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IS CRIMINALIZATION OF CORPORATE DEFAULTS JUSTIFIED: A POLICY REVIEW.

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Abstract:

A critical analysis of the issue of criminalising the default of corporates as a policy reaction in the modern economic systems is presented in this paper. Corporate defaults which have long been seen as civil and commercial matters have received criminal penalties more and more following the large number of financial scandals and the increase in number of fraud and wilful default. The paper will assess the deterrent effect, implications of justice including economic implications related to the criminalisation of corporate defaults by comparing judicial practice, intent behind the legislation and comparative legal systems in India, the United Kingdom and the United States. The paper poses the question of whether the criminal law works in preventing fraudulent behaviours, accountability and protection of the interest of the people or it poses the risk of over-criminalisation that can destroy the entrepreneurship, investment and lawful risk-taking. The study indicates the challenge of proving deterrence empirically, threat of confusing legal business collapse with criminal malpractice, and unequal influence of corporate criminal responsibility.

The paper eventually recommends a moderate, mixed liability system which puts civil and insolvency reprisals at the forefront to business failures in good faith and consequently criminal penalties as a last resort to fraud, wilful default and breach of trust. This paper concludes that such a balanced approach will reconcile best accountability, economic efficiency and principles of criminal justice.

Research questions:

Q1. What do the empirical data collected concerning the deterrent impact on the corporate default criminalisation in cases of fraud and wilful default show and to what extent has criminalisation been proven to be effective in practice?

Q2. How can the law and regulation better be used to isolate justifiable business failure and criminal activity in instances of corporate default?

Q3. Largely, how much criminalisation of corporate defaults leads to over-criminalisation and

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what does that mean to the entrepreneurship, investment decisions, and lawful risk-taking in business?

Q4. Is individual liability imposition on directors and promoters more effective than corporate criminal liability in deterring fraudulent and wilful defaults, and which liability models are best at fulfilling the role of deterring fraud and accountability?

Introduction:

Historically, corporate defaults were treated primarily as civil and commercial matters, governed by insolvency and bankruptcy laws aimed at creditor recovery and corporate restructuring. However, a series of high-profile corporate collapses particularly following global financial crises such as the 2008 financial meltdown have exposed instances where defaults were not merely the result of market forces but of deliberate misrepresentation, financial manipulation, and abuse of fiduciary duties. These developments prompted policymakers in several jurisdictions to reconsider whether civil remedies alone were adequate to address corporate misconduct.

The current paper explores the issues on whether categorizing the corporate default as a criminal offense would represent an efficient and fair measure or it gives the risk of over-criminalization of business failure.[1]

Corporate crime is an inseparable concept on this discourse. According to Clinard and Quinney (1973), "Corporate crime is a violation of the law committed by a corporate entity or its representatives acting in the interest of the corporation."[2] This definition highlights the fact that organizational goals, and not the personal motive, often drive corporate malpractice, hence distinguishing it with that of the traditional criminal behavior. Although corporate defaults can sometimes be caused by justified financial distress, it can also include material falsification, embezzlement, and misuse of corporate power.

The argument that denies criminal punishment is pegged on the unique nature of corporations. Hazlitt states that, "Corporate bodies are more corrupt and profligate than individuals, because they have more power to do mischief, and are less amenable to disgrace or punishment. They neither feel shame, remorse, gratitude nor goodwill."[3] This view gathers closer to the notion that traditional civil sanctions might not be sufficient to prevent serious corporate malpractices, thus supporting the reason why criminal penalties should be involved.

[1] *Corporate crime | Legal Penalties & Prevention Strategies | Britannica*
[2] A. Javier Treviño (2019) *Clinard and Quinney's Criminal Behavior Systems (4th ed.)*
[3] Duncan Wu (1999) *The Selected Writings of William Hazlitt* Vol 6 (1st ed.)

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Concept of Corporate Default and Criminal Liability.

In the Indian legal system denotes the default of a business organisation on the basis of providing its financial commitments to the creditors, lenders, or other legal stakeholders within the stipulated time in the legal framework. Conventionally, these defaults have been regulated mainly by the civil and commercial law, which was administered and guaranteed by the insolvency and debt-recovery systems. Asset preservation, resolution of claims and restructuring of debt in common among the parties instead of punitive sanctions have been the main objectives of these regimes.[4] The example of this remedial strategy is present in legislative tools, including the Companies Act, 2013[5]; the Recovery of Debts and Bankruptcy Act, 1993[6], and, perhaps most notably, the Insolvency and Bankruptcy Code, 2016 [7](IBC).

However, given time, Indian policymakers have realized that corporate default is not necessarily due to actual business unsuccessfulness. In a number of cases, defaulting is an intentional or mala fide behavior such as borrowing fraudulently, manipulation of financial statements, embezzlement, misappropriation and misuse of fiduciary obligations by corporate officers. Therefore, the act of criminalising the default of companies in India does not target insolvency, as such, or its economic impacts, but the egregious behavior that is involved in the default or its antecedent. The liability of crime is averted where there is a failure of finances together with mens rea like fraud, false representation or an unprecedented neglect of a statutory responsibility.

The History of Imposing Criminal Penalties on Corporate Defaults in India.

In the past, the civil remedies were of primary importance in Indian company law and insolvency deals. The initial laws such as companies act 1956 depended majorly on winding-up penalties and regulatory penalties. There were criminal clauses, but they were somewhat restricted and inapplicable. Corporate insolvency was considerably considered to be a commercial tragedy and not a crime against the society.

This view has changed considerably in the post-liberalization period especially following the massive banking frauds, coupled with the cartridge increase in the non-performing assets (NPAs) of the Indian financial system. The failure of large corporations disclosed systematic inefficiencies of enforcement and accountability systems. To this, a more severe system of

[4] *agrudpartners. (2024, October 7). Corporate criminal liability in india - Agrud partners. Agrudpartners.*
[5] *The Companies Act 2013*
[6] *Recovery of Debts and Bankruptcy Act, 1993*
[7] *Insolvency and Bankruptcy Code, 2016*

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penalties was provided by the Companies Act, 2013, which includes the explicit criminalization of fraudulent actions, misstatements and administrative misconduct, which will lead to the insolvency of the company.

With the introduction of the Insolvency and Bankruptcy Code, 2016, the watershed moment was achieved. Although IBC is a civil form of insolvency resolution, it expressly provides criminal penalties in Section 68 to 77 in instances of fraudulent trading, wrongful insolvency conduct, concealments, and willful falsification of books. This is an adjudicated form of legislation, and the amount of insolvency is saved, but the misuse of the insolvency process is punished.

Situations where Criminal Punishment is imposed.

According to the Indian law, criminal punishment resides on the cases of the corporate default only when there are specific aggravating factors. These include:

Fraud and Willful Default: Where the companies or the promoters involved in this deliberately default with the intention of being in a position to pay the loan back but make use of the funds that have been borrowed in an unethical manner.

Fraud and Accounting Alteration: False financial statements being reported willfully with aims of getting credit or misleading creditors.

Fiduciary Duty violations by Directors: Directors who persist in trade, even though they know that they will go into insolvency, will result in wrongful loss to the creditors.

Asset Stripping and Concealment: Moving or hiding of assets with the aim of frustrating proceedings of creditors in a case of insolvency.

The acts also draw criminal liability on the purview of the IBC, the Companies Act, 2013 and the Indian Penal Code, 1860, especially when crimes of cheating have been committed, or criminal breach of trust as well as conspiracy.

Legal framework:

a) NATIONAL

Failure to pay is not punishable in Indian law. Typically, a corporate default is simply addressed as a civil/commercial failure unless the mens rea (intent, fraud or dishonesty) can be established.

The legal framework dealing with corporate default in India are as follows:-

1. Insolvency and Bankruptcy Code (IBC), 2016

   The Insolvency and Bankruptcy Code, 2016 (IBC) addresses the issue of corporate

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default as a civil and economic collapse and no longer a criminal offence. A corporate default arises out of a corporate debtor defaulting on the payment of a debt when it becomes payable, and this has been subjected to the Corporate Insolvency Resolution Process (CIRP) pursuant to the Code.

The main aim of the IBC is that the insolvency is resolved on time, maximization of the value of assets and that the interests of all parties are balanced rather than punishing the debtor.

Criminal liability is not even drawn by mere non-payment or financial distress; but the Code sets the punishment of fraudulent or dishonest actions on part of promoters or management, e.g. concealment of assets, falsification of accounts or transactions designed to defraud creditors.

Therefore, there is a trading-off of default by corporations under the IBC, which subjects them to a resolution-based insolvency system, whereas criminal penalties are inflicted only when the default is accompanied by misconduct.

2. Companies Act 2013

The Companies Act, 2013, does not regard the default of companies per se as the crime, the Act does make the distinction between commercial failure and the intentional wrongful actions of the administration.

Although defaulting in other forms like failure to pay dues or financial losses are normally resolved either through civil liabilities and regulations, the Act punishes acts of fraud, misrepresentation or intentional misappropriation.

The most important is section 447, defining and implicating fraud at the company, its directors, or officers, and punishing them with imprisonment and a fine in case of dishonest intent.

447. Punishment for fraud. —

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud [8]

[8] T*he Companies Act 2013, s 447*

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Along with this, this section, Section 448, punishes false statements in financial documents and returns

448. Punishment for false statement. —

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—(a)which is false in any material particulars, knowing it to be false; or(b)which omits any material fact, knowing it to be material, he shall be liable under section 447. [9]

Section 449 addresses false evidence.

449. Punishment for false evidence. —

Save as otherwise provided in this Act, if any person intentionally gives false evidence— (a)upon any examination on oath or solemn affirmation, authorized under this Act; or(b)in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.[10]

The institution of procedural defaults embraces a major penalty in monetary terms after the decriminalization amendments of 2020 that embodies a policy shift of ease of doing business. Accordingly, the Companies Act, 2013 lays criminal responsibility only in situations whereby corporate default is accompanied by an element of fraudulent or mala fide behavior but not failure to discharge financial obligations.

b) INTERNATIONAL – UK & US.

United Kingdom

In the United Kingdom, insolvency and company law are the main areas of law that address corporate default, and (as in India) mere default is not a crime. There is a legal framework of rescue, restructuring, or orderly liquidation whereas criminal liability can only occur in instances of misconduct or fraud.

[9] T*he Companies Act 2013, s 448*
[10] T*he Companies Act 2013, s 449*

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1. Bankruptcy and insolvency act of 1986[11] (core legislation).

The major law in corporate default is the Insolvency Act, 1986. When a company cannot pay its debts, either on a cash-flow basis or balance sheet basis, then it is said to be in default. The Act has mechanisms like administration, company voluntary arrangements (CVAs), liquidation, and receivership and these are meant to offer protection to creditors and rescue of the business. In this Act, any default by a corporation is a civil, not a criminal, matter.

2. Companies Act 2006[12]

Directors and corporate governance are covered by the Companies Act, 2006. Although it does not criminalize the default of corporations, the corporate directors have statutory obligations such as the duty of acting in good faith and in the benefit of the company.

In insolvency situations:

- Directors have to give priority to the interests of creditors.
- Violation can lead to disqualification, civil liability or compensatory orders.

3. Company Directors Disqualification Act 1986.[13]

In cases where corporate default is attributed to inappropriate behavior, directors can be:

- Disqualified for 2 to 15 years
- Disallowed to run businesses.

4. Fraud Act 2006 [14]

The criminal liability is associated with default of corporations with fraud, which include:

- False representation fraud.
- Abuse of position
- Omission of information fraud.

The directors and the officers can be imprisoned and fined in case of insolvency caused by fraudulent actions.

United States of America

Corporate default in the United States is primarily governed by the federal bankruptcy law and is considered as a civil and commercial issue and not a criminal offense.

The main law is the U.S. Bankruptcy Code (Title 11 of the United States Code), in accordance with which a company debtor can seek a way out of his/her troubles by

[11] *Bankruptcy and insolvency Act of 1986*
[12] *Companies Act 2006*
[13] *Company Directors Disqualification Act 1986*
[14] *Fraud Act 2006*

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filing a Chapter 7 (liquidation) or Chapter 11 (reorganization) in the event of default or other financial trouble.

The U.S. bankruptcy law aims to give a clean start to the debtor, evenly allocate the creditors, and help rehabilitate the business. Simple failure to meet the repayments in loans is insufficient to draw in criminal liability.

Moreover, the securities and banking laws can make one bear a liability in case of misrepresentation or fraud in the market. Therefore, the U.S. law clearly identifies the corporate insolvency as a civil procedure and criminal responsibility due to the dishonest behavior, which holds the argument that default is not a criminal violation.

Sarbanes-Oxley Act, 2002[15]

In the Sarbanes-Oxley Act, 2002, corporate default in itself is not a crime, however, the Sarbanes-Oxley Act exposes the corporations to strong criminal and civil penalties of corporate misconduct, which frequently becomes evident when the company is in financial distress or close to such distress. SOX was passed to regain investor confidence following the corporate failures of large corporations (Enron, WorldCom) and to concentrate on transparency, accountability and accuracy of corporate reports, especially in the case of public companies.

Pros of criminalization:

1. Deterrence:- Criminal penalties (prison, criminal records) threat can cause executives and employees to be more deterred than civil fines which may be a cost of doing business in some firms.
2. Individual Accountability:- Criminal law focuses on individual responsibility, aiding in the effort to make sure that those who make decisions, not only corporations, are responsible to perpetrated frauds.
3. Markets and Investors Protection and Security Provisions :- Criminalizing ensures that the markets are fair and transparent and that investors, consumers, and employees will not be deceived and suffer any financial damage.
4. Public Trust and Confidence:- Criminal penalties would be a way of signalling that they are not above the law, which would help to strengthen trust in economic institutions and the justice system.

[15] *Sarbanes-Oxley Act, 2002*

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5. Moral Condemnation :- Penalties of fraud are a strong social expression of disapproval of the offense, which strengthens moral principles concerning integrity and justice in business.
6. Victim Justice and Restitution :- Prosecution may assist in providing restitution to victims and the gravity of the damage suffered.
7. Prevention of Systemic Risk :- Corporate fraud should be punished to mitigate the risk of massive financial scandals that pose a threat to economic welfare.
8. Promotion of Compliance Programs :- The threat of criminal liability encourages companies to invest in an effective compliance system, internal controls and ethical training.

Q1. What do the empirical data collected concerning the deterrent impact on the corporate default criminalisation in cases of fraud and wilful default show and to what extent has criminalisation been proven to be effective in practice?

Although there is a rising momentum towards punishing corporate failures and financial malpractices through criminal proceedings, there is scarcity of empirical data to support the fact that criminalizing them can be effective in preventing fraud or wilful default. Corporate crime as noted in the study of Texas Law Review is inadequately quantified without standardized and comprehensive measures to collect the data. Indirect indicators that the enforcement agencies frequently rely on are the actions of the enforcement, settlements, or whistleblower complaints and sometimes are indicators of the detection and reporting practices, not the practices of eliminating misconduct. Such dearth of trustworthy as a foundation data complicates formation of causal connection between criminal penalties and deterrence consequences.

Moreover, there is a lack of literature regarding deterrence in business and financial crime that provides conflicting findings. According to the literature, deterrence is a very conditional issue based on the certainty and the steadiness of enforcement and not on the harshness of penalty. In most jurisdictions, there is a paucity of prosecutions against corporate misconduct, penalties are often internalized as cost of doing business and individual responsibility is not common. The impact of criminalization, therefore, might not change bottom-line corporate behavior in any significant manner especially when the implementation is both uneven and slow. Such an evidentiary lapse helps cause unrest on the normative premise that criminal sanctions are

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always inherently a useful deterrent to corporate fraud and wilful default.

Q2. How can the law and regulation better be used to isolate justifiable business failure and criminal activity in instances of corporate default?

Criminal activity can be better segregated into justifiable business failure through law and regulation by taking a middle ground based on intent that separates commercial risk and a culpable misconduct in the case of corporate default.

Legitimate reasons why companies fail are frequent market fluctuations, economic crashes or bad business decisions, which should not legally invite criminal prosecution. Thus, it is necessary to directly outline the mental component needed to be prosecute criminals and resort to punishment (penalties) only in instances of fraud, dishonesty, wilful misrepresentation, or intentional misuse of the funds.

Regular disclosure and transparency policies with independent audits and forensic accounting help the regulators and courts to determine whether the losses occurred as a result of true business decisions or as a result of false accounting transactions.

Safe harbouring of directors acting in good faith encourages restructuring early and discourage the criminalisation of the good risk taking.

Also, good insolvency and restructuring regimes with specialised courts and co-ordinated enforcement of regulation enable independent inquiry of managerial behaviour and provide proportional and evidence-based responses.

All these combined, ensure accountability in corporate crime without compromising on entrepreneurial activity or economic efficiency.

Q3. Largely, how much criminalisation of corporate defaults leads to over-criminalisation and what does that mean to the entrepreneurship, investment decisions, and lawful risk-taking in business?

As much as the concept of extending criminal responsibility to the business and corporate worlds has been perpetrated on the default of deterrence and accountability, the overall economic impact of commercial responsibility is underpinned with little empirical study. The risk of over-criminalisation may heighten legal ambiguity among companies and decision-makers whenever the criminal law cuts across civil or regulatory breaches. Under these conditions, entrepreneurs and corporate executives might be unable to differentiate between justifiable business failure and actions that might provoke criminal penalties, which increase the risk awareness of legal prosecution.

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This heightened risk climate has the potential to produce a chilling effect on entrepreneurship, investment and innovation in business. The economic and criminological theories imply that high and bad criminal liability reduces the risk-taking of the small and medium enterprise and individuals, who are unable to manage complicated compliance regimes. Instead of ensuring ethical behaviour, over-criminalisation can make business adopt excessively conservative business practices, discourage entry into a particular market, or push economic activity into some form of market into the informal or less disclosed arrangements. The lack of specific empirical research on these outcomes is thus a critical gap in the literature and creates a need to pay closer attention to the economic costs that are unintended with regard to expanding the corporate criminalisation.

Q4. Are individual liability imposition on directors and promoters more effective than corporate criminal liability in deterring fraudulent and wilful defaults, and which liability models are best at fulfilling the role of deterring fraud and accountability?

Corporate fraud and wilful default cause severe instability to the economy, trust by creditors, and market integrity. The question that has challenged the legal systems in different jurisdictions is whether the criminal liability imposed on corporate bodies is enough to discourage such malpractices or more emphasis should be given to the directors and promoters holding a personal liability. The arguments revolve around deterrence, responsibility, justice, and efficiency in enforcement. Although corporate criminal liability can be used to a great effect in compliance with the rules, the liability placed on directors and promoters as individuals is usually more effective in preventing the occurrence of the fraudulent and wilful defaults. Nevertheless, neither of the two models is the most effective, and the best approach is a hybrid model of liability that incorporates corporate and individual responsibility.

- Character of Corporate Default and Fraud.

Corporate default can be as a result of lawful commercial failure or fraudulent and wilful action. Fraudulent defaults are usually characterized by intentional misrepresentation, misappropriation of funds, falsification of records, hiding of losses or irresponsible borrowing without an idea of how to settle the debts. This kind of behavior can hardly be attributed to spontaneity and is typically motivated by people who own corporate decision-making. Fraudulent intent and wilful misconduct have their source at the level of corporate directors, promoters, or senior management, as a corporation is a legal fiction in which human beings act. This fact puts the usefulness of corporate-only criminal liability in the deterrence of serious financial misconduct to the test.

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Consequently, the liability of corporations on their own does not tend to have any significant impact on the actions of the individuals that actually possess the decision making authority.

- Individual Liability Effectiveness.

Direct liability on directors and promoters is normally more effective in preventing fraudulent and wilful defaults since it is directly linked to culpable individuals. Imprisonment, disqualification as a director, attachment of personal assets, reputational damage are examples of criminal sanctions that form powerful deterrent incentives that are not easily internalised or transferred to other people.

Behaviourally, humans are more responsive to individual punishment than corporate punishment, which is abstract. The risk of being put in jail or losing a professional reputation is a much bigger factor that changes risk calculations and deters accidental delinquency

- The Hybrid Liability Model

Based on the weaknesses and strengths of both models, a hybrid liability model, which incorporates corporate criminal liability and individualized accountability, is the best deterrence model. According to this model, the corporations are liable to organisational failure, breaches of compliance and benefits of wrongdoing, whereas directors and promoters are personally liable when intent, knowledge, or careless negligence is proved.

This structure coordinates incentives on several levels. Corporations are advised to create strong governance systems and the individuals are advised against the exploitation of the corporate structures to enrich themselves. Notably, hybrid models avoid the responsibility dilution and make sure that the punishment is proportional to culpability.

Jurisdictions which have adopted hybrid regimes tend to complement them with regimes of director disqualification, recovery of illicit gains, civil fines and deferred prosecution deals based on cooperation and internal reforms.

responsibility and the willingness to take risks as an entrepreneur, thus enhancing trust in the corporate and financial system.

Critique of Criminalization:

Prohibiting corporate defaults is a bad idea as it mixes up business failure with criminal offence though many defaults are as a result of normal business and economic depressions or unexpected market shocks as opposed to criminal misbehaviour.

Criminalizing such consequences is a weakness to the principle of mens rea based criminal law and sends a chilling effect to entrepreneurship since managers and directors are not willing to take risks or engage in innovative business due to the uncertainty that they might face personal

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criminal penalties.

This excessive criminalization also misallocates the limited resources of criminal justice, drawing the attention away to the real fraud or corrupt behaviour, and does not deter much as defaults tend to be inevitable and that decision-making in corporations is diffuse.

Additionally, the criminal penalties of corporate defaults may not be proportionate and fair to the individuals especially the independent and nominal directors who might not have much influence on the daily operations but could be prosecuted.

The risk of criminal liability stimulates defensive and opaque behaviour, i.e. delayed disclosure of financial distress or accrual manipulation, which eventually lead to worse outcomes among creditors, employees and economy in general.

It may also destabilize effective insolvency and restructuring systems by deterring collaboration to the resolution processes and driving companies to liquidation. With this in mind, civil, regulatory and insolvency based arrangements are more proportionate and effective ways of imposing accountability without punishing normal business failure.

Case laws:

In the case of ***Nimmagadda Prasad v. Central Bureau of Investigation***, the Supreme Court heard massive corporate fraud cases where the dislocation of the government funds was carried out by the use of complicated company constructions. The Court in the case of bail speculated on the nature of economic offences in that they represented a special type of crime due to the serious impact it has on the financial system, trust and institutional honesty. It turned down the idea that such offences could be handled lightly simply because they are commercially or corporately situated. [16]

The judicial ruling is significantly doctrinal in that once a corporate default is coupled with intentional fraud or other financial evasion and manipulation, intercession based on criminal law, including incarceration, is reasonable and justified. The arguments of the Court support the distinction between a business failure that is undertaken in good faith and a culpable misconduct and show that insolvency or economic hardship cannot be used to reduce criminal liability due to a deliberate economic crime.

In ***Hridaya Ranjan Prasad Verma v. State of Bihar,*** the Supreme Court provided the distinction between civil and criminal prosecution in business and financial cases. This case was as a result of cheating allegations on the failure to repay money through a web of contract.

[16] *(2013) 7 SCC 466*

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The Supreme Court determined that the breach of contract or failure to repay alone does not amount to the infraction of cheating in the sense of this term in Section 420 IPC. To establish criminal liability, it is necessary that the dishonest or fraudulent intent was present even at the beginning of the transaction. In this case the motive to lie emerges later, it is a civil wrong. The Court gave a warning of the abuse of criminal law in order to resolve commercial disputes or to put pressure to recover money. This ruling is a key to policy issues of corporal defaults criminalization, because the ruling makes it clear that criminal law should not be applied in business failure or loan default cases.[17]

Recommendations:

1. Definite Statutory Separability of Default and Fraud: -

Distinctive cases of corporate default should be identified by the law in cases where the default occurred as a result of failure of the business and those which occur due to fraud, misrepresentation, or diversion of funds. Criminal liability has to be clearly confined to the acts of mens rea, as per the Supreme Court case law (Hridaya Ranjan Prasad Verma v. State of Bihar). This minimizes the abuse of the criminal law in recovering debts.

2. Preferential treatment of Civil and Insolvency Remedies: -

The main response to corporate distress should be the use of civil recovery mechanisms and Insolvency and Bankruptcy Code (IBC). Criminal action must be an extraordinary event, and this action occurs when the civil mechanisms indicate the presence of fraud or intentional malpractice.

3. Minor Criminal Responsibility by Officers in default: -

Criminal liability of directors and other key managerial staffs should only be enforced on individuals who are directly engaged in decision making or in the fraud with no mass prosecution of independent/non-executive directors.

4. Technical and Procedural Defaults Decriminalization: -

Minor violation of corporate laws in the form of non-compliance with regulatory acts should also be decriminalized and dealt with by imposing fines or adjudication as it facilitates the ease of doing business without hindering the compliance incentive.

5. Specialized Economic Offences Courts: -

Specialized courts or benches that have financial skills can guarantee expediency, unanimity in the criteria of mens rea and proportionality in the sentence of major corporate

[17] *(2000) 4 SCC 168.*

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frauds.

6. Both Corporate Governance and Whistleblower Protection should be stronger: -

This can be achieved by preventive regulation by having strong disclosure norms, audit responsibility and whistleblower protection that will reduce the necessity to rely on criminal regulation by preventing misconduct at earlier stages.

Corporate defaults should be criminalized only when such defaults are the result of fraud, deception or abuse of trust. A proper legal structure should be able to achieve both deterrence and responsibility as well as entrepreneurship and economic development, but criminal law should not be a punitive measure of first resort, but they should be a measure of last resort.

Conclusion:

It is a basic policy issue at the border of corporate governance and criminal law that criminalization of corporate defaults. Corporate default is not a homogenous phenomenon as it has been demonstrated through doctrinal analysis, comparative legal review and case law as demonstrated in this paper.

The comparative study of India, the United Kingdom, and the United States shows that there is an underlying principle that is similar there are only instances when default is coupled by a criminal intent that creates criminal responsibility.

Simultaneously, the analysis shows that remedies of civil and insolvency are not sufficient in situations where default is committed out of deliberate fraud or willful breaching. Criminal law, in such instances, has an important expressive and corrective role in the processes as its victims the integrity of the market, safeguards the trust of the population, and penalizes severe misuse of corporate privilege. Nonetheless, the paper confirms the overall effectiveness of individual liability against directors and promoters with intent, knowledge, or reckless disregard demonstrable in a court is usually better than any criminal liability in which only the company is involved. Personal responsibility not only matches punishment and culpability; it also not only does not externalize harm to the innocent stakeholders but contributes to stopping the harm by directly implicating the decision-makers.

In line with this, it can be concluded in this paper that criminalization of corporate defaults is only justifiable in its narrow and well measured manner. The best balance between the objectives of accountability, economic efficiency, and criminal justice is a hybrid liability system one which integrates civil and insolvency-based remedies as the central form of response of a real business failure, corporate wrongdoing, and individual wrongdoing of fraud and willful default. Criminal law ought to be applied as a last resort and only used to address

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definite cases of willful maltreatment but not as a normal policy repercussion to economic hardship. This kind of balanced course would maintain the validity of criminal penalties, enhance responsible corporate governance, and ensure the environment in which it is possible to take risks in law and economic prosper.