

**A STUDY ON CORPORATE CRIMINAL LIABILITY UNDER ITS REGULATORY
AND LEGISLATIVE LANDSCAPE – A SOCIO ECONOMIC OFFENCES**

APPROACH

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*“Laws are like cobwebs, which may catch small fishes, but let wasps and hornets
breakthrough”*

- Jonathan Swift in his ‘Essay on the Faculties of the Mind’.

ABSTRACT

Two kinds of persons are recognized by law and those are natural person and legal persons. The two essentials of a legal person are the corpus and the animus. The corpus is the body into which the law infuses, the animus is the will or intention of a fictitious personality. As regards the criminal liability of a corporation, before the corporations were exempted from criminal liability, as a corporation has no mind of its own to establish its guilty intention necessary for a crime but that is not the case today with the emergence of socio economic offences and new legislative deal. They can now be punished for the offences of non-feasance and even misfeasance. This is so when a statutory requirement is not performed by a corporation or the same is performed badly.

Socio economic offences are those crimes which affect both the health and material welfare of the community as a whole or country’s economy and by and large are committed not by low class people but invariably the middle class and the elite of the community, most often during the course of their occupation i.e. trade, profession, commerce or business. The common types of deviances involved by corporations included tax evasion and tax avoidance, share pushing, malpractices in share market and administration of companies, monopolistic controls, usury, under invoicing and over invoicing, hoarding, profiteering, substandard performance of contracts of construction and supply, evasion of economic laws, bribery of corporations, election offences anti-trust violations and various other malpractices.

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The paper aims at bringing a vivid study on common forms of deviances indulged by companies amounting to socio economic offences, the evolutionary aspects of corporate criminal liability, effectiveness of regulatory and legislative landscape under general and special enactments in nutshell, glaring corporate deviances in India, contribution of relevant committees and such other relevant aspects.

KEYWORDS: Company, Corporate criminal liability, Offences by companies, Socio economic offences, Deviances, Special enactments etc

INTRODUCTION TO CORPORATE CRIMINAL LIABILITY:

Two kinds of persons are recognized by law and those are natural person and legal persons. Legal persons are also known as artificial, juristic or fictitious persons. Legal persons are real or imaginary being to whom personality is attributed by law by way of fiction where it does not exist in fact. Juristic persons are also defined as those things, mass of property, group of human beings or an institution upon whom the law has conferred a legal status and who are in the eye of law capable of having rights and duties as natural persons. Law attributes by legal fiction a personality of some real thing. A fictitious thing is that which does not exist in fact but which is deemed to exist in the eye of law. There are two essentials of a legal person and those are the corpus and the animus. The corpus is the body into which the law infuses the animus will or intention of a fictitious personality. The animus is the personality or the will of the person. There is a double fiction on a juristic person. By one fiction, the juristic person is create or made an entity. By the second fiction, it is clothed with the will of a living being. A legal person has a real existence but its personality is fictitious².

A Corporation is an artificial or fictitious person constituted by the personification of a group or a series of individuals. The individuals forming the corpus of the corporation are called its members. Corporate law stipulates that a company that has been incorporated in accordance with the law is a legal personality that is separate from its shareholder, directors, creditors and other constituency. This principle forms the foundation of the limited liability protection, offered to shareholders that encourage entrepreneurs to establish business and carry out trade that benefits the economy as a whole.

Vicarious liability: The old view was that as a corporation had no mind of its own, it could not be held responsible for torts. However, that view has been given up in modern times. As

² V. D. Mahajan, Jurisprudence and Legal Theory, Fifth Edition

regards the criminal liability of a corporation, it cannot have an guilty intention necessary for a crime as a corporation has no mind of its own. To begin with, corporations were exempted from criminal liability, but that is not the case today. They can now be punished for the offences of non-feasance and even mis-feasance. This is so when a statutory provision is not performed by a corporation or the same is performed badly. In these cases, punishment is usually by way of fine.

According to Keeton: In crime, the occurrence of three elements is necessary before liability can be properly attributed to the corporation:

1. The crime must be one in which it is not necessary to prove a guilty state of mind in the person charged.
2. The offence must be of a kind that the act or omission of the agent may also be said to be the act or omission of the corporation.
3. The punishment must be a fine, at least as an alternative, or some other punishment which may be inflicted on the corporation.

The liability of a corporation is as much logical as the liability of any other ordinary employer. A corporation is held responsible on the ground that it should not have selected careless and dishonest agents.

SOCIO ECONOMIC OFFENCES AND ITS EVOLUTION:

Socio economic offences are defined as those crimes which either affect the health and material welfare of the community as a whole or country's economy and by and large are committed not by low class people but invariably the middle class and the elite of the community, most often during the course of their occupation i.e. trade, profession, commerce or business. Sutherland named such crimes as White-collar crimes; others describe it as public welfare offence, regulatory offences, crimes of strict liability etc.

The fact is that the white-collar criminals are intelligent, stable, and successful and mend of high social status as compared with the ordinary criminals. Such crimes are committed in commercial world are indirect, anonymous, impersonal and difficult to detect. The rise of socio-economic offences in many countries coincided with the progress made in those countries in the economic and industrial fields (production and distribution of wealth). The two World Wars also contributed towards white-collar criminality in a substantial way. The

end of World War II almost coincided with the Independence of India and the emergence of an avowedly welfare state in the country.

Sutherland's publication of the book, 'White-Collar Crime', focused much of its attention on the crimes of businessmen and organizations, 70 of which were committed in the private sector and 15 in the public sector. It focused on the misconduct of many high-profile corporations including restraint in trade, misrepresentation in advertising, and infringement of patent, trademark and copyrights, unfair trade practices, frauds in business. He defined white collar crime as a 'crime committed by persons of respectability and high social status in course of their occupation'. For the first time, the definition of criminality shifted away from focusing and defining the crime, thereby included the different ways in which white collar crime can be committed. Sutherland wrote in '*Crimes and Corporation*' as follows: "*It is very clear that the criminal behavior of businessmen cannot be explained by poverty, in the usual sense, or by bad housing or lack of recreational facilities or feeble-mindedness or emotional instability. Business leaders are capable emotionally balanced, and in no sense pathological.*"

According to Santhanam Committee, the common types of deviances involved by corporations included tax evasion and tax avoidance, share pushing, malpractices in share market and administration of companies, monopolistic controls, usury, under invoicing and over invoicing, hoarding, profiteering, substandard performance of contracts of construction and supply, evasion of economic laws, bribery of corporations, election offences and various other malpractices. The Law Commission has also noted various factors responsible for the growth of white-collar criminality in India as follows: "*The advance of technological and scientific development is contributing to the emergence of 'mass society', with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms...*"³

The legal system defines white-collar crime broadly and encompasses a large array of frauds within its legal umbrella. The following violations are considered to be white-collar crimes: anti-trust violations, bank fraud, bankruptcy fraud, bribery/kickbacks, computer or internet fraud, consumer fraud, credit card fraud, economic espionage and trade secret theft, embezzlement, larceny, extortion, blackmail, financial fraud, forgery, health-care fraud, identity theft, public corruption, racketeering and so on. The aforementioned violations are

³ Twenty-ninth Report, Law Commission of India (1966)

not meant to be an exhaustive list as new schemes are constantly being developed and revised as technology and opportunities make themselves apparent. It may seem that the above violations are distinct and unrelated, but each has a common characteristic i.e. element of 'DECEIT', which the suspect uses to procure financial gains from an unsuspecting victim.

EMERGENCE OF ANTI-TRUST LEGISLATIONS IN INDIA:

Anti-Trust Legislations are that branch of law that deals with trust, cartels, combines and syndicates etc formed to combat competition or to raise prices or otherwise interfere with the freedom of trade to the detriment of honest businessmen or the consuming public. All over the world, one of the dominant economic themes in the last decade and a half has been the process of globalization and a progressive international economic integration of the world economy. Measures adopted by many countries are essentially designed to open competition in strategic sectors; such measures are part of tripod architecture with the three vertices, as Liberalization, Privatization and Globalization (LPG). In the pre-1991 reforms period, India's planned strategy and economic development stressed the broad policy objectives of i) the development of an industrial base with a view to achieving self-reliance and ii) the promotion of social justice, these are described as "Command-and-Control" economy. It is after i1991 reforms (LPG) that the said premise 'big becoming bigger is ugly' metamorphosed to 'big becoming bigger may not be handsome but certainly is not ugly'. The MRTP Act, 1969 was amended in 1991 as a part of the new economic reforms. With the restructuring of the MRTP Act through the 1991 amendments, the thrust thereof is on curbing Monopolistic, Restrictive and Unfair Trade Practices with a view to preserving competition in the economy and safeguarding the interest of consumers by providing them protection against false and misleading advertisements and or deceptive trade practices.

The experience in administering the MRTP Act, for about three decades since 1969, signify the deficiencies noted in the said Act, the difficulties that arose out of different interpretation which necessitated the need for a new law with appropriate amendment and legislative framework to handle anti-trust situations. The recommendations of the High Level Committee (Raghavan Committee) paved way for the enactment of the Competition Act, 2002. The Competition Act, 2002 aims at preventing 'abuse of dominance', 'anti-competitive agreements', combinations regulations' including merger, amalgamation, acquisition and other forms of anti-trust violations and also deals with 'competition advocacy'.

NEW LEGISLATIVE THINKING – REGULATORY LEGISLATIONS:

Article 39(b) and (c) imposes an obligation on the State regarding ownership and distribution of nations wealth and resources as follows, ‘the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.’ The above philosophy led to the various regulatory legislations, a breach of those regulations giving a tremendous fillip to white collar crime in India. The obligations imposed on the State regarding the ownership and distribution of national wealth and resources of the community, this philosophy led to various regulatory legislations, a breach of those regulations giving a tremendous fillip to white-collar criminality in India.⁴

Some of the regulatory legislations pertaining to the activities of the company/corporations are:

1. The Companies Act, 2013
2. The Reserve Bank of India Act, 1934
3. The Securities Exchange Board of India, 1992
4. The Securities Contracts (Regulation) Act, 1956
5. The Insurance Regulatory and Development Authority, 1999
6. The Foreign Exchange Management Act, 1999
7. The Monopolies Restrictive Trade Practices Act, 1969 (Repealed)
8. The Competition Act, 2002
9. The Prevention of Money Laundering Act, 2002
10. The Black Money (Undisclosed Foreign Income and Asset) Imposition of Tax Act, 2015
11. Benami Transaction (Prohibition) Amendment Bill, 2015 and so on

Apart from the above regulatory legislations, provisions under IPC, the basic Criminal Law containing specific offences relating to business or corporate (frauds including insider trading, money laundering etc) mainly dealt under: Misappropriation with regard to sale of securities – S. 403, Forgery – S. 463, Falsification of accounts – S. 477A, Dishonest misappropriation of property – S. 403, Criminal breach of trust – S. 405, Cheating – S. 415, Tax crimes and so on.

⁴ Some Statutes include: Essential Commodities Act, 1955; Industrial (Development and Regulation) Act, 1951; Imports and Exports (Regulation) Act, 1973; Central Excise and Salt Act, 1944; Income Tax Act, 1961; Customs Act, 1962 etc

PROVISIONS UNDER COMPANIES ACT, 2013:

Background of Companies Act, 2013:

While the liberalization phase that began in 1991 attempted to break away from the shackles of the previous socialist approach of company law, the new legislation brings the trend and reinforces some of the social aspects of corporate law. Since the early 1990's efforts had been underway to revamp the companies' legislation in India, several proposals were made and Bills drafted and presented in Parliament in the last two decades (especially in 1993, 1997, 2003), it was the appointment of an Expert Committee on Company Law in 2004 under the chairmanship of Mr. J.J. Irani ("Irani Committee) that initiated the shaping of the current legislation. The report suggested simplification of the law, and was indeed business friendly, but at the same time subscribed to stringent norms of corporate governance.

Satyam Scandal: In January 2009, the chairman of the company confessed to fraud to the magnitude of over US\$ 1 billion. This further triggered calls for strengthening corporate law and governance norms in India. The Companies Bill 2009 was referred to the Parliamentary Standing Committee on Finance under the chairmanship of Mr. Yashwanth Sinha. Based on the Standing Committee Report, (which emphasized in the backdrop of emerging trends in corporate scandal that evoked an outrage within the country, particularly against the corporate sector and the business community) on stricter controls through regulation and also emphasized the social responsibility of corporations. The Government introduced the Companies Bill 2011, following which the Companies Act 2013 was passed.

Fraud under the Companies Act, 2013:

"Fraud in respect of affairs of companies includes any act or omission, concealment of fact or abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive to gain undue advantage from or in the interest of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss". *Punishment for fraud* – S. 447 of Companies Act, 2013: Not less than six months and can be extended up to ten years and fine not less than the amount involved in the fraud, which can be extended up to three times of the amount involved in the fraud.

Special Regulatory Mechanism under the Companies Act, 2013:

- *Vigil Mechanism* – S. 177 – aims to provide adequate safeguards against victimization of employees and directors who avail of the Vigil Mechanism.
- *Risk Management Policy* – S. 134(3)(n) – it is the process of making and carrying out the decisions that will minimize the adverse effects of the accidental losses (threatening the existence) of a company.
- *Serious Fraud Reporting Office* – S. 211 empowers the central government to establish an office called Serious Fraud Investigation Office (SFIO) to investigate frauds relating to companies and initiate proceedings on receipt of investigation report from it.
- *Class Action Suit* (proposed by not yet notified by the Central Government) - S. 245 of the Companies Act, 2013 provides that certain members or depositors or any class of them are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.
- *Reporting by Auditor(s)* – S. 143(12) read with S. 143(15) of the Companies Act, and its Rules require an auditor of a company including branch auditor, cost accountant and company secretary in practice to report immediately to the central government in the course of the performance of their respective duties has reason to believe that an offence involving fraud is being or has been committed against the company by the officers or employees of the company.
- *Independent Directors Appointment* – S. 149(6) of Companies Act make a special provision for appointment of ‘Independent Director’ to certain companies and is required to report the concerns about unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy etc.

Offences and Penalties under Companies Act, 2013:

Offences to be Non-Cognizable:

- According to Section 439, Companies Act, 2013:
 - i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of Section 212 shall be deemed to be non-cognizable within the meaning of the said code.

- ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company or of a person authorized by the Central Government in that behalf.
 - iii) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.
 - iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.
 - v) Where the complainant is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.
 - vi) The above provisions shall not apply to any action taken by the liquidator of company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.
 - vii) The liquidator of a company shall not be deemed to be an officer of the company.
- Application of Fines, according to S. 446, the Companies Act, 2013: The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

GENERAL FEATURES OF THE SPECIAL ENACTMENTS:

‘Company’ means any ‘body corporate’ and includes a firm or other association of individuals. Most of the special enactment have section titled ‘*Offences by Companies*’- any person who at the time of the offence was committed, was directly in charge of, and was responsible to the company for the conduct of its business of the company, as well as the company, shall be deemed to be guilty of an offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this section shall render any such person liable to any punishment provided in this (relevant) Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by Body Corporate: (other than local authorities) every person at the time of commission of the offence was a director, general manager, secretary etc shall be deemed to be guilty of offences unless the offence was committed without his consent or connivance or he exercised due diligence to prevent the commission of the offence.

Liberal interpretation of Mens Rea: The liberal interpretation of penal provision with regard to socio economic crimes are at variance with the ordinary rules of construction of penal statutes which require strict interpretation and benefit of doubt, if any, must be given to the accused. Courts in India have given strict interpretation to the socio economic statutes which do not require any MENS REA either in the form of intention, or knowledge for committing an offence. The special enactments usually casts an absolute obligation regardless of scienter, bad faith (mens rea) eg. the Supreme Court while interpreting S. 7 of Prevention of Food Adulteration Act observed that ‘if you have sold any article of food contrary to any of the sub sections of S. 7 you are guilty and there is no more argument to it.’⁵ The Supreme Court in number of cases felt that the liberal interpretation must be given to penal laws dealing with social welfare legislation to see that the legislative object is not defeated. Basically the criminal laws are calculated to protect public health and the nation’s wealth.

Types of penalties: There are five types of penalties that have been contemplated under the Companies Act, 1956 /2013. They are: 1) Fine only. 2) Imprisonment or fine, 3) Imprisonment or fine or both, 4) Imprisonment and fine, 5) Imprisonment only. Other special considerations of corporate criminal liability include, vicarious liability, special rules of evidence, penalties, special powers, special provisions as to sanctions, provision for publicity etc.

“Offences by Companies” under some Special Enactments (Relevant Provisions):

1. The Air (Prevention and Control of Pollution) Act, 1981 – S. 40 (Offences by Companies)

⁵ Pyarali K. Tejani v. Mahadeo Ramachandra Dange

2. The Arms Act, 1959 – S. 33 (Offences by Companies)
3. The Biological Diversity Act, 2002 – S. 57 (Offences by Companies)
4. The Contempt of Courts Act, 1972 – S. 12(4) (Punishment for contempt of court)
5. The Copyright Act, 1957 – S. 69 (Offences by Companies)
6. The Depositories Act, 1966 – S. 21(Offences by Companies)
7. The Drugs and Cosmetics Act, 1940 – S. 34 (Offences by Companies)
8. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 – S. 9 (Offences by Companies)
9. The Drugs (Control) Act, 1950 – S. 14 (Offences by Corporations)
10. The Environment (Protection) Act, 1986 – S. 16 (Offences by Companies)
11. The Essential Commodities Act, 1955 – S. 10 (Offences by Companies)
12. The Food Safety and Standards Act, 2006 – S. 66 (Offences by Companies)
13. The Foreign Exchange Management Act, 1999 – S. 42 (Contravention by Companies.
14. The Income Tax Act, 1961 - S. 278B (Offences committed by companies, Hindu Undivided Family, firm) S. 278C (Criminal liability of Managing Director, Managing Partner, Karta of any such offence)
15. The Indecent Representation of Women (Prohibition) Act, 1986 – S. 7 (Offences by Companies)
16. The Information Technology Act, 2000 – S. 85 (Offences by Companies)
17. The Narcotic Drugs and Psychotropic Substances Act, 1985 – S. 38 (Offences by Companies)
18. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 – S. 26 (Offences by Companies)
19. The Prevention of Food Adulteration Act, 1954 – S. 17 (Offences by Companies)
20. The Protection of Civil Rights Act, 1955 – S. 14 (Offences by Companies)
21. The Standards of Weights and Measures Act, 1976 – S. 74 (Offences by Companies and power of court to publish name, place of business etc., of companies convicted)
22. The Transplantation of Human Organs Act, 1994 – S. 21 (Offences by Companies)
23. The Water (Prevention and Control of Pollution) Act, 1974 – S. 47 (Offences by Companies)
24. The Wild Life (Protection) Act, 1972 – S. 58 (Offences by Companies)

ENFORCEMENT MACHINERY:

Corporate law may be enforced either through the public enforcement apparatus or through private action. In public enforcement, the State (or an independent regulatory body) initiates proceedings against alleged violators of corporate law with a view to imposing civil or criminal penalties. Private enforcement consists of legal action by the victims of wrongdoing (who are private parties) to recover damages or obtain injunction by way of a civil suit. Despite the existence of substantial rules for civil liability and compensation and the presence of an elaborate court system, delays, costs and other inefficiencies, the civil liability and compensation of investor's losses have almost never been utilized to any meaningful extent in India as a tool for enforcing corporate law. Recognizing the need for private enforcement of corporate law, the Companies Act, 2013 has introduced a statutory shareholder class action mechanism. In order to overcome delays faced before the regular court system, the legislation proposes the establishment of a specialized body in the form of the National Company Law Tribunal ("NCLT") that will hear shareholder class actions and other corporate law disputes.

Enforcement Agencies:

- Central Bureau of Investigation (CBI) - investigations of fraud and cheating more than one state.
- Serious Fraud Investigation Office – Ministry of Corporate Affairs, multi-disciplinary, it detects, prosecutes and recommends for prosecution of WCC/Frauds
- Department of Revenue (CG) – various agencies to fight economic crimes:
- Central Economic Intelligence Bureau (monitors economic offences and co-ordinates /cooperates with international agencies i/r to economic offences)
- Directorate of Enforcement (for foreign exchange and money laundering)
- Central Bureau of Narcotics (for drug related offences)
- Directorate General of Anti-evasion (Central excise related offences)
- Directorate General of Revenue Intelligence (customs, excise and service tax related offences)
- Securities and Exchange Board of India (SEBI) – deals with securities fraud and aims to protect the interests of the investors in securities, promote the development of the securities market, and regulate the securities market among other objectives.
- Central Vigilance Commission – supervises corruption cases in governmental departments
- Directorate of Enforcement (DOE) –Ministry of Finance - enforcement of FEMA and PMLA

- Economic Intelligence Council (EIC) – Ministry of Finance – to facilitate co-ordination among the enforcement agencies dealing with economic offences

Securities Exchange Board of India (SEBI):

The Securities Exchange Board of India Act, 1992 was enacted with the objective to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. SEBI among many of its functions, regulating or registering and regulating the stock exchange or any other securities market; the working of stock broker, sub-broker, share transfer agents etc; the working of depositories, foreign institutional investors, credit rating agencies; the working of venture capital funds, prohibiting fraudulent and unfair trade practices, prohibiting insider trading, regulating substantial acquisition of shares and takeover of companies etc.

GLIMPSE OF CORPORATE MALPRACTICES IN INDIA:

- ❖ The Vivian Bose Commission, which inquired into the affairs of the notorious Dalmia-Jain group of companies, the third biggest in the country, held them responsible in different degrees for fraud, mismanagement, manipulation of accounts, destruction of records, personal gain at the expense of the investing public, avoidance of taxes and a number of irregularities and violations of trust.⁶ Ramakrishna Dalmia, the then chairman of Dalmia Jain Airways and the owner of Bharat Insurance Company admitted in a written confession that he had embezzled Rs. 2.2 crore from his insurance company.
- ❖ Mr. M.C. Chagla, who probed into the working of the Mundhra concerns (big business magnet involved in sales of fraudulent shares to LIC by a Calcutta base Marwari Businessman named Haridas Mundhra), made the following observations about the business tycoon: “Mundhra is a flamboyant personality and a financial adventurer whose only ambition is to build up an industrial empire by dubious means.” The reports of the Company Law Administration record about 124 prosecutions against Mundhra and companies owned or controlled by him between the years 1958 and 1960 in various courts in the country, out of which 113 ended in conviction.⁷

⁶ Vivian Bose Inquiry Commission Report (1965)

⁷ Third and Fourth Annual Reports on the Working of the Indian Companies Act (1956), Govt. of India

- ❖ The Santhanam Committee, appointed to report on Corruption in the country found that during the five-year period from 1958 to 1962, licenses valued at Rs. 70 million were obtained or wrongfully utilized by nearly 700 firms through misrepresentation, forgery or other breaches of the export or import control regulations.⁸
- ❖ Food and drug adulteration including production of spurious drugs is the most atrocious crime committed by businessmen as it can cause irreparable damage to the health or even lives of innocent citizens. The spurious drugs trade flourishes in India to a colossal extent that is due to, the greed of the manufacturers' ignorance of the poor consumers who go in for cheap medicines from unauthorized dealers and the shortage of genuine goods.⁹
- ❖ Securities Malpractices: Harshad Mehta and his associates initiated a securities scam by diverting funds of about Rs. 5,000 crore from the banks to stockbrokers between April 1991 to May 1992, then the scam was exposed, the stock markets crashed and Mehta was arrested and banned from trading in the stock market.
- ❖ Following Mehta's case, during 2001 (Stock market share scam) Ketan Parekh, a chartered accountant, India's biggest stock broker indulged in manipulation in stock market, he conned banks and exchanges like the Allahabad Stock Exchange and the Calcutta Stock Exchange, and bought shares in fictitious names to manipulate the share prices in companies.
- ❖ India's one of the biggest corporate scandal affecting Indian-based company Satyam Computer Services in 2009 in which Satyam Company's chairman Ramalinga Raju confessed that he manipulated accounts to show increased profits margins from 2003 to 2008. He along with nine others were pronounced guilty in the Satyam Case.
- ❖ Violations of companies law, money laundering and violations of foreign exchange regulations by Vijay Mallya and 18 others (Kingfisher Airlines case) costing loss of Rs. 9000 crore to the public exchequer is yet another glaring instance of malpractices by company.
- ❖ Instances of other malpractices pertaining to anti-trust violations are also highlighted by various committees such as Mahanobolis Committee, Monopolistic enquiries committee, Raghavan Committee, Wanchoo Committee etc.

CONCLUSION:

⁸ Santhanam Committee Report on the Prevention of Corruption (1964)

⁹ Pharmaceutical Enquiry Committee, Ministry of Commerce and Industry, 1954

Socio economic offences comprising of new form of criminality, is usually carried on by upper and middle class people and is committed in the course of their occupation or business. Such crimes are spread all over the world at different degrees, its incidence and magnitude differs among developed, developing and under developing countries. The traditional laws of crimes as established in Indian Penal Code, 1860 was found insufficient to cope with the new varieties of crimes which have sprang up with the aforesaid development and changes in the conditions of living conditions and therefore there have been a host of statutory laws enacted during 20th and 21st centuries. In spite of numerous regulatory legislations neither the socio economic offences in general nor could corporate crime in particular be curbed or brought under control. This is because the inherent nature of such offences involves 'deceit' or 'greed' which has no end in it and the 'victimless offences'. Greed is an ongoing problem in the corporate world and it is this individual greed that fuels the fire for fraud. Regulations need to be in place to help minimize the chance that such crimes can be prevented.

Despite the best attempts by government legislations, there is no real solution for fraud other than awareness by consumers, government, employees, corporations, and executives. The main reason why corporate crimes are perceived as non-violent and as less serious than street crimes is because the public does not have a clear perception of such white-collar crime and its consequences. From the discussion above, it is pertinent to note that unlike traditional offences, the white-collar crimes especially the corporate crime results in huge economic setback to the nations' economic development especially – tax evasion, foreign exchange violations, money laundering, frauds, security scams, anti-trust violations etc; nevertheless it is to be viewed seriously. Now that innumerable legislation is in place, even corporate criminal liability also been clarified from corporate personality point of view, all it needs is to ensure efficient and effective implementation of regulatory laws, enforcement mechanism, victim assistance, corporate ethics etc to be equipped accordingly. The unsuccessful conviction rates of corporate crimes in India reveal that, only with the collapse of capitalist society the problem of criminality can be solved. The real cause of increasing corporate crime rate can be equated to economic prosperity, i.e. people manipulate to escape from conviction and detection which is mainly due to public apathy. Thus fraud is a never ending phenomenon that will require society's sustained attention.