Corporate crime is nothing new to India. Corporate crime is a burning issue nowadays, one can find in newspaper daily scams involving companies which are ruining the economy of the state and also spoil the state of welfare community. Corporate crime is the basic foundation of any developing country, and state should not depend on the business sector to deliver a stable economy.

For welfare of the community corporate crime pose a significant threat given the pervasive presence of corporation in wide range of activities in our society and the impact of their action on much wider group of people are affected. The potential harm for both economic and physical caused by corporation is greater.

Bribery and corruption are the major problem in the developed world and corruption among public official is said to be a large cause of crime on poor countries that having large International Monetary Fund debts.

Therefore it is important to improve the notion of what is corporate crime and up to what extent the liability should impose on corporate. Because the ultimate goal of any civilized society is that “Jio are Jine do” means “live and let to live others”

In the opening of researcher that for any developed state or country corporate are necessity it’s improve the economy but it should not at the cost of human life.

To live simply is not the real meaning or definition of any civilized society to live means to live with dignity with humanity. The present scenario of liability of corporate is to become more strengthen than now. The endorsement of criminal liability for corporation has been largely a twentieth century phenomenon. Corporate liability has become prominent item on the agenda for law reformer Provision on corporate liability have been in several proposal for codification in
India especially since the Bhopal Gas case. As yet the direction forward remain unsettled. Conventional crime were not designed with the company in mind and they fail to capture the essence of corporate fact. The role of corporation in society has become conspicuous. Given the place that corporation play in the commercial life of our society and the place that commercial life holds in our system of values it is easy to see how corporate criminal liability suits this purpose.

1.1 Meaning of Crime

Crime is illegal activity that is prohibited by the law. A crime is often called an ‘offence’. Some people wear shirts that say ‘it’s only illegal if you get caught’. This is untrue. Any activity prohibited by statute or the common law is illegal whether you are caught or not. This is like saying ‘it’s only illegal to hurt children if you get caught’. People would agree that hurting children is illegal whether or not the people who commit such crimes are caught.

The law, and the crimes it creates are most often a reflection of morality. Morality is made up of the principles we use to govern our relationships with one another. This is why actions such as stealing, assault, rape, and murder are crimes – each of these acts harms our ability to trust other people, and to feel safe in society.

Other questions around crime are less easy to answer. Why is smoking cannabis a crime and smoking cigarettes not a crime, Why is alcohol legal but not other drugs. These are very difficult questions to answer, and there are many different answers. Often it is a question of cost and benefit. Tobacco products are heavily taxed. The tax from the sale of cigarettes goes to the public health system. Tobacco users will have greater cause to rely on that system later in life. It is more of a benefit to tax cigarettes and use money gained from that for the benefit of all, than to attempt to prevent people smoking them, which would involve more cost, and less benefit in the way of crime prevention. It would also create another large illegal industry, alongside that of drug manufacture and supply.
On the whole, crime is something that has to do with the greater good of society. The law criminalises activities that will hurt our relationships with one another, and in society as a whole. There are different levels of crime though – not all crimes are of the same magnitude. A parking offence is very different to murder. The law reflects the difference between these in the way the legal system deals with each crime, and the penalty imposed. A parking offence will incur a small fine, murder will incur a term of imprisonment.

Man by nature is a fighting animal hence to think of criminal less society is a myth. Truly speaking there is no society without the problem of crime and criminals. The concept of crime is essentially concerned with social orders. It is well known that man’s interest are best protected as a member of the community. Everyone owes certain duties to his fellow man and at the same time has certain rights and privileges which he expects others to ensure him.

Although, most people believe in “live and let live” policy yet there are a fear who for some reason of the other deviate from this normal behavioral pattern and themselves with anti social elements. There is hardly any society which is not beset with the problem of crime. Infect crime is a constant phenomenon changing with the social transformation.

The concept of crime is closely related to social policy of given time with changes in ideologies the concept of crime also changes. This is to say, certain new crimes spring up where existing crime become absolute and therefore they are deleted through adequate changes in the criminal law. It is for this reason that the criminal law has often been considered as a barometer to gauge the moral turpitude of the society as given time. In other words the social standard of society can conveniently be judge by studying the criminal policy adopted by it.

There has been considerable increase in crime rate in recent decades. This phenomenon, however is not peculiar to India alone. The up word trend in crime rate can be attributed to modernization ,urbanization, industrialization, advance of science and technology and growth of civilization and advent of materialism with
economic growth people’s crave for wealth and other luxuries of life has increased beyond limits which can not be quenched with the available resources. Obviously person who can not resist their temptation too often resort to unlawful means to meet their ulterior motives. Scientific know has proved a boon to offenders in carrying out their criminal activities with considerable ease. They have provided better opportunity for escape and avoid detection which has mitigated the risk involved in committing crimes.

The term crime does not, in modern times, have any simple and universally accepted definition, but one definition is that a crime, also called an offence or a criminal offence, is an act harmful not only to some individual, but also to the community or the state a public wrong. Such acts are forbidden and punishable by law.

The idea that acts like murder, rape and theft are prohibited exists all around the world, and has a universal moral basis. What precisely is a criminal offence is defined by criminal law of each country. While many have a catalogue of crimes called the criminal code, in some common law countries no such comprehensive statute exists.

The state government has the power to severely restrict one’s liberty for committing a crime. Therefore, in modern societies, a criminal procedure must be adhered to during the investigation and trial. Only if found guilty, the offender may be sentenced to punishment such as community sentence, imprisonment, life imprisonment or, in some jurisdictions, even death.

To be classified as a crime, the act of doing something bad that is actus reus must be usually accompanied by the intention to do something bad mens rea, with certain exceptions strict liability.

While every crime violates the law, not every violation of the law counts as a crime. Breaches of private law (torts and breaches of contract) are not automatically punished by the state, but can be enforced through civil procedure.
1.1.2 Origin of word crime

The word *crime* is derived from the Latin root *cerno*, meaning “I decide, I give judgment”. Originally the Latin word *crimen* meant “charge” or “cry of distress.” The Ancient Greek word *krima*, from which the Latin cognate derives, typically referred to an intellectual mistake or an offense against the community, rather than a private or moral wrong.

The word may derive from the Latin *cernere* – “to decide, to sift”. But Ernest Klein rejects this and suggests cri-men, which originally would have meant “cry of distress”. Thomas G. Tucker suggests a root in “cry” words and refers to English plaint, plaintiff, and so on. The meaning “offense punishable by law” dates from the late 14th century. The Latin word is glossed in Old English by *facen*, also “deceit, fraud, treachery.. *Crime wave* first attested in 1893 in American English.

1.1.3 History of Crime

Some religious communities regard sin as a crime; some may even highlight the crime of sin very early in legendary or mythological accounts of origins — note the tale of Adam and Eve and the theory of original sin. What one group considers a crime may cause or ignite war or conflict. However, the earliest known civilizations had codes of law, containing both civil and penal rules mixed together, though not always in recorded form.

Historically the concept of crime seems to have always been changing with the variations in social conditions during the evolutionary stages of human society. This can be illustrated be the face that early English society during 12th, 13th centuries included only those act as crime which were committed against the state or the religion The expression “crime” means, in England and Ireland, any felony or the offence of uttering false or counterfeit coin, or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or any misdemeanour under the fifty-eighth section of the Larceny Act, 1861.
1.1.4 Crime defined

A precise definition of “crime” is by no means an easy task. Generally speaking, almost all society have certain norms be beliefs, customs and traditions which are implicitly accepted by its member as conducive to their well being to and healthy around development. Infringement of these cherished norms and custom is condemned anti social behavior, thus many writers have defined, ‘crime’ as anti social immoral or sinful behavior.

1.1.5 Sociological

A normative definition views crime as deviant behavior that violates prevailing norms–cultural standards prescribing how human sought to behave normally. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social, political, psychological, and economic conditions may affect changing definitions of crime and the form of the legal, law-enforcement, and penal responses made by society.

These structural realities remain fluid and often contentious. For example: as cultures change and the political environment shifts, societies may criminalise or decriminalise certain behaviours, which directly affects the statistical crime rates, influence the allocation of resources for the enforcement of laws, and influence the general public opinion.

Similarly, changes in the collection and/or calculation of data on crime may affect the public perceptions of the extent of any given “crime problem”. All such adjustments to crime statistics, allied with the experience of people in their everyday lives, shape attitudes on the extent to which the State should use law or social engineering to enforce or encourage any particular social norm. Behaviour can be controlled and influenced in many ways without having to resort to the criminal justice system.

Indeed, in those cases where no clear consensus exists on a given norm, the drafting of criminal law by the group in power to prohibit the behaviour of another
group may seem to some observers an improper limitation of the second group’s freedom, and the ordinary members of society have less respect for the law or laws in general — whether the authorities actually enforce the disputed law or not.

However, according to the legal definition ‘crime’ is any form of conduct which is declared to be socially harmful in a state and such forbidden by law under pain of some punishment. Therefore, Tappan has defined as an international act or omission in violation of criminal law, committed with out any defense or justification and penalized by the law as felony or misdemeanor. According to Blackstone, “A crime is an act committed or omitted in violation of a public law either forbidden or commanding it.” He however realized at his latter stage that this definition may prove to be misleading because it limit the scope of crime to violation of a “public law” which normally covers political offence as offence against state therefore he modified his definition of crime and stated “a crime is a violation of public” rights and duties due to the whole community considered as a community.

1.1.6 Characteristics of crime

There are certain characteristics of a crime which make an unlawful act or omission punishable under the law of the land. The main characteristics of crime are as follows:

1. External consequences
2. Act (Actus Reus)
3. Mens rea or guilty mind
4. prohibited act
5. punishment

1 Tappan Paul Wk; crime Justice and correction, P.80.
2 William Blackstone: Commentaries Vol.IN P.5
1. External consequences

Crime always have harmful impact on society may it be social, personal, economical or mental.

2. Act (Acts Rens)

There should be an act or omission to constitute crime. Intention or mens rea alone shall not construe a crime unless it is followed by some external act. Generally omitting to do something will not amount to actuaries of an offence. The criminal law usually punished individuals for positive conduct and not for inaction. There are however some notable exception. e.g. a police officer may have a duty to act to prevent and assault and if he does not he will be liable to punished under the law.

3. Mens rea or guilty mind

Mens rea is one of the essential ingredient of a crime. It may however be direct or implied. the implied means rea is otherwise termed as constructive means rea. The maxim ‘actus non facit reumnisi mens sit rea’ means that an act alone does not constitute a crime unless it is a companied by gailty intention. The doctrine had been discussed elaborately by Will J. in Tolson;s case3

Mens rea implies that there must be a state a mind with respect to an actus reas that is an intention to act in the prescribed fashion. It is however, important to distinguished means from motive Thus if a person steal’s away a few loaves of bread from someone’s kitchen to feed a child who is dying of hunger the motive here may be honourable and understandable, nevertheless the means rea being to commit the theft, the persons would be convicted for theft, its motive may however be taken in to account in sentencing and he may be less severely punished because for his good motive. In short motive should be taken into consideration at the sentencing stage and not at the time of deciding the questions of mens rea.

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3 (1869) 23 GBD 168
4. Prohibited act

The act should be prohibited or forbidden under the existing penal law. Act however immoral, shall not be an offence unless it is prohibited by law of land.

5. Punishment

The act, in order to constitute a crime should not only be prohibited by the law but should also be punishable by the state. The punishment usually set out in term of a maximum and the actual punishment in any particular case is left to the direction of the judge both the defence and the prosecution have a right to appeal against the quantum of sentence.

1.2 Concept of Corporate

The common man definition of corporation is a group of individuals coming together to carry on a business. Corporation is a creation of law, a business entity recognized by law. Though English law established the origin of Modern corporation in the 14th century or so, yet some authors are of the view that the origin of corporation could be sought in the 20th century or perhaps in the roman law where juristic person was said to have been recognized, Sir Henry Maine suggested that a sort of corporate as opposed to the individual responsibility was at the very heart of the primitive legal system. Society was not what it is assumed to be at present, a collection of individuals but in view of others it is an aggression of families, The law recognized this system of small independent corporation.

1.2.1 Corporation are of two kinds.

a. Corporation Aggregated
b. Corporate Aggregate

1.2.2 Corporate crime

Corporate crime refers to crime committed by either a corporation or individual that may be identified with corporation or other business entity. In criminology, a corporate crime refers to crime committed by individual that may be identified with a corporation or other business entity.
Corporate crime overlaps with:

A) White collar crime

B) Organized crime

C) State corporate crime

A) White collar crime

The majority of individual who may act as or represent the interest of the corporation are employees or professionals of a higher social class.

According to Edlehere “An illegal act or series of illegal acts committed by non physical kinds of means and by concealment or guilt, to obtain money or property or to obtain business advantage”.

According to Sutherland “crime committed by persons of respectability and high social status in course of their occupation”

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white collar criminality. The reason for enormous increase in white collar crime in recent decades is to be found in the fast developing economy and industrial growth of this developing country.

The Santhanam Committee Report in its findings gave a vivid picture of white collar crimes committed by persons of respectability such as businessmen, industrialists, contractors and suppliers as also the corrupt public officials. Highlighting the magnitude of white collar crime in India, the Commission on ‘Prevention of Corruption’ in its report observed:

“The advance of technological and scientific development is contributing to the emergence of ‘mass society’ with a large rank of file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and
economic processes. The inability of all sections of society to appreciate this need in full results in the emergence and growth of white collar and economic crimes, renders enforcement of the law-s, themselves not sufficiently deterrent, more-difficult. Tax evasion and avoidance, share-pushing, malpractices in the share market and administration of companies, monopolistic control, usury, under-invoicing or over-invoicing, hoarding, profiteering, substandard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime.”

B) Organized crime

The criminal can set up corporation either for the purpose of crime or as vehicles for laundering the proceeds of crime organized crime has become a branch of big business and is simply the illegal sector of capital. It has been estimated that by the middle of the 1990s the gross criminal product of organized crime made it the twentieth richest organization in the world richer than 150 sovereign states.

The gross criminal product has been estimated at 20 percent of world trade.

C) State Corporate Crime

In many content the opportunity to commit crime emerges from the relationship between the corporation and the state.

Corporate crime may involve acts like fraud, environmental pollution, corporate crime such as the 1985 Union Carbide accident in Bhopal India making of unsafe product and dangerous work environment.

Corporate crime activities are mostly due to inadequate cash security practices inadequate supervisions as well as a lack of internal auditing. The recent wave of corporate scan dates has a different character. In many of these cases, the crime serves firm owner’s direct interest employees commit crime in response to incentives provides by the firm.
White collar crime steals the thunders from conventional crime as it potentially affect the financial performance of commercial organization in the country. The corporate crimes together with the economic development of modern society. The suppression of corporate crime is receiving increased of attention world wide and have been incorporated into legal system in a lot of countries.

1.3 Criminal liability and Corporate Criminal liability

1.3.1 Meaning of Criminal liability

In criminal law, corporate liability determines the extent to which a corporation as a legal person can be liable for the acts and omissions of the natural persons it employs. It is sometimes regarded as an aspect of criminal vicarious liability, as distinct from the situation in which the wording of a statutory offence specifically attaches liability to the corporation as the principal or joint principal with a human agent.

Criminal liability is what unlock the logical structure of criminal law. Each element of crime that the prosecutor needs to prove Beyond reasonable doubt is a principle of criminal liability. There are some crime that only involve a subset of all the principles of liability and these are called “crimes of criminal conduct”

Criminal liability is attached only those acts in which there is violation of criminal law i.e to say there can not be liability without a criminal law which prohibits certain acts or omissions.

The basic rules of criminal liability revolves around the basic latin maxim acts non facit reum, nisi mens sit rea. It means that to make one liable it must be show that act or omission has been done which was forbidden by law and has been done with guilty mind.

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Hence every crime has two elements one physical known as acts reus and other mental known as mens rea. This is the rule of criminal liability in technical sense but in general the principle upon which responsibility is premised is autonomy of the individual, which states that the imposition of responsibility upon an individual flows naturally from the freedom to make rational choices about actions and behaviors.

Although the general rule as stated above is applicable to all criminal cases but the criminal law jurisprudence has seen one exception to the above said concept in form of doctrin of strict liability in which one may be made liable in absence of any guilty state of mind. This happens in cases of mass destructions through pollution gross negligence of the company resulting in widespread damages like tragedy etc.

Hence there can be no dispute of imposing criminal liability on corporations as regards no mens res requiring offences but however, it used to come to be questioned before the chartered bank judgment when mens rea was concerned.

1.3.2 Concept of Corporate criminal liability

The nature of corporate crime include insider trading in finance company so many companies came and in night it’s companies shares price become hike and greedy and needy person buy it and couple of month such companies are run away,

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5 Acts reus connotes those results of human conduct which is forbidden by law and hence constitutes of human action; result of conduct and act prohibited by law. One other hand mens rea is generally taken an blame worthy metal condition: Russell, W.O. Russll on crime P.17.51 (J.W.C. Turner Ed. New Delhi, Universal Law Publishing Pvt, 2001)


There are so many companies in Security Exchange Board of India. Such companies where about still not found. This is also a corporate crime. There are also some different types of corporate crime which affect mass population such as environment pollution, food adulteration so looking the nature of crime it is the obligation of state and nation to impose criminal liability on such corporate.

The endorsement of criminal liability for corporation has been largely a 20th century phenomenon, corporate liability has now become a prominent item on the agenda for law reformers provisions on corporate liability have been several proposal for codification in India, especially since the Bhopal gas case. Conventional crimes were not designed with the company in mind and they fail to capture the essence of corporate fault. The concept of acts and mens rea, with their human mooring attach are neither useful not appropriate in the corporate concept.

1.4 Indian Criminal Justice system

India derived its criminal justice system from British. There is a clear demarcation of the role and power and function of the legislature, Executive and judiciary is independent and there is a free press. The penal philosophy in India has accepted the concept of prevention of crime and treatment and rehabilitation of criminals which have been reiterated by many judgments of the supreme court victims have no rights under the criminal justice system and the state under take the full respnisifilty to prosecute and punish the offenders by treating the victims as mere witnesses

The Indian criminal justice system is governed by overall by four leves
1. The Constitution of India
2. The Indian Penal Code
3. The Code of Criminal Procedure of India
4. The Indian Evidence Act
The legislative power is wasted with the union parliament and state legislatures and the lane functions are divided into the union list state list and concurrent list in the Indian constitution. At the national level, two major criminal codes, The Indian penal code. 1865 and the Code of Criminal procedure 1973 deal with all substantive crime and their punishment and the criminal procedure respectively to be followed by the criminal justice agencies. i.e the police precaution and judiciary during the process of Investigation prosecution of trial of an offence. These two criminal laws are applicable through India and take precedence over any state legislation.

All major offences are defined in the Indian penal code and these apply to resident foreignness and citizens alike. Beside the Indian penal code many special laws have also been encased to tackle new crime.

The Indian criminal justice system has four sub systems which include legislature, (Union parliament state legislature, law enforcement Police, Adjudication, courts) and corrections adult and juvenile correction institutions, probation other non instructional treatment. The legal system in India is adversarial.

1.5 Corporate Criminal liability Under Indian Law

Corporate Crime have been always been in the news and can best be define as “illegal acts commotted by corporate employee on behalf of the corporation and with its supports. the consequences are far reaching and it is said to be very severe as corporation are inflicting a kind of damage to the society that individual acting alone can not conceive of inflicting. India should India adopt criminal liability in this regard is woth examining to evaluate and observe which liability would help hand down justice especially after the Bhopal Gas Leak case which resulted in mass destruction. It is considered as the world’s worst industrial catastrophe in 1984 where due to the leak of methyl isocyanate gas and other substances at the Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh, India, 500,000 people resulted in being affected and despite public commitments to health and safety UCIL created or allowed to develop conditions whereby an
accident was possible and further failed to mitigate the effects. Its aftermath is still seen today. Meanwhile, the Supreme Court judgment delivered in 1996 by justice Ali. M. Ahmadi is highly criticized for diluting the charges against the accused where on a petition moved by the accused, the Supreme Court had “amended” the charges from Section 304 Part (i) (culpable homicide not amounting to murder) to Section 304-A (causing death by negligence) of the Indian Penal Code 1860. On June 7th 2010, 26 years after the tragedy, the trial of the accused, mostly former officials of the Union Carbide, concluded with a shockingly low punishment i.e. two years of imprisonment with a fine of Rs 1 lakh under main Section 304-A (causing death by negligence) of the Indian Penal Code making it a bailable offence. The punishment does not justify the offence committed on that dreadful night, which is why it has been attacked from every corner. However the conviction of the accused did bring forth one fact that the model adopted in India for corporate liability is similar to that of UK i.e identification as we see that the head of the UCIL was charged for the offence. Although today it is an established fact that corporations can be criminally liable but so far India has not legislated on corporate criminal liability like the US, UK or Australian. The statutes in India do not yet include such developed jurisprudence and hence still makes the official responsible for all criminal acts. Some examples are sections 45,63,68,70(5),203,542 etc of the Indian Companies Act 1956 which hold only the officials of the company liable and not the company itself and the various sections of the Indian Penal Code 1860 directs compulsory imprisonment failing to take a corporation into account since such a sanction cannot work against the corporation. Apart from the above in India certain legislations which have provisions for corporate method of liability are Prevention of Food Adulteration Act, 1954 (Section 17), the Essential Commodities Act, 1955 (Section 10), the NDPS Act,1985 (Section 38), the Trade Marks Act,1999 (Section 114), the Income Tax Act,1961 (Sections 276-C and 278-B). It is important to analyse the pros and cons of corporate criminal liability and compare it with civil remedies to conclude what is more justifiable or efficient.

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