
Exploring the Threats of Corporate Crime as a Rising Trend of White Collar Crime in Bangladesh: An Empirical Study in the Light of Criminal Law

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Abstract: *In today's globalization, corporate crime is an ongoing challenge worldwide and like most other countries, it has taken epidemic form in the corporate sector of Bangladesh that gained wide attention throughout the country since the issue leaves serious threat to the nation's economic reform. Corporate crimes are usually those illegal or socially injurious actions done by corporation or by officials of any financial entity with desire to gain more wealth, make illicit profit, create monopoly business and ameliorate financial performance of the corporations. Bangladesh, being a developing country is enormously vulnerable to corporate crimes and immensely faces terrifying hardship to punish corporate criminals under the national criminal justice system. In this context, this paper highlights the root causes and mannerism of corporate crime repeatedly committed in Bangladesh. This study further seeks to examine the existing statutory laws, criminal proceedings and enforcement mechanism with particular emphasize on the challenges to ensure corporate criminal liability and penalize corporate criminals. Subsequently this paper also tries to overview other relevant statutory provisions adopted by the South Asian countries like India and Malaysia which can be noted to be useful to understand the regulating measures of corporate crime under different legal customs and may also be adopted by the legislature of Bangladesh. At the end, this paper suggests some way forwards to develop and formulate effective criminal legislation to regulate the cases of corporate crime in Bangladesh.*

Keywords: *Corporate crime, Corporate criminal liability, Corporations, Globalization, Financial fraud*

1. Introduction

The advancement of communication technology has made corporate activities borderless and in fact, the large-scale corporations are said to be the core driving force of global economy. Corporation is basically known to be a recognized body having separate and artificial legal entity with its own privileges, rights and liabilities distinct from its members. In this modern era, some corporations including multinational corporations (MNCs) are so potent and systematically important that they can even influence the actions of any national government and political culture (Werle, 2019). Such dominating activities of corporations may make them notorious and give birth to numerous corporate crimes. Such crimes inflict severe harm ranging from manslaughter to substantive loss equally to corporation's internal and external stakeholders. Thus these corporations turn into perpetrator of crime when their officials commit financial crimes within the ambit of their corporate responsibilities (Sarwar, 2015). But due to non-human entity of corporations it is often very ponderous to ensure corporate criminal liability by applying existing principles of liability.

Besides, corporate crime is rapidly taking more tangled form as the financial transactions around the world are currently being done digitally. It is often observed that corporate crime usually takes place in business establishments having complex hierarchy of positions categorizing from directors, managers, executives and individual employees (Coleman, 2009). In fact it is the managers, directors, auditors, security officers and other high executives who get involved in numerous financial crimes within their service on behalf of the corporation. These responsible stakeholders of company commit corporate wrongdoings using their position either for personal interest or benefit of the company. Corporations are now-a-days found in polluting environment, engaging in financial fraud, price fixing, market manipulations, producing unsafe goods and so on. Moreover, the impact of corporate crime is more intensive when committed by multinational corporations. As MNCs run their business worldwide and the host countries not having adequate legislations to address such financial frauds, suffering from political chaos and economic crisis may face unbearable catastrophe. Another agony is that in most of the illustrations of corporate crime, legislations are enacted when there is already a large public outcry after a number of corporate scandals have taken place (Khanna, 2004). Basically for two reasons the occurrence of corporate crime lies under a dodge of official secrecy i.e. the national government tries to hide the image of the country as riddled with high-class law breaking people and secondly the executives themselves do not desire to aware the common people to illegal schemes in which they are involved (Tehrani et al, 2013).

It is quite saddening to mention that in Bangladesh there remains no adequate, unique and up-to date legislation to handle the instances of corporate wrongdoing, economic fraud, organizational crime and corporate manslaughter. On the other hand, corporate crime being a white collar crime often remains unseen and untraced. For these two basic reasons corporate criminals rarely face the sanction of law. Corruption is said to be the central problem in Bangladesh and business frauds like consumer fraud, tax evasion, money laundering, share market manipulation, misrepresentation of financial statements etc. have affixed more miseries towards the economic stability of the country. These crimes take place in the mode of widespread corruption and in last few years, frequent manipulations of stock market have been witnessed by the people of Bangladesh (Sarwar, 2015). Managers, directors, auditors and executives in industries and companies of all sizes are getting engaged in numerous financial crimes within their service (Ghafoor, Zainuddin & Mahdzan, 2018). Though corporate frauds are ultimately done by the officials of an organization, they have got more structural roots and their position plays a defining role which enables them to get involved in such economic crimes.

However, there are very few and scattered legislations so far enacted by the Parliament of Bangladesh to regulate the instances of corporate crime. As Bangladesh lacks adequate enactment on economic crime and being a developing country, it is marked as a heaven for corporate criminals both domestically and internationally. In last few years, number of cases of corporate wrongdoings was witnessed by the people of Bangladesh but no such satisfactory precedent of sanction has been seen. As a result, the problem has turned into more exquisite form and the actual culprits are always

beyond the grip of law. Even after numerous incidents of corporate fraud, neither comprehensive law nor separate court or tribunal is yet established to deal these cases in Bangladesh.

2. Research Objectives

The prime purpose of this research is to explore the numerous factors and modes of commission of corporate crime and ways to prevent them in Bangladesh. The article additionally focused to cover the following objectives:

- To analyze the existing national legal regime as well as other statutory provisions in connection with laws and regulations of India and Malaysia regarding corporate crime.
- To identify various challenges for Bangladesh government to ensure corporate criminal liability of guilty corporations and to resort efficient protection mechanisms against any sort of corporate fraud.

3. Methodology

The present research is an analytical and diagnostic research. The research materials have been gathered from numerous primary and secondary sources such as journals, books, newspaper articles, internet etc. regarding corporate crime. To this context both qualitative and descriptive method of analysis has been used in this paper.

4. Notion of Corporate Crime

Any action by corporation that injures institutional actors or society which are punishable under the criminal law comes under the banner of corporate crime. Such criminal actions by corporation are somehow covered by the discussions of white collar crime as the white collar crime is “a violation of the criminal law by a person or upper socioeconomic class in the course of his/her occupational activity” (Sutherland 1941). However, the dissimilation between white collar crime and corporate crime is by no means unambiguous because corporate crime may also crib individual interest. This type of crime is basically reserved for wrongdoings in which this is only a secondary intent or effect as conversed to white collar crime namely “crime committed by a person of respectability and a high social status in the course of his occupation” (Erp, 2018). Corporate crime has been capially studied in criminology, law and economics. As per the concept of criminology, corporate crime is a direct abuse of power by capital and signifies those wrongdoings committed either by a corporation or any individual working for a corporation. Being a segment of white collar crime, corporate crime indicates the unlawful or detrimental acts committed by legitimate corporate bodies or their members mainly for the sake of these corporate bodies (Erp, 2018). Sociologist David Friedrichs defined corporate crime as “illegal and harmful acts committed by officers and employees of corporations to promote corporate and personal interest”. Another sociologist David Simon refers corporate crime as “acts of economic domination”.

Corporate transgression additionally indicates to the violations of international principles of corporate code of conduct and economic practices such as unsafe and unhealthy working condition, location of highly polluted industries, customer fraud, labor exploitation and modern slavery etc.

(Evertsson, 2017). Thus one of the key features of corporate crime is complexity and some wrongdoings may be quite ordinary like bribery or consumer fraud where others may involve number of interlinked actors (Simpson et al, 2014).

5. Boosting Factors of Corporate Crime

Crime chases opportunity and globalization which has induced the advancement in technology has made abundance of opportunities for delinquent activities and affluence of both legitimate and illicit actions. Such accelerated advancement and dispersion of technology has remarkably widened the communication capability which made the criminal corporations to extend their activities across national border (Grabosky, 2009). However, about globalization there is nothing inherently evil as the benefits are both plentiful and spectacular. The radical growth in the world economic system and unprecedented mobility of business activity grant the wrongdoers to seek out jurisdictions where they can run business with impunity. The fear of withdrawal of capital and decrement of some privileges that otherwise injurious corporate actions might however fetch to a jurisdiction, may seduce national government to tolerate victimization (Grabosky, 2009).

Research shows that corporate profit-seeking actions, unethical corporate agents, inadequate governance policies, lack of precise state regulations, market competition and corporate environmental factors are the core causes for occurrence of corporate crimes (Alcadipani & Medeiros, 2019). Sutherland pointed that corporate criminals bear towering rate of recidivism and when they violate law rarely loose the status among their associates (Sarwar, 2015). In number of corporations, the role of audit committee has been called in question for allegation of corporate crime in different extent as it directly monitors internal audit, risk management system and other monetary issues (Levi & Dorn, 2006). Furthermore, corporation's social, industrial and professional environments are often blamed for occurrence of economic crime because some organizational strategies, structures and cultures may make them crime-prone than others (Erp, 2018). Corporations may have perception that legitimate practices are not ample to satisfy business goal and subsequently picks illegal means to realize unattainable and ambitious targets. Use of resources to obstruct legal proceedings or enforcement, destruct evidences and use of political involvement to prevent or delay the execution of law can be adopted by business organizations. The decision making policy of a corporation may even give rise to irrationalities, flawed risk perceptions, group thinking or official secrecy. Notably, complexity in policy making mechanism can be a potential factor towards corporate fraud and misconduct. Corporate wrongdoings are acute where complex organizational hierarchy exists and in highly decentralized multinational companies. Top managers with high-status position may have feelings of invulnerability, overconfidence and obsessive optimism about hazard (Erp, 2018).

Corporate crimes are often very difficult to prove as crime and this concept inclines the potential corporate culprits to commit crime. Unfortunately adequate attention has not been given to financial crimes which required special attention like other growing fields of criminology, law, sociology, finance and political science etc. (Sarwar, 2015). Thus corporate wrongdoers are rational actors and they usually do not get engaged in crimes based on need or revenge but rather for interest for themselves or their company. Corporate firms get involved in crime to enhance their financial

capability where individuals do the same for personal prestige, promotion and desire to attain more wealth (Sarwar, 2015).

6. Varieties of Corporate Crime

Corporate crimes are numerous and cannot be circumscribed within some instances of commercial frauds. These crimes would be any illegal behaviors by corporate institution which are punishable by law. On a daily basis, newspapers of the country are filled with instances of corporate crimes in the form of corporate tax avoidance, fraudulent advertising, consumer fraud, manufacturing bogus product, selling goods at inflated rate, commercial bribery, trading with illegal medicines, embezzlement of funds, manipulating stock market, corporate manslaughter and environmental destruction etc. New illustration of corporate crime comes out like corporate manslaughter and using low quality materials in building constructions which would soon be collapsed and killing local residents or concerned workers.

6.1 Fraudulent Marketing

Fraud represents achieving something valuable by means of deception. Marketing fraud occurs when a vendor offers goods for sale which is defective or has no factual existence (Grabosky, 2009). Technological advancement has made an open way for fraudulent commercial transaction and marketing across national borders very spontaneous. Consumers both in national and international arena are victimized by online shopping means which often delivers defective products and very nominal legal action can be taken against such vendor. Trading in unsafe drugs and contraband products has been occurring for centuries. The internet has highly facilitated the trading of such illicit drugs and goods in international market (Grabosky, 2009).

6.2 Bribery

Bribery has been marked as the core curse in the economic and corporate sectors of both developed and developing countries. It indicates to offering something as gift to dominate the actions of government officers. Bribery can be money, goods, property, privilege or anything which is valuable. The practice of bribery is equally seen even in international commerce to secure contract or manage local market competition. Some scholars consider bribery as state-corporate crime (Peoples & Sutton, 2015).

6.3 Corporate Manslaughter

The concept of Corporate Manslaughter is comparatively a modern phenomenon. There are number of cases of death to workers because of negligence and non-fulfillment of safety measures by employers. Especially the construction and mine workers have to face the risk of height, machine, crane, heavy equipment, chemicals and dust etc. which can even cause horrible death instances. Apart from this, corporate negligence may also cause serious injury or death to common public and foreign nationals (Grabosky, 2009). It is pertinent to mention that many developed nations enacted laws on corporate killing after public outrage on deficiency of the laws to prosecute corporations for manslaughter while common public was victimized (Wells, 1995). Not

maintaining occupational safety measures and not complying with the international labor standards indiscriminately fall within the heinous instance of corporate crime.

6.4 Money Laundering

The advancement of communication technology has generated a global corporate crime called Money Laundering. It refers to the means by which the wrongdoers conceal the source of ill-gotten profits thereby converting dirty money into clean money (Grabosky, 2009, p. 135). The trans-border system of money transfer and use of international credit card have allowed rapid monetary transaction in numerous jurisdictions. Thus such complex financial transaction is considered to be a gateway for occurrence of money laundering.

6.5 Environmental Pollution

Environmental Pollution refers to anything that may cause injurious change in the condition of the environment, invades the safety of human beings or wildlife (Islam, 1999). Both the domestic companies and MNCs are often alleged to discharge toxic substances during manufacturing process which is in many extents detrimental to the ecological balance of the entire world (Grabosky, 2009). Pollutions like toxic wastes exhausted during manufacturing operations generally travel through air or water and can cause significant harm downstream or downwind. Many factories around the world are established near coastal areas which dump their toxic garbage in sea that contaminates both territorial and international waters.

6.6 Share Market Manipulation

Share Market Manipulation is another corporate fraud around the globe. The influential investors using their online trade policy have cunningly compelled the ordinary citizens to disseminate fake rumors and avail to the evident momentum in the bulk of share trading (Grabosky, 2009). Thus it is the market abuse with a willful attempt to interpose with free and fair performance of the market and make artificial, fake or misleading expression regarding the price of any product, security or currency.

6.7 Tax Evasion

Tax Evasion refers to an illegal way to avoid the payment of taxes. It is a common charge against many giant corporations and MNCs that they frequently adopt numerous policies and loans to defraud the national government from imposing taxes upon them. Corporations in collaboration with the auditors try dishonest reporting declaring their less profit and monetary losses.

6.8 Price Fixing

Price Fixing occurs when two or more sellers come to an agreement to coordinate the pricing of their goods. This elevates the market value of the product by giving advantage to the sellers and

subsequently causing loss to the prospective buyers. Such recession of the market may even take place nationally or among the manufacturers from different countries (Grabosky, 2009).

6.9 Industrial Espionage

In today's global economy, Industrial Espionage is a corporate wrongdoing done so far to obtain confidential business policy of foreign or domestic competing corporations. Stealing foreign trade secrets may be interesting for national companies and considerable business intelligence can also be attained by mining open source data (Grabosky, 2009). However, both public and private inquisitive organizations may get involved in illicit conduct to bring out proprietary information of their market competitors.

7. Corporate Crime by Multi-National Companies

In the global economy, Multi-National Companies (MNCs) have climbed to the apex of world economic prowess. Many MNCs have huge annual earnings that exceed the gross national product of many developing countries. These companies often resort practices that imbibe legal, financial and political fatigues to frame national legislations as well as influence international laws to attain private interest. In fact, MNCs have influence worldwide and the countries not having adequate legal framework to address corporate crime can face indicative injury towards their journey of economic stability (Alcadipani & Medeiros, 2019). This approach is made by the MNCs via creating a bridge among legislators, specific interest groups and government bureaucrats. Lastly, the ultimate goal behind this is to build a business environment for corporations to work with low wages, flexible rules and paramount protection from any sort of social and legal liability for their activities (Gilbert & Russell, 2002).

The World Trade Organization, the World Bank and the International Monetary Fund have initiated free trade policies which enhance the market based economic system. Nevertheless, such trade mechanism has also opened illegitimate opportunities for MNCs like dumping of counterfeit products in least developed countries, use of child labor, illegal adjustment of toxic wastes, manufacturing of defective goods, unsafe working conditions, money laundering, market manipulation, producing harmful medicines and other financial crimes (Gilbert & Russell, 2002). Subsequently these transnational corporate entities carrying business in two or more countries often create unbearable harm in at least one country. These harmful actions can be either violation of criminal and civil law or severe injury to individual person, property, local culture and environment. It is an undeniable truth that such corporate wrongdoing is done under the shelter of corporation's owner, directors or other key executives with objective to gain financial advantage and extend their arbitrary control on business competition (Gilbert & Russell, 2002). In the second half of the 20th century, companies like Nestle, United fruit and Wal-Mart were boycotted by mass people who were accused of unethical trade practices while they should have dedicated their attention in issues

like food safety, fair labor practice, human rights and environmental safety etc. (Berghoff & Speckermann, 2018).

8. Corporate Crime Scenario in Bangladesh, India and Malaysia

Corporate crime has got its huge fuel through economic and technological advancement of the developed and least developed nations worldwide. It was earlier discussed that globalization plays dominant role to spread the impact of business fraud beyond the national border. In last few decades, South-Asian countries like Bangladesh, India and Malaysia have experienced enormous economic prosperity but also encountered many incidents of corruption at both public and private level. These countries have faced economic frauds like accounting fraud, illicit trading activities, human trafficking, cybercrime, intellectual property theft, share market scandal and many more (Pontell & Geis, 2010).

8.1 Bangladesh

Bangladesh is said to be one of the world's fastest growing economies and both Dhaka as well as Chattogram are the key commercial zones of the country. Like many other developing nations, Bangladesh has number of business institutions which genuinely contribute to the domestic economic prosperity. Being an economic zone in Asia, the country has equally faced number of corporate crimes. Manipulations of the stock market and looting of small investors by the syndicate were the mostly talked corporate issues of the country (Sarwar, 2015). Using their wide and empirical network they shifted gigantic amount of money in abroad. Unfortunately these manipulators of share market have not been yet brought before the court. Occurrences in last few years like embezzlement and misuse of trust fund of Sonali Bank, BPL Cricket Tournament, Padma Bridge Budget, Hallmak and Destiny 200 Ltd. are observable corporate scams in the economic sector of Bangladesh. The event of Rana Plaza is may be the most shocking illustrations of corporate disaster, the people of Bangladesh have lastly witnessed. The Rana Plaza, an eight-storied building was not planned for factories but for shops and offices and the top four floors were built by violating the provisions of national building code. Without paying any heed to the building code, politician Sohel Rana was running his garment factory with heavy machinery in his Rana Plaza. On 24 April of 2013, the building collapsed killing around 2500 workers where more than half of the victims were women. Just a day before the collapsing of Rana Plaza, cracks were seen in the building but Sohel Rana declared to factory workers that the building was safe. The Industrial Police requested the evacuation of the building but Sohel Rana reported to media that his Rana Plaza was totally safe and the workers should go back to the work next day. This was the deadliest garment factory disaster has ever taken place in Bangladesh. Till now, the investigating authority lacks well equipped knowledge to investigate the cases of corporate corruption and the legal system of the country is not updated enough to realize the complexities arising in financial crimes. Another notable corporate fraud in Bangladesh is Sonali Bank and Hallmark scam. In 2012 it was revealed by the Bangladesh Bank that between 2010 and 2012, the Ruposhi Bangla Hotel Branch of the state-owned Sonali Bank illicitly distributed 460 million US Dollars in loans and the largest share of 340 million US Dollar was gained by the Hallmark Group. It is alleged that this scam is the country's largest

banking scandal in the history and resulted from the collusion between the stakeholders of Sonali Bank and Hallmark.

8.2 Legal Framework in Bangladesh

After all these incidents of corporate scandals the Parliament of Bangladesh has not yet enacted any precise, unique and comprehensive legislation to regulate the liability and punishment of the corporate wrongdoers. However, enactment of the Anti-Corruption Commission Act, 2004 can be mentioned as under this Act an independent Commission has been founded for considerable detention, investigation and conducting of cases regarding any sort of corruption. This Commission is empowered to investigate the crimes enlisted in the schedule of the Act. Moreover, the Commission can appoint an Investigating Officer who shall have the equivalent power to investigate just like an Officer-in-Charge of police station. As per the provision of this Act if a person becomes unable to put forward the statement of his property within the fixed time or presents counterfeit statement and if owns assets disproportionate to lawful source of income is punishable under Section 26 and 27 respectively. According to the Anti-Corruption Rules, 2007 enquiry into the allegations of corruption can be initiated upon finding the *prima facie* truth or falsehood thereof. Besides, the Money Laundering Prevention Act, 2012, the Digital Security Act, 2018, the Penal Code, 1960, the Companies Act, 1994 and the Banking Companies Act, 1991 are enacted having few distraught provisions regarding the regulation of corporate crime in Bangladesh. For example, Section-103, 145, 146, 147, 181, 185, 190, 290, 331, 397 and 398 of the Companies Act enumerate some civil and criminal liabilities of directors of any company. But unfortunately there is no history of noteworthy and striking penalty for corporate crime in Bangladesh so far.

8.3 India

In India, the advancement of economic and industrial development has led to the establishment of industries and factories by both domestic corporations and MNCs. Number of illustrations of corporate crime occurred in India like Bhopal Gas Tragedy, Jaipur Oil Depot Fire, Bombay Docks Explosion, Uphaar Cinema Tragedy, Satyam Scam, Ketan Parekh Securities Scam, Speak Asia Scam, Home Trade Scam, Saradha Chit Fund Scam, Mundhra Scam, Enron Scam and Standard Chartered Bank case etc. Notably the Saradha Chit Fund Scam of 2013 was one of the devastating corporate scandals in West Bengal of India. It was alleged to get political patronage and enticed millions of investors to deposit fund with guarantee of huge return including other facilities (Tiwary, 2019). At last, the chit fund collapsed directing to defaults after being strictly scrutinized by SEBI and Reserve Bank of India. This incident left the fellow depositors as street beggars, wounded up number of media outlets of Saradha and made thousands of journalists jobless. The Chairman and Managing Director of Saradha Group, Sudipto Sen was arrested in 2018 and charged with allegation of money laundering. For poor depositors the State Government had arranged a fund of Rs 500 crore as compensation.

8.4 Legal Response of India towards Corporate Crime

To make a strong grip over the outrageous impact of corporate crime, the government of India has promulgated legislations like the Industrial (Development and Regulation) Act, 1951, the Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1973, Companies

Act, 2013, the Prevention of Money Laundering Act, 2002 and the Prohibition of Corruption Act, 1986 which contain numerous rules regarding the penalty of corporate criminals. The key object of the Prevention of Money Laundering Act is to restrain the banking companies from aiding as a chain in money laundering activities and maintain database about the source of money from their clients. The Indian Companies Act, 2013 in Section 447 shows a list of corporate offences and also directs the government to establish special courts for speedy trials of those offences under Section 447. The Section 211 authorizes the central government of India to form Serious Fraud Investigation Office (SFIO) to investigate the cases of corporate frauds throughout the country. According to the Indian Penal Code, if any business entity endangers public safety by polluting water then the District Magistrate can initiate legal action against them under Section-133 of the Code of Criminal Procedure, 1973. Additionally the Environment (Protection) Act, 1986 and the Water (Prevention and Control Pollution) Act, 1974 apparently lays down the provisions under which corporations can be prosecuted for various criminal liabilities. In the *Standard Chartered Bank and Others v. Directorate of Enforcement* case, the Standard Chartered Bank was made liable for violating certain provisions of the Foreign Exchange (Regulation) Act and subsequently the Apex court decided that the corporation could be punished with fines for violation of national laws. The court added that a company is a juristic person and both the Foreign Exchange (Regulation) Act as well as the Indian Penal Code did not make any differentiation between a natural person and a company. Being a juristic person, a corporation cannot be awarded imprisonment but the sentence of fine can be imposed on it.

8.5 Malaysia

Like other countries of the world, the rate of corporate crime in Malaysia is on the upward trend. According to the survey of KPMG Malaysia, it is felt by 60% respondents that fraud is the core crisis in Malaysian business (Abdullah et al, 2016). Many chief executives of public listed companies are engaged with the commission of business fraud and it is an increment of 33% from 2002 (Abdullah, Said, Saad & Omar, 2016). In 2019, criminal charges under the Capital Markets and Services Act were lodged against seventeen directors and former directors of Goldman Sachs Group Inc. This came to light from an investigation of multi-billion-dollar corruption scandal that led to the expiry of the sovereign fund, 1Malaysia Development Berhad (1MDB). For being involved in the 1MDB Scandal, there are currently around 42 charges brought against the ex-prime minister of Malaysia ranging from criminal breach of trust to money laundering (Huan & Singh, 2019).

8.6 Malaysian Laws on Corporate Crime

The Securities Industry Act, 1983, the Companies Act, 2016, the Malaysian Anti-Corruption Commission Act, 2009, the Capital Markets and Services Act, 2007, Financial Services Act, 2013, the Islamic Financial Services Act, 2013, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act, 2001 and the Competition Act, 2010 have been successfully promulgated by the Malaysian government to deal the cases of corporate corruption. Malaysia has the Commercial Crime Investigation Department (CCID), the Malaysian Anti-Corruption Commission (MACC), the Companies Commission of Malaysia (CCM), the Securities Commission, the Central Bank of Malaysia and the Competition Commission as the law enforcement authorities with earmarked and distinguished duties to overview the country's

commercial sector. These commercial law enforcing authorities are responsible for investigating cases of financial crime such as embezzlement, fraud, bribery, corruption of public officer, breach of director's duty, market manipulation, money laundering and monopoly business etc. In Malaysia, the law enforcement agency can even take assistance from foreign enforcement authority under the Criminal Matters Act, 2002 to investigate grievous corporate crimes. The Malaysian Anti-Corruption Commission Act, 2009 which was amended in 2018 is the prime legislation to introduce corporate liability in Malaysia. The Amended Act has got a new Section 17A that provides for corporate criminal liability. Under this Section, a commercial organization is held liable if any executive of the organization corruptly commits an act for the benefit of himself or organization. Any corporation alleged of corporate fraud is punishable with fine not less than ten times of the value of subject matter of the offence or RM 1 Million, whichever is higher or with confinement up to 20 years or with both. Under Section 367(1) of the Capital Markets and Services Act, if an offence has been done by a corporation or by a director or higher executive or a representative or was intending to do such act, is deemed to have committed that offence as the employee was the operating mind of the corporation. Similarly in *Kumpulan Wang Persaraan (Inc) v. Meridian Asset Management Sdn Bhd*, the Malaysian High Court held that a corporation can be made liable for any corrupt act of its officials when they work within the authority and for the benefit of that corporation. However, there is no special or separate court in Malaysia to try the cases of business crime whereas the Magistrate Courts and the Sessions Courts usually try these cases.

9. Challenges to Ensure Corporate Criminal Liability

It has always been a long debated issue regarding the establishment of intentionality of corporate frauds and determination of corporate criminal liability for punishing culprit corporations. However, in 1842 the English courts recognized the concept of corporate criminal liability when a corporation was fined due to failure of statutory duty (Basi, 2016). Corporate crimes are usually quite different and bear diverse characters distinct from most of the ordinary street crimes (Henning, 2015). Proving the allegation of corporate fraud and sentencing the offenders is a vexing issue as these wrongdoings do not immediately seem to be crime and the victims do not suffer in the same course like other traditional offences. The mass people in most of the cases do not even bring any allegation of corporate crime and as a result, law enforcing agency fails to initiate any investigation (Sarwar, 2015). Some companies are so large and politically powerful that they influence the employment and unemployment rate of a country by controlling job sectors. National government often takes loan from giant corporations and in case of involvement of these corporations with financial crimes they can compel the government to impose nominal penalties (Werle, 2019). It is also argued that imprisonment cannot be sentenced in case of corporation even for serious offences (Thansum & Kannappan, 2018). Furthermore, it is observed that corporate organizations may have business cohesion with renowned lawyers, trade associations, journalists and columnists that help them to keep a dignified status in the eye of mass people (Etzioni & Mitchell, 2007).

Internationally the laws to hold corporations accountable are systematically being dismantled. The criminal law only addresses those injuries that have been decided as crime before commission of the act and it is immensely problematic while dealing with allegation against corporations (Gilbert & Russell, 2002). Before imposing punishment it is must to establish criminal intent or *mens rea*. But where the accused is a corporation, it is a challenge to prove clear intention of causing injury as corporate documents and papers often reveal law abiding corporate goals and practices.

Argument is always there about the *mens rea* of corporations as they neither have mind nor freedom of action separate from the decisions and activities of the executives involved. Under this view, only the human actors running the corporation can form guilty intent and may commit criminal acts for personal interest while acting on behalf of corporation or making corporate decisions. A corporation in the physical sense does not have a brain to pose criminal ideas and all the corporate conducts are the result of consultation and decision-making of the individuals who carry out the duties entrusted to them of different units within the organization (Gilbert & Russell, 2002). This corporate decision making authority has due knowledge of law and ability to differentiate between right and wrong. By business risk assessment policy, the directors of a company can also identify probable harms and risks. So under this illustration there is actually no scope for criminal sanctions of corporation (Gilbert & Russell, 2002). It is another annoyance that deficiency of apposite knowledge of the judges of trial courts on corporate crime is a big hindrance towards the framing of corporate criminal liability and additionally the prosecutors are often not well trained to deal corporate fraud cases (Khanna, 2004). Lastly, lack of public awareness and criminal attitude of many gigantic corporations have cemented more agony to ensure corporate criminal liability and punish culprit corporations.

10. Way Forwards

There is no alternative left for the government of Bangladesh but to enact a comprehensive, unique and fruitful legislation to deal with the cases of corporate crime and ensure corporate

criminal liability of the corporations. The country signed the Rome Statute in 1999 and being an economic zone in South Asia, has an international obligation to strive for the betterment of national economy free from corruption and business crimes. Taking the current perspective of corporate crime incidents of Bangladesh the following recommendations can be initiated:

- Criminal liability shall be imposed upon all the directors and policy-makers of the corporation in case of any corporate wrongdoing committed by employees that relates to the interest of corporation.
- Special commission and training institution for both judges and lawyers shall be established to bestow moderate knowledge for ensuring criminal liability of corporation as well as handle business and industrial crime cases.
- Speedy tribunal or court shall be established to try the cases of corporate crime as the commission and impact of these offences do not resemble with traditional crimes.
- Separate and independent commercial law enforcing agencies like Malaysia shall be formed with expertise knowledge and demarcated power to conduct investigation into the diversified cases of corporate crime.
- Corporations alleged to be involved in any sort of financial crime shall be listed as suspicious in record of the law enforcing agencies as either the main perpetrator or as an accomplice of that crime.
- Fines to be imposed for corporate crime shall be quite larger than the value of mischief caused or assets gained by committing business fraud and shall be proportionately distributed among the victims.
- Imposition of huge amount of fine shall also be introduced for charge of crime against corporation where the penalty for such crime also included imprisonment.
- Emphasis shall be given to establish corporate criminal liability even if the corporation is found to be negligent or imprudent to comply with the safety regulations, labor standard or other corporate responsibilities.
- Order of winding up and permanent or temporary prohibition from continuing certain business activities can be pronounced by the trial court depending upon the nature and impact of the crime committed by corporation.
- To have better control over the actions of MNCs, they shall be compelled to deposit a proportionate amount of their capital to the national treasury which can assist the national government to recover damages in case of any corporate fraud by them.
- Exemplary punishment shall be given and arrangement of public humiliation by broadcasting public notice be made in society exhibiting the impact of committed crime and sentence imposed upon the criminal corporation.

11. Concluding Remarks

Corporate crime is a heinous crime which leaves terrible harm on economic sector at both national and international level. Around the world, the least developed countries suffer mostly due to the occurrence of corporate disaster as they consistently strive to attain financial stability. Bangladesh having lack of adequate legislation to regulate corporate crime bides serious challenge to address and punish corporate culprits. In order to mitigate the sufferings of corporate crime, it is incumbent upon the government to enact comprehensive and unique legislation for ensuring

corporate criminal liability and enhance the progression of corporate and industrial sector of the country. Special regulatory bodies like commercial law enforcing agencies and separate court shall be established with explicit power to deal with the instances of corporate crime. Judges and prosecutors conducting the cases of corporate crimes shall be well acquainted with the knowledge of corporate and economic affairs. Fine with other sanctions are to be effectively implemented to bring corporate criminals under convictions and initiatives shall be adopted to make society aware of such crimes. It is undoubtedly true that the way to control corporate crime around the world is to regulate this threat globally and especially the developed countries shall come forward to ensure the effectiveness of criminal law to punish corporate wrongdoers. Corporations causing death of people or workers shall be treated as a crime against humanity and the concerned persons operating the business of such company shall be charged with this wrongdoing. Furthermore, as corporate crime has socio-economic implications it requires collective endeavor of the government and citizens to fight this pest. Last but not the least; public awareness must be shaped to make common citizens literate about the uncertain victimization and unsighted harm of corporate crime. Eventually

it is expected that the proposed recommendations can be utilized to save national economic prosperity of Bangladesh from the evil of corporate crime.

References:

- Abdullah, W. N., Said, R. Saad, S. M. & Omar, N. (2016). Corporate Crime Tolerance of Accounting Professionals in Malaysia. *Proceedings of the ASEAN Entrepreneurship Conference*, Springer, 205-219, DOI 10.1007/978-981-10-0036-2_19
- Alcadipani, R. & Medeiros, C. R. O. (2019). When Corporations Cause Harms: A Critical view of Corporate Social Irresponsibility and Corporate Crimes. *Journal of Business Ethics*, 01-14, DOI 10.1007/s10551-019-04157-0
- Berghoff, H. & Spiekermann, U. (2018). Shady business: On the history of whir-collar crime. *Business History*, 60(3), 289-304. Doi: 10.1080/00076791.2018.1414735
- Coleman, K. (2009). Controlling corporate Crime: an Analysis of Deterrence Versus Compliance. *Northwestern Interdisciplinary Law Review*, 02(01)
- Erp, J. V. (2018). The Organization of Corporate Crime: Introduction to Special Issue of Administrative Science. *Administrative sciences*, 08(36), 03-12
- Etzioni, A. & Mitchell, D. (2007). Corporate Crime. *International Handbook of White-Collar and Corporate Crime*, Springer, USA
- Evertsson, N. (2017). State Aid and Taxation of Transnational Companies: A study of State-Corporate Crime. *Critical Criminology*, 25, 507-522, DOI 10.1007/s10612-017-9375-6
- Ghafoor, A., Zainuddin, R. & Mahdzan, N. S. (2018). Factors Eliciting Corporate Fraud in Emerging Markets: case of Firms Subject to Enforcement Actions in Malaysia. *Journal of Business Ethics*, 01-22, DOI 10.1007/s10551-018-3877-3
- Gilbert, M. J. & Russell, S. (2002). Globalization of criminal justice in the corporate context. *Crime, Law & Social Change*, 38, 211-238
- Grabosky, P. (2009). Globalization and White-Collar Crime. *Springer Science+Business Media*, 129-151, DOI 10.1007/978-0-387-09502-4_7
- Henning, P. J. (2015). Is Deterrence Relevant in Sentencing White-Collar Criminals? *Wayne Law Review*, 61, 27-59
- Huan, L. K. & Singh, M. (2019). Malaysia: Business Crime Laws and Regulations 2020. Available at <http://iclg.com/practice-areas/business-crime-laws-and-regulations/malaysia>
- Islam, S. M. F. (1999). INITIATIVES TO COMBAT CORPORATE ENVIRONMENTAL CRIMES: A COMPARATIVE STUDY. *Bangladesh Journal of Law*, 03(01), 91-138

- Khanna, V. S. (2004). Corporate Crime Legislation: A Political Economy Analysis. *Washington University Law Review*, 82(1), 95-141
- Levi, M. & Dorn, N. (2006). Regulation and Corporate Crime: Managers and Auditors. *European Journal of Criminal Policy and Research*, 12, 229-255, DOI 10.1007/s10610-006-9023-2
- Peoples, C. D. & Sutton, J. E. (2015). Congressional bribery as state-corporate crime: a social network analysis. *Crime Law Society Change*, DOI 10.1007/s10611-015-9584-4
- Pontell, H. N. & Geis, G. (2010). Introduction: White-Collar and Corporate Crime in Asia. *Asian Criminology*, 05, 83-88
- Sarwar, T. B. (2015). Corporate Criminality: A threat to the society and Challenge for the Criminal Justice System. *International Journal of Humanities & Social Science Studies*, 02(02), 320-346
- Simpson, S. S., Rorie, M., Alper, M. & Busey, N. S. (2014). Corporate Crime Deterrence: A Systematic Review. *Campbell Systematic Reviews*, 04, 01-105, DOI 10.4073/csr.2014.4
- Tehrani, A. K. G., Pushkarna, N., Shen, P., Geis, G. & Pontell, H. N. (2013). White-collar and corporate crime in China: a comparative analysis of enforcement capacity and non-issue making. *Crime Law Society Change*, DOI 10.1007/s10611-013-9454-x
- Thansum, M. A. & Kannappan, M. (2018). A Critical Study on Corporate Criminal Liability with Reference to Indian Case Laws. *International Journal of Pure and Applied Mathematics*, 119(17), 681-692
- Tiwary, D. (2019). Explained: What is the Saradha scam? How is Trinamool linked? Available at <http://indianexpress.com/article/explained/mamata-banerjee-vs-centre-kolkata-police-rajeev-kumar-saradha-chit-fund-scam-5569235/>
- Wells, C. (1995). Corporate Manslaughter: A Cultural and Legal Form. *Criminal Law Forum*, 06(01), 45-72
- Werle, N. (2019). Prosecuting Corporate Crime When Firms Are Too Big to Jail: Investigation, Deterrence, and Judicial Review. *Yale Law Journal*, 128(05), 1366-1438
- *Kumpulan Wang Persaraan (Inc) v. Meridian Asset Management Sdn Bhd* (2013) 9 MLJ
- *Standard Chartered Bank and Others v. Directorate of Enforcement* (2005) 4 SCC 530