legal News Network April 23, 2020, available at Satyam Scandal: The biggest issue revolving around Corporate Governance - LexForti last seen on 08-04-2023

Adequacy of Legal and Regulatory Measures Adopted To Control and Prevent the Problem

Adequacy of existing Legal mechanism

Law emerges from a society. Incorporating the social desires and international commitments, laws are designed in a society for the regulation of human behaviour, maintaining peace and order, protection of life, property and contractual rights, etc. Laws, even though is offering punitive actions like imprisonment and fine on being found guilty of violation of them, serve a far more necessary purpose. Defining and enforcing the laws in a society helps preventing and controlling the unlawful acts in them. Let's first initially explore how adequate are our current Indian legal system in serving to prevent and control the issue of corporate criminal liability.

Section 11 of the Indian penal code states the following:

“Person—the word “person” includes any Company or Association or body of persons, whether incorporated or not.”²¹, Also, natural person can be convicted of an offence as they possess mind which are one important thing in determining the crime Thus we are able to observe that IPC’s definition of a ‘Person’ includes corporations and companies so including them under the purview of law in case of a criminal liability. However, as we have a tendency to further explore, we find certain areas where company may not be held liable but only the officials involved. Companies Act 2013, is a regulatory document by Parliament of India that caters to incorporation of companies, company’s dissolution and responsibilities of company and its directors. The act replaced the companies Act 1956, after being approved by the President of India.

²⁰ Ibid

²¹ Indian Penal Code, 1860(Act 45 of 1860), s.11<https://www.iitk.ac.in/wc/data/IPC_186045.pdf> lastseen on 14 march 2023

Under sections 70 (5), 43, 68 and 203 of the companies Act which are dealing with corporate criminal liability talks about the officials accountable for the crimes in this. However, the company itself isn’t considered liable²².

Similarly, sections of the Indian penal code wherein imprisonment and fine or compulsory imprisonment is involved, liability on a corporation can't be established as the corporation being a non-living entity, can't be imprisoned. In the case of State of Maharashtra vs. Syndicate Transport²³, the court observed that it cannot impose just fine on the culprit where the mandatory punishment involved was both fine and imprisonment. Imposing simply a fine during this case was considered being deviating from the minimum prescribed punishment according to the law.

However, the Supreme Court solved the problem which arose because of the previous judgments by passing a radical judgment in the case of Standard Chartered Bank and Ors. etc. vs. directorate of enforcement and Ors.²⁴ The court observed and enforced that once imprisonment moreover as fine is that the prescribed obligatory punishment, the corporation cannot escape just because it can't be imprisoned. In this case, the corporate would be liable to pay the fine enforced upon by the court as a punitive measure against corporation’s liability. As against certain sections of the companies Act wherein the corporation itself wasn’t held accountable, we will also observe other statutes where corporations will be fined if found guilty under the sections like, Section 276-B of the income tax Act, Section 141 of the Negotiable Instruments Act, Section 7 of the essentials Commodities Act, etc.

²² Companies Act, 2013(Act 18 of 2013)

<<http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>>lastseen on 14 march 2023

²³ AIR 1964 BOM 197

²⁴ AIR 2005 SC 2622

Summary

The judicial approach to the decriminalization of corporate offenses has been varied, with different courts taking different positions on the issue. Some courts have taken a more lenient approach and argued that criminalizing corporate offenses can be excessive and disproportionate. They argue that other civil or administrative measures can be more effective in addressing corporate misconduct. However, some courts have taken a stricter approach and emphasized the need for criminal sanctions to deter corporate offenses and hold corporations accountable for their actions. They argue that criminalizing corporate offenses can help maintain public confidence in business and financial institutions.

Overall, the approach taken by courts on the decriminalization of corporate offenses is influenced by various factors, including the specific legal framework in place, the severity of the offense, and the impact on public interest and safety. Ultimately, it is up to governments and policymakers to weigh these factors and determine the appropriate level of criminalization for corporate offenses.

