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Corporate Criminality: A threat to the society and Challenge for the Criminal Justice System

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Abstract

Corporate criminality is a global and relatively new phenomenon in the world which leaves deep impact on the lives of the individuals and the society at large. This necessitates the dissection of this concept to come with findings to deal with corporate crimes. It poses potential challenge to the criminal justice system in many ways. Therefore, this treatise seeks to discuss corporate crimes from the global perspective with its nature, causes and it will try to identify the effects of this sort of crime. Corporations are more powerful than the states because of their huge capital. Corporations control the government and wield power over it for the purpose of fulfilling its object which is maximization of profits at any cost. In this venture corporations do away with the ethics, moral values and the laws. Corporate powers are not confined within a particular territory; multinational corporations function in different countries and thus spread crimes worldwide. But corporate crimes, being different from the ordinary crimes, are not easily detectable. Hence, punishment of the corporate criminals appears to be a big challenge for the government, especially of the developing countries which are the most vulnerable to, and affected by, the corporate crimes. The task of the research is to analyze the facts and cases of corporate crimes in different parts of the world. It will discuss the means through which corporate crimes have been confronted with so far and the theories developed to fight corporate crimes. The essay will try to find out the measures necessary to stop corporate crime.

Key words: Corporation, Corporate Crime, Criminal Justice system, Society, Challenges.

1. Introduction

Corporate criminality is a global problem. Therefore it becomes necessary to look at the variety of activities attributable to corporations that in recent years have been recognized as particularly harmful to society.¹ As part of the industrial (or corporate) era, corporate criminality is inherent in contemporary society.² Large-scale corporations are the main defining force on the globe. They are

¹See White-Collar and Corporate Crime, p. 331.

highered.mheducation.com/sites/dl/free/0078026423/971173/ch12.pdf

² Holler Branco, Daniela, "Towards a New Paradigm for Corporate Criminal Liability in Brazil: Lessons from Common Law Developments", A Thesis Submitted to The College of Graduate Studies and Research in Partial Fulfillment of the Requirements for the Degree of Masters of Laws In the College of Law, University of Saskatchewan, Saskatoon, p. 42. ecommons.usask.ca/bitstream/handle/10388/etd.../d_branco.pdf

everywhere, in almost every aspect of our lives.³ Of the world's biggest 100 economies, 51 are corporations, not countries. As the most powerful institution of our time, the multinational corporation dominates not only global economics, but politics and culture as well. But the mechanisms of corporate control and the details of corporate abuses have remained largely hidden from public perception-until now.⁴ The objective of the research is not to determine the criminal liability of a corporation, which is taken for granted, rather it emphasizes on the corporate crimes be these committed by the corporation *per se* or by the individuals within the corporation. In both the cases it's corporate crime if the crime is of a particular nature. The individuals cannot use the legal doctrine as a shield to evade the criminal liability. Corporations and the individuals will both be liable for the corporate crimes. Normally the board of directors, the managing director and perhaps other superior officers of a company carry out the functions of management and speak and act as the company.⁵ Viscount Dilhorne explained that in his view "a person who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company" would be the directing mind and will of the company. Lord Pearson underscored this reasoning adding that the constitution of the company concerned should be taken into account in order to indicate if the person is in a position of being identifiable with the company. This essay portrays an overall picture of the corporate criminality in the various parts of the globe including Bangladesh with special reference to the role of the justice system to prevent it. It describes how the corporate demon has appeared as a potential threat to the society and accomplishing crimes in disguise. It recommends the necessary steps to be taken to prevent corporate criminality. Corporate hypocrisy revealed in different prosecutions are considered to be more devastating than many ordinary crimes for its far reaching impact. It has been seen that the corporations have amassed profits at the cost of the lives of the people. Hence, discussing these sorts of crimes under a different head namely 'corporate crimes' has appeared crucial. It is required to fight these crimes socially. So, the people have to be aware about these crimes and deal with the corporation and its men cautiously and be vigilant about the corporations which would not be possible without categorizing it separately from the ordinary crimes.

2. Understanding corporate criminality

It is argued that corporate crime is committed by higher ranking officers. Corporate crime refers to those crimes committed by members of an organization to benefit the organization.⁶ Corporate crime occurs when, for example, fraud is being committed on behalf of an organization; that is the crime is being committed to benefit the business.⁷ Corporate crime is a type of white collar crime.⁸ Edwin Sutherland introduced the latter concept to describe criminal activity by persons of high

³ *ibid*, p. 1.

⁴ <http://www.amazon.com/Corporate-Predators-Mega-Profits-Attack-Democracy/dp/1567511589>.

⁵ Denning L.J, in *H.L. Bolton (Engineering) Co. Ltd. v. T. J. Graham & Sons Ltd.* [1957] 1 Q.B. 159 at 172.

⁶ Gottschalk, Petter, Glasø, Lars, "Corporate Crime Does Pay! The Relationship Between Financial Crime and Imprisonment in White-Collar Crime", *International Letters of Social and Humanistic Sciences* Vol. 5 (2013), p. 65

⁷ *ibid*.

⁸ Simpson, Sally S., *Corporate Crime, Law, and Social Control*, (2002), 1st Edition, Cambridge University Press, p. 6

social status and respectability who use their occupational position as a means to violate the law.⁹ Corporate illegality is not pursued for individual benefits but rather for organizational ends. Thus in order to maintain profits, manage an uncertain market, lower company costs, or put a rival out of business, corporations may pollute the environment, engage in financial frauds and manipulations, fix prices, create and maintain hazardous work conditions, knowingly produce unsafe products, and so forth.¹⁰ Previously scholars and practitioners had made little distinction between the types of crimes committed on the streets and those committed by powerful individuals in the corporate boardroom. Early criminologists were especially concerned with the crimes of lower-class individuals and invariably ignored the behavior of those in the middle and upper classes.¹¹ Corporate crime means crime committed by the company through its directors and other responsible persons for the purpose or benefit of the company. It also denotes the crimes committed by the corporate personnel for the personal gain and benefit using the position in the company and which is related to corporate affairs. In such case if the employee is of lower rank, he and his bosses will be held accountable and it will engage the company on the agency principle. It is the duty of the company (as it is abstract, it means the management of the company) to oversee the activities of the employees. But this is corporate crime in narrow sense. In wide sense, corporate crime denotes that crime which is committed by the highest executives of the company using the company framework. But the act must be of particular nature. For example, if one corporate personnel commits murder out of personal enmity, only he will be liable and it is not considered as a corporate crime. The company is not liable and it does not have to face any trial and punishment. But not so in making adulterated food, medicine, involvement in corruption by the employee for the corporate purpose. In that case the company will be liable and fined and the employees will be punished. On the question of separate corporate entity the company is liable for its actions and for the actions of the employees, but in case of fraud the employees will be liable as well. The Sociologist Edwin H. Sutherland published the first academic study of corporate crime in 1949, *White Collar Crime*. His study of 70 non-financial corporations found that in total they had been convicted of 980 criminal and civil charges, for an average of 14 convictions per corporation.¹² A company is a legal person capable of being prosecuted for most criminal offences. However, the very concept of corporate crime and the type of conducts that should be considered corporate crime are also problematical aspects of corporate criminal liability. Geis and Meier characterize the task of defining corporate crime as “an intellectual nightmare.”¹³ Corporations have become dangerous criminals.¹⁴ Corporations become perpetrators of crime when managers or employees commit financial crimes within the context of a legal organization.¹⁵ If a corporate official violates the law in acting for the

⁹ Sutherland, Edwin, *White Collar Crime*, (New York: Dryden Press, 1949)

¹⁰ *ibid*, p.7.

¹¹ Friedrichs, David. 1996. *Trusted Criminals: White Collar Crime in Contemporary Society*. (New York: Wadsworth Publishing Company), p. 3.

¹² See Etzioni, Amitai and Mitchell, Derek. 2007. “Corporate Crime”. In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 188.

¹³ See Geis and Meier cited in David O. Friedrichs, “White Collar Crime and the Definitional Quagmire: A Provisional Solution” (1992) 4 *Journal of Human Justice* 6 at 6.

¹⁴ Holler Branco, above note 2, p. 1.

¹⁵ Gottschalk, Petter, “White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises”, 2010, Universal Publishers, p. 17.

corporation it is considered a corporate crime as well.¹⁶ Corporate crime typically occurs in large, complex business organizations. Corporations operate based on a complex hierarchy of positions, ranging from a board of directors, executives, corporate divisions, and individual employees¹⁷ Edwin Sutherland, who provided the first scholarly insight into the wrongdoing of corporations, originated the concept of white-collar crime. Subsequent scholars have distinguished white collar crime, committed by individuals, from corporate crime, committed by business organizations.

2.1 Corporate liability standard

The historical background of the criminal liability of corporations has its genesis in the ascription of criminal liability to other antecedent collective entities such as clans, tribes, cities, churches, old enterprises and other groups.¹⁸ There is no obstacle in the criminal law jurisprudence whatsoever to impose criminal sanction on a corporate since it can have a mind of its own and also an environment wherein crime is nurtured.¹⁹ It is widely recognized that the notion of a legal person is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.²⁰ Therefore, in order to prevent a legal person from committing a criminal offence, the imposition of criminal liability upon executives or persons responsible for the activities²¹ of a legal person is necessary. Despite so many disasters, the law was reluctant to impose criminal liability upon corporations for a long time. This was for basically two reasons that are²²: That corporations cannot have the *mens rea* or the guilty mind to commit an offence; and that corporations cannot be imprisoned. Now, it is well settled that a corporate can be held liable for committing offences that require *mens rea* as now it has been recognized that a corporate can have a *mens rea*. Generally, corporations may be held criminally responsible for the illegal acts of its employees if such acts are related to and committed within the course of employment.²³ A corporation's will is declared through its representatives and its business is carried out through its representatives. The punishment of corporate crime is based on the doctrine of 'Respondent Superior', whereby agent's conduct is imputed to the corporation. A corporation may be held criminally liable for the acts, omissions, or failures of an agent acting within the scope of his

¹⁶ *ibid*, p. 16.

¹⁷ Coleman, Katherine, "Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance", *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 189.

¹⁸ Holler Branco, above note 2, p. 9.

¹⁹ Singhvi, Angira, "Corporate Crime and Sentencing in India: Required Amendments in Law", *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p.3.

²⁰ <http://www.icclr.law.ubc.ca/Publications/Reports?FergusonsG.PDF>, Viscount Haldane cited in Gerry Ferguson, *Corruption and Corporate Criminal Liability*.

²¹ executives of a legal person means representatives, directors, managers or any persons who are responsible for the operation or the business of a legal person or entitled to declare the will or decision of such legal person.

²² *Zee Telefilms Ltd. v. Sahara India Co. Corporation Ltd.*, 2001 (3) *Recent Criminal Reports (Criminal)* 292; *Motorola Inc. v. UOI*, 2004CrLJ1576.

²³ Singhvi, Angira, "Corporate Crime and Sentencing in India: Required Amendments in Law", *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p.3.

employment. Corporate criminal liability did not exist long before.²⁴ In legal terms, a corporation is an unnatural person.²⁵ Since corporations are considered to be purely incorporeal legal entities, they do not possess any mental state and the only way to impute intent to a corporation is to consider the state of mind of its employees. The theory encompasses a simple and logical method of attributing liability to a corporate offender: if corporations do not have intention, someone within the corporations must have it and the intention of this individual as part of the corporation is the intention of the corporation itself.²⁶ Courts in the United States, where the theory is widely used, have developed a three-part test to determine whether a corporation will be held vicariously liable for the acts of its employees. First, the employee must be acting within the scope and course of her employment.²⁷ Secondly, the employee must be acting, at least in part, for the benefit of the corporation, yet it is irrelevant whether the company actually receives the benefit or whether the activity might even have been expressly prohibited. Thirdly, the act and intent must be imputed to the corporation.²⁸ The requirement that an employee must be acting within the scope of his or her employment is met if the employee has actual or apparent authority to engage in the act in question.²⁹ Actual authority exists when a corporation knowingly and intentionally authorizes an employee to act on its behalf.³⁰ In *New York Central Railroad*,³¹ the first Supreme Court case holding a corporation criminally liable, the corporation was convicted of violating the Elkins Act where a general and an assistant traffic manager paid rebates for shipments of sugar. The agents acted within the scope of actual authority because they were authorized to set up freight rates. Therefore, they acted within the scope of authority conferred upon them by the corporation. In

²⁴ See Podgor, Ellen S., “A New Corporate World Mandates A “Good Faith” Affirmative Defense”, *American Criminal Law Review*, Vol. 44, No. 4, 2007, p. 1537

²⁵ Gottschalk, Petter, “White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises”, 2010, Universal Publishers, p. 16.

²⁶ Holler Branco, above note 18, p. 1.

²⁷ See *N.Y. Cent. & Hudson River R.R. Co. v United States*, 212 U.S. 481, 491-495 (1909) (finding corporation liable because it acts only through its agents or employees whose knowledge and purpose may be attributed to the corporation); *United States v. Photogrammetric Data Serv.*, 259 F 3d 229, 242 (4th Cir. 2001) (holding that a corporation can act through the conduct of its agents).

²⁸ See *In re Hellenic Inc.*, 252 F.3d 391, 396(5th Cir. 2001) (stating that the imputation of knowledge is a creature of necessity); *United States v. One Parcel of Land*, 965 F. 2d 311, 316 (7th Cir. 1992) (stating agent’s knowledge of illegal act may be imputed to corporation if agent was “acting as authorized and motivated at least in part by an intent to benefit the corporation” (citing *Zero v. United States*, 459 U.S. 991 (1982))).

²⁹ See *United States v. Investment Enter Inc.*, 10 F. 3d 263, 266 (5th Cir.1993) (stating that a corporation is criminally liable for the unlawful acts of its agents, provided that the conduct is within the scope of the agent’s authority, whether actual or apparent); *Meyers v. Bennet Law Offices*, 238 F. 3d 1068, 1073 (9th Cir 2001) (rejecting fact that employee acted outside scope of authority because employee had at least apparent authority to take actions).

³⁰ See *New Hampshire v. Zeta Chi Fraternity*, 696 A. 2d 530, 535 (N.H. 1997) (stating actual authority exists when “the principle explicitly manifests its authorization for the agent to act”) (citations omitted).

³¹ *N.Y. Cent. & Hudson River R.R. Co.* See Joseph Vining, “Corporate Crime and the Religious Sensibility” (2003) 3 *Punishment & Society* 313 at 315.

United States v. Investment Enters., Inc., the company was convicted of violating obscenity laws where the corporation's president conspired to transport obscene videos in interstate commerce. The president's unlawful acts could be imputed to the corporation because he was an "undisputedly authorized agent."³² These Courts have found that an employee's act can bind the corporation even where the corporation has implemented policies prohibiting the behaviour. When an employee's conduct is contrary to the company's compliance policies and specific directives, the company can still be held liable.³³ The company can prove that it has established corporate policies in an effort to reduce crime, but this does not prevent a court from finding it criminally liable. The existence of an effective compliance policy will not provide an absolute defence from criminal liability.³⁴ A company may in many ways be likened to a human body. It has a brain and a nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.³⁵ Generally, the guilty mind can be identified with the board of directors, the top officers of the corporation, those who are delegated responsibility, and those that have duties of such responsibility that their conduct may fairly be assumed to represent the policy of the corporation.³⁶ Corporations are living organisms that create their own ways of working, acting and making choices. The board of directors, managers and other employees are, at the same time, distinct from the corporation, yet also highly influenced by and part of the culture that is inherent in each corporate environment. Corporations have their own identity, separate from their members, and this fact alone makes it possible to attach blame and censure to them.³⁷ The corporation as a whole is the transgressor when illicit profits are channeled into its coffers rather than pocketed by executives.³⁸ Legally, the idea of holding the corporation criminally liable is not a universally supported idea. There is some case law to support the concept of a "juristic person" when considering criminal behavior perpetrated by the corporation, but other white-collar crime experts are adamant that "corporations do not kill people, people kill people." Ultimately, a person

³² *Investment Enters., Inc.*, 10 F. 3d 263, 266 (5th Cir.1993)

³³ See *United States v. Portac Inc.*, 869 F 2d 1298 (9th Cir. 1989) (affirming company's conviction although supervisor of agent who committed infraction had expressly told agent that company did not permit violations of law) (citing *United States v. Hilton Hotels Corp.*, 467 F. 2d 1000, 1004 (9th Cir. 1792)); *United States v. Automated Med. Labs., Inc.*, 770 F. 2d 399, 407 (4th Cir. 1985) ("The fact that many of [employees'] actions were unlawful and contrary to corporate policy does not absolve [defendant] of legal responsibility for their acts").

³⁴ Dan K. Webb et al., "Understanding and Avoiding Corporate and Executive Criminal Liability," (1994) 49 Bus Law 617 at 624 cited in Matthew E. Beck & Matthew E. O'Brien, "Corporate Criminal Liability (annual white collar crime survey)" (2000) 37 American Law Review 261 at 268, n.37.

³⁵ Denning L.J, in *H.L. Bolton (Engineering) Co. Ltd. v. T. J. Graham & Sons Ltd.* [1957] 1 Q.B. 159 at 172.

³⁶ Holler Branco, above note 2, p. 86

³⁷ *ibid*, p. 58.

³⁸ Etzioni, Amitai and Mitchell, Derek. 2007. "Corporate Crime". In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 187-188.

will be held responsible for the actions of the corporation. If an agent of the corporation committed an offense while in the course of his/her duties and for the benefit of the corporation, the principal can be held liable and convicted of a criminal offense, not the corporation itself.³⁹ A corporation is liable for the actions of its agents whenever such agents act within the scope of their employment and at least in part to benefit the corporation. The theory that has evolved is simple and seemingly logical: a corporation, being merely a person in law only, and not a real one, can act only through its employees for whom it should be held responsible.⁴⁰ It “is not necessary that the employee be primarily concerned with benefiting the corporation, because courts recognize that many employees act primarily for their own personal gain.”⁴¹ A corporation can be held liable for agents no matter what their place in the corporate hierarchy⁴² and regardless of the efforts in place on the part of corporate managers to deter their conduct.⁴³ When agents of a corporation use the corporate infrastructure or assets to commit a crime meant to boost general profits and benefit shareholders, the corporation as a whole can legitimately be held as the culprit.⁴⁴ Thus, it is proved that the criminal law jurisprudence relating to imposition of criminal liability on corporations is settled on the point that the corporations can commit crimes and hence be made criminally liable.⁴⁵

2.2 Corporate crimes defined

One problem with corporate crime is defining it. The term corporate crime can be defined as crime committed either by a corporation (for example, a business entity having a separate legal

³⁹ Barnett, Cynthia, The Measurement of White-Collar Crime Using Uniform Crime Reporting (UCR) Data,

U.S. Department of Justice, Federal Bureau of Investigation, *Criminal Justice Information Services (CJIS) Division*, p.6

⁴⁰ Weissmann, Andrew, A New Approach To Corporate Criminal Liability, *American Criminal Law Review*, Vol. 44, 2007, P. 1319.

⁴¹ Hyewan Han & Nelson Wagner, *Twentieth Survey of White-Collar Crime: Corporate Criminal Liability*, 44 Am. Crim. L. Rev. 337, 342-43 (2007) (citing as examples *Cox v. Adm’r U.S. Steel & Carnegie*, 17 F.3d 1386, 1404 (11th Cir. 1994); *United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 407 (4th Cir. 1985); and *United States v. Bainbridge Mgmt., L.P.*, Nos. 01 CR 469-1, 01 CR 469-6, 2002 WL 31006135 at *4 (N.D. Ill. Sept. 5, 2002)).

⁴² Corporate criminal liability has been predicated on the actions of low-level employees, including salespeople, manual laborers, truck drivers, and clerical workers. *E.g.*, *United States v. Dye Construction Co.*, 510 F.2d 78, 82 (10th Cir. 1975) (superintendent, foreman, and backhoe operator); *Tex.-Okla. Express, Inc. v. United States*, 429 F.2d 100, 102 (10th Cir. 1970) (truck driver); *Riss & Co. v. United States*, 262 F.2d 245, 250 (8th Cir. 1958) (clerical worker); *United States v. George F. Fish, Inc.*, 154 F.2d 798, 801 (2d Cir. 1946) (salesman).

⁴³ *See, e.g.*, *United States v. Twentieth Century Fox Film Corp.*, 882 F.2d 656, 660 (2d Cir. 1989) (“We agree with the District Court that Fox’s compliance program, however extensive, does not immunize the corporation from liability when its employees, acting within the scope of their authority, fail to comply with the law and the consent decree.”).

⁴⁴ Etzioni, Amitai and Mitchell, Derek. 2007. “Corporate Crime”. In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 187.

⁴⁵ Singhvi, Angira, “Corporate Crime and Sentencing in India: Required Amendments in Law”, *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p. 17.

personality from the natural persons that manage its activities) or by individuals that may be identified with a corporation or other business entity or by their agents against members of the public, the environment, creditors, investors or corporate competitors.⁴⁶ As a subcategory of white collar crime, corporate crime has been defined in many ways. Perhaps the simplest definition is that offered by Braithwaite. Corporate crime is the conduct of a corporation or of employees acting on behalf of a corporation, which is proscribed and punishable by law.⁴⁷ In criminology, corporate crime refers to crimes committed either by a corporation (i.e., a business entity having a separate legal personality from the natural persons that manage its activities), or by individuals acting on behalf of a corporation or other business entity. Corporate crime is an abuse of power by capital.⁴⁸ The terms corporate crime, white collar crime, organizational crime and occupational crime are often used interchangeably. Although close in meaning, these expressions do not suggest the same thing.⁴⁹ Corporate crime involves offences committed by companies or their agents against members of the public, the environment, creditors, investors or corporate competitors.⁵⁰ Corporate crime can be understood as a category of organizational crime. Organizational crime refers to the criminal conduct and activities of a wide range of organizations. Because a corporation is a kind of organization, corporate crime would be included in this broader class of crimes. Corporate crimes can be understood as criminal activities engaged in by corporations for the corporations' benefit as a whole.⁵¹ According to sociologist David Friedrichs, corporate crimes are "illegal and harmful acts committed by officers and employees of corporations to promote corporate and personal interests."⁵² Similarly, sociologist David Simon refers to corporate crime as "acts of economic domination."⁵³ Corporate crime, defined as offences committed by corporate officers and employees on behalf of and for the benefit of a legitimate business organization, lies at the core of broader concepts such as white-collar or economic crime.⁵⁴

2.3 Corporate crimes identified

Corporate crimes are numerous; however, more difficult than the search for a proper definition of corporate misbehaviour is the classification of the kinds of acts that can be considered corporate crime. The list cannot and should not be circumscribed. Corporate crimes would be any act

⁴⁶ Grabosky, Peter and Braithwaite, John, Corporate crime in Australia, *t r e n d s & i s s u e s* in crime and criminal justice, Australian Institute of Criminology, June 1987, p. 2.

⁴⁷ Braithwaite, John, Corporate crime in the pharmaceutical industry, (London; Routledge and Kegan Paul, 1984), p.6.

⁴⁸ Simpson, Sally S., Corporate Crime, Law, and Social Control, (2002), 1st Edition, Cambridge University Press, p. 6.

⁴⁹ Geis and Meier cited in David O. Friedrichs, "White Collar Crime and the Definitional Quagmire: A Provisional Solution" (1992) 4 Journal of Human Justice 6 at 6.

⁵⁰ Grabosky, Peter and Braithwaite, John, p.2.

⁵¹ Holler Branco, above note 2, p. 45.

⁵² Freidrichs, David. 1996. Trusted Criminals: White Collar Crime in Contemporary Society. (New York: Wadsworth Publishing Company), p. 40.

⁵³ Simon, David, Elite Deviance, 7th Edition, Boston, Allyn and Bacon, 2002, p. 36.

⁵⁴ See Walburg, Christian, "The Measurement of Corporate Crime: an Exercise in Futility", in The Routledge Handbook of White-Collar and Corporate Crime in Europe edited by Judith van Erp, Wim Huisman, Gudrun Vande Walle, Routledge, Oxon, New York, 2015, p.25.

committed by corporations that are punished by the State.⁵⁵ Corporate crimes may be categorized under different heads. Some examples of corporate crimes that affect consumers and general public are fraudulent advertising, misleading sales behaviour; false labelling of products; manufacture or distribution of dangerous products; and selling goods at inflated prices, increased tax bill because of corporate tax avoidance schemes, violation of licensing restriction, environmental offences⁵⁶ such as air and land pollution, as well as depletion of scarce resources. Corporate crimes also affect the workers of the corporation when it does not comply with the safety measures. Edwin Sutherland's definition of white collar crime also is related to notions of corporate crime. In his landmark definition of white collar crime he offered these categories of crime: Misrepresentation in financial statements of corporations, Manipulation in the stock market, Commercial bribery, Bribery of public officials directly or indirectly, Misrepresentation in advertisement and salesmanship, Embezzlement and misappropriation of funds, Misapplication of funds in receiverships and bankruptcies, corporate fraud, Environmental destruction, antitrust violation. Historically, much of the focus on corporate crime has been on large corporations with many investors, but small corporations have also been charged with their share of corporate wrongdoing. Especially prominent in the media have been stories of nursing homes, doctors' offices, and pharmacies defrauding the government out of Medicaid and Medicare payments.⁵⁷ Poor sanitation in food processing plants, the large scale adulteration of meat products and the false claims of medicine advertisements, war profiteering, defense procurement fraud, avoiding incorporating safety features into automobiles in order to reduce costs,⁵⁸ environmental crimes are some instances of corporate criminality in the 20th century. There are Companies and security Offences involving management practices which, through design or negligence, result in a company's going into liquidation, thereby victimising share-holders and creditors. New paradigm of corporate crime emerges like corporate killing, for instance: using poor quality of material in building dams which would soon collapse thereby dislocating and even killing inhabitants around the area or the labourers themselves. Crimes committed by the pharmaceuticals are beyond reckoning and it requires an individual paper to discuss those. The marketing of an unsafe drug can cause crippling deformities in tens of thousands of bodies. Now corporate criminality has become widespread and evolved into a complex global issue.

2.4 Factors leading to corporate crimes

Like other ordinary crimes there are different factors behind the commission of corporate crimes. Bonger saw the capitalist economic system and economic conditions as a major cause of crime. A capitalist society teaches people to become rich as the principal end in life and therefore teaches

⁵⁵ Clinard, M.B., Yeager, P.C., *Corporate Crime* (New York: Free Press, 1980), p. 16.

⁵⁶ The most serious case of industrial pollution involved the deaths of between 3,000 and 5,000 residents in Bhopal in India in 1984, following the release of methyl isocyanate, which was widely held to be the result of the company's neglect of safety rules. Wildlife and fish may also be endangered. In one incident in 1996, a British water company was prosecuted following a chemical leak which killed 33,000 salmon.

⁵⁷ Etzioni, Amitai and Mitchell, Derek. 2007. "Corporate Crime". In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 190.

⁵⁸ The case of defective Ford Pinto, that was prone to exploding in rear-end collisions, was one of the most flagrant examples of an auto company's knowing of a car's safety problems but choosing not to fix them.

bourgeois business people to make profit even to the detriment of those with whom they do business.⁵⁹ There are two things regarding the commission of corporate crimes which are commission of crime for the first time and recurrence of such crime. There are factors behind these two categories. Sutherland noted that corporate criminals have a high rate of recidivism, their illegal behavior is widespread, and those individuals who violate the law do not always lose status among their associates.⁶⁰ This shows the peculiarity of the corporate criminals and the related motivations. As advancement in information and communication technologies has made the world borderless, corporate activities have become global through network systems, thus making commission of corporate crime more sophisticated and complicated.⁶¹ Corporate crimes are becoming more and more part of the international setting. This is mainly due to the phenomenon of globalization. With the rising of a new economic paradigm, corporations have found in developing countries the perfect place to commit illegalities. These kinds of crimes are called transnational crimes, and most of them occur in developing countries.⁶² Developing countries are particularly vulnerable to corporate criminality as they usually lack proper regulation and infrastructure to control the activities of corporations.⁶³ Human beings are inclined to crime in whatever form or pattern it is. Now it is in the corporate form. The objective is to gain more money and thus becoming more powerful. Some things facilitate the commission of the corporate crimes. Business school education not only fails to improve the moral character of a student, it actually weakens it.⁶⁴ Penalties available at law tend to be modest, and those actually imposed in the event of conviction fall far short of the maximum. Sometimes corporate crimes are not considered as crimes at all. This factor encourages the potential corporate criminals to commit those crimes. In this way the number of corporate criminals is increasing. There has been inadequate attention to corporate crime problems which requires special knowledge in different fields like business and finance, economics, law, criminology, sociology, psychology, political science etc.⁶⁵ Corporations are not willing to provide information regarding its affairs. Many things are kept secret. Scholars of criminal behavior generally agree that corporate criminals are rational actors. Based on the rational-actor model, corporate criminals do not commit crimes based on need or vengeance but rather to gain power and profit either for themselves or for their corporation.⁶⁶ Firms engage in corporate crime to improve their financial performance.⁶⁷

⁵⁹See Huisman, Wim, Van Ero, Judith, Vande Walle, Gudrun, Beckers, Joep, "Criminology and White Collar Crime in Europe", in *The Routledge Handbook of White-Collar and Corporate Crime in Europe* edited by Judith van Erp, Wim Huisman, Gudrun Vande Walle, Oxon, New York, 2015, p.7.

⁶⁰ See Simon, David, "Elite Deviance", 7th ed. Boston: Allyn and Bacon, 2002. p. 116.

⁶¹ Sudti-autasilp, Bhornthip, *Corporate Crime And The Criminal Liability Of Corporate Entities In Thailand*, Resource Material Series No.76, 137th International Training Course Participants' Papers, p. 94.

⁶² Michael J.Gilbert & Steve Russel, "Globalization of Criminal Justice in the Corporate Context" (2002) 38 *Crime, Law and Social Change* 211.

⁶³ Holler Branco, above note 2, pp. 50-51.

⁶⁴ Bradshaw, Della, "Aspen Survey: most business school programs tend to transform concerned consumers into corporate consultants", the financial times, April 8, 2002, p. 16.

⁶⁵ See N. Pontell, Henry and Geis, Gilbert, *International Handbook of White-Collar and Corporate Crime*, 2007 Springer Science+Business Media, LLC, p. xii.

⁶⁶ Simpson, Sally, "Corporate Crime, Law, and Social Control", Cambridge: Cambridge University Press, 2002. 9-10.

Theories of Anomie and Strain explained by sociologists like Emile Durkheim, help explain the motives of corporate criminals.⁶⁸ According to Durkheim, individuals perceive an unlimited amount of success that they can achieve, emphasizing monetary success and individual prestige and crime is motivated by the desire for more wealth and power.⁶⁹ Corporate executives are thrust into a world where attaining higher profits is the chief concern of the profession. As leaders of their companies, executives have a responsibility to act in the interest of their shareholders and seek to maximize profits at all costs.⁷⁰

3. Corporate Crimes Everywhere

There is corporate crime in all types of industry and business organization.⁷¹ There have been innumerable instances of corporate crime throughout the world especially in the developed world. The statistics of corporate crime is appalling with its gigantic effect which threatens rule of law and good governance. But officially recorded corporate crime represents only the tip of a large iceberg.⁷² Corporations with its enormous power have surpassed the government and the state. These institutions are now virtually controlled by the corporate hands. Everything is run following the standard set by the corporations. Even the human minds are dictated in this way. A peculiar and noteworthy characteristic of corporate criminals is their ability to commit crimes across the limits of national borders.⁷³

3.1 USA

In USA, Large corporations were found to be the chief violators, and a few particular industries (pharmaceutical, automotive) were the most likely to violate the law.⁷⁴ Eli Lilly & company, the pharmaceutical manufacturer, was fined \$25,000 for a guilty plea to a misdemeanor charge for failing to inform the government of four deaths and six illness related to its arthritis drug Orflex. Though the company was charged with only a misdemeanour, the drug was linked to at least 26 deaths in the United States and even more from its sale overseas.⁷⁵ In 1991, corporate crime cost the American consumer \$260.06 billion, six thousand times less than the amount taken in all bank robberies that same year and forty times more than the amount taken in all street crime.⁷⁶ The president and vice-president of Beech-Nut Nutrition Corp. systematically orchestrated the

⁶⁷ Gottschalk, Petter, "White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises", 2010, Universal Publishers, p. 18.

⁶⁸ Coleman, Katherine, "Controlling Corporate Crime: An Analysis of Deterrence Versus Compliance", *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 189.

⁶⁹ See Stephen, Marks. "Durkheim's Theory of Anomie" *The American Journal of Sociology* 80 (1974), pp. 330-331.

⁷⁰ Pearce, Frank, and Tombs, "Law, and Class: Contextualizing the Regulation of Corporate Crime", *Social and Legal Studies* 6, 1997.

⁷¹ Slapper, G. and Tombs, S., (1999) *Corporate Crime*, Harlow: Pearson Education, p. 50.

⁷² Gobert, J. and Punch, M. (2003) *Rethinking Corporate Crime*, London: Butterworths, p. 12.

⁷³ Holler Branco, above note 2, p. 50.

⁷⁴ See *White-Collar and Corporate Crime*, p. 331.

higher.ed.mheducation.com/sites/dl/free/0078026423/971173/ch12.pdf

⁷⁵ Shenon, Philip, "Report says Eli Lilly failed to Tell of 28 Deaths," *The New York Times*, august 27, 1985, p. A16

⁷⁶ Simon, David, "Elite Deviance", 7th ed. Boston: Allyn and Bacon, 2002. p. 91.

adulteration of purportedly pure apple juice for babies, and its shareholders reaped the benefits. Data drawn from 178 corporate offenders in federal courts during the mid-1980s show that the average monetary harm per offense committed was \$565,000. In contrast, the average loss per burglary and per larceny during this time period was \$1,000 and \$400 respectively.⁷⁷ In recent years, many of the major pharmaceutical companies have been accused for withholding information about the negative side effects of drugs they have marketed.⁷⁸ The Enron case is one of the most elaborate and high-profile cases of corporate crime in American history, and exemplifies the need for tougher regulation to better prevent corporate crime.⁷⁹ In 2000, the internet played a key role in the largest criminal insider trading case in American history.⁸⁰ On March 14, 2000 the Securities and Exchange Commission (SEC) filed charges against nineteen individuals accused of trading insider information about U.S. and Canadian companies in an internet chat room. The accountancy firm Deloitte and Touche estimated the cost of ‘tax dodging’ between 1976 and 1996 at around £2000bn, the equivalent of six years of government expenditure. Tax evasion takes place on a global scale through the use of offshore financial centres with the notorious company Enron having been revealed as avoiding US 409 million in taxes over five years. Bernard (“Bernie”) Madoff, former chairman of the NASDAQ stock exchange and a large securities firm, has been convicted of carrying out the largest Ponzi scheme in U.S. history—perhaps world history—with losses to investors that might exceed \$100 billion. Allied Chemical admitted responsibility for 940 misdemeanor counts of discharging toxic chemicals into the Charles River in Virginia, thereby causing 80 people to become ill.⁸¹ At the end of 2009, 592 corporate fraud cases were being pursued by FBI field offices throughout the United States, several of which involved losses to public investors that individually exceeded \$1 billion. Corporate fraud includes Falsification of financial information, Self-dealing by corporate insiders etc. The Imperial Food case illustrates how corporate crime can affect the workers. A fire in a plant run by Imperial Food in North Carolina claimed twenty-five lives. Investigation revealed that the plant had no alarms or sprinkler system and the emergency exits were locked.⁸²

⁷⁷ Mark A. Cohen, “Corporate Crime and Punishment: A Study of Social Harm and Sentencing Practice in the Federal Courts, 1984-1987,” *American Criminal Law Review* 26 (1989): 605-660.

⁷⁸ See for example, Mahler, Jonathan, “The Antidepressant Dilemma.” *The New York Times Magazine*, November 21, 2004, p. 59; Masters, Brooke A., “Two Agencies Probe Merck’s Handling of its Vioxx Drug”, *The Washington Post*, November 9, 2004, p. A6.

⁷⁹ Coleman, Katherine, “Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance”, *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 201.

⁸⁰ “The Great Chat Room” case is considered the largest case of criminal insider trading based on the number of people who allegedly made illegal trades and the number of business deals for which inside information was stolen;

John Freeman and John Labate. “19 Charged in 8.4m Dollar Insider Trading Case.” *Financial Times*, March 15, 2000.

⁸¹ See White-Collar and Corporate Crime, p. 332, highered.mheducation.com/sites/dl/free/0078026423/971173/ch12.pdf.

⁸² Stephen E. Brown & Chau-Pu Chiang, “Defining Corporate Crime: A Critique of Traditional Parameters” in Michael B. Blakenship, ed., “Understanding Corporate Criminality: Challenges and Issues” in *Understanding Corporate Crime* (New York: Garland Publishing, 1993) 29 at 43.

3.2 Australia

Treasury's 1985 Draft White Paper estimated revenue losses of \$3 billion per year arising from tax fraud in Australia. Hundreds of deaths and tens of thousands of serious injuries occur in Australian workplaces each year. An unknown, but significant, proportion of these arise from violations of occupational health and safety laws. The 1981 meat substitution scandal threatened an export market worth \$1 billion per year. Illegal price fixing arrangements in the building industry in one capital city helped add an estimated \$30 million in construction costs during the late 1970s. The Australian Medical Association estimated in 1981 that the cost of fraud and over servicing by medical practitioners had reached \$100 million per year. Corporate Affairs Commissions throughout Australia are deluged with cases involving companies in liquidation which are unable to pay 50 cents in the dollar to creditors. The principals of many of these companies incurred debts which they had neither the expectation nor the intention of paying. The Balanced Property Trust collapsed in December 1983. Some 5000 investors, including many pensioners lost an estimated \$50 million. In the late 1970s, a businessman was the chief administrator of a large tax avoidance scheme. He became a director of more than 410 companies eventually stripped to avoid at least \$33.7 million in tax. In 1984 he was sentenced to two years imprisonment. In 1982 a South Australian factory inspector left instructions to place a guard around an unguarded conveyor belt. The employer failed to heed the inspector's instructions, and a worker had his leg caught in the unguarded conveyer. The leg was later amputated in hospital. The company was fined \$250. In 1983, over 10 tonnes of oil spilled into Botany Bay from an Australian Oil Refinery pipeline. It was the company's fifth oil spill in seven years. A fine of \$300 was imposed. In 1984, a second hand car dealer in South Australia sold nine vehicles without a license, and wound back the odometers of five cars to make them more attractive to prospective purchasers. On one vehicle, he reduce the odometer reading by 76 000 kilometers and realized a \$900 profit. The dealer was fined a total of \$1400. In 1984 the Queensland government closed down the Suimin instant Chinese food factory when the Health Minister reported that 'even the cockroaches in the factory had contracted salmonella poisoning'. In 1983, Bishopsgate Insurance went into liquidation, with a total deficit of over \$18 million. Millions of dollars had been invested, and lost, in the highly speculative gold futures market. The principal of the company left Australia and has not been seen since. Perhaps the most trenchant criticisms that have been leveled against Australian regulatory agencies is that they are inefficient at best, and moribund at worst. Part of this may be explained by lack of political leadership. In the current climate of economic uncertainty, most Australian governments have been unwilling to jeopardize economic recovery by antagonizing or intimidating business.⁸³

3.3 Bangladesh

Bangladesh, being a developing country, is considered to be a safe haven for corporate crime. There have been manipulations of the stock market in the recent past in Bangladesh. Small investors have been looted by the syndicate. Sometimes the corporate employees bribe the government authorities to get services and to establish their business in a particular area. Sometimes bribes are given many soft names like hadia, gift, kharach pati, bokhshish etc. as if those are not crimes. Profits mongering corporate people do not possess any ethics. In many aspects now everything can be 'managed' by money. It is not difficult for the rich people to evade the law. Corporate crime in Bangladesh appears in the form of widespread corruption. Moreover, the events of Rana Plaza and

⁸³ Grabosky, Peter and Braithwaite, John, *Corporate crime in Australia, trends & issues in crime and criminal justice*, Australian Institute of Criminology, June 1987, p. 4

Tazreen Garments claimed the lives of thousands which are definitely Corporate criminality affecting the own employees. Investigative agencies are not well equipped in knowledge and procedures to investigate corporate corruptions and file cases. Prosecutors and the legal system lack understanding of the complexities involved in financial crimes. Lack of know-how, interagency cooperation and inbuilt corruption within the agencies has resulted in a virtual free reign for the perpetrators. Overall, social moral and ethical standards have deteriorated to a level that such criminals are looked at with admiration. Sometimes they are treated like heroes or royalty. There is no history of exemplary punishments so far.⁸⁴

3.4 Thailand

The most serious corporate crime in Thailand is financial and banking crime. In 1997, Thailand faced a critical financial crisis which caused serious damage to the country. Its impact was far greater than that of ordinary crimes.⁸⁵ Corporate crime in Thailand usually relates to economic crime; in another words when a corporation commits a crime, it usually violates economic laws.⁸⁶ At present, there are various kinds of economic crime occurring in Thailand. Examples of economic crime are crimes in relation to intellectual property, commerce, banking and finance, environment and public health. However, according to the statistics of the Royal Thai Police, economic crime in Thailand is mostly crime in relation to commerce and finance and banking. It is said that from 1993 to 2003 the loss in capital markets and financial markets were 50,000 million baht. Out of this number, 40,000 million baht was lost in the financial market. From 1992 to 2002, there were 46 cases filed in relation to banking and financial crimes; 27 cases were filed under the Commercial Banking Act and 19 cases were filed under the Act on the Undertaking of Finance Business. The total amount of loss was 42,678.1 million baht.⁸⁷

3.5 Brazil

The Shell case in Brazil is an example of criminal behaviour of corporations. In the seventies, the production of aldrin, diedrin and endrin by Shell Chemical Company was banned in the US, when it was detected that these organochlorine pesticides were carcinogenic and related to DDT. In 1977, a subsidiary of Shell Chemical in Brasil, the “Shell Química do Brasil,” started to produce these same pesticides - aldrin, dieldrin and endrin, three of the 12 POPs condemned by the Stockholm convention - at the Recanto plant, in a residential area of the city of Paulínia in the state of São Paulo. The sale of these agricultural toxins was banned in Brazil in 1985, but production for export continued until 1990. In 1993, when Shell was selling various of its unites to Cyanamid, an environmental inspection was conducted in the Recanto plant. The inspection reported not only contamination of the land and of the river Atibaia but also a toxicological exam showed that 80 percent of the residents of the nearby area presented varying degrees of chronic diseases because of

⁸⁴ Rashid, Mamun, “Combating Financial Crimes in Bangladesh”, The Daily Star, Vol. 5, Num 1037, May 03, 2007. www.prp.org.bd/Media/3May2007.pdf

⁸⁵ Sudti-Autasilp, Bhornthip, Corporate Crime And The Criminal Liability Of Corporate Entities In Thailand, Resource Material Series No.76, 137th International Training Course Participants’ Papers, p. 94.

⁸⁶ *ibid*, p. 98.

⁸⁷ See Sudti-Autasilp, Bhornthip, Corporate Crime And The Criminal Liability Of Corporate Entities In Thailand, Resource Material Series No.76, 137th International Training Course Participants’ Papers, p. 99.

the contamination of the area. Shell faces a lawsuit, but still has not been held criminally responsible. The Thalidomide Scandal and the Ford Pinto case are notorious instances of corporate crime against the consumer.

4. Socio-economic implications of corporate crimes

Socio-economic implications of corporate crimes are destructive. What may be seen as primarily economic harms also have emotional effects.⁸⁸ Fraud victims report feelings such as bitterness and anger, depression, general health problems and loss of work.⁸⁹ They may blame themselves and feel let down by a breach of trust. Not only does fraud lead to broken dreams, it also closes off opportunities. Frauds can destroy happiness permanently, just as readily as any other crime such as mugging or a more serious burglary, because victims know that they have supplied funds or goods voluntarily and because the loss of their financial cushion makes meaningless all their lifelong savings and sacrifices. At one level, corporations develop new technologies and economies of scale. These may serve the economic interests of mass consumers by introducing new products and more efficient methods of mass production. On another level, given the absence of political control today, corporations serve to destroy the foundations of the civic community and the lives of people who reside in them.⁹⁰ In the modern day world, the impact of activities of corporations is tremendous on the society. In their day to day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the category of crimes.⁹¹ Due to their disguise the corporate criminals are not recognized in the society as criminals. Rather they are considered respectable persons of the society. However, the losses and harms resulted from corporate crimes are greater than those of ordinary or street crimes, yet the public perception about the corporate criminals are positive. Society hates and resists the ordinary criminals, though they love and adore the corporate criminals because of their high social status and financial stability. But sometimes it can be seen that when a corporate criminal is exposed with his heinous crimes the perception of the society is changed. However, this does not affect the other corporate criminals who are not exposed yet. The total impact of corporate crime is greater in terms of cost than impact of all individual crimes together.⁹² The corrupted group of people associated with the corporate criminals has stronger voice than the righteous people. Not only do consumers, employees and members of the general public bear the cost of corporate crime, but honest business men and women suffer

⁸⁸ Croall, Hazel, "Victims of White-Collar and Corporate Crime", In P. Davies, P. Francis, & C. Greer (Eds.), *Victims, crime and society*. (pp. 78-109). London: SAGE Publications Ltd., p. 90.

⁸⁹ Titus, R. (2001) 'Personal Fraud and Its Victims', in Shover, N. and Wright, J. P. (2001) *Crimes of Privilege: Readings in White-Collar Crime*, Oxford: Oxford University Press, pp. 57-67.

⁹⁰ Mokhiber, Russell and Weissman, Robert, "*Corporate Predators: the Hunt for Mega-Profits and the Attack on Democracy*", Common Courage Press, 1999.

⁹¹ Singhvi, Angira, "Corporate Crime and Sentencing in India: Required Amendments in Law", *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p.2.

⁹² Grabosky, Peter and Braithwaite, John, *Corporate crime in Australia, trends & issues in crime and criminal justice*, Australian Institute of Criminology, June 1987, p. 1

economic disadvantage at the hands of those competitors who break the law.⁹³ Well-publicized scandals in major corporations, such as Enron and WorldCom, have raised public awareness of the economic, societal, and personal harm resulting from “crime in the suites”.⁹⁴ Since corporations are more influential than individuals, it has been shown that corporations are capable of doing greater harm than persons acting in their individual capacities.⁹⁵ The Bhopal tragedy in India is an illustration of the greater potential of corporations to harm people.⁹⁶ Mega power triggers mega crimes that result in mega harm.⁹⁷ As F. Meier and J.F. Short add, corporate crime threatens the trust that is basic to community life.⁹⁸ Crimes committed by corporations trigger a general disillusionment. If the impunity of the powerful prevails, there is no hope for the powerless. It is perceived that the rules do not work for everybody. This feeling can erode a community.⁹⁹ Unofficial research has shown that corporate crimes are not only more harmful than street crimes but also more costly. The economic cost of white-collar crime is vastly greater than the economic cost of street crime. The costs of corporate crime cannot be quantified, but it is estimated that in the United States it costs \$ 1.5 trillion annually.¹⁰⁰ Lee Drutman, in an article published in Los Angeles Times in 2003 reports that:

Using conservative numbers, issued by the U.S. Chamber of Commerce, for instance, criminologist Jeffrey Reiman, a professor at American University, estimated that the total cost of white-collar crime in 1997 was \$338 billion. The actual cost is probably much greater. For instance, the General Accounting Office, the investigative arm of Congress, estimates that health-care fraud alone costs up to \$100 billion each year. Another estimate suggests that the annual cost of antitrust or trade violations is at least \$250 billion. By comparison, the FBI estimated that in 2002, the nation's total loss from robbery, burglary, larceny-theft, motor vehicle theft and arson was almost \$18 billion. That's less than a third of the estimated \$60 billion Enron alone cost investors, pensioners and employees.¹⁰¹ Many types of corporate crime may not have violent consequences, but the price paid by its victims is catastrophic nevertheless. Corporate crimes generally impact a greater number of people. Fraud and anti-trust violations can impact on an entire organization, the economy, or possibly society as a whole.¹⁰² A company fraud not only results in cheating of the people who have invested in that company but may also adversely impact investors' confidence

⁹³ *ibid*, p. 2.

⁹⁴ Holtfreter, K., Van Slyke, S., & Blomberg, T. C. (2005). Socio-legal change in consumer fraud: From victim-offender interactions to global networks. *Crime, Law, and Social Change*, p. 44.

⁹⁵ Charles J. Walsh and Alicia Pyrich, “Corporate Compliance Programs as a Defence to Criminal Liability: Can a Corporation Save its Soul?” (1995) 47 *Rutgers Law Review*, pp.605, 639.

⁹⁶ See e.g., “Bhopal: Absolutely Liable”, *Economist*, vol. 308, Issue 560, July 23 1988; “The Ghosts of Bhopal”, *Economist*, vol. 310, Issue 590, Feb. 18 1989.

⁹⁷ Holler Branco, above note 2, p. 50.

⁹⁸ Sir Henry Sumner Maine, *Ancient Law*, 10th ed. (London: John Murray, 1930), p. 16.

⁹⁹ Holler Branco, above note 97, p. 50

¹⁰⁰ Unknown, “Cost of Corporate Crime: \$ 1.5 Trillion Annually,” online: The Foundation for Tax Payers and Consumers Rights <<http://www.consumerwatchdog.org/corporate/fs/fs003284.php3>>

¹⁰¹ Lee Drutman, “Corporate Crime Acts Like a Thief in the Night” *Los Angeles Times* (4 November 2003) B.13.

¹⁰² Coleman, Katherine, “Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance”, *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 188.

thereby affecting the growth of the economy.¹⁰³ According to most definitions, corporate crimes victimize the general public, consumers, a corporation's employees, or a corporation's competitors. Offenses often include acts like corporate stealing, corruption, or fraud and have broad domestic or, in some cases, international implications.¹⁰⁴ The Law Reform Commission of New South Wales offers an explanation of such criminal activities:

Corporate crime poses a significant threat to the welfare of the community. Given the pervasive presence of corporations in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action, the potential for both economic and physical harm caused by a corporation is great.¹⁰⁵

Bad money can gradually drive away the good money. A market dominated by ill practices result in difficulty for the genuine business entities. A company evading tax has a lower product cost through which it can drive away the genuine business person which has higher product cost. At an individual level, proceeds of this crime bring extra money to the hands of the undeserved. People with larger amounts in hand go for property acquisition and spending and/or savings overseas. These have multiple negative consequences to the economy. Some of the people become entrepreneurs and hike the entry barriers, crowding out the true entrepreneurs who would otherwise have created real value to the economy.¹⁰⁶

When deaths and injuries due to unsafe products, environmental hazards, and other illegal corporate acts are considered, corporate crime is perhaps the most dangerous and consequential kind of crime that occurs in our society.¹⁰⁷ Marvin Wolfgang and his associates found in a national survey that Americans regard illegal retail price-fixing (the artificial setting of prices at a high level, without regard for the demand for the product) as a more serious crime than robbery committed with a lead pipe.¹⁰⁸ The problem of corporate criminal liability since the 1960s goes far beyond an individual death or injury. Ultimately, it concerns the health and even the survival of humankind. Nor is the problem confined to the United States. It is a global problem.¹⁰⁹

5. Criminal justice system challenged by corporate crime

Corporate crimes are organized crimes. It is difficult to prevent, deter or combat this crime since it is committed by elite well educated people of good reputation, experts and executives, directors, managers or persons responsible for the operation of or empowered to decide on behalf of such

¹⁰³ Group 2, The Economic Crime Including Money Laundering; Its Legal And Financial Implications, 128th International Training Course Reports Of The Course, Resource Material Series No.67, p. 246 www.unafei.or.jp/english/pdf/RS_No67/No67_26RC_Group2.pdf

¹⁰⁴ Simon, David. *Elite Deviance*. 7th ed. Boston: Allyn and Bacon, 2002, p. 115.

¹⁰⁵ Law Reform Commission for New South Wales. *Issues Paper 20 (2001) - Sentencing: Corporate Offenders*. https://en.wikipedia.org/wiki/Corporate_crime

¹⁰⁶ Rashid, Mamun, "Combating Financial Crimes in Bangladesh", *The Daily Star*, Vol. 5, Num 1037, May 03, 2007. www.prp.org.bd/Media/3May2007.pdf

¹⁰⁷ See Simpson, Sally S., *Corporate Crime, Law, and Social Control*, (2002), 1st Edition, Cambridge University Press, p. 14

¹⁰⁸ See White-Collar and Corporate Crime, p. 332.

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¹⁰⁹ See *ibid*, p. 331.

corporations in the course of their duty.¹¹⁰ Corporate crime is highly complex and diverse, therefore it is so much difficult to enact suitable legislation to accommodate corporate crime and prevent it. Though people have learned through the ages to be wary of strangers on the street, they have not yet learned to protect themselves against vast enterprises.¹¹¹ According to Clinard and Yeager, what makes it so difficult to curb corporate crime is the enormous political power corporations wield in the shaping and administration of the laws that govern their conduct. This is particularly the case in regard to multinational corporations that wish to operate in developing countries. The promise of jobs and development by a giant corporation is a temptation too great for the governments of many developing countries to resist. They would rather have employment opportunities that pollute air and water than unemployment in a clean environment. Government officials in some Third World countries can be bribed to create or maintain a legal climate favorable to the business interests of the corporation, even though doing so may be detrimental to the people of the host country.¹¹² The criminal justice system is now playing a larger role in the war against corporate crime. The criminal process offers a greater deterrent for corporations and managers than other control mechanisms.¹¹³ However, a regular complaint of victim groups following major incidents is that those perceived to be responsible, particularly individuals, are not publicly brought to account for their offences.¹¹⁴ Stone asserts that the law will fail because it lacks the necessary flexibility to adjust to and permeate dynamic business organizations.¹¹⁵ Corporate crimes are often difficult to detect and prosecute, either because the wrongdoing can be passed off onto one or more individual employees or because the illegal behavior is buried in complex networks of transactions, hidden behind corporate fronts, or concealed in offshore accounts.¹¹⁶ The public may not be aware of corporate crime. Therefore they do not make allegations of offences and the police cannot make an inquiry unless such an offence is a public offence. In these circumstances, the criminal is not punished. In addition, the public may be aware of corporate crime, however, in some cases they view the seriousness of the crime as equivalent to 'ordinary' crime, not fully understanding the impact which corporate crime will have. Therefore they do not actively co-operate with the State in fighting it.¹¹⁷ Executives easily hid their dubious accounting practices from investors and employees, while at the same time saving their own

¹¹⁰ See Sudti-Autasilp, Bhornthip, Corporate Crime and The Criminal Liability Of Corporate Entities In Thailand, Resource Material Series No.76, 137th International Training Course Participants' Papers, p. 99.

¹¹¹ See above note 109, p. 314.

¹¹² See *ibid*, pp. 331-332.

highereducation.com/sites/default/files/0078026423/971173/ch12.pdf

¹¹³ Simpson, Sally S., Corporate Crime, Law, and Social Control, (2002), 1st Edition, Cambridge University Press, p. 4.

¹¹⁴ Corall, Hazel.2007. "Victims Of White-Collar And Corporate Crime", in Davies, Pamela & Francis, Peter & Greer, Chris (eds.), Victims, Crime and Society, SAGE Publications Ltd, p. 92.

¹¹⁵ Stone, Christopher D., Where the Law Ends (New York: Harper and Row, 1975), p.93.

¹¹⁶ See Etzioni, Amitai and Mitchell, Derek. 2007. "Corporate Crime". In Henry N. Pontell and Gilbert Geis (eds.), International Handbook of White-Collar and Corporate Crime. Springer US, p. 188.

¹¹⁷ See Sudti-Autasilp, Bhornthip, Corporate Crime and The Criminal Liability Of Corporate Entities In Thailand, Resource Material Series No.76, 137th International Training Course Participants' Papers, p. 109.

financial holdings in the company.¹¹⁸ It is easy to catch a thief on the street and punish him as well, but not so in case of a criminal wearing tuxedo, riding BMW and having champagne in parties. Corporate crime is often committed by skilled perpetrators and more often by a conspiring group who are usually ahead of the law enforcement authorities.¹¹⁹ Corporate personnel maintain good outfit which is eyewash by the corrupted and dishonest. Therefore, it is imperceptible that they commit crimes which are committed very delicately. Like fraud of giving short weight goods than the mentioned weight has been very common, besides use of date expired materials is another example of corporate crime which is committed by the company employees under the instructions of the management from behind the closed doors meeting. But if such crime is committed without the knowledge of the management, despite it cannot evade liability so long as it's its responsibility to oversee the entire process vigilantly. Corporate crime is committed from behind the veil where the eyes cannot reach. If the food is bottled which contains harmful elements for the human body, nonetheless it is not easy to identify those harms and thus the crimes of those companies and its officials remain unnoticed and unrestrained. Company officials engage themselves in financial crimes using the corporate camouflage. Corporate criminals are very powerful; moreover, they do not look like criminals rather like gentleman. It is clear that environmental pollution causes many health problems and deaths, but it is difficult to establish the causal connection between specific illnesses and deaths and decisions by corporations to engage in illegal pollution.¹²⁰ There is inadequacy of the sentences. The punishment awarded is not proportionate to the loss and suffering caused to the people. The judges cannot contemplate the actual loss caused by a particular incident. They do not dare to award too great a punishment. Law is insufficient in respect of corporate crimes. The most powerful group in medieval society secured relative immunity from punishment by 'benefit of clerg' and now the present most powerful group secures relative immunity by benefit of business.¹²¹ Sometimes it becomes difficult to prosecute the offenders due to firestorm of opposition from major corporations, their lawyers, trade associations, TV channels and the columnists close to them.¹²² The enforcing authorities have been seen to move back due to such opposition. In opposing the actions against them the corporate criminals find the political power and undercover government support in their favor, even the Prime minister or the president. Therefore the culprits remain aloof from justice and the victims' suffering continues. Moreover, for the extenuating circumstances provided by the legal experts the offenders are frequently released or face very nominal penalty in the form of fine. The prevention and detection of corporate crime are both extraordinarily difficult as much of it is hidden from public gaze, and regulatory agencies are characteristically understaffed.¹²³ Ministerial intervention to prevent prosecutions of corporate offenders from proceeding is not uncommon.¹²⁴ Corporate offenders have an overwhelming sense of

¹¹⁸ Coleman, Katherine, "Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance", *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 203.

¹¹⁹ Above note 117, p. 94.

¹²⁰ Holler Branco, above note 2, pp. 48-49.

¹²¹ Sutherland, E H (1961), "White Collar Crime", New York: Holt, p. 47

¹²² See Etzioni, Amitai and Mitchell, Derek. 2007. "Corporate Crime". In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 193.

¹²³ Grabosky, Peter and Braithwaite, John, *Corporate crime in Australia, trends & issues in crime and criminal justice*, Australian Institute of Criminology, June 1987, p. 1.

¹²⁴ *ibid*, p. 4.

arrogance. They think that the rules don't apply to them, and that if they get caught they can use defense attorneys to keep them from getting the most severe penalties.¹²⁵ Corporate attitudes like that are not only criminal, but also immoral, and for this reason alone criminal conduct of corporations should deserve particular attention and tougher control and sanctioning.¹²⁶ There are no official data on corporate crime in common law jurisdictions; governmental agencies do not bother to collect statistics on such issues. The lack of information on corporate criminality would be understandable in developing countries where commonly any data are very difficult to obtain and where, in most of the cases, corporations cannot be criminally liable; however, this is also a reality in developed nations.¹²⁷ Till now, the Courts have been able to impose only fine as a form of punishment because of statutory inadequacy and lack of new forms of punishments which could be imposed upon corporates.¹²⁸ By its corporate policies, or lack thereof, the company demonstrates that it is willing to encourage or at least condone criminal conduct that redounds to the benefit of the corporation.¹²⁹ According to Garoupa, corporations can more easily corrupt enforcers, regulators and judges, as compared to individuals.¹³⁰ Corporations are better organized, are wealthier and benefit from economies of scale in corruption. Corporations are better placed to manipulate politicians and media. By making use of large grants, generous campaign contributions and influential lobbying organizations, they may push law changes and legal reforms that benefit their illegal activities.¹³¹ The internet has created a new avenue for corporate crime, making it more difficult to detect and prosecute all of the individuals involved. Corporate crimes may have once been confined within specific businesses or geographic regions, but now criminals can instantly and more anonymously be linked together through internet chat rooms and instant messaging.¹³² The corporations have spread corruption in different forms and have multiplied it. People cannot help but resort to the corporations for the different services which are not available from the state. The advent of the corporate gods has made money the determining factor of everything and every aspect of human relationships. Corporate criminality *per se* has become successful to create criminal tendency in the minds of the people within or outside the institutions, Government or individuals. People are ready to bribe even before it is asked. Bribery has become spontaneous on the both sides, taker and giver. Some people are compelled to do so, having no way without it, because without it they will not get the service they are entitled to. Corruption breeds corruption and it multiplies. Lives of the good people have become miserable having no security from the state due to the involvement of the state actors in corruption with the corporations and the others. Therefore they have become indifferent to the problems of the people because there is no financial interest in it. They are inclined to more

¹²⁵ See Coleman, Katherine, "Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance", *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 211.

¹²⁶ Holler Branco, above note 120, p. 51

¹²⁷ *ibid*, p. 52.

¹²⁸ Singhvi, Angira, "Corporate Crime and Sentencing in India: Required Amendments in Law", *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p.10.

¹²⁹ Weissmann, Andrew, *A New Approach To Corporate Criminal Liability*, *American Criminal Law Review*, Vol. 44, 2007, P.1327.

¹³⁰ Garoupa N., *Journal of Economic Behavior & Organization* 63 (2007), pp. 461-474

¹³¹ Gottschalk, Petter, "White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises", 2010, Universal Publishers, p. 17.

¹³² Coleman, Katherine, "Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance", *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 208.

comfort by sacrificing the oaths which have been taken by them. Demands have increased amongst the people which have caused the price hiking and have made lives more miserable of those who are not corrupted. It has become an uneasy struggle for those people to survive remaining honest when there is social and family pressure for goods and property. The society itself has become corrupted as well as the thinking by which it is governed. Humanity, compassion, tranquility are gone from every sphere of the society. It has to be fought by the legislature, executive and the judiciary together. Business and politics are now integrated thus political power is being use for the business purpose throwing away all the political values of a welfare state. There have been negotiations and deals amongst the politicians and the business men. Power is being sold and handed over to the political parties in exchange of uncontrolled and free monopoly. Since state is an abstract concept, the individuals cannot prevent the corporations from committing crimes. It is not impossible for the judges to become a part of the negotiation along with the prosecution when the punishment of the corporate crime comes in front. However, honesty of the judicial people taken for granted, it is to analyze, apart from the corruption, how to prosecute and punish the corporate criminals for the crimes which can also be termed as technical crime or crime in disguise etc. the greatest challenge of prosecuting corporate criminals is the peculiar nature of the corporate crime per se. corporate crimes are not easy to identify. Separate legislation, executive and judicial body are to be established for that purpose. In order to deter corporate crime, offenders must not only be successfully prosecuted, but also punished to the fullest extent so as to set an example for other potential offenders.¹³³ In the United States, large companies and wealthy individuals can use their resources to contest prosecution, negotiate settlements, and appeal convictions. This raises the cost of criminal prosecution because prosecutors must apply more resources in order to combat a well-organized defense teams. It is more difficult to gather sufficient evidence for prosecution in complex cases, particularly when there are a number of individuals involved. This benefits larger, more prestigious organizations that are more difficult to navigate and who can organize skilled professionals in their defense. For these reasons, some corporate criminals go unpunished.¹³⁴ Enron demonstrates the difficulty prosecutors experience investigating and collecting evidence in complicated cases of corporate fraud. Sam Buell, a member of the Enron Task Force designed to investigate allegations against the company, pointed out the difficulty prosecutors faced assembling their case. He noted that nearly all employees resisted cooperating with prosecutors, stating “nobody wanted to be a witness.”¹³⁵ This remains the biggest drawback restricting fine as the sole form of punishment to corporates since with their massive bank accounts, it is easy for them to get away with the criminal liability and it also does not solve the purpose of punishment since neither the corporates would be deterred nor would they be retributed for the crimes.¹³⁶ The Courts have no doubt been efficient in evolving the concept of criminal liability of corporates and have imposed the same on the convicts but the only way of imposition that has been thought of is by way of fines. It is now for the legislature to evolve new forms of punishments and incorporate them in the criminal justice system

¹³³ Hazel, Croall. *Understanding White Collar Crime*. Buckingham: Open UP, 2001, p. 60.

¹³⁴ Simon, David. *Elite Deviance*. 7th ed. Boston: : Allyn and Bacon, 2002. p. 40.

¹³⁵ Cathy Booth Thomas. 2006. “The Enron Effect.” *Time Magazine*, May 28.

<http://www.time.com/time/magazine/article/0,9171,1198917,00.html?iid=sphere-inline-bottom>

Cite Website: <http://www.time.com/time/magazine/article/0,9171,1198917,00.html?iid=sphere-inline-bottom>

¹³⁶ Singhvi, Angira, “Corporate Crime and Sentencing in India: Required Amendments in Law”, *International Journal of Criminal Justice Sciences*, Vol 1 Issue.2 July 2006, p. 11.

of the land like Economic Sanctions, Social Sanctions etc.¹³⁷ Simpson argues that thinking about corporate crime requires recognition that both organizations and individuals may be illegal actors and potential targets for crime prevention and control such as sanctions.¹³⁸ Moreover, since the nature of corporate crime is different from other types of crime, the process is sometimes not easy. In some instances, the Court may have to dismiss the case because the public prosecutor does not have sufficient evidence to prove beyond a reasonable doubt that the offender committed the crime. The complexity of corporate crime makes it difficult to investigate and prosecute a company. The lack of specialized personnel may result in delay in investigation and prosecution, and the loss of the best evidence which can be used against the defendant in court. There are no specialized courts dealing with cases relating to corporate crime. Lack of public awareness makes it difficult to collect supportive evidence. Because of the social status of the criminals the public may be afraid to provide evidence or to co-operate with the police. Witness may be intimidated and may not be willing to testify. The public prosecutor needs to prove beyond reasonable doubt that the offender committed such a crime. However, corporate crime is usually committed by the executives or the employees of the corporation; therefore there is a tendency that the executives or employees destroy the evidence to conceal the crime. Hence, to satisfy the court with such an extensive degree of proof without the necessary evidence is almost impossible.¹³⁹ Many governments recognize that criminal justice systems are not well prepared to deal with economic crimes, in terms of either strategy or resources. They also recognize the importance of attacking this problem at the international level, perhaps by designing strategies, standards, and guidelines that may be helpful to all governments.¹⁴⁰ Developed nations tend to be tougher on corporate criminality whereas developing countries cannot afford to fight against corporations and risk to losing the economic “advantages” that corporations bring, such as more employment and support of social projects.¹⁴¹

6. Recommendations

1. Public awareness must be built regarding corporate crime and its resulting impacts. Corporate criminals must be outnumbered socially. Awareness building programs have to be undertaken by the Govt. regarding corporate crime and the commission of those crimes must be brought to the public through media communications.
2. Separate commission has to be established for punishing the corporate offenders
3. Separate special sophisticated investigating agency has to be established to investigate the corporate offences. Prosecution and the judges must be trained regarding corporate crime, its detection and prevention.
4. Penalty for the corporate crimes must be exemplary and harsh. New forms of penalties must be introduced which is required for deterrence as fine cannot deter all corporate in all cases.

¹³⁷ *ibid*, p. 12.

¹³⁸ Simpson S. S., “Making Sense of White-Collar Crime: Theory and Research”, *The Ohio State Journal of Criminal Law* 8(2) (2011) 481-502.

¹³⁹ Sudti-autasilp, Bhornthip, Corporate Crime And The Criminal Liability Of Corporate Entities In Thailand, Resource Material Series No.76, 137th International Training Course Participants’ Papers, pp. 107-110.

¹⁴⁰ See White-Collar and Corporate Crime, p. 336.

higher.ed.mheducation.com/sites/dl/free/0078026423/971173/ch12.pdf

¹⁴¹ Holler Branco, above note 2, p. 51.

The gravity of each of these punishments should vary with the gravity of the act committed. Seizing the company properties and barring the company from functioning can be effective punishment.

5. Fine for the crimes should be two or three times the amount of damage caused or illicit gains obtained by the corporation. Fines should be such that can remove all the harms caused to the people by the company as long as it takes.
6. Strengthening the internal policies of the corporations for compliance. For example a code of ethics must be set and implemented, violation of which will lead to different types of sanctions.
7. Audit committees of the corporations must be manned by independent individuals who are not in the management of the corporations.
8. Fostering a culture of respect for the law within corporations and creating internal controls to prevent misconduct. Creating a law abiding atmosphere within the corporation.
9. Incorporating more ethical education at the business schools
10. The Government must spend more resources to prevent and punish corporate crimes. Upgraded technology must be utilized in this regard. investigative and inquiry authorities need to have some skill and knowledge.
11. Revocation of the license of the accused corporation and removal of the liable employees. In case of crime limited liability should not be applicable.
12. For stopping the crimes of the multinational corporations international cooperation is essential.
13. Corporate Death or order for winding up only in cases of continuous criminal behaviour in the given field. Temporary closure of the company for a given period depending upon the gravity of the act till the time compliance with norms can be ensured. For instance, a corporate being closed for causing pollution till the time it does not arrange for a pollution free technology.
14. Rehabilitation of victims of crime. In such a form of punishment, the corporate would be ordered to rehabilitate the victims in a manner such as to erase any traces of the effect of the crime. For instance, cleansing of the riverbanks that have been polluted as a result of toxic disposal.
15. Payments of high sum as compensation to the victims of crime for removing the harms caused by the crimes. For example curing the disease of the victims resulting from the corporate activities.

7. Conclusion

Finally, after discussing extensively about corporate crime and its socio-economic implications, it can be asserted that dealing with such crimes and criminals would not be easy and it requires collective endeavour to remove this pest. In the context of organizational behavior criminal law is the ultimate deterrent.¹⁴² In his second Fireside Chat, May 1933 Roosevelt declared that

¹⁴² Gottschalk, Petter, "White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises", 2010, Universal Publishers, p. 17.

“government ought to have the right and will have the right...to prevent...unfair practice by industry.¹⁴³The crimes persist because crime pays. Harder sanctions are therefore needed, including prison sentences for CEOs and other senior executives. Criminals and their organisations should consider carefully whether they find it ethically acceptable to receive money that may have been partly been earned by crimes that are harmful to the public. Apart from fine there are other sanctions that can be effectively applied against the corporations. One way to control their power and to reduce the harm that they cause is by controlling their misbehaviour through effective sanctions. The role of criminal law is to bring corporate power to face criminal conviction for wrongdoing by making society aware of their crimes and by properly deterring them from committing crimes.¹⁴⁴ Gilbert and Russell advert to the harm that transnational crimes inflict on developing countries, and in their seminal work, “Globalization of Criminal Justice in the Corporate Context” they call for an international control of corporate crime as a matter of global justice. There is no doubt that the only way to control corporate criminality, especially transnational criminality, is to deal with such issues globally. However, for this to happen, a large number of countries, especially developing countries, need to be aware of corporate crime and, most importantly, aware of the effectiveness of criminal law to control such deviance.¹⁴⁵ When a crime has led to the deaths of many people, we should view it as a crime against humanity. Whether hundreds or thousands of people are killed for personal gains by arms or by pills should make no difference for our perception of the misdeed.¹⁴⁶ The regulatory agencies are to be invested with the power of enforcement to prevent the corporate crimes. Corporate crime has existed for decades and will likely continue for years to come. Nevertheless, by seeking new approaches to prevention we might be able to limit the extent to which corporate crime impacts society and lessen the likelihood that innocent men and women are victimized.¹⁴⁷ Judges must be honest and well acquainted with the technicalities of the corporate affairs. Lawyers must act with integrity for truth and justice and not only for money. Corporate crime is serious crime which has tremendous effects and impacts on economic stability and social security at both domestic level and international level. Therefore, it is incumbent upon the State to impose efficient and appropriate criminal liability upon a legal person as well as its representatives who are the soul and the mind of such corporations and are actually the persons operating the business of the corporations. Since corporate crime is usually economic crime, the laws in relation to economic crime need to be flexible, up to date and in advance of the criminals.¹⁴⁸

¹⁴³ See Etzioni, Amitai and Mitchell, Derek. 2007. “Corporate Crime”. In Henry N. Pontell and Gilbert Geis (eds.), *International Handbook of White-Collar and Corporate Crime*. Springer US, p. 191.

¹⁴⁴ Holler Branco, above note 2, p. 53.

¹⁴⁵ *ibid*, p. 51.

¹⁴⁶ Gøtzsche, Peter C., *Corporate crime in the pharmaceutical industry is common, serious and repetitive*, 2012, Nordic Cochrane Centre, Rigshospitalet, Dept. 7811 Copenhagen, p.8.

¹⁴⁷ Coleman, Katherine, “Controlling Corporate Crime: an Analysis of Deterrence Versus Compliance”, *Northwestern Interdisciplinary Law Review*, 2009, Vol. 2(1), p. 215.

¹⁴⁸ Sudti-autasilp, Bhornthip, *Corporate Crime And The Criminal Liability Of Corporate Entities In Thailand*, Resource Material Series No.76, 137th International Training Course Participants’ Papers, p. 112.

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