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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين أجمعين
أما بعد
فإن الله قد جعلنا
هذا الكتاب من كتب
الهدى والرحمة
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والمؤمنين
الذين آمنوا
بالحق والهدى
والرحمة
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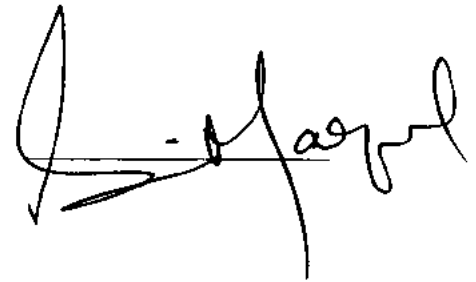
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It is certified, that we have read the dissertation submitted by Ms. Saira Bashir Dar, Registration No. 365-FSLCL/F12 on the topic " Relocation of Corporate Hazards and Poor Working Conditions in Transnational Context: Victimization in Pakistan" in Faculty of Shariah & Law. We have evaluated the dissertation and found it up to the requirements in its scope and quality by the International University, Islamabad for award of LL.M Corporate Law Degree.

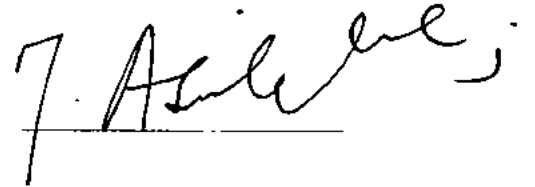
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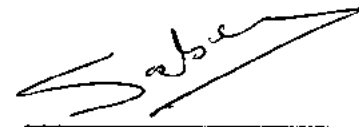
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LIST OF ABBREVIATIONS

| | |
|--------|--|
| PPC | Pakistan Penal Code |
| Cr. PC | Criminal Procedure Code |
| UN | United Nations |
| SEC | Securities and Exchange Commission |
| SECP | Securities and Exchange Commission of Pakistan |
| PEPA | Pakistan Environmental Protection Act |
| NAB | National Accountability Bureau |
| EIA | Environmental Impact Assessment |
| TNC | Transnational Corporation |
| MNC | Multinational Corporation |
| FIA | Federal Investigation Agency |
| CSR | Corporate Social Responsibility |
| OSHA | Occupational Safety and Health |
| WHO | World Health Organisation |
| ICI | Imperial Chemical Industries |

DECLARATION

I hereby declare that this dissertation is original and has never been presented in any other university or institution of learning. I also declare that this dissertation has never been copied and secondary information used has been duly acknowledged in this dissertation.

SAIRA BASHIR DAR

DEDICATION

This dissertation is dedicated to my beloved parents for their unconditional love, moral and financial support and also for their care and prayers. May Allah always shower His blessings upon them. Ameen.

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I say special thanks to Allah Almighty for His countless blessings upon me. I would like to acknowledge my parents who have supported me throughout my career with their prayers. I would also like to acknowledge my supervisor Ms. Samia Maqbool Niazi, Assistant Professor of Law for her special attention, support, advice and guidance. This work may not have been possible without her great assistance. It is my pleasure to say thanks to her for her assistance and support. I would also like to acknowledge the sincerity and support of my friends Ms. Warda Yasin and Ms. Sadia Tabassum for editing this thesis. I am highly grateful to Mr. Nayyer Islam, Assistant Reference and Research, Rawalpindi, The Jung Group of Pakistan for providing me with all relevant and necessary informative material. I am very thankful to my younger sister Ms. Asima Bashir Dar and my brother-in-law Mr. Muhammad Salman Tariq for their support and sincerity. I warmly thanks to my colleague Mr. Hafiz Muhammad Usman Nawaz for his great support and guidance throughout this thesis.

SAIRA BASHIR DAR

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1985 SCMR 257.

ABSTRACT
RELOCATION OF CORPORATE HAZARDS AND POOR WORKING
CONDITIONS IN TRANSNATIONAL CONTEXT: VICTIMIZATION IN
PAKISTAN

BY

SAIRA BASHIR DAR

This dissertation describes the concept of contemporary issues of corporate crime with special focus on relocation of corporate hazards and poor working conditions in transnational context and its effects on people, making victimization vulnerable in Pakistan. There are different factors which become a major cause of such criminal activities of corporations in transnational context. Historically, the concept of social responsibility was very much prevalent among society men. Gradually corporations were made responsible towards society at large. With the passage of time, as man became more and more inclined to his worldly profits, it remained more evident to find different business entities engaged in criminal activities to achieve their monetary goals even at the cost of innocent consumers and poor labour. In this dissertation, two aspects of transnational corporate crime have been described with their adverse effects on people in host developing countries. The logical conclusion of this dissertation is that relocation of corporate hazards and poor working conditions cause victimization in developing countries including Pakistan which needs to be resolved by adopting strict and effective legal and regulatory measures.

CHAPTER 1

INTRODUCTION

1.1 Introduction

Corporate crime is a type of white collar crime which is committed by corporations or by their employees on their behalf to meet the needs of an organization. It has been very easy for them to commit corporate criminal activities as they have a very strong grip over social fabric of developing countries.¹ Corporate crime is punishable not only under criminal law but also under the civil and administrative law.² The corporations having influence over every one's life should perform their social responsibilities towards society at large as a citizen, producer, principal, employer, and a social designer.

The explicit influence of transnational corporations upon economic conditions of a country has been acknowledged all over the world but unfortunately, there is no fixed mechanism to make transnational corporations realize their sensible and important role towards society.³ Rather, it depends upon voluntary change in their selfish corporate objectives of having monetary profits at the expense of common people of society and by letting their profits and benefits go for the sake of goodness of society.⁴

A very little number of companies in Pakistan have adopted different corporate social responsibility techniques for social betterment like Mr. Shaukat Aziz, the former prime

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

² Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 16.

³ Catherine J. Morrison Paul, Donald S. Siegel, "Corporate Social Responsibility and Economic Performance," *Journal of Productivity Analysis, NBER* 26: 3 (2006), 209.

⁴ David P. Baron, "Corporate Social Responsibility and Social Entrepreneurship," *Journal of Economics & Management Strategy* 16: 3 (2007), 688.

minister had proposed all companies in Pakistan to donate an amount of 1% of their profits for social welfare and betterment.⁵

Multinational corporations in developed countries shift their subsidiaries and their corporate violence along with injurious effects in respect of food, environment, public health, and the like to the developing countries that arise in the space between the laws of host and home countries.⁶ It is mostly seen in almost every industry of the countries with improper and insufficient legal systems⁷ and Pakistan being a developing country is facing the fatal problem of transnational corporate crime because of the difference in the laws of developing and developed states.

It is a growing issue as how to control such issues of transnational corporate crime. Nonetheless, the policy makers in Pakistan have left such serious issues unresolved. Nevertheless, controlling transnational corporate crime is not an easy task as it requires different substantive enactments and enforcement measures to produce deterrent force.⁸ No doubt, transnational corporate crime is going to penetrate in our society and is functioning like a slow poison. One cannot say that it is of less gravity than that of ordinary crime.

It is very important to control such a grave crime and suggestions in this context vary from strict civil penalties and legal actions against corporate violators to severe punishments.⁹ Transnational corporate crime will be difficult to be fought against if absorbed within our

⁵ Available at <http://www.docstoc.com/docs/69529110/Mahomed-J-Jaffer--Syed-Bulent-Sohail-On-the-Importance-of-Corporate-Social-Responsibility> (Last accessed: September 27, 2013).

⁶ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

⁷ Austen L. Parrish, "Domestic Responses to Transnational Crime: The Limits of National Law," *Criminal Law Forum* 23: 4 (2012), 279.

⁸ Geraldine Szott Moohr, "On the Prospects of Deterring Corporate Crime," *Journal of Business and Technology Law* 2: 1 (2007), 28.

⁹ Albert W. Alschuler, "Two Ways to Think about the Punishment of Corporations," *American Criminal Law Review*, North western Public Law Research Paper No. 09-19 (2009), 1.

society but to explore the internal relationship between public responsibility, norms and corporate criminal behaviour.¹⁰

The growing issues of relocation of corporate hazards and supply of poor working conditions to workers in transnational context is alarming and debatable in Pakistan and needs to be resolved by designing different effective legal and regulatory measures.

Corporations in Pakistan are working efficiently in all the fields of life from household to Air Planes. Like natural persons who are into ordinary crime, corporations being a group of natural persons commit crime called as corporate crime.¹¹ Corporate crime is a branch of white collar crime which is an advanced addition to the theory of criminology.¹² The issues of relocation of corporate hazards and poor working conditions in transnational corporations in Pakistan have an unidentified legal status with the civil, criminal and administrative laws which requires to adopt a proper legal and regulatory mechanism to deal with them and to fight against the hurdles in the way to solution of such issues.

The definitional dissection of corporate crime expresses corporation as a legal entity and socio economic body with complex relationship among a number of persons. The main objective of a corporation is to get profits and benefits by investing shares made by the shareholders¹³ and crime as any act committed in violation of criminal law and punishable by

¹⁰ Edwin H. Sutherland, *White Collar Crime, The Uncut Version* (New Heaven and London: Yale University Press, 1983), 237.

¹¹ Available at <http://definitions.uslegal.com/c/corporate-crime/> (Last accessed: September 27, 2013).

¹² Available at <https://www.mcgraw-hill.co.uk/openup/chapters/0335204279.pdf> (Last accessed: September 28, 2013).

¹³ David O. Friedrichs, *Trusted Criminals, White Collar Crime in Contemporary Society*, 4th Edition (USA: Wadsworth Cengage Learning, 2010), 250.

the state under criminal law.¹⁴ Combining the two presents an idea of corporate criminal attitude, desiring to have material benefits even at the cost of lives of others.¹⁵

In Pakistan, issues of transnational corporate crime particularly relocation of corporate hazards from developed to developing countries and poor working conditions in transnational corporations and controlling transnational corporate crime are softly dealt with by the state.

It is ironic that people living in developing countries do not even know that they are becoming victims of criminal attitude of corporations existing therein but such transnational corporations do harmful practices by putting direct and indirect influences upon the socio-legal infrastructure of developing states. These corporations do in the developing countries what is forbidden by the law of their own countries.¹⁶ The informative role of mass media in this regard is very important. Interesting is the fact that consumers are not fully aware of social responsibility of transnational corporations and the breach of social responsibility of such corporations is not being considered as corporate crime by them. Such corporations are making their best efforts to improve their corporate image by having adopted different publicity measures.¹⁷

It is because the laws promulgated so far to deter corporate crimes especially Code of Corporate Governance 2012, Companies Ordinance 1984 and Pakistan Penal Code 1860 have proved insufficient to counter corporate crimes and have not been fully succeeded in deterring corporate crime. Such legislations have failed to recognize the adverse direct and

¹⁴ Section no: 40, Pakistan Penal Code 1860 (Act No.XLV of 1860).

¹⁵ Sally. S. Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002), 7.

¹⁶ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

¹⁷ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 318.

indirect effects of corporate crime over human life and health, politics and economy of the state.

In such circumstances, it is first required to identify such growing issues of transnational corporate crime as people are more into controlling corporate crime and then to go for suitable remedies under appropriate legal and regulatory mechanism to counter the proliferating damage and harmful effects resulting from such issues of relocation of corporate hazards and poor working conditions in transnational corporations in Pakistan.

Corporations in Pakistan are performing their vital role in the progress of country but many actions of corporations are harmful to the society, thus, such actions need to be combated and controlled in efficient ways. But there is no proper solution in Pakistan to resolve contemporary issues of corporate crime such as transnational corporate crime, social responsibility of corporations and controlling corporate crime. For this purpose, the researcher would suggest different legal and regulatory mechanisms to deal with these major contemporary issues of corporate crime. The researcher is of the view that such existing issues of corporate crime can be resolved from legal and regulatory perspectives.

This research would significantly point out the immediate need for important substantive reforms in the laws of Pakistan for social responsibility for corporations, transnational corporate crime and for controlling it. This work aims to focus on:

Firstly, to expose the corporate hazards caused by their relocation from developed to developing countries.

Secondly, to identify the areas for further development in the strategies for controlling transnational corporate crime.

Thirdly, to make society aware of harmful effects of transnational corporate crime.

Fourthly, to highlight the major responsibilities of corporations towards society at large.

Fifthly, to make a comparison of existing legislative and regulatory mechanism to control transnational corporate crime in Pakistan with that in a developed country.

Sixthly, to make recommendations with a view to improve efficiency of transnational corporations and to control transnational corporate crime.

1.2 Literature Review

Sally S. Simpson in his book, *Corporate Crime, Law and Social Control*¹⁸ evaluates deterrence and cooperative models of corporate crime control and seems to be disturbed by failure of criminal law in controlling corporate crime in United States. The book signifies different strategies of corporate control. However, the writer does not refer to the victims of corporate crime, what they suffer from corporate violations which the researcher tends to cater in this thesis.

Marshall B. Clinard in his book, *Corporate Crime*¹⁹ serves to inform the readers about contemporary issues of corporate social responsibility, failure of business ethics, criminal liability of corporate executives and controlling corporate crime. The process of growth and development of corporations explains fully the corporate structure and its relevance with its criminal behaviour. However, the author fails to streamline the function of law in formulating the controlling policies, which the researcher tends to explore in my thesis.

¹⁸ Sally S. Simpson, *Corporate Crime, Law, and Social Control*, Cambridge University Press, 2002.

¹⁹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime*, New Brunswick, New Jersey: Transaction Publishers, 2006.

David O. Friedrichs in his book, *Trusted Criminals, White Collar Crime in Contemporary Society*²⁰ overviews different types of white collar crime, presents relevant theories, social control of white collar crime, policing, regulating, prosecuting and defending white collar crime and responding to the challenge of white collar crime. This book does not suggest proper strategic framework to control corporate crime. The author seems to leave behind the role of state legislators to accomplish that goal of deterring corporate crime.

Edwin H. Sutherland in his book, *White Collar Crime: The Uncut Version*²¹ makes the readers go through the theory of problem of white collar crime along with variations in the corporate crimes. Coverage moves from statistical records of many large and other public utility corporations, patents, trademarks and copy rights, violation of laws concerning advertisement, financial matters, war and labour practices and different case histories. However, the author in this article does not address the role of law in fighting against corporate crime.

Catherine J. Morrison Paul and Donald S. Siegel in their article, "Corporate Social Responsibility and Economic Performance"²² describe some perspectives on corporate social responsibility in the economic context. The writer proposes CRS programmes to motivate corporations for socio-moral activities. The writer does not discuss the important function of law in shaping up the psychological attitude of corporations to perform their responsibilities towards society at large.

²⁰ David O. Friedrichs, *Trusted Criminals, White Collar Crime in Contemporary Society*, 4th Edition, Wadsworth Cengage Learning USA, 2010.

²¹ Edwin H. Sutherland, *White Collar Crime, The Uncut Version*, Yale University Press, New Heaven and London, 1983.

²² Catherine J. Morrison Paul, Donald S. Siegel, "Corporate Social Responsibility and Economic Performance," *Journal of Productivity Analysis, NBER* 26: 3 (2006), 207.

Raymond J. Michalowski and Ronald C. Kramer in their article, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context"²³ describes the injurious activities of transnational corporations in the developing countries, occurring due to weak legal controls therein. The author appreciates the efforts of United Nations for creating code of conduct for transnational corporations. However, the writer fails to recommend a set of uniform standards for international business worldwide and for prosecution of harmful transnational business entities.

Geraldine Szott Moohr in his article, "On the Prospects of Deterring Corporate Crime"²⁴ seems to have inclination to deterrence of corporate crime through amended substantive criminal laws and enforcement measures. The writer in this article does not address the role of other stakeholders in collaborating with state legislators to achieve required deterrence of corporate crime.

David P. Baron in his article, "Corporate Social Responsibility and Social Entrepreneurship"²⁵ explores his point of view regarding corporate social giving as it cannot be a suitable substitute for personal giving. The writer in this paper envisions the creation of voluntary corporate social responsibility (CSR) firms for increased social giving by forgoing their maximum profits, by tax inferences and market control for better CSR. However, this article does not prescribe the function of the state legislators to suggest a proper legal and regulatory mechanism for such increased social entrepreneurship in society at large.

²³ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

²⁴ Geraldine Szott Moohr, "On the Prospects of Deterring Corporate Crime," *Journal of Business and Technology Law* 2: 1 (2007), 26.

²⁵ Baron, "Corporate Social Responsibility and Social Entrepreneurship," *Journal of Economics and Management Strategy* 16:3 (2007), 683.

Albert W. Alschuler in his research paper, "Two Ways to think about the Punishment of Corporations"²⁶ argues that corporate criminal punishment is of no use to deter corporate crime, making a comparison of recent corporate criminal liability with old legal practices and follows very defensive approach towards corporate criminal liability. The writer in this article does not suggest any solution to the conflicts of interest between corporation and its officers who are subject to the criminal punishment.

Austen L. Parrish in his article, "Domestic Responses to Transnational Crime: The Limits of National Law"²⁷ describes transnational crime as a challenging phenomenon, force of domestic laws to control transnational corporate crime and proposes rule of law. The writer seems to incorporate international norms into domestic legal frame work. This article illustrates the growth of such a concept to follow transnational criminal laws, in America and Canada, to find out a better solution of transnational corporate crime. However, the author in this article does not suggest an appropriate forum of extraterritorial jurisdiction to resolve serious issue of transnational corporate crime.

The study will be limited to the contemporary issues of corporate crime in Pakistan such as transnational corporate crime, social responsibility of corporation and controlling corporate crime along with legal and regulatory frame work to deal with such issues. The researcher has selected only two countries i-e., Pakistan and United States for limitation of study. The researcher, taking these limitations into consideration will perform his maximum efforts to suggest the most reasonable and appropriate conclusion for each of the contemporary issues of corporate crime in Pakistan.

Transnational corporate crime, social responsibility of corporations and controlling corporate crime of every nature are very serious and much talked about contemporary issues

²⁶ Alschuler, "Two Ways to Think about the Punishment of Corporations," *American Criminal Law Review*, North Western Public Law Research Paper No. 09-19 (2009), 1.

²⁷ Austen L. Parrish, "Domestic Responses to Transnational Crime," *The Limits of National Law*, *Criminal Law Forum* 23: 4 (2012), 275.

in Pakistan, the victims of which are not only a few people but the whole state,²⁸ a large number of consumers and environment.²⁹

Corporations, both national and transnational seem to be engaged in corporate social responsibility but in reality they are making private benefits at the expense of breach of social responsibility thus affecting society at large in many serious ways without any proper remedy,³⁰ which brings different questions to the researcher's mind. Corporate violation, being non-cognizable³¹ and hardly punishable under Pakistan penal code³² without any suitable remedy brings many questions and confusions to the researcher's mind.

Although corporations have a very significant role in Pakistan and they are increasing in number day by day but at the same time, their illegal activities can harm and victimize society at large. Therefore they should be deterred and controlled in different effective suitable ways.

This research would help the readers to understand the consequences of transnational corporate crime, responsibility of corporations towards society and to save the rights of consumers. It would also help in proposing a very useful strategic framework to control corporate crime. People in Pakistan would be in a better position to make corporations realize their harmful activities towards society at large to bring a positive change in their conduct.

1.3 Chapterization

In the first chapter, introduction of the research study is given. It is also mentioned as to what is the literature review and significance of the study. In the second chapter, general introduction of corporate crime has been given. It is also explained as to what is the scope of

²⁸ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 36.

²⁹ *Ibid.*, 37.

³⁰ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime*, New Brunswick, New Jersey: Transaction Publishers, 2006, 16.

³¹ Section no: 475, Companies Ordinance 1984 (Act No. XI.VII of 1984).

³² Section no: 11, Pakistan Penal Code 1860 (Act No. XLV of 1860).

corporate crime. At the end, the forum and jurisdiction of corporate crime is discussed to show a clear picture of forum where different issues relating to corporate crime can be raised and remedied at domestic level and across border.

The third chapter deals with the essential elements of corporate crime in transnational context. The transnational corporations do in the poor countries what they are not allowed to do in their own home nation states thereby affecting consumers badly. People suffer from environmental pollution resulting of hazardous manufacturing plants shifted by transnational corporations to developing countries. Consumers get substandard products. The poor workers earn poverty out of their maximum hard work at giant corporations. At the end, emphasis is put on corporate social responsibility.

The fourth chapter is the key chapter of dissertation which gives a clear picture of the legislative regime to control transnational corporate crime in Pakistan. In the second phase of this chapter, other allied legislations are also discussed. In the end, case study of the US legislative scheme for controlling transnational corporate crime is also gone through.

At the end, the fifth and the last chapter of this dissertation deals with concluding points after discussing different important contemporary elements of transnational corporate crime. An effort has been made to give some recommendations to deal with such elements to have a prosperous corporate crime free society in Pakistan.

CHAPTER 2

CORPORATE CRIME

2.1 Introduction to Corporate Crime

Corporate crime is an act or omission performed by a group of people or by individuals working under the cover of corporate entity purely for its monetary profits even at the expense of common man.³³

It is the complete violation of civil, administrative and criminal law.³⁴ Corporations make health and lives of others worse, fulfilling their aims to become rich and powerful. Such corporations running after their dreams to lead the whole particular industry, violate their social responsibilities and thus make money.³⁵

They do not let their profits go for better lives of others.³⁶ Corporations are more likely to commit their criminal activities in the domain of environment, food, health and the like in the pursuit of their illegal aims. Such corporate criminal activities are as injurious to a society as conventional crime.³⁷

The definitional dissection of corporate crime describes corporation as an artificial but legal socio-economic body comprising of a number of persons the main concern of which is to get profits out of their business by making investments by shareholders even at the cost of

³³ Simpson, *Corporate Crime, Law, and Social Control*, (Cambridge: Cambridge University Press, 2002), 6.

³⁴ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 16.

³⁵ Catherine J. Morrison Paul, Donald S. Siegel, "Corporate Social Responsibility and Economic Performance," *Journal of Productivity Analysis, NBER* 26: 3 (2006), 209.

³⁶ David. P. Baron. "Corporate Social Responsibility and Social Entrepreneurship," *Journal of Economics and Management Strategy* 16: 3 (2007), 688.

³⁷ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

breach of corporate social responsibility³⁸ and crime as any act or omission committed in contravention of criminal law and is prosecuted by the state. It is punished under the criminal law of the state where it is committed.³⁹

It is ironic that people living in developing countries do not even know that they are becoming victims of criminal behaviour of corporations but these corporate entities are usually remain engaged in doing harmful and injurious activities by putting direct and indirect influence upon political, economic and legal infrastructure of developing nations.⁴⁰

Interesting is the fact that consumers in developing countries including Pakistan are not well aware of their rights as consumers. They are usually ignorant of corporate responsibilities towards them and breach of corporate social responsibility is not considered as corporate crime by them.⁴¹

No, doubt corporate crime is of huge gravity⁴² as it is deteriorating the fabric of humanity and it is now very important to control corporate crime for a civilised and prosperous society.

2.2 Definitions and Concepts

Corporate crime is one of the forms of white collar crime.⁴³ White collar crime is of two forms, one of them is occupational crime and the other is corporate crime.⁴⁴ White collar crime is defined differently by different jurists.

³⁸ David O. Friedrichs, *Trusted Criminals, White Collar Crime in Contemporary Society*, 4th Edition (USA: Wadsworth Cengage Learning, 2010), 250.

³⁹ Section no: 40, Pakistan Penal Code 1860 (Act No.XI.V of 1860).

⁴⁰ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

⁴¹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 318.

⁴² Simpson, *Corporate Crime, Law, and Social Control*, (Cambridge: Cambridge University Press, 2002), 1.

⁴³ *Ibid.*, 6-7.

2.2.1 White Collar Crime

Edwin Sutherland a famous white collar crime scholar describes white collar crime in 1949 as "Criminal acts committed by persons of middle and upper socio-economic groups in connection with their occupations."⁴⁵

According to Michael Benson and Sally S. Simpson, famous jurists, define white collar crime in 2009 as "An illegal act or a series of illegal acts committed by non-physical means and by concealment or guile to obtain money or property or to obtain business or personal advantage."⁴⁶

2.2.2 Corporate Crime

John Braithwaite an eminent corporate crime scholar defines corporate crime in 1984 as "Conduct of a corporation, or of employees acting on behalf of a corporation, which is proscribed and punishable by law."⁴⁷

Different interpretations come to mind after going through the above mentioned definition of corporate crime.

Firstly, conduct of corporation entails act or omission in the form of either civil or criminal violation.⁴⁸

Secondly, corporate offenders committing civil or criminal violations are punished subject to civil, criminal or administrative laws.⁴⁹

⁴⁴ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 18.

⁴⁵ Edwin Sutherland, *White Collar Crime* (New York: Dryden Press, 1949), 8-9.

⁴⁶ Michael Benson, Sally S. Simpson, *White Collar Crime. An Opportunity Perspective*, Criminology and Justice Studies, (London: Routledge, 2009), 10.

⁴⁷ John Braithwaite, *Corporate Crime in the Pharmaceutical Industry* (London: Routledge and Kegan Paul, 1984), 6.

⁴⁸ Simpson, *Corporate Crime, Law, and Social Control*, (Cambridge: Cambridge University Press, 2002), 7.

So, it can be said that corporate crime is the violation of laws and regulations by corporate entities, set by the legislative and regulatory bodies of the state for working of corporations.⁵⁰

A corporation should be liable vicariously not only in torts but also in criminal law for all the acts or omissions done by its agents during the course of their employment for the ultimate profits of corporation for conviction of corporation itself seems to be more effective than that of corporate agents.⁵¹

Sir Fredrick Pollock said:

"I am answerable for the wrong of my servant or agent, not because he is about my affairs and I am bound to see that my affairs are conducted with due regard to the safety of other."⁵²

Corporations commit different crimes against society at large by exposing the individuals living therein to health hazards. They play with their health and lives by providing them with sub-standard products including food and drugs. They also expose their employees to poor working conditions, thereby putting their lives and prosperity in danger and causing their up-coming generations to face the fearful effects genetically ultimately to attain personal benefits.

They do not provide essential safety measures to their employees. It is no defence to corporate crime that the physical harm was apprehended in advance and obvious to the workers according to the nature of the employment as it amounts to playing with others lives at the cost of personal benefits.

⁴⁹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 18.

⁵⁰ John Hasnas, "Ethics and the Problem of White Collar Crime," *American University Law Review* 54: 3 (2005), 585.

⁵¹ Ibid.

⁵² A. M. Choudhry, *The Law Of Torts* (Lahore: PLD Publishers, 2009), 47.

The corporations are also found involved in adopting illegal measures against other corporations including both private and public corporations. This criminal aptitude of corporations against the other corporations is facilitated by internal unethical corporate environment and by fusion of corporations. The fused corporations being huge and powerful ones are more into sophisticated business criminal activities than the small ones by making conspiracies to take control over an industry. They are usually inclined towards violation of state laws which are made for the protection and safety of consumers, customers, clients, public at large, employees and businesses.⁵³

Corporate crime is also defined by a known jurist named Shapiro in 1976 as follows: "Corporate crime is enacted by collectivises or aggregates of discrete individuals; it is hardly comparable to the action of alone individual."⁵⁴

As corporation is a structure having complexity in relationships among board of directors, managers and workers,⁵⁵ corporate crime is committed by such complex structure. The executives in corporations particularly in family owned businesses usually remain busy in connection with their family members, resulting in uniformity and no excel in innovations.⁵⁶ They often put a defence to law violations that they are justified in so doing if the society norms are a true reflection of corporate criminal activities.⁵⁷

For better knowhow about corporate crime, a thorough understanding of important factors behind corporate criminal activities is required. Firstly, the growing size of corporation gives birth to a dire need of delegation of responsibilities among different levels of corporation but contrary to it is commonly seen at all levels. The upper level does not

⁵³ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 53.

⁵⁴ *Ibid.*, 18.

⁵⁵ *Ibid.*, 24.

⁵⁶ *Ibid.*, 63.

⁵⁷ *Ibid.*, 60.

inquire what is going on at lower level and lower level does not so inform to the upper level.⁵⁸

Secondly, profit maximization pressure is another important big push to corporate crime and thereby corporate executives try to do the best in the interest of corporation even at the expense of innocent people. It will not be untrue to state that corporate crime is the collective effort of a number of employees in a corporation for maximization of corporate monetary profits at the cost of failure of systems in a society.⁵⁹

The corporate executives being the decision makers decide to have political and economic impact upon government to get their ultimate goals achieved.⁶⁰ They make conspiracies⁶¹ and commit unethical activities in their pursuit.⁶² They exploit and make bad use of the economic environment of the country where they are working in when corporate internal culture is contrary to it leading to corporate crime.⁶³

Corporate crime is such an issue in Pakistan that is worth deterring as it is growing with the growing trends of industry and technology. Like many other countries, Pakistan is equally facing very crucial and desperate consequences resulting from a variety of corporate crimes.

2.3 Jurisprudence of Corporate Crime

Corporate crime sounds more as crime but the knowledge of law of corporate crime describes corporate crime as crime and as a civil wrong, the detailed study of which is given as follows:

⁵⁸ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 44.

⁵⁹ *Ibid.*, 46.

⁶⁰ *Ibid.*, 54.

⁶¹ *Ibid.*, 53.

⁶² *Ibid.*, 67.

⁶³ *Ibid.*, 58.

2.3.1 Civil Wrong

Civil wrong is any act or omission, which is remedied by un-liquidated damages in civil law. Corporate crime is a civil wrong when corporation is held liable for its unethical act or omission in civil law for un-liquidated damages.⁶⁴

Corporate crime being a civil wrong is remedied by civil remedies. Corporate crime seems to work on the basic principles of the law of equity⁶⁵ by acting upon the maxim, "there is no wrong without remedy."⁶⁶ Corporate crime is different from ordinary crime as corporate crime is not committed with an intention to cause physical injury but is concerned to the profits achieved at the expense of others lives.

Prosecution of corporations under criminal law is not as effective as civil proceedings against corporations when there are sufficient remedies under civil law including strict monetary compensation to victims of corporate crime.⁶⁷

Wrong is violation of law by any person in the form of infringement of legal right of others for the beneficial enjoyment of his property which is either compensated in terms of money or is prevented by judicial orders in accordance with circumstances of the case.⁶⁸ So, corporate crime being a wrong is the violation by the corporate bodies of legal rights of people who are subject to its operations and its produce thus putting others at stake for attaining personal benefits.⁶⁹ From the above discussion, it is concluded in a nut shell that

⁶⁴ A. M. Choudhry, *The Law Of Tort* (Lahore: PLD Publishers, 2009), 2.

⁶⁵ Richard A. Booth, "What is Bussiness Crime," *Journal of Business and Technology* 3: 1(2008), 128.

⁶⁶ A. M. Choudhry, *The Law Of Torts* (Lahore: PLD Publishers, 2009), 15.

⁶⁷ Richard A. Booth, "What is Bussiness Crime," *Journal of Business and Technology* 3: 1(2008), 127.

⁶⁸ A. M. Choudhry, *The Law Of Torts* (Lahore: PLD Publishers, 2009), 5.

⁶⁹ Sally. S. Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002), 7.

corporate crime is a civil wrong as it comes within the ambit of the law of torts and is remedied either by filing a complaint or by taking a civil action in civil courts.⁷⁰

2.3.2 Crime

Crime is any act done in violation of law of the state, which is punished by the state.⁷¹

Corporate crime is corporate violation of laws made for the protection and safety of society men, consumers and of employees from corporate hazards. Corporate crime is a form of crime which is distinguishable from other forms of crime in respect of nature and severity of act committed. Corporate crime is a bit different from ordinary crime as it is a little ambiguous and indirect as compared to the street crime. Corporate crime exhibits with high magnitude and intensity in society when it is presented in a big number. It is not usually confronted individually as it is not easy to identify the individuals against whom injuries are inflicted because of crime committed by corporations.⁷²

It is a kind of crime, committed by elite and business class of a society. This type of crime poisons the society slowly and gradually and is committed by non-violent offenders by non-violent means. These non-violent offenders in a corporation when cause injury to others resulting in loss of lives, they will go through the punishments of fine or imprisonment.⁷³ So, corporate crime is one of the other forms of crime which is different structurally and substantially from it but the results forthcoming from both are worse effects on lives of innocent people and destruction of a descent society.

⁷⁰ Richard A. Booth, "What is Business Crime," *Journal of Business and Technology* 3: 1 (2008), 128.

⁷¹ Section no: 40, Pakistan Penal Code, 1860.

⁷² Stuart P. Green, "Moral Ambiguity in White Collar Criminal Law," *Notre Dame Journal of Law, Ethics and Public Policy* 18: 2 (2014), 209.

⁷³ Petter Gottschalk, "Internal Vs External Detection of White Collar Criminals: An Empirical Study," *Pakistan Journal of Criminology* 4: 1 (2012), 17.

2.4 Scope of Corporate Crime

Corporate crime is largely seen in different disciplines of business, thus targeting a huge number of people in different fields of life.

2.4.1 Consumer Right Violation

Corporate crime entails violation of consumer rights by all types of corporations⁷⁴ when they deceive their consumers by playing with their health and safety.⁷⁵ A consumer⁷⁶ has a right to get safe and nutritious goods as corporations are socially and legally responsible to produce and sell healthy and up to standard products at a reasonable price.⁷⁷

With the growing industry and technology in this globe, consumer protection laws have been made and enforced in almost all the developed countries of this world which portrays their policies and commitment to protect consumers from corporate violations.

Consumer interests protection is focussed upon not only by non Islamic states but Islamic states also seem to be aimed at protection of rights of consumers by establishing institutions like Ombudsman for consumer protection.⁷⁸

In 1985, United Nations provided guidelines on consumer protection according to which, there are eight fundamental consumer rights:

- Right to basic needs
- Right to safety
- Right to be informed
- Right to choose

⁷⁴ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 220.

⁷⁵ *Ibid.*, 214.

⁷⁶ Section no: 2, The Punjab Consumer Protection Act, 2005.

⁷⁷ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 203.

⁷⁸ Available at <http://ssrn.com/abstract=2144790>.

- Right to be heard
- Right to consumer education
- Right to healthy environment⁷⁹

Consumer right comes out as a result of violation and breach of consumer protection laws. The corporations out of cheap and very mean competitive strategies commit corporate crime, violating consumer protection laws for profit maximization at the cost of consumers. They go so far in their race to maximum profits that they leave basic human values aside. There is no doubt as to the fact that today consumer is becoming more demanding than in the past. His needs are increasing and changing with the increasing advancements in technology.⁸⁰

Big merged corporations not only themselves do violations of laws made for protection of rights of consumers but also make ways for small corporations to do so by putting pressure economically and politically upon the law makers to make laws in their favour. They insist upon leniency of laws which are made to control violation of consumer rights.

They put big hurdles and barriers in the way to consumer protection strategies applied by the regulatory institutions to fight against such corporate crime. They have to bear with great difficulties to break the corporate monopolies up, finally to bring most required consumer protection reforms⁸¹ as consumers are commonly not aware of their legally protected interests and of remedies coming out of violations of consumer protection laws.⁸²

⁷⁹ Available at <http://www.consumersinternational.org/who-we-are/un-guidelines-on-consumer-protection> (Last accessed: February 4, 2015).

⁸⁰ Jan Smits, "Full Harmonization of Consumer Law? A Critique of the Draft Directive on Consumer Rights," *European Review of Private Law* 5: 14 (2010), 7.

⁸¹ Available at <http://ssrn.com/abstract=962462>.

⁸² Muhammad Sarwar Khan, Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan, 1999, 1.

2.4.2 Intellectual Property Crime

Intellectual property⁸³ dealing with non physical property is as important as physical property. Many corporations expend their all sources like money and time and put their all efforts and dedication to establish their good will. They want their brand look different from others.⁸⁴

In this 21st century intellectual property crimes are spreading in almost every industry as corporations are commonly found being involved in unfair competitive activities, thus cheating others and adopting short cuts to get success. Such corporations put their and their country's reputation at stake. This is very alarming and serious issue in our society as we are facing very harmful consequences on daily basis.⁸⁵

A big reason behind such failure is that people are not aware of their intellectual property rights and of their infringement. So, there is a great need of making people aware of intellectual property because a society which is ignorant of its becoming vulnerable thus becomes victims of such corporate crime.⁸⁶ Intellectual property crimes are rapidly growing in Pakistan to a dangerous level and common man who buys and sells is at target.

It is very good to have healthy competition among corporations in every industry but if they are involved in illegal competitive practices like violation of trade mark,⁸⁷ copy right,⁸⁸ and of right of having patentable invention,⁸⁹ they are likely to commit corporate

⁸³ Section no: 2(d), Intellectual Property Rights Organization Ordinance, 2005 of Pakistan.

⁸⁴ Kevin Lewis, " The Fake and the Fatal: The Consequences of Counterfeits," *Park Place Economist* 17: 1 (2009), 47.

⁸⁵ Paul R. Paradise, *Trademark Counterfeiting, and the Billion Dollar Threat to the US Economy* (United States of America: Green Wood Publishing Group, 1999), 3.

⁸⁶ Available at <http://www.counseelpakistan.com/vol-1/intellectual-property/intellectual-property-organization.php> (Last accessed: May 5, 2014).

⁸⁷ Any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. See, Section 2 (xlvii), Trade Marks Ordinance, 2001.

⁸⁸ Section no: 2 (ha), The Copy Rights Ordinance, 1962.

⁸⁹ Section no: 7, The Patents Ordinance, 2000.

crime as they violate federal laws.⁹⁰ It is very usual to find aggrieved corporations filing a suit under civil law for redress of its grievance but prosecution of intellectual property crimes under criminal law is very rare.⁹¹ It is an unfortunate fact to find both civil law and criminal law less remedial in Pakistan so as to control such corporate crime of violation of intellectual property rights.

2.4.3 Human Right Violation

"Everyone has a right to just and favourable conditions of work."⁹²

Everyone's life is affected by good and bad impacts caused by corporate bodies. Going through their bad shadow upon our society, it comes to our knowledge that corporations commit violations of human rights on a large scale by not only providing hazardous products to consumers but also providing workers with poor working conditions.⁹³

There are some set international human safety and health standards, the violation of which by both national and transnational corporations is considered as international crime. If corporations commit violation of human rights, they are liable under civil and criminal laws for such corporate violation.

Our lives are being badly and harshly affected by illegal behaviour of domestic and transnational businesses. But unfortunately we are not adequately relieved by such corporate offenders. Particularly in case of transnational corporations committing industrial espionage,

⁹⁰ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 229.

⁹¹ Ed Hagen and Nancy Bowman, *Prosecuting Intellectual Property Crimes* (United States of America: Office of Legal Education Executive Office for US Attorneys, 2006), 85-86.

⁹² Article 23, The Universal Declaration of Human Rights. Available at <http://www.un.org/en/documents/udhr/> (Last accessed: May 5, 2014).

⁹³ <http://www.un.org/en/documents/udhr/index.shtml#a26> (Last accessed: May 6, 2014).

there is a big uncertainty regarding jurisdiction, which country either home or host has, to provide judicial remedies to the victims of human right violation.⁹⁴

It is very sad to say that we living in 21st century have still to think about the effective remedies to victims of human right violation by corporate entities and legislation in this respect needs to be updated according to the latest circumstances prevailing in Pakistan.

2.4.4 Unfair Trade Practice

Corporations in order to gain personal benefits and profits are used to adopt illegal and unfair ways of trading. There are many examples of their unfair trade practices like they provide bad working environment and poor working conditions to workers, thus avoiding to spend money to make them equipped with basic precautionary measures.⁹⁵ It is commonly happening in developing countries including Pakistan that such carefree business bodies play with the health and lives of poor workers.

Business entities also mislead their customers in their advertisements by making exaggerations about the benefits from the use of products made by such businesses. They use different unfair strategies to represent their products very attractive in advertisements in order to achieve a big sale.⁹⁶

Another unfair trick used by business entities is deceptive packaging. Small quantities are packaged in such a manner in very odd sized boxes that customers get confused that contents inside the boxes are greater in amount than the amount mentioned onto the boxes.⁹⁷ They deceive their customers not only by deceptive packaging but also deceive by producing

⁹⁴ Available at <http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyLawRemedies.pdf> (Last accessed: May 6, 2014).

⁹⁵ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 213.

⁹⁶ *Ibid.*, 217.

⁹⁷ *Ibid.*, 220.

unsafe and non-nutritious products.⁹⁸ In order to make their all unfair efforts successful, they exert unethical influence upon government to get legislation of their own choice.⁹⁹

Corporations in developed countries relocate their hazards to the developing countries where there is no law abiding environment.¹⁰⁰ Notable is that our daily lives are being influenced badly and are vulnerable by such illegal and unfair business practices by corporate entities. The health and safety of a common man is at stake as the virus of unfair trade practices is penetrating in almost every type of industry particularly in those countries with weak legislation and weak enforcement measures. Unfortunately, Pakistan is one of them.

2.5 Jurisdiction of Corporate Crime

2.5.1 Domestic Jurisdiction

In case of violation of Companies Ordinance, 1984, by company or body corporate,¹⁰¹ the High Court in the place at which the registered office of the company is situated has jurisdiction to entertain cases of such violation. The Federal Government may empower any civil court having respective territorial jurisdiction to decide cases of violation of Companies Ordinance, 1984.¹⁰²

In case of violation of Pakistan Environmental Protection Act, 1997, by corporations,¹⁰³ the Environmental Tribunal has civil, criminal, and appellate jurisdiction to entertain a complaint in writing by environmental protection agency or by any person aggrieved of any act in such violation.¹⁰⁴ The Judicial Magistrate of the First Class acts as

⁹⁸ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 224.

⁹⁹ *Ibid.*, 228.

¹⁰⁰ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

¹⁰¹ Section no: 270, The Companies Ordinance, 1984.

¹⁰² Section no: 7, The Companies Ordinance, 1984.

¹⁰³ Section no: 18, The Pakistan Environmental Protection Act, 1997.

¹⁰⁴ Section no: 21, The Pakistan Environmental Protection Act, 1997.

Environmental Magistrate to try such violations.¹⁰⁵ The case of *Abdul Ghaffar and Others v. D.G. Environmental Protection Agency and Others (2011)*¹⁰⁶ is a very important case in respect of corporate crime and exclusive jurisdiction of environmental tribunal to deal with the crimes affecting environment and committed by business entities. The facts of the above said case are as follows:

Abdul Ghaffar and others were running poultry farms in tehsil Murree. They were found to cause nuisance in suburbs as to their mismanagement of poultry waste caused environmental pollution in the form of bad smell and pollutants affecting human health as these farms existed close to the school and big masses were living nearby them. The D.G. Environmental Protection Agency sued Abdul Ghaffar and Others who were ordered to deter such criminal activities upon which they filed an appeal to the Lahore High Court against such preventive order.¹⁰⁷

The close analysis of the facts of the case law brings a clear picture of the exclusive jurisdiction of the environmental tribunal to adjudicate and decide the crimes affecting environment badly. Keeping in view the above point, we can say that the environmental tribunal decided to control civil activities in the residential area. Now the question arises, what about the culprit? Does eradication of life killing activities meet the ends of justice? If we want to get rid of only evil projects then it would not be sufficient to administer justice in our society. But here, the Lahore High Court remanded the case to the environmental tribunal to try the corporate criminals under Criminal Procedure Code, 1898 to punish the corporate culprits.¹⁰⁸

¹⁰⁵ Section no: 24, The Pakistan Environmental Protection Act, 1997.

¹⁰⁶ 2011 CLD 776.

¹⁰⁷ Ibid., 776.

¹⁰⁸ Ibid., 778.

The judgement of Rauf Ahmed Shiekh J.¹⁰⁹ is as follows:

In fact, the tribunal being vested with the powers of the Court of Sessions have tried with the appellants under Criminal Procedure Code, 1898. According to section 21(6) of Pakistan Environmental Protection Act, 1997 read with rule 13 of the Environmental Tribunal Rules, 1999, the environmental tribunal is to follow the Code of Criminal Procedure, 1898, in the cases of corporate crimes causing nuisance to environment and local residents. The concerned magistrate may exercise its powers under section 133, Cr.P.C. to remove such nuisance.¹¹⁰

In this way the case was remanded to the environmental tribunal to decide the case upon merits by following the Code of Criminal Procedure, 1898 to control corporate crime.

In case of violation of National Accountability Ordinance, 1999, by any person,¹¹¹ the accountability courts, established pursuant to this Ordinance, shall try such violation on a reference made after an inquiry or investigation by the National Accountability Bureau.¹¹²

In case of violation of The Prevention of Electronic Crimes Ordinance, 2007, the Information and Communication Technologies Tribunal have jurisdiction to entertain any complaint filed by any person aggrieved by any offence¹¹³ by corporate body if committed on its instructions or for its benefits under this ordinance.¹¹⁴

The case of *Muhammad Hanif S. Kalia and Others vs. the State* (2010)¹¹⁵ exhibits the jurisdiction of Information and Communication Technologies Tribunal and of Magistrate class 1st to decide the cases of illegal transfer of money by the companies and to control the crime committed by the corporations by using electronic devices. The facts of the above said case are as under:

¹⁰⁹ Ibid., 776.

¹¹⁰ Ibid., 779.

¹¹¹ The word person as used in section 9 of National Accountability Ordinance, 1999, extends the scope of corruption and corrupt practices to corporate frauds and corporate corrupt practices.

¹¹² Section no: 18, The National Accountability Ordinance, 1999.

¹¹³ Section no: 23, The Prevention of Electronic Crimes Ordinance, 2007.

¹¹⁴ Section no: 21, The Prevention of Electronic Crimes Ordinance, 2007.

¹¹⁵ 2010 YLR 1822.

F.I.R against Muhammad Hanif S. Kalia and others was registered at police station Karachi, South for illegal transfer of money misusing electronic system. The accused were arrested and criminal trial was initiated against them. The accused were refused to grant bail by the Sessions Judge upon which they filed an application to the High Court in respect of determination of jurisdiction of the court in the above said case.¹¹⁶

The analysis of the facts of the case tells us some important points. The very important point is that the Sessions Court acted as tribunal or not. The other is as to the role of specialized cell in Federal Investigation Agency in respect of the said case. It was held that:

The Sessions Judge Karachi, South was directed to send the cases to the court of Magistrate Class 1st, competent to try the offence. Since bail applications were filed in the Court of Sessions Judge who was not competent to try the offence. Those bail applications shall be deemed to be pending and the magistrate shall hear and decide those applications as expeditiously as possible.¹¹⁷

Now it is concluded that the Magistrate 1st Class should act in accordance with relevant law either by seeking help from police or by engaging federal investigation agency.

In case of violation of The Anti Money Laundering Ordinance, 2007, the Court of Sessions have jurisdiction to try any suit in respect of offences under this ordinance, filed by an investigation officer of Financial Monitoring Unit in State Bank of Pakistan or by any officer of Federal Government or of Provincial Government authorised in writing by the Federal Government in this regard.¹¹⁸

¹¹⁶ Ibid., 1824.

¹¹⁷ Ibid., 1845-1846.

¹¹⁸ Section no: 20, The Anti Money Laundering Ordinance, 2007.

In case of violation of Offences in Respect of Banks (Special Courts) Ordinance, 1984, the Special Courts established by the Federal Government have jurisdiction to try offences in respect of banks under this ordinance.¹¹⁹

In case of violation of Punjab Consumer Protection Act, 2005, the consumer court has jurisdiction to entertain any complaint by any person aggrieved of any act in violation of consumer rights by corporations under this Act¹²⁰. In the case of *Dr. Abrar ul Haq v Tehsil Municipal Officer and Water Consumer Committee(2013)*¹²¹, the District and Sessions Judge/ Judge Consumer Courts, Rawalpindi ordered the municipal corporation Tehsil Kotli Sattian, District Rawalpindi to provide the people with clean drinking water. Their lordships observed that:

Under article 38 of the constitution of Pakistan, 1973, it is the duty of the state to provide all citizens with basic necessities of life and under the local laws, the tehsil municipal corporations are responsible for the facilities of water, sewerage and roads etc. These organizations have their own set targets which they want to achieve even at the cost of lives of people living in the vicinity.¹²²

Here lays a very clear standard for local state organizations to set their corporate social responsibility to customers in particular and to the society in common. The other important point to be noted here is that all corporate bodies whether national or transnational should recognize all fundamental rights regarding consumer protection in Pakistan. The plaintiff being consumer was supplied with substandard contaminated water by the tehsil municipal corporation and water consumer committee, the legislative role and value of the

¹¹⁹ Section no: 3, Offences in respect of Banks (Special Courts) Ordinance, 1984.

¹²⁰ Section no: 27, The Punjab Consumer Protection Act, 2005.

¹²¹ Available at http://pcpc.punjab.gov.pk/?q=system/files/4_2_13.pdf.

¹²² Ibid.

judgement is noticed of its imposition of duty upon tehsil municipal corporations to take all essential actions to avoid loss of health of customers in upcoming times.

The corporate bodies have thus legal and social responsibility towards society men so that they could enjoy all essential necessities of life without fear of being targeted in the name of customers.

In case of violation of intellectual property rights by corporations, the court of District Judge has jurisdiction to try offences in respect of violation of a registered copy right under The Copy Right Ordinance, 1962¹²³ and of a registered patent under The Patents Ordinance, 2000.¹²⁴

The High Court or the Court of District Judge has jurisdiction to try a suit as to violation of a registered trade mark of a body corporate under The Trade Marks Ordinance, 2001.¹²⁵ The case of *Malik Safdar Hussain vs. Irfan Ahmad Ayyub and Another (2014)*¹²⁶ represents the jurisdiction of the additional District Judge under the Trade Marks Act, 2001 to adjudicate the matter regarding infringement of trade mark. The facts of the case are as follows:

Malik Safdar Hussain being the owner of registered trade mark "Younas Fan" made a licence agreement with Irfan Ahmad Ayyub and another to allow them to make and sell fan under the registered trade mark "Younas Fan" for a term of three years. After the expiration of agreed period, Irfan Ahmad Ayyub and another violated a registered trade mark by continuing to manufacture and sell fans in the same trade mark thus causing huge damage to Malik Safdar by infringing his only right to deal in their registered trade mark. The order for restraining trade in

¹²³ Section no: 65, The Copy Right Ordinance, 1962.

¹²⁴ Section no: 60, The Patents Ordinance, 2000.

¹²⁵ Section no: 47, The Trade Marks Ordinance, 2001.

¹²⁶ 2014 CLD 1310.

the registered trade mark by the additional Sessions Judge was called in question by Irfan Ahmad Ayyub and another.¹²⁷

We get an important point from the case law that the business entities use to cause irreparable damage to their rival business by violating trademarks. This trend is worth condemning in our society. Secondly, the appellant being not satisfied with the said order challenged the jurisdiction of the additional district judge by filing an appeal to the Lahore High Court Lahore.

Muhammad Farrukh Irfan Khan¹²⁸ said in his judgement:

"The order passed by the learned Additional District Judge, Gujrat does not suffer from any illegality or wrong exercise of jurisdiction. The appeal is dismissed."¹²⁹

So, we can conclude that the Additional District Judge exercises exclusive jurisdiction to decide the cases of infringement of registered trademarks.

In case of maladministration under Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 by any agency¹³⁰ or by any of its executives or employees, Wafaqi Mohtasib has jurisdiction to investigate into on a complaint by an aggrieved person, on a reference by the president or by the National Assembly, on a motion of the Supreme Court or a High Court or on its own motion.¹³¹

2.5.2 Across Border Jurisdiction: United States of America

There are two sets of courts in United States of America. One is federal court and the other is state court. Each state has its own separate federal courts in addition to separate state courts.

¹²⁷ Ibid.

¹²⁸ Ibid., 1311.

¹²⁹ Ibid., 1313.

¹³⁰ The word agency as used in section 9 of Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, extends the scope of maladministration to corporate maladministration.

¹³¹ Section no: 9, Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

The federal courts include the district courts, the courts of appeals, bankruptcy courts and the supreme court of the United States of America.¹³²

In case of breach of the federal laws of The Securities Act 1933, The Securities Exchange Act 1934 and Sarbanes Oxley Act 2002, committed by corporations or companies, the Federal District Courts of the state where such breach is committed have jurisdiction to handle such cases.¹³³

Each state has separate civil and criminal courts which come under the one head of state courts. Furthermore, among civil courts, there exist some small claims courts which handle cases of consumer protection.¹³⁴

Federal Consumer Product Safety Commission came into being in pursuance of the Consumer Product Safety Act, 1972. This Act of 1972 gives authority to the Consumer Product Safety Commission to regulate the sale of various consumer products.¹³⁵

The Act of 1972 also empowers the Consumer Product Safety Commission to lodge a complaint before the Federal District Court of the state where the manufacturer resides if the Commission finds some products hazardous to the health and safety of the public at large.¹³⁶

For the protection of environment from hazardous substances, a federal regulator agency known as United States Environmental Protection Agency was created in 1970 in pursuance of the National Environmental Policy Act, 1969.¹³⁷ The National Environmental

¹³² Available at www.uscourts.gov/federalcourts/understandingthefederalcourts/jurisdiction.aspx (Last accessed: May 15, 2014).

¹³³ Ibid.

¹³⁴ Available at www.litigation.findlaw.com/legal-system/what-sorts-of-cases-do-state-courts-decide.html (Last accessed: May 15, 2014).

¹³⁵ Section no: 4, The Consumer Product Safety Act, 1972.

¹³⁶ Section no: 12, The Consumer Product Safety Act, 1972.

¹³⁷ Preamble of The National Environmental Policy Act, 1969.

Policy Act was promulgated in 1969 to protect and to keep the environment safe for the good health of citizens of America.¹³⁸

All the private and public corporations are under legal obligation to comply with the provisions of the Act of 1969 to do good for the betterment of human beings and of nature.¹³⁹ The federal district courts of the state where such environment related crime occurs have jurisdiction to entertain litigation under the National Environmental Policy Act, 1969.¹⁴⁰

Occupational Safety and Health Act, 1970 promotes the health and safety of workers by establishing legal obligation upon employers to provide them with safe workplace not causing physical and mental deterioration or death of poor labour and each employer in United States of America shall have to comply with the relevant provisions of the Act of 1970.¹⁴¹

The National Institute for Occupational Safety and Health is created in pursuance of the Occupational Health and Safety Act, 1970. This institute is an important part of the United States Department of Labour. The U.S. Department of Labour is playing a very vital role in the enforcement of the Act of 1970 throughout the United States of America.¹⁴²

Occupational Safety and Health Review Commission is an important part of the Institute for Occupational Safety and Health. Keeping in view the convenience of the parties

¹³⁸ Section no: 2, The National Environmental Policy Act, 1969.

¹³⁹ Section no: 101(a), The National Environmental Policy Act, 1969.

¹⁴⁰ Bernard S. Cohen, Jacqueline Manney Warren, "Judicial Recognition of the Substantive Requirements of the National Environmental Policy Act of 1969," *Boston College Law Review* 13:4 (1972), 688.

¹⁴¹ 29 U.S.C. Sec. 654 (1970).

¹⁴² Available at www.epa.gov/law-regulations/summary-occupational-safety-and-health-act (Last accessed: June 5, 2014).

to the dispute relating to workplace safety and health issues, the commission may hold case proceedings in any state having jurisdiction to handle and decide such issues.¹⁴³

In case of violation of intellectual property rights by corporate bodies, the federal district courts of each state of United States of America have jurisdiction to hear all types of cases involving such violations. The district courts are the trial courts in such cases and appeals are heard by the federal courts of appeals.¹⁴⁴

In case of violations of federal laws relating to internet, committed by corporate business entities to gain monetary advantages, such violations including crimes and civil wrongs shall be prosecuted in federal district courts.¹⁴⁵

In case of companies being involved in cases of bankruptcy, such cases are tried by the federal bankruptcy courts of the states where such crime is committed as the federal bankruptcy courts have original jurisdiction to decide such cases.¹⁴⁶

2.5.3 Types of Corporate Crime and Developing Countries

Different types of corporate crime are committed by transnational corporations by shifting their production plants to host developing countries.¹⁴⁷ The most injurious crime against society at large in poor countries is to produce environmental disasters. Transnational corporations adopt the perilous way of earning profits by polluting the environment of developing countries without fear of consequences.

¹⁴³ Available at www.law.cornell.edu/uscode/text/29/661 (Last accessed: June 5, 2014).

¹⁴⁴ Available at <http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch4.pdf> (Last accessed: June 12, 2014).

¹⁴⁵ Available at www.referenceforbusiness.com/industries/public-administration/courts.html (Last accessed: June 7, 2014).

¹⁴⁶ Available at <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/Jurisdiction.aspx> (Last accessed: June 10, 2014).

¹⁴⁷ Simon Boughan, "Multinationals and the Export of Hazard," *Modern Law Review* 58: 1 (1995), 54.

Such corporate criminals exploit the lenient legislative regime of the less developed countries where they commit heinous crime of more gravity than that of conventional crime by affecting badly the lives of a huge number of people by exposing them to health killing industrial waste.¹⁴⁸

Transnational corporations affect human lives not only by causing environmental deterioration but also by violating legal rights of consumers in developing nation states. They play weirdly by killing health of consumers as these corporations do not hesitate to produce and export substandard products in developing countries. So, these are commonly found involved in gross criminal activity of producing and selling hazardous products in developing countries of the world.¹⁴⁹

Playing with the health and lives of the workers in developing countries is another attribute of the transnational corporations. These big corporate entities violate the legal rights of workers as these corporations exploit the poor economical and weak political system. These giant business entities are least concerned with work place safety. Poor workers are provided with the poor working conditions and low remuneration. These corporations violate the labour laws of the host developing countries. Transnational corporations pay much lesser to the poor workers than that paid to the workers in their home countries.¹⁵⁰

So, transnational corporations are found to be indulged into committing corporate crime of different types by polluting environment, producing unhealthy substandard products and by providing workers with poor working conditions in developing countries.

¹⁴⁸ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 39.

¹⁴⁹ Henry Shue, "Export of Hazards," *Ethics* 91: 4 (1981), 582.

¹⁵⁰ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 39.

2.6 Victims of Corporate Crime

The immediate communities surrounding the large corporations usually become victims of their unfair and criminal activities. Such communities are directly vulnerable as they are exposed to very serious health, safety and unemployment issues due to their such criminal activities. Not only a big number of skilled workers become unemployed by the when subsidiary closes just to avoid the expenses for pollution control, many innocent people suffer from life killing diseases due to corporate hazards.¹⁵¹

Society at large is being victimized in every field of industry. The corporations should perform their social responsibility towards society at large,¹⁵² because society people being consumers and their employees are their stakeholders. So, they should be their first priority to treat them good.¹⁵³

It is very common to see victimization of workers in corporate sector. This encompasses both physical and emotional injury to workers in workplaces. Physical injury seems to be a part of mission to be accomplished by the workers for the sake of corporate benefits. Emotional injury happens to be discrimination among high and low level workers in a corporation. This customary criminal and unfair behaviour of corporations needs to be amended on equitable grounds.¹⁵⁴

Where corporation works as investor, neighbour, producer, resource manager and social designer, it should meet the expectations of consumers. It must work with the changing

¹⁵¹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 5.

¹⁵² Harry J. Van Buren, "Employee-Centered Model Of Corporate Social Performance," *Business Ethics Quarterly*: Philosophy Documentation Center 15: 4 (2005), 687.

¹⁵³ Ibid.

¹⁵⁴ Karl Aquino, Murray Bradfield, "Perceived Victimization in the Workplace: The Role of Situational Factors and Victim Characteristics," *Organization Science* 11: 5 (2000), 525-526.

demands and requirements of existing time. When it works as a citizen, it must go obediently with the laws of the state where it is running its operations.¹⁵⁵

Corporate victimization is vulnerable in the areas worldwide where they can cause influences by their applying all sources upon government, pursuing their ultimate profits.¹⁵⁶ The corporations including both nationals and multinationals, when initiate their subsidiaries in poor areas of the world, misuse their poor economic and weak legislative environments to come to their set targets. They thereby play with the health and safety of people not only by providing poor working conditions to their workers¹⁵⁷ but also by providing customers with sub-standard products.¹⁵⁸

The manufacturing corporations in Pakistan are commonly not through innovations and reflect a picture of uniformity in the products. Consequently, consumers get bored of such repetitions in products in this trendy modern world market.

¹⁵⁵ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 203-204.

¹⁵⁶ *Ibid.*, 332.

¹⁵⁷ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 36.

¹⁵⁸ *Ibid.*, 38.

CHAPTER 3

TRANSNATIONAL CORPORATE CRIME

3.1 Introduction to Transnational Corporate Crime

Transnational corporate crime is the outcome of differences between the laws of home and host countries.¹⁵⁹ It signifies violation of not only criminal laws but also of civil and regulatory laws committed by multinational corporations while carrying on their manufacturing, administrative and marketing operations in host countries.¹⁶⁰

Transnational corporate crime is indicative of violation of laws by multinational corporations misusing their strong economic and political position in developing countries. Such dominating developed countries do in the developing countries what they are not allowed to do in their own countries.¹⁶¹

Transnational corporations are very huge companies progressing business in more than one country. Their head office is situated in their home country and subsidiaries usually work in host developing countries. They possess a particular characteristic of domination over the international market and create a unique binding economical force between the rich and the poor countries.

Transnational corporations commit crimes across borders for their personal benefits. Such crimes are litigated in the country where these are committed as it is a matter of right

¹⁵⁹ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 34.

¹⁶⁰ *Ibid.*, 35.

¹⁶¹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 19.

and just for a nation state to fight for its sovereignty against such transnational corporate crime.¹⁶²

Different factors are involved in the rapid growth and widespread of transnational corporate crime like huge structure of transnational corporations plays a vital role in the breakdown of laws of host countries.¹⁶³

Firstly, transnational corporations increase their product lines by going through mergers to have big profits. Secondly, the transnational corporations are inclined towards relocation of their all industrial operations to developing countries with lenient rules and regulations to evade tax. For that very purpose transnational corporations open their subsidiaries in developing host countries with legislative regime suitable to their illegal corporate activities.¹⁶⁴

As the structure of giant corporations is very complex, not in respect of relationship among their shareholders, directors, executives and employees but also among parent corporations and its subsidiaries,¹⁶⁵ they commit violation of laws in both home and host markets out of such complexity.¹⁶⁶

The transnational corporations are the large entities who achieve their motive of earning maximum profits after acquiring economical and political power by having their subsidiaries in the countries whose economic, legal and political environment is suitable for their criminal motive. The transnational corporations seek the most cheapest and suitable place in all respects for their high and rapid productivity. The final and ultimate decision will

¹⁶² Available at <http://www.globalpolicy.org/empire/47068-a-brief-history-of-transnational-corporations.html> (Last accessed: July 6, 2014).

¹⁶³ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 20.

¹⁶⁴ *Ibid.*, 34-35.

¹⁶⁵ *Ibid.*, 24.

¹⁶⁶ *Ibid.*, 35.

be made and profits will be earned in developing countries and remitted to foreign banks by the parent corporation.¹⁶⁷

Multinationals earn huge profits in Pakistan and transfer it to foreign banks. Berger Paints, General Tyres, Gillette Pakistan, Continental Biscuits, Lakson Tobacco, Lever Brothers, Shell Pakistan and Johnson & Johnson have transferred a monetary profit of \$322million to foreign banks during the three quarters of this running year.¹⁶⁸

A time has now come that developing nations make their trade strategies according to the trade plans of transnational corporations for running their businesses in those countries. It will not be untrue to say that our lives are affected by the criminal strategies and selfish plans of transnational corporations. Such giant corporations work beyond boundaries to achieve their ultimate goals as if those are on money. They have now become a symbol of power and wealth as they have going concern with an infinite life time and modern ideology to conquer this world.¹⁶⁹

These transnational corporations shift their plants along with their hazards to the other countries where there is easy way out. They find developing countries a suitable yet cheaper place to play therein for much more substantial benefits than that obtained in their own home countries.¹⁷⁰

Pakistani society is exposed to dangerous effects being produced by detrimental activities of multinational companies. But these multinationals make use of social media not to expose their illegal corporate activities by adopting a strategy of promoting their products

¹⁶⁷ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 39.

¹⁶⁸ Khaleeq Kiani, "Foreign Cos Remit \$322m Profit," *Dawn*, 12 May 2003, 8.

¹⁶⁹ *Ibid.*, 38.

¹⁷⁰ *Ibid.*, 39.

and services. At times governments are also seen as a helping tool to transnational corporate crime.¹⁷¹

Noman Ahmed, a journalist, in his article, "Rise of the Multinational" published in Dawn Newspaper on December 26, 2004 stated that: "The award of construction contracts to certain Chinese Multinationals is quite understandable. The anticipated cooperation in terms of strategic defence supplies expected from China gives her all the legitimacy to access Pakistani markets without following the norms."¹⁷²

He further stated that:

The performance of multinational companies and their outputs is closely regulated by powerful consumer rights groups in the first world contexts. Amply protected by state laws and regulations, these groups watch the quality and ingredients of the products. In case of deficiencies leading to any loss or damage to consumer, a particular MNC has to face law suits often leading to heavy fines. However, same is not the case in developing countries including Pakistan.¹⁷³

The impending critical situation of human rights infringements in Pakistan can be visualised by the following example: "The US backed the Taliban regime until the late 1990's due to its interest in an oil pipeline deal brokered by a giant American MNC."¹⁷⁴

Transnational corporations, in order to evade laws of host country, bribe the government officials of that country. They get expert opinion on how to pursue their illegal goals in the host country and endeavour to get legislation favourable to their corrupt activities. A country with weak tax system, pollute environment, no consumer protection and

¹⁷¹ Noman Ahmed, "Rise of the Multinational," *Dawn*, 26 December 2004, 8.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, 9.

¹⁷⁴ *Ibid.*

poor working conditions is very appealing to transnational corporations to run their industrial operations therein.¹⁷⁵

Transnational corporations famous for their generous attitude towards human resource in the world are seen least interested in performing their corporate social responsibility in Pakistan. MNCs are not taking Pakistan seriously as their management is poor. They are not more into diversification and expansion. Their target is to get a lot of money without innovation in their products and services. Very famous MNCs in Pakistan like ICI, Lever Brothers, Pakistan Tobacco, Shell, ESSO, Glaxo, McDonalds, KFC, Indus Motor Company and to name a few are not serious in performing their responsibility towards consumers, environment and society at large. It is now time to target foreign investments by carrying out a suitable regulatory system for multinational corporations in Pakistan.¹⁷⁶

These corporations misuse their power and other available resources to infringe laws and thus portray a horrible picture of immense breach of business ethics.¹⁷⁷ The dilemma of transnational corporate crime is very much concerned with the legal understanding of corporate illegal activities in a particular society and the impacts of such understanding upon that particular society in which illegal activities are committed by transnational corporations. Most specifically, the nation states ignorant of their being victimized of transnational corporate crime must come to know about corporate violation in transnational context.¹⁷⁸

3.2 Essential Elements of Transnational Corporate Crime

Different elements of crime by transnational corporations are very important to study criminal behaviour of transnational corporations. These elements include relocation of

¹⁷⁵ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 41.

¹⁷⁶ Farooq Hasan, "Multinationals in Pakistan," *The News International*, 23 December 2013, 6.

¹⁷⁷ *Ibid.*, 42.

¹⁷⁸ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 35.

corporate hazards by transnational corporations and poor working conditions in transnational context.

3.2.1 Relocation of Corporate Hazards

Out of this global world, the offshore relationship among developed and developing countries of the world is abundantly seen now-a- days. That ultimate relationship is of financial, political and social activities between different countries of the world. This type of across border manufacturing and trading is debatable as it sometimes causes hazardous effects on people living in developing countries. Actually, ruling over third world countries is established by transnational corporations through the investments made by them in those countries.¹⁷⁹

These investments are made not only in already running industries in developing countries but also relocate their industrial plants to these countries for in return monetary benefits. They shift such productive projects to third world countries that are prohibited to run in their own countries. Such shifting is accelerated by the wish of developing countries to get foreign investments at the expense of human lives.

3.2.2 Bhopal Case (1984)

This was a case of criminal negligence on the part of a multinational corporation. The facts of the case are as:

There was India based Union Carbide India Limited in collaboration with US based Union Carbide subsidiary corporation in the city of Bhopal. The chemical industry was working with its targets to produce concentrated fertilizers and pesticides at Bhopal plant. There occurred a lesson seeking incident as a result of poor working conditions. There was a blockage in the gas pipes which caused water back up which further exerted pressure in the

¹⁷⁹ Simon Baughen, "Multinationals and the Export of Hazard," *The Modern Law Review* 58:1 (1995), 54.

gas pipes. This caused continuous leakage out for long resulting in thousands of death casualties and severe injuries to person and property existed in the vicinity of the production plant. This was ultimately due to criminal negligence of management exhibiting extremely non serious attitude of transnational corporations in developing countries.¹⁸⁰

From the facts of the case, we conclude the following points to determine the relocation of corporate hazards by transnational corporations to developing countries.

- a. The transnational chemical industry relocated its operations to one of the developing countries India for making pesticides.
- b. Relocation of production plant to a small city of Bhopal.
- c. Workers to work at contaminated plant site.
- d. Less skilled labour to work under poor working conditions.
- e. Criminal negligence on the part of management of transnational industry.¹⁸¹

The Indian government filed a law suit on behalf of victims against the US based company in US courts. The district court of New York decided: "The case is to be adjudicated and decided by the Indian Courts as hearings of the case is to be taken place at the place where the incident was taken place in pursuit of international rules of justice."¹⁸²

With the relocation of such prohibited corporate production to developing countries, the corporate hazards are also relocated from developed to developing counties¹⁸³. Transnational corporations at times relocate their head offices after they have had relocated

¹⁸⁰ Available at <http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1004&content=edethicsinscience> (Last accessed: April 25, 2015).

¹⁸¹ Available at <http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1004&content=edethicsinscience> (Last accessed: April 25, 2015).

¹⁸² Ibid.

¹⁸³ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 35-36.

their subsidiary corporations. They do so in order to be in touch very closely with their unethical corporate practices.¹⁸⁴ Here corporate hazards are illegal corporate activities and injurious waste. When it comes to relocation of corporate hazards, it extends to relocation by transnational corporations of illegal activities and dangerous waste to developing countries.¹⁸⁵ The relocated corporate hazards by transnational entities result in all possible issues of transnational corporate crime including most importantly environmental hazards and failure to consumer health and safety.¹⁸⁶

3.2.3 Environmental Hazards

Transnational corporations are abundantly seen to export environmental hazards along with their productive operations in less developed countries as they do not expend money on pollution control measures therein. They will have to follow the rigid laws in respect of environmental protection and will have to make efforts to meet the standards in respect of environmental safety set by legislative regime of their home countries if they have their all industrial procedures located in their nation states.

Transnational corporations often expose the environment of developing host countries to hazardous waste materials while carrying on their corporate activities. They do not properly and safely dispose of the hazardous waste material in host nations. They not only pollute the air but also water, thus making the environment of developing countries no more worth living.¹⁸⁷

¹⁸⁴ Julian Birkinshaw, Pantus Braunerhjelm, Ulf Holm and Siri Terjesen, "Why do some Multinational Corporations Relocate Their Headquarters Overseas," *Strategic Management Journal* 27:7 (2006), 683.

¹⁸⁵ Simon Baughen, "Multinationals and the Export of Hazards," *Modern Law Review* 58: 1 (1995), 54.

¹⁸⁶ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 35.

¹⁸⁷ *Ibid.*, 37.

The global corporations shift their capital and technology along with their all possible hazards to the places with poor economical conditions.¹⁸⁸ It is worth stressing to know that these global enterprises have their subsidiaries in the countries with no legal restrictions in the respective field.¹⁸⁹

Transnational corporations should deliberately expend money on environment friendly atmosphere. They should produce goods favourable to human lives. But unfortunately these global enterprises are usually found not to comply with the laws regarding environmental protection. Rather these corporations are exposed to the pressure put by the shareholders on the corporate entities to get their expectations of huge profits fulfilled at any cost. Due to this extraordinary pressure, the safe and healthy environment in less developed countries is affected badly a loads. Thus these corporations irresponsibly deal with the left over and waste material that results in degradation and deterioration of healthy green environment.¹⁹⁰

It would be very true to state that such global enterprises are injurious to human health and lives. Green washing in developing nation states is abundantly seen to being caused by subsidiaries of multinational corporations, thereby making the corporate image as a producer and investor worse in the eye of common people at large. Their non serious behaviour towards their social and ethical obligations is because of their greed for maximization of profits.¹⁹¹

¹⁸⁸ From the point of view of transnational corporations, the electronics industry seems to be very safe to environment yet invades the environmental safety in developing countries by dealing in dangerous material which is strictly treated with in United States of America (Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in Transnational Context", *Social Problems* 34:1 (1987), 37).

¹⁸⁹ Deepak Nayyar, "International Relocation of Production and Industrialization in LDCs," *Economic and Political Weekly* 18:31 (1983), 20.

¹⁹⁰ Hope M. Babcock, Corporate Environmental Social Responsibility: Corporate Green Washing or a Corporate Culture Game Changer?, *Georgetown University Law Centre* 1:78 (2010), 1.

¹⁹¹ *Ibid.*, 3.

It is very tempting and appealing to have big sized global corporations but their big size is one of the other causes public hatred for them because their enlargement is a symbol of huge power exercised by them to deny to follow the regulations in respect of environmental safety and protection set by government.

The intuition of transnational corporate body of getting monetary benefits out of difference between the laws of developing host and developed home countries puts impediments in the way to comply with the environmental protection measures.¹⁹²

Another important thing is that their huge size and diverse corporate activities puts a big full stop to the regulating bodies. Transnational corporate entities being very powerful influence our lives as we use different products from a needle to an aeroplane made by these corporations. But they do not play their vital duty of not polluting the environment with dangerous fumes, harmful gases and vapours. Thus they manipulate the weak economic and poor legal circumstances of the host developing countries where they are relocating their environmentally harmful manufacturing plants.

Not only this, they also bribe the political environment of host nations to get favourable legislation in respect of environmental safety and protection. They spend money on relocation of green washing projects to developing nation states despite making expenditure on keeping environment clean and healthy for people at large.¹⁹³

These big industries relocate their hazards in the name of technology transfer to developing countries as is stated by a journalist in Dawn Newspaper on December 26, 2004

¹⁹² Hope M. Babcock, *Corporate Environmental Social Responsibility: Corporate Green Washing or a Corporate Culture Game Changer?*, *Georgetown University Law Centre* 1:78 (2010), 7-8.

¹⁹³ *Ibid.*, 19-20.

that: "Many environmentally hazardous technologies are dumped in developing countries including Pakistan under the garb of technology assistance or technology transfer."¹⁹⁴

Non serious attitude and least concern of the policy makers in Pakistan towards environment is a big call to the multinational companies around the globe to relocate their plants along with environmental hazards to Pakistan. A clear example of their this attitude is that the government remains unaddressed as only one percent of Rs 38 billion Metro Bus project is spent on environment safety. Approval by the Sindh Environmental Protection Agency of nuclear power plants to be built near to the city of Karachi knowing the bitter fact of release of radiations causing environmental deterioration is another example of silly behaviour of government over environmental issues in Pakistan.¹⁹⁵

Imrana Tiwana, an environmentalist said that: "Environment is not a priority subject for the government and it is difficult to achieve social, cultural and economic progress if people do not have clean water to drink and fresh air to breathe."¹⁹⁶

Criminal activity of many local and multinational industries of polluting drinking water in Lahore needs to be redressed in order to keep water reserves clean. Release of dangerous industrial waste into underground water channels cause many skin and bone diseases. A much published incident of the year 2000 displays a crucial situation when loads of resident of Kalanawala village in the suburbs of the city of Lahore got ill with bone diseases owing to pollutant underground water containing poisonous chemicals like Mercury, Zinc, Bacteria etc. This shows a complete failure of Punjab Environmental Protection Department to enforce Pakistan Environmental Protection Act, 1997 as local and

¹⁹⁴ Noman Ahmed, "Rise of the Multinational," *Dawn*, 26 December 2004, P. 8-9.

¹⁹⁵ Imran Khalid, "Environmental Concerns," *The Nation*, 21 June 2015, P. 6-7.

¹⁹⁶ Jamal Shahid, "Environmental Damage in Islamabad is Irreversible," *Dawn*, 18 June 2015, 8.

transnational industries get permission to carry on with injecting untreated waste into drains by offering huge bribes to corrupt officers.¹⁹⁷

An official in the Environmental Protection Commission Islamabad said: "Section 12 of the Pakistan Environmental Protection Act, 1997 by public authorities causes serious environmental issues that would otherwise be resolved upon its enforcement."¹⁹⁸

The environmental problems are growing enormously in Pakistan due to different irresponsible actions of transnational corporations. Worst accidents in industrial sector in transnational corporations appear to happen in developing countries including Pakistan because of their desire to get huge investments through global enterprises which are always looking forward to maximum profits out of minimum investments.

According to Environmental Democracy Index presented by the World Resources Institute in the month of May, 2015, Pakistan stood 59th out of 70 countries in relation to strict legislation to protect environment and effective implementation measures. One of the reasons of weak enforcement of environmental laws in Pakistan is the influence of business class politicians and multinationals over provincial environmental protection agencies.¹⁹⁹

The rapidly growing deterioration of environmental safety by multinationals is widely seen in Pakistan. This is because of increasing trend of mergers of corporations. So, conglomerates are one of the other important reasons of worse environmental hazards because these massive enterprises heavily utilize natural resources in less developed countries but pay back very minute social betterment and security from corporate environmental hazards.

¹⁹⁷ Adnan Adil, "Polluting Aquifer," *Dawn*, 14 June 2015, 8.

¹⁹⁸ Jamal Shahid, "Environmental Damage in Islamabad is Irreversible," *Dawn*, 18 June 2015, 8-9.

¹⁹⁹ Imran Khalid, "Sidelining Environmental Concerns," *The Express Tribune*, 13 June 2015, 6-7.

3.2.4 Coca Cola Beverages (Pakistan) Limited vs. Director General, Environmental Protection Agency, Government of Sindh (2012)

The hazardous activity of transnational corporations at the cost of lives of people is mentioned in a case of *Coca Cola Beverages (Pakistan) Limited vs. Director General, Environmental Protection Agency, Government of Sindh (2012)*²⁰⁰ where environmental hazards were caused by pollutant discharge from Coca Cola Beverages factory subsidiary in Pakistan. The facts of the case are as follows:

The Coca Cola Beverages subsidiary factory located in Karachi was ordered to stop its production activities by the D.G. Environmental Protection Agency, Sindh on the ground of its pollutant water discharge into domestic sewerage thus affecting adversely health and lives of residents in suburbs. The time period of six months was granted to the factory to fulfil the National Environmental Quality Standards.²⁰¹

On filing an appeal against such order, Mrs. Ashraf Jahan, Chairman and Abdul Karim Memon, Member of Environmental Protection Tribunal, Karachi²⁰² said in their judgement: "No justification, in circumstances was available to grant another period of six months as prayed by the appellants. As violation of National Environmental Quality Standards was established, appeal was dismissed."²⁰³

The above mentioned case shows requirement of sensible strict approach to constitute a workable framework on transnational corporations to be socially accountable.

In such crucial environmental circumstances prevailing in Pakistan, it is the utmost duty of government of Pakistan to legislate strict and influential laws in respect of keeping environment friendly atmosphere in transnational corporations and to follow effective

²⁰⁰ 2012 CLD 1887.

²⁰¹ *Ibid.*, 1888.

²⁰² *Ibid.*, 1887.

²⁰³ *Ibid.*, 1897.

implementation measures for keeping public health good and away from health killing effects of environmental deterioration.²⁰⁴

Out of this global world, where there is transfer of economic and trade activities between developed and developing countries, transnational corporations present a true picture of this exchange. This exchange causes a massive evil impact on environment in third world countries. Despite this bitter fact there is a huge over whelming welcome to foreign investment in respect of manufacture and sale of goods worldwide but one cannot deny the fact that transnational entities are not coming up to the expectations of people living in developing countries.

As these corporations are not natural bodies, they do not have any such feelings for the people living in third world countries where they are having their industrial operations as people of those countries have in their hearts for prosperity of their nation states. These multinationals do not care for safety of environment from corporate hazards.²⁰⁵

With the gradual increase in the third world investment, there is rapid decrease in the well being of environment and countrymen in those countries which results in vulnerability of victimization of environmental hazards caused by relocated businesses to third world nation states. Sadly it is to state that transnational corporations being socially responsible do not bother about important environmental issues while considering upon their grave business issues.²⁰⁶

²⁰⁴ Available at [http:// www.southasiainvestor.blogspot.com/2012/01/high-environmental-pollution-in-india.html](http://www.southasiainvestor.blogspot.com/2012/01/high-environmental-pollution-in-india.html) (Last accessed: July 12, 2014).

²⁰⁵ Available at <http://www.pkhope.com/globalization-and-pakistan> (Last accessed: July 13, 2014).

²⁰⁶ Available at <http://www.globalissues.org/article/55/corporations-and-the-environment> (Last accessed: July 15, 2014).

3.2.5 *Dadex Eternit Limited vs. Syed Haroon Ahmed and Others (2011)*

The issue relating to environmental hazards at expense of others caused by poisonous discharge was raised in *Dadex Eternit Limited vs. Syed Haroon Ahmed and Others (2011)*²⁰⁷.

The facts of the case are as follows:

The petitioner factory named as *Dadex Eternit Ltd* was a leading manufacturing factory of PVC pipes used in a number of countries. The production plant emitted hazardous health killing waste called as "asbestos" causing life threatening disease "cancer" among people in the vicinity including death of an innocent employee. On applying before Environmental Tribunal Karachi to direct the factory management to take effective preventive measures, an order was passed to commit environmental assessment by environmental commission.²⁰⁸

On filing a petition against such order, Mushir Alam, C.J. and Muhammad Ali Mazhar Judge. High Court Karachi²⁰⁹ dismissed the appeal by stating: "Setting aside of impugned interlocutory order at such preliminary level would tantamount to strangulate spirit and scope of Pakistan Environmental Protection Act, 1997."²¹⁰

The case law points out of the following points to be pondered upon:

- a. Asbestos is included in the hazardous chemicals prescribed in section 14 of PEPA, 1997 as pointed out by the learned counsel of petitioner.²¹¹
- b. The above case law exhibits an extensive requirement of creating a detailed legal and regulatory framework to deter relocation and use of hazardous substances resulting in transnational corporate crime.

²⁰⁷ PLD 2011 Karachi 435.

²⁰⁸ PLD 2011 Karachi 435.

²⁰⁹ *Ibid.*, 435.

²¹⁰ *Ibid.*, 450.

²¹¹ *Ibid.*, 439.

Federal Secretary for Climate Change Arif Ahmed Khan said: "Industries, hospitals, electronics and other multinational manufacturing companies generate enormous waste and discard it without its proper management which continues to damage environment, particularly water and air in the country."²¹²

Sea water in Karachi is polluted with toxic chemicals due to non treatment of solid waste and other sewage coming out of both domestic and a number of multinational industries and dumping into the sea water. Not only marine life but human lives are also being affected by it as consumers of sea food suffer from different genetic disorders. This scenario also destroys national integrity and thus it causes prominent reduction in the export sale of sea food and an increase in the relocation of transnational corporations along with their all hazards to Pakistan.²¹³

The increase in the environmental problems is alarming and worth settling in the developing countries including Pakistan and needs to be resolved by making and then exercising strict legal and regulatory measures.

3.2.4 Failure to Consumer Health and Safety

The big global corporations manipulate the human interests by infringing the basic human rights. They make a very worse use of weak socio-economic fabric of third world countries by exporting them consumer hazards. They put the health and safety of consumers in danger by exporting them harmful goods like worthless food products and useless medicine.

They exploit the ineffective legal system of less developed countries as they do business in sub standard products including food items, electronics and other home appliances which are not up to mark. For their such inhuman corporate activities they choose

²¹² Mushtaq Ahmed, "Pakistan offered help in proper disposal of hazardous waste," *The News*, 11 April 2015, 6.

²¹³ Mushtaq Ahmed, "The Karachi Coastline," *The News*, 12 June 2015, 6-7.

those countries whose legal and regulatory infrastructure has many drawbacks as it lacks in defining properly transnational corporate transgressions as corporate crime and controlling re-shifting of transnational corporate hazards.²¹⁴ The case of *Rana Rashid v/s M/S Haier Pakistan Ltd(2007)*²¹⁵ shows the manufacturing and selling of defective electronic products in Pakistan by the China based transnational company.

3.2.5 Rana Rashid v/s M/S Haier Pakistan Ltd (2007)

The facts of the case are as follows:

The complainant purchased a Haier Split AC and got it installed by the authorized installer of the company. But its compressor was replaced after a few days of its installation. After refusal to replace the AC to the complainant, he claimed for refund of its purchase money and compensation for mental tension.²¹⁶

Syed Maruf Ahmedali, Judge District Consumer Court, Lahore²¹⁷ pronounced its judgement as under: "The respondent shall refund the price of the Haier Split AC along with installation charges, lawyer's charges and compensation of Rs. 20,000/- to be given to the complainant."²¹⁸

It is very common to happen in developing countries that consumers living in such countries are supplied with products of daily use having carcinogenic effects. As a result these consumers become victims of fatal diseases. The citizens in poor countries are exposed to weird products by multinationals that are banned to sell in developed countries.²¹⁹

²¹⁴ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 38.

²¹⁵ Available at <http://pcpc2.pitb.gov.pk/index.php?q=system/files/14-07-07.pdf> (Last accessed: May 3, 2015).

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Henry Shue, "Export of Hazards," *Ethics* 91: 4 (1981), 582.

Where transnational corporations play a great part in enhancing latest developments and in making developing countries prosperous ones, one cannot deny the fact that the introduction of latest technology and generation of new variety of jobs also cause detriment in respect of consumer health and lives. In pursuance of their profit they not only produce but also export sub standard products along with their harmful effects to developing countries.²²⁰

Due to the export of sub standard products to host developing countries with weak economic and legal systems, different diseases with harsh after-effects breakout²²¹ therein. So, it would not be incorrect to state that relocation of transnational subsidiaries to developing countries brings health hazards with it. The case of *Imran Sohail Tarrar v/s Pepsi Cola Pvt. Ltd. through Shamim Khan Durrani, Gujranwala, Etc. (2007)*²²² exhibits the manufacturing and supplying of sub standard, local made and unhealthy beverages by the US based company famous by the name of "Pepsi Cola" worldwide.

3.2.6 Imran Sohail Tarrar v/s Pepsi Cola Pvt. Ltd. through Shamim Khan Durrani, Gujranwala, Etc. (2007)

The facts of the case are as follows:

On opening two bottles of Pepsi Cola out of six bottles purchased by complainant, bad smell came out of the drink and a wrapper was also found in the drink. The complainant prayed for compensation as he suffered from mental torture.²²³

The District Consumer Court Sialkot/ Narowal²²⁴ decided the above said case as follows:

²²⁰ Mahmood Monshipouri, Claude E. Welch Jr. and Evan T. Kennedy, "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities," *Human Rights Quarterly* 25:4 (2003), 967.

²²¹ Park-Davis, a U.S. based transnational pharmaceutical company exported a drug named as Chloramphenicol to poor developing countries which was restricted to sell in United States due to its being manufactured of ingredients causing life threatening after effects (Kramer, " The Space between Laws," 38).

²²² Available at http://pcpc2.pitb.gov.pk/index.php?q=system/files/4_8Imran.pdf (Last accessed at: May 1, 2015).

²²³ Available at http://pcpc2.pitb.gov.pk/index.php?q=system/files/4_8Imran.pdf (Last accessed at: May 1, 2015).

As the respondents M/S Pepsi Cola, Etc. did not establish plea that Pepsi Cola beverages is manufacturing under proper hygienic standards and after going through the whole evidence, compensation of Rs. 50,000 is awarded against M/S Pepsi Cola along with fine of Rs. one Lac only and imprisonment of manufacturer of M/S Pepsi Cola for four months.²²⁵

Social injustice is seen to be prevailing in poor world countries in the fast blind rush to grow economically. The transnational corporations working in otherwise than in due course of law violate the rights of consumers. They are thus responsible to compensate the consumers who become victims of their corporate violations in transnational context.²²⁶

The transnational corporations put the health and lives of a huge number of people into danger by producing poor quality products from domestic household, medicine, food items to major electronic appliances. Thus by putting economic influence upon developing nation states, they play awkwardly with the lives of innocent consumers.²²⁷ The case of *Ijaz Ahmed v/s Nestle Nirala Dairies Etc(2013)*.²²⁸ exhibits the manufacturing and selling of defective and unhealthy food products in Pakistan by the multinational Switzerland based food and beverages company famous by the name of "Nestle" all over the world.

3.2.7 Ijaz Ahmed v/s Nestle Nirala Dairies (2013)

The facts of the above said case are as under:

Mr. Ijaz Ahmed bought 8 tins of Desi Ghee manufactured by Nestle Dairies which caused severe infection of throat and thus resulting in serious health issues. The defendants did not pay any attention to the legal notices issued to them.²²⁹

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Mahmood Monshipouri, Claude E. Welch Jr. and Evan T. Kennedy, "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities," *Human Rights Quarterly* 25:4 (2003), 965.

²²⁷ Ibid., 966.

²²⁸ Available at <http://pcpc.pitb.gov.pk/index.php?q=system/files/05.12.2008.pdf> (Last accessed: April 28, 2015).

²²⁹ Ibid.

Syed Maruf Ahmedali, Judge District Consumer Court, Lahore²³⁰ decided the above said case and said that the Nestle Dairies shall pay fine of Rs. 50,000/- for preparing defective and unhealthy food product following the quality test of the Desi Ghee and shall refund the sale price to the complainant and 7 tins of Desi Ghee to be deposited with the DCO Lahore for taking relevant action.²³¹

Hussain H. Zaidi, a journalist, reported in *The News* dated 23 October, 2011 that “A common allegation against the multinational corporations in developing countries including Pakistan is that by virtue of their large investments, they coerce host governments into pursuing policies suitable to their interests at the expense of those of domestic industry or consumers.”²³²

In order to fight against the corporate social irresponsibility, the consumer rights activists facilitate the promotion of consumer rights at international level. But the recessive behaviour of weak developing countries across the globe to transnational corporate bodies pays a very big cost in the form of loss of consumer health and safety.²³³

3.3 Poor Working Conditions

Transnational corporations are familiar for violation of their social and moral obligations towards workers as they provide poor working conditions to them. The employees in these corporations get to work with health killing materials which put their lives in danger as a large number of workers do not know how to use these life threatening substances. They are ignorant of all positives and negatives of these chemicals as they are not trained

²³⁰ Available at <http://pcpc.pitb.gov.pk/index.php?q=system/files/05.12.2008.pdf> (Last accessed: April 28, 2015).

²³¹ Ibid.

²³² Hussain H. Zaidi, “Data Protection and Exclusivity,” *The News*, 23 October 2011, 6.

²³³ Ibid., 967

professionally to use them properly. Working in unhealthy environment they fight with life killing diseases.

They also suffer genetically as their upcoming generations are badly affected straight from their poor health. These workers are not only physically disturbed but also lack in good mental health thus are victims of mental distress as they are exposed to health and safety hazards at their work places in transnational corporations. Such poor working conditions drive these victims sick.²³⁴

Lack of awareness and less relevant education among employees about having safe and healthy working environment is prevailing in developing countries including Pakistan. Poor working conditions in different industries in Pakistan result in severe skin and lung diseases abundantly. Not only workers, the inhabitants of the nearby industrial area are also badly affected when it comes to their health and safety.²³⁵ Putting aside this issue of unawareness among workers, caution and reasonable diligence is not abundantly seen to be adopted by management in transnational entities in Pakistan. The result out of such breach of duty of care is very crucial and disappointing.²³⁶

The poor countries including Pakistan with weak labour laws are deemed to be heaven for transnational industries²³⁷ to get maximum benefits and incentives.²³⁸ So, where we see lots of blessings of globalization over human lives everywhere, there are increasing

²³⁴ Available at <http://www.multinational-corporation-essays-zocyzyt-microsoftword> (Last accessed: July 15, 2014).

²³⁵ Available at [http://www.amrc.org.hk\(alu-article/occupational-health-safety/occupational-health-and-safety-in-pakistan](http://www.amrc.org.hk(alu-article/occupational-health-safety/occupational-health-and-safety-in-pakistan) (Last accessed: July 15, 2014).

²³⁶ Available at <http://www.labourwatchpakistan.com/pakistan-facing-workplace-safety-challenges> (Last accessed: July 17, 2014).

²³⁷ Amatax, a Pennsylvania based transnational corporation dealing in asbestos yarn relocated its manufacturing plant in 1972 to fast developing country Mexico with no legal restrictions to expose labour to dangerous chemicals (Kramer, " The Space between Laws," 36).

²³⁸ Available at <http://www.nber.org/digest/oct03/w9669.html> (Last accessed: July 17, 2014).

difficulties to be faced by developing countries in respect of occupational health and safety of employees.²³⁹

It is a very common practice in Pakistan to avoid the expenses that are compulsory to be incurred by the employer to provide good working conditions to the workers. It is very evident from this instance that Pakistan remains in those 157 ILO member countries those have not ratified the ILO Private Agencies Convention 181 held in 1997 for the safety of rights of poor temporary workers.

According to the Industrial and Commercial Employment (Standing Order) Ordinance 1968 in Pakistan, all the workers including temporary labour have right to get minimum wages but corporations including both local and transnational commit criminal activity by not mentioning them as workers. Unfortunate is the fact that Pakistan is not having specific legislation to ensure occupational health and safety and minimum wages to the poor temporary workers.

It is widely seen in developing countries that labour rights movements resulted in intervention of federal government in the shape of enforcing legislation for protection of labour rights but Pakistan remains unable to promulgate such legislation due to huge pressure of giant transnational corporate entities to establish business friendly environment.²⁴⁰

It is commonly believed by the society men that transnational corporations should be responsible to provide up to mark instruments and good working conditions to the workers working in their subsidiary corporations existing in developing countries. If they do not perform their responsibility to poor temporary workers then they should be liable to

²³⁹ Available at <http://www.labourwatchpakistan.com/pakistan-facing-workplace-safety-challenges> (Last accessed: July 17, 2014).

²⁴⁰ Anjum Altaf, "Helping Labour," *Dawn*, 23 January 2015, 8.

compensate the workers victimized by their irresponsible behaviour as these transnational corporate bodies are not supposed to ruin the health of poor temporary workers.

The across border subsidiaries are obliged to abide by the orders passed by the parent corporate bodies. The parent transnational corporations are more focussed on such structural model of their subsidiaries that is more helpful and appealing to achieve their goals. And sadly, their goal of seeking maximum profits at the expense of safe working conditions for workers is achieved by poor administrative corporate structure of their subsidiaries.

As the subsidiaries with poor administrative structure of transnational corporate entities are mostly found to exist in less developed nation states, the parent transnational corporations find it very convenient to run business successfully in states with weak labour policies concerning working conditions for workers.²⁴¹ For example, Pennsylvania had strict laws relating to working conditions of workers, a yarn mill named "Amatax" dealing in Asbestos moved its complete manufacturing operation to Mexico in 1972 in pursuit of extremely weak legislation relating to exposure of poor labour to dangerous chemicals including toxic asbestos.²⁴²

The workers in such subsidiaries are subject to work in an environment full of health threatening releases of toxic chemicals like benzene, asbestos and vinyl chloride. This is all because of devotion of transnational corporations to earn pecuniary benefits at the cost of lives of workers as they do not spend money on protection of poor labour from such dangerous emissions. Constitution based judicial decisions have played a great role in the administration of justice and accountability against corporations in respect of working conditions of workers is clearly and widely seen. The judgement in *Shehla Zia vs. Wapda*

²⁴¹ Available at http://www.analyse-und-kritik.net/2011-1/AK_Daenzer_2011.pdf (Last accessed: July 17, 2014).

²⁴² Kathryn A. Stout, Richard A. Dello Buono, William J. Chambliss, *Social Problems, Law, and Society*, Social Science (Rowman & Littlefield, INC., 2004), 389.

(1994)²⁴³ seems to be a mile stone in the way to awareness about universal working standards. It puts emphasis on fair relation between all the society men.

3.3.1 *Shehla Zia vs. Wapda (1994)*

The Honourable Supreme Court observed that:

The word life in the constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. The constitution guarantees dignity of mankind and also articles are read together, question will arise whether a person can be said to have dignity if his right to life is shelter, education, health care and unpolluted atmosphere.²⁴⁴

The case law proves to be legislative source by setting a very clear standard for the social responsibility of corporate entities towards their poor labour working under their charge in bad working environment.

The transnational corporations do not comply with the laws in respect of work place health and safety as they do not relocate safe manufacturing plants to developing host nations.²⁴⁵ The parent transnational corporations are legally and morally responsible for commission of any wrong act or omission by their subsidiaries. So, they bear upon vicarious liability for any corporate crime committed by their affiliates in developing host nations.²⁴⁶ The paradigm of increased job opportunities by transnational corporations is accompanied with human right violation as workers are provided with unreasonable and poor working conditions. Thus proving the fact of human right violation is a form of transnational corporate crime.

²⁴³ P.I.D 1994 SC 693.

²⁴⁴ Ibid.

²⁴⁵ Hart Hodges, "Cost of Complying with Environmental Regulations Almost Always Less than Advertised," *Economic Policy Institute*, Briefing Paper No.69 (1997), 1-2.

²⁴⁶ Available at http://www.analyse-und-kritik.net/2011-1/AK_Daenzer_2011.pdf (Last accessed: July 17, 2014).

With more employment generation they also generate corporate hazards like occupational health and safety hazards and low wages with long working hours.²⁴⁷

3.3.2 Occupational Health and Safety

Health and safety problems of workers at work stations are seen widespread in developing countries. Such problems are the result of poor working environment provided to the employees by transnational corporations in third world countries. It would not be untrue to state that good economic condition of transnational corporations is at the cost of poor occupational health and safety of workers in less developed countries.²⁴⁸

The labour market in the developing countries including Pakistan is at stake as the workers are facing occupational health and safety hazards. The workers are even deprived of their basic rights.²⁴⁹ The transnational corporations in order to get favourable environment for incorporating business in less developed host countries make the most influential political leaders realize that their political success is in reciprocal status with foreign investments by transnational corporations.

As these leaders have huge control over rights of poor workers, the transnational corporations get huge monetary profits out of such control in their desired business environment in host nation states. So, the workers work in unsafe working environment when transnational corporate entities relocate their production operations to low economical nation states.²⁵⁰

²⁴⁷ Mahmood Monshipouri, Claude E. Welch Jr. and Evan T. Kennedy, "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities," *Human Rights Quarterly* 25:4 (2003), 968.

²⁴⁸ Available at http://www.who.int/social_determinants/resources/articles/emconet_who_report.pdf (Last accessed: July 18, 2014).

²⁴⁹ Sabur Ghayur, "Labour Market Issues in Pakistan: Unemployment, Working Conditions and Child Labour," *The Pakistan Development Review* 35:4 (1996), 789.

²⁵⁰ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 39.

The big global corporations in developing host countries violate the legal rights of their employees as they have no fear of punishment while relocating to and then committing illegal corporate activities in less developed countries with weak regulations in respect of labour.²⁵¹

Giant transnational corporations injure their workers by providing them with poor working conditions as they are exposed to health and safety problems at work stations. One of the major reasons as to why employees are found compromising upon unhealthy and risky work environment is unemployment in developing countries and this leaves poor workers to work on temporary basis thus compromising their health and safety.

There has been a very gradual increase in industrialization in Pakistan for many years. But unfortunately it was accompanied with deterioration and bad working conditions in every industry.²⁵² The workers are exposed to occupational health and safety problems working for long hours constantly.²⁵³ Lack of efficient safety and precautionary measures at work stations in Pakistan puts the health and lives of workers in danger.

The workers are suffering from miserable health problems as their legal right to be facilitated with good working conditions is being violated by the multinationals. They are even not properly having natural light, air, up to mark latest equipments and rest breaks at work places. As workers in Pakistan are not aware of their occupational health and safety rights, they become victims of severe corporate criminal attitude. It is widely reckoned that the reputation of transnational corporations is always intact when they misuse such unawareness among employees in there.

²⁵¹ Sabur Ghayur, "Labour Market Issues in Pakistan: Unemployment, Working Conditions and Child Labour," *The Pakistan Development Review* 35:4 (1996), 790.

²⁵² Available at [ssrn: id 200329.pdf](https://ssrn.com/abstract=200329) (Last accessed: July 20, 2014).

²⁵³ *Ibid.*

The concerned governments in Pakistan play a very weird and negligent role out of all possible by keeping quiet over criminal behaviour of transnational corporations. Such careless and ignorant governments with only greed of power are easily tackled by transnational corporate bodies and thus allow them to commit corporate crime in transnational context, making victimization of workers vulnerable at work places by exposing them to health and safety hazards.²⁵⁴

Poor corporate control and greed for more and more monetary benefits is the ultimate reason for weak health and safety of workers at workplace. The countries with weak socio-economic conditions seem to be very supportive for workplace unpleasant incidents. The clash between maximization of substantial benefits and workplace injuries ends in success of monetary greed. The capitalists should be ashamed of their such mean behaviour. It is a thought provoking issue now-a-days to put off the fire of corporate monetary greed which has victimized a huge number of poor workers at workplaces.

The transnational capitalists reduce their cost expenditure of production by shifting their jobs to third world countries and lowering the standard of work related conditions. Thus they relocate workplace hazards to less economical territories.²⁵⁵

The bad impacts on the health of poor workers in multinationals are very evident from the bad health of workers as these detrimental effects on their health are parallel to the nature of their workplace jobs. These giant corporations expose their workers to poor job conditions which result in detrimental effects on health and safety of workers as they go through different long lasting health illness issues.²⁵⁶

²⁵⁴ Available at <http://www.ssrn: id 200329.pdf> (Last accessed: July 20, 2014).

²⁵⁵ Daniel M. Berman, *Death on the Job* (New York: Monthly Review Press, 1978), 315.

²⁵⁶ Available at <http://www.nber.org/digest/sep09/w15121.html> (Last accessed: August 3, 2014).

While facing abusive and depressive workplace environment in multinational corporate entities, the workers employed therein suffer from not only physical illness, rather they remain mentally unfit too.

The efforts of International Labour Organization in respect of imposing good working conditions in transnational corporations are worth-appreciating but practically non-compliance to these standards is widely seen in developing countries as poor occupational health and safety measures are being taken by transnational companies to their employees.

The adverse effects of unsafe poor working conditions upon the lives of poor workers in transnational corporations are worth-addressing. Such relocation of corporate business along with corporate hazards in the shape of unsafe and unhealthy working environment challenges the integrity of poor third world countries. As a result the people of those countries felt the ultimate need for strict regulatory actions to be taken by transnational corporations as the number of workplace accidents is becoming very high day by day.²⁵⁷

Relocation of transnational corporations from developed to developing not only relocates corporate hazards but also keeps working and wage standard very low. Expansion in the number of transnational subsidiaries along with their hazards in developing countries is seen as they attract foreign investments at the cost of setting cheap labour standards. This exploitation of weak socio-economic fabric of developing nations by transnational corporations results in social injustice and human rights violation in such countries.²⁵⁸

Globalization is the force behind relocation of corporate business from one country to the other country particularly to the developing countries. Where this force increases the job opportunities and enhances innovative technology, social deterioration cannot be ignored.

²⁵⁷ Available at <http://www.nbcr.org/chapters/c9541.pdf>.

²⁵⁸ Mahmood Monshipouri, Claude E. Welch Jr. and Evan T. Kennedy, "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities," *Human Rights Quarterly* 25:4 (2003), 965.

The giant corporations pursuing their dreams of getting huge monetary profits come in the international market beyond their local peripheries. They achieve their targets at the expense of lives of poor workers in developing countries.²⁵⁹

In order to escape from their parent liability the huge transnational companies often engage contractors to work on their behalf. This carefree attitude of transnational companies is abundantly seen in US- based big Microsoft Corporation. This giant US- based transnational corporation is seen being adopted this culture of engaging third party contractors in order to save money. These transnational corporations do not spend money on the health and safety of poor workers by posing as if they are not the true employers of poor temporary labour. This is a common tactic used by multinationals to evade from their parent liabilities. In this way, they find a very easy way to get maximum work and monetary benefits by compromising on working conditions.²⁶⁰

A famous judgement of Supreme Court of Pakistan on May 16, 2013 in a case titled as *Fauji Fertilizer Company VS National Industrial Relations Commission*²⁶¹ is alarming to all the owners of both local and multinational business entities.

The facts of the case are as follows:

Fauji Fertilizer Company was urea manufacturing company and used to hire contractors to get its all tasks fulfilled. The contractors used to contract with independent workers to handle urea and to even washing machines but those workers were not provided with good working conditions as they were to work with urea in a separate non airy place. The workers were also contracted to pay them wages according to the volume of urea filled in the bags which was

²⁵⁹ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 968.

²⁶⁰ Parvez Rahim, "Contracting Out Jobs," *The News*, 19 May 2015, 6.

²⁶¹ 1985 SCMR 257.

violated later on. They raised the matter before the National Industrial Relations Commission first which went on through different forums and after about two decades it was finally decided by the Supreme Court of Pakistan on May 16, 2013.

The Supreme Court announced the status of 112 contract workers as employees of the Fauji Fertilizer Company under Section 2(h) of the Factories Act, 1934 which was denied by the above said company and ordered to give them all benefits and environment which the company gives to its permanent employees.²⁶²

The company was just directed to provide workers with all benefits and healthy working environment but neither the company was fined nor the responsible executives of the company were given a lesson by the Honourable Court. The company should be criminally liable when funds involved in criminal activities.

These big corporations being capitalist and transacting in the open market have great responsibility towards society at large. As these corporations have enormous influence upon political and economic activities of developing states, they misuse their influence and get these poor states inclined to set low labour standards. Violation of labour rights by transnational corporations draws a thick line of difference between the poor and the rich.

Relocation of plants in transnational context due to cross border relaxation results in poor labourers at target as they get low remuneration in poor working conditions and face violation of basic workers rights.²⁶³

This victimization of workers is increasing day by day in developing countries where there is a clash of private interests between a common man and entrepreneurs. But there is no such difference of interests between host government and transnational corporate bodies as

²⁶² 1985 SCMR 257.

²⁶³ *Ibid.*, 971-972.

their centre of interest is collection of money even at the cost of labour force, living standard and safety of consumer.

The health and lives of not only labour in transnational corporate entities is being affected but of local population is also vulnerable by the relocation of corporate hazards. When health and safety of labour and of consumers is at stake, it is inevitable that their standard of living will become low.²⁶⁴

So, restriction free trade facilitates the transnational corporations to exploit the economic and political conditions prevailing in developing countries. They do not miss the chance of such exploitation as soon as they find opportunity to get economic benefits.²⁶⁵

The labour rights have no doubt worldwide recognition and The Charter of the League of Nations, in 1919 gave recognition to the labour rights. The Universal Declaration of Human Rights by the United Nations in 1948 gives protection to worker rights to work in safe and reasonable working conditions.²⁶⁶ The weak home legislations in developing countries leave them at target when it comes to relocation of corporate hazards and poor working conditions in transnational context.²⁶⁷

What the workers are going through at work sites is seriously thought provoking and alarming for legislators, regulatory bodies and enforcement agencies as there is a dire need for efficient and effective administrative steps to take to stop a big number of life killing accidents at work places.

²⁶⁴ *Ibid.*, 973.

²⁶⁵ *Ibid.*, 974.

²⁶⁶ Douglass Cassel, "Human Rights and Business Responsibilities in the Global Marketplace," *Business Ethics Quarterly* 11:2 (2001), 262.

²⁶⁷ Olufemi O. Amao, "Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States," *Journal of African Law* 52:1 (2008), 89.

3.3.4 Low Wages

The United Nations recognized the right of labour to get fair wages by proclaiming the Universal Declaration of Human Rights in 1948.²⁶⁸ The issues regarding labour practices are contemporary around the globe. The poor becomes poorer and rich becomes richer in developing countries because the rich cash the poverty of poor and the poor earns poverty out of their hard work.²⁶⁹

The transnational corporations exploit economic circumstances of poor workers by paying them cheap wages in their sweatshops. Although it is feasible for transnational corporations to pay the earnings of labour fairly but they usually do not vindicate the labour laws of the host countries.

It is a very popular view that these international business entities have been performing an incredible role in improving the global economy. Their positive role is appreciable across the globe but the negative role of transnational corporate actors in violation of labour rights cannot be ignored.²⁷⁰

By stating that these giant corporate actors play a weird role in human rights infringements by exploitation of poverty in developing nations, it seems obviously essential to put social responsibilities to transnational corporations to do for the betterment of labour.

It is a very unreasonable and common thought that the corporate bodies have nothing to do with the labour betterment but to do beneficial for their investors. It is also totally obsolete perception that competitive corporations always have great influence upon the

²⁶⁸ Cassel, "Human Rights and Business Responsibilities in the Global Marketplace," 262.

²⁶⁹ Howard M. Wachtel, Charles Betsey, "Employment at Low Wages," *The Review of Economics and Statistics* 54:2 (1972), 121.

²⁷⁰ Denis G. Arnold, Laura P. Hartmann, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," *Human Rights Quarterly* 28:3 (2006), 676.

legislature of host developing countries to get their interests intact. Rather corporate social responsibility cannot be denied in any society whether poor or rich.²⁷¹

The perception of corporate self-centred attitude needs to be changed which takes it to a new level of business with good working environment and fair wages to poor temporary labour. In order to overcome poverty the poor labour in third world society works to its best but they remain poor. This harsh reality comes out of transnational corporations being self centred as they only perform their best to their investors.

The transnational corporations need to shun down their culprit attitude because it results in miserable living of poor workers. These workers do loads of struggle for their survival but in vain. They make maximum efforts to earn their living but it proves to be effortless.

Labour is always motivated by the helpful and fair attitude of their master corporations. Where social and moral factors are very important for a society, economic factors cannot be neglected because they all are interconnected. Poverty is a big curse which goes hand in hand with immorality.²⁷²

Economic factors affect mental and physical capabilities of a common man. This fact shows that poor economic condition of labour in transnational corporations gradually deprives them of their working capabilities.²⁷³ Poor physical and mental capabilities of workers is directly associated with their low salary. So, there seems to be reciprocal relationship between pay and health of workers.²⁷⁴ It is to address the sole proprietors and corporate entities operating in transnational context to understand their huge responsibility to

²⁷¹ Ibid., 677.

²⁷² Ibid., 678.

²⁷³ Ibid., 679.

²⁷⁴ Elena Cottini, "Health at Work and Low Pay: A European Perspective," *The Manchester School* 80:1 (2012), 75.

their labour working under worst working conditions. In order to earn their bread, they go for working over time. But the business entities are seen to breach their responsibilities towards their workers to give them fair wages and suitable over time charges as gauged by the labour laws in national interest.²⁷⁵

It is a very shameful thing on the part of transnational corporate actors that they have veneration for monetary profits not from their business activities in developing countries but from poor labour by paying them very low. They earn wealth by starving their wealth makers. These huge corporations dominating over world market do not give a fair portion of their earnings to their hard working labour.

The same issue of unfair labour practice by transnational corporation was raised in *Falak Naz and 16 Others vs. Messrs Hertz Optimus Limited, 2009*.²⁷⁶

3.3.5 *Falak Naz and 16 Others vs. Messrs Hertz Optimus Limited (2009)*

The facts of the above mentioned case are as follows:

The respondents running a big fleet of around 525000 vehicles worldwide in 150 countries are paying very low that is fixed in the Factories Act, 1934. The petitioners claim that they being the permanent workers in the corporation are entitled to get adequate overtime wages and corporations either working in national or transnational context should strictly follow the labour laws of the nation states where they are operating in.²⁷⁷

Bashir Ahmed Memon, Member National Industrial Relations Commission²⁷⁸ stated in his judgement: "Only general allegations were raised by the labour against the said corporation in

²⁷⁵ 1994 SCMR 2061.

²⁷⁶ 2009 PLD 375.

²⁷⁷ Ibid., 377.

²⁷⁸ 2009 PLD 378.

the petition. However, both the parties to the case are directed to perform their affairs in a manner so as to avoid happening of unfair labour practice."²⁷⁹

The above case law shows a dire need of inclined behaviour towards establishing useful national regulatory and legal measures on transnational corporate social accountability.

The major cause behind such inhuman behaviour of corporations across the globe is the big wave of unemployment in developing countries. This wave takes the integrity of poor workers away with it as they are treated like disposable things and are wasted after being used up in achieving the monetary interests of giant corporations.

These transnational corporate actors commit infringement of the basic human right recognised by the United Nations to do work without economic exploitation.²⁸⁰ The social and moral obligation of corporations in transnational context to provide labour with fair remuneration is abundantly breached.

Transnational corporations achieve their multi-interests by having their subsidiaries in developing nations but do not furnish the very needs and interests of poor workers working therein. They do not provide reasonable diverse opportunities to skilful poor workers rather they make use of their energies rigorously.

Infringement of local laws issued by local regulatory bodies in respect of wage of labour given by foreign based enterprises in host developing countries is accompanied by the illegal efforts of local authorities. Such facilitation entails violation of labour rights by paying minimum remuneration under the level of poverty.²⁸¹

²⁷⁹ 2009 PLD 380.

²⁸⁰ *Ibid.*, 683.

²⁸¹ *Ibid.*, 687.

A famous judgement of Supreme Court of Pakistan on May 16, 2013 in a case titled as *Fauji Fertilizer Company VS National Industrial Relations Commission*²⁸² is alarming to the owners of multinational companies who want to get the maximum by paying nothing to poor labour. The facts of the case are as follows:

Fauji Fertilizer Company was urea manufacturing company and used to hire contractors to get its all tasks fulfilled. The contractors used to contract with independent workers to handle urea and to even washing machines but those workers were not provided with good working conditions as they were to work with urea in a separate non airy place. The workers were also contracted to pay them wages according to the volume of urea filled in the bags which was violated later on and were paid very less than that contracted to pay them. The employer company denied to accept them as their employees and to pay them accordingly. They raised the matter before the National Industrial Relations Commission first which went on through different forums and after about two decades it was finally decided by the Supreme Court of Pakistan on May 16, 2013.

The Supreme Court of Pakistan announced the status of the 112 temporary workers as employees of the said company under Section 2(h) of the Factories Act 1934 which was denied by the said company and ordered to pay wages not less than that contracted to them by the hired contractor of the company.²⁸³

The company was just directed to provide workers with all benefits and fair wages but neither the company was fined nor culprit executives of the company were given a lesson by the Honourable Court. The company should be criminally liable when finds involved in criminal activities.

²⁸² 1985 SCMR 257.

²⁸³ 1985 SCMR 257.

Following the international agreements and conventions, the federal government of Pakistan, last year, announced Rs 12000 as the minimum wage of private workers but it seemed least important for big local and multinational industries to comply with that announcement because of non issuance of any notification in this regard. Although minimum wages boards are made at provincial level to announce minimum wages in accordance with economic position of the locality yet federal government has authority to fix it.²⁸⁴

Thus the global corporate actors do in the developing countries what they are not allowed to do in their own countries in order to get huge monetary profits by exploiting the legal environment in developing host countries.²⁸⁵

The corporate operations in transnational context raise many detrimental social issues when it comes to low wages and low level working standards which the poor workers are going through in poor countries. They cause victimization vulnerable in poor countries by violating globally accepted workers rights.²⁸⁶

It is very hard to just think of being paid very minutely after lengthy hard work with even dangerous health killing chemicals. Foreign based enterprises are very known to provide the poor workers with low wages in bad working environment. The workers in host developing countries are paid equal to nothing as compared to those in their own home countries.²⁸⁷

It is very disappointing to have subsidiaries of parent transnational corporate bodies in host developing states where poor workers are maltreated by driving them long timely for

²⁸⁴ Iftikhar Ahmed, "Minimum Wage: The Federal Mandate," 13 June 2015, *Pakistan Today*, 7.

²⁸⁵ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 39.

²⁸⁶ Available at www.nber.org/digest/oct03/w9669.html (Last accessed: August 10, 2014).

²⁸⁷ Per day earning of labour in poor developing countries is often almost equal to per hour earning of workers in United States of America (Kramer, "Space between Laws," 39).

very low wages.²⁸⁸ Thus it can be said that where these transnational corporations play a vital role across the globe in increasing globalization, they also play a notorious role by violating human and labour rights.²⁸⁹ In order to stop exploitation of poor workers, there is a need of complete legislation encompassing all contemporary issues of labour at one place.

²⁸⁸ Available at www.studymode.com/essays/multinational-corporation-125897.html (Last accessed: August 15, 2014).

²⁸⁹ Available at www.globalpolicy.org/empire/47068-a-brief-history-of-transnational-corporations.html (Last accessed: August 18, 2014).

CHAPTER 4

CONTROLLING TRANSNATIONAL CORPORATE CRIME IN PAKISTAN

4.1 Introduction

Transnational corporate crime is a type of white collar crime which not only affects the lives of people in host country but also impact people worldwide. The whole society wherein the transnational corporate crime penetrates its roots becomes vulnerable nevertheless. It would not be wrong to state here that it is fully impossible to have prosperity and comfort if such transnational criminal corporate activities do prevail injustice in a society.

Transnational corporate crime is not commonly subject to the prompt strict policies to control it as compared to conventional street crime.²⁹⁰ Rather it is as serious a crime as a street crime and it has as serious implications upon a society as other crimes have. It would be difficult to stop the dangerous implications of conventional crimes upon a society without taking serious preventive measures against criminal activities committed by transnational corporations.²⁹¹

Scholars across the globe have prescribed different theories to fight against corporate crime committed in both home and host countries. Some theories put emphasis upon penal force while some focus on regulators to prevent any form of corporate crime. Thus, some go with strict punitive system while others rely on regulatory system to deal with corporate criminal activities in transnational context.²⁹²

²⁹⁰ Croall Hazel, *Understanding White Collar Crime* (Buckingham: Open University Press, 2001), 4.

²⁹¹ *Ibid.*, 5.

²⁹² *Ibid.*, 6.

Some scholars re-thinking about corporate crime control suggest strict legal actions to take against corporations committing crime either in home countries or host developing countries. This reflects a complete picture of strict legal system with flawless legislations and strong enforcement means. So, some sociologists believe in strict criminal justice to fight against corporate crime from all directions.²⁹³

While others are of the view that rules and regulations passed by federal regulators are very useful and more influential than strict criminal justice system with rigid criminal proceedings and punishments. The corporations both national and transnational would mend their illegal behaviour by following regulations issued by regulating bodies.²⁹⁴

However, the most effective and best way to control corporate crime committed either in local areas or in foreign territories while doing business operations by transnational corporations seems to have properly framed legislation and effective enforcement ways.²⁹⁵

The giant transnational corporations abundantly commit crimes in their host developing countries without fear of being punished. But it cannot be said in their favour and support that they do so just to fulfil the challenges of time or due to their particular corporate culture. The common corporate defence is that they commit criminal activities where ever they find easy to meet their economic needs.²⁹⁶

So, there is a great need to put emphasis on reformation of corporate internal environment. This reformation may be either voluntary by corporate officers or by strict governmental actions. Talking about voluntary change in corporate criminal culture and

²⁹³ Available at <http://www.cics.northwestern.edu/documents/nlr/vInlColeman.pdf> (Last accessed: August 12, 2014).

²⁹¹ David O. Friedrichs, *Trusted Criminals, White Collar Crime in Contemporary Society*, 4th Edition (USA: Wadsworth Cengage Learning, 2010), 281.

²⁹⁵ Sally S. Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002), 9.

²⁹⁶ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 299.

structure, the executives of corporate entities would have to perform a very responsible role to establish strong principles of corporate social responsibility encompassing fair ways to business.²⁹⁷

Although it does not seem to be very effective idea but it would be great if business persons would start saying no to unethical and criminal internal corporate culture. Such principles in respect of behaviour of business personalities would highlight their responsibilities and powers thereby help improving criminal corporate environment.

Such responsible conduct of decision makers would draw a clear line of difference between ethical and unethical attributes of corporations. This voluntary fair conduct of corporate executives would help decreasing criminal activities of corporations in both local and foreign business operations, thus improving corporate image at national and international level.²⁹⁸

There is no doubt about dire need of education in the field of business ethics. Reforms are not only required in respect of business ethics, rather, corporate internal structure needs to be altered. As board of directors commonly supervises the activities of managers and does not bother what is going on at lower level, this carefree attitude of directors becomes a big source of transnational corporate criminal activities.

Fair selection of corporate managers is also a neglected task by the directors. They also act blindly upon the advices of management. So, independent non executive directors must be serving on the board to protect the society from hazardous results. The social

²⁹⁷ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 300.

²⁹⁸ *Ibid.*, 304.

interests of the society at large would be protected by the careful attitude of decision makers.²⁹⁹

This is another fact that these independent non executive directors are not paid handsome wages and do not enjoy full liberty to make their decisions in developing countries including Pakistan.³⁰⁰ So, there must be ultimate changes in the corporate internal structure to derive good results to organizations themselves and to society people.

Some opinion makers state that union members of a particular area and directors of a corporation transacting business in the same area must go hand in hand because the union members well understand and go through the problems of society at large. If the responsible authorities get committed to their task of curbing the malicious activities of corporations, the corporate crime will get controlled in a very easy way.³⁰¹

When it comes to role of government fighting against the corporate crime, it must promote chartering the corporate reforms at federal level. A charter prescribes all the rules and regulations to run their business activities. Then the corporations will have to follow those certain prescribed rules as they will have no chance to say no to those rules and regulations.

In case of violation of such chartered reforms these corporate bodies will be subject to criminal prosecutions resulting in severe criminal sanctions. In this way if the regulatory bodies will work by promoting federal rules and regulations, the corporate entities will work in the best interest of public at large³⁰² e.g. SEC in United States of America³⁰³ and SECP in

²⁹⁹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 305-306.

³⁰⁰ Safdar A. Butt, *Corporate Governance* (Islamabad: Capital Academic Publishers, 2010), 91.

³⁰¹ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 307.

³⁰² *Ibid.*, 310.

Pakistan³⁰⁴ are the regulatory bodies working at federal level to safe guard the interests of both share holders and of society men. SECP has issued Code of Corporate Governance, 2012, which works on the principle of lifting of corporate veil.³⁰⁵

The size of the giant transnational corporations is very huge due to their subsidiaries being opened in different host developing nation states. Their big size plays a vital role in the widespread relocation of corporate hazards. Big size of these corporations seems to be a big hurdle in the way to control of their criminal activities. Thus it is very tough for these federal regulators to control crime committed by the transnational corporations.

The government should play its valuable role by legislating appropriately in the field of controlling corporate crime committed nationally and internationally. It seems very fruitless to litigate against the powerful transnational corporate entities without having proper relevant legislation.

It becomes very essential to pass proper and precise legislation to have corporate crime free society as corporate crimes are frequently prevalent all around the globe and process of legislation to control such corporate crimes is on the way everywhere in the world.³⁰⁶

4.2 Controlling Transnational Corporate Crime in the Legislative Regime of Pakistan

Going through the legislative regime of Pakistan to control corporate crime, the laws passed in this respect seem to be insufficient in recent times. In perspective of Pakistan, it seems

³⁰³ Safdar A. Butt, *Corporate Governance* (Islamabad: Capital Academic Publishers, 2010), 6.

³⁰⁴ *Ibid.*, 182.

³⁰⁵ *Ibid.*, 82-183.

³⁰⁶ Marshall B. Clinard, Peter Cleary Yeager, *Corporate Crime* (New Brunswick, New Jersey: Transaction Publishers, 2006), 313.

very convenient to pursue the ideas of others as the laws in Pakistan to control the corporate criminal activities in both national and transnational context are very weak and thus lenient.

4.2.1 Pakistan Penal Code, 1860

Every country has its own criminal law which is applied extensively to fight against both street and corporate crime. The number of corporations is increasing day by day and no doubt they play an important role in the economic prosperity of Pakistan but at the same time, their criminal activities can make victimization vulnerable in Pakistan. Therefore their unethical and illegal activities hazardous to the health and safety of innocent consumers and of poor workers should be deterred.

Unfortunately, criminal law in Pakistan presents a very dark picture when it comes to corporate criminal responsibility. At present, there are a big number of cases relating to corporate crime in Pakistan but big corporations do not come on scene after being involved in illegal activities. After being listed with stock exchanges, they get monetary advantages by illegal ways but system of criminal justice is very weak before such corporate culprits.

The word person used in Pakistan Penal Code includes any type of company or a group of individuals whether registered to do some business or not and there is no criminal liability upon corporate bodies either national or transnational.³⁰⁷

The word person used in section 11 of Pakistan Penal Code, 1860 and in other provisions of the Code of 1860 talking about offences punishable with imprisonment does not mean corporations because only natural persons are subject to criminal sanctions like imprisonment. Probably it would not be wrong to state that there does not find a precedent that an FIR has been lodged against transnational corporation.³⁰⁸

³⁰⁷ Section no: 11, Pakistan Penal Code, 1860.

³⁰⁸ 1977 P Cr L J 537.

There are some drawbacks in criminal law of Pakistan which prove to be supportive to corporate criminal activities.

First, the basis of criminal law upon the intention of offender in almost all criminal acts proves to be the basic hurdle in the way to better administration of justice. As corporation is considered to be an artificial and fictional body having no mind to decide what is right and what is wrong³⁰⁹, it cannot be punished under the criminal law.³¹⁰

Secondly, fear of being imprisoned is another attribute of criminal law. As corporation be it national or transnational cannot be imprisoned, criminal law is not appealing to deter corporate crime committed by national or transnational corporation.

We are already facing a huge criticism on Pakistan to be the safest place for commission of corporate crime as a large number of crimes committed by transnational corporations have emerged in present times.³¹¹ So, there arose a dire need to come up with a model criminal law to deter corporate criminal activities in transnational context.

Pakistan Penal Code, 1860, is the traditional criminal law effective on criminal intent. As corporation is a fictional person according to different theories on corporate person,³¹² criminal law seems to be ineffective to control corporate criminal activities. So, there are some major issues in criminal law which need to be addressed to set a model criminal law in order to get proper execution of corporate criminal liability.

First core issue is to establish a clear definition of corporate criminal intent so that to punish corporate culprits according to criminal law. Second worth addressing issue is to

³⁰⁹ A. M. Chaudhary, *The Law Of Tort* (Lahore: PLD Publishers, 2009), 25.

³¹⁰ 1977 P Cr I, J 537.

³¹¹ Available at www.pakistanilaws.wordpress.com (Last accessed: May 10, 2015).

³¹² Sally S. Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002), 7.

utilize its fearful attribute of imprisonment against culprit transnational corporations thus applying a true practical approach to fight against transnational corporate crime.

Third important issue is related to important addition into chapters of Pakistan Penal Code, 1860. Corporate crime is such a serious crime that puts very bad implications upon our society and it is of different types. So, a chapter dealing fully in corporate crime in national and transnational context, its wide range and punishments needs to be incorporated into criminal law. The culprit transnational corporations are amenable to prosecution for criminal activities resulting from relocation of different corporate hazards to developing countries punishable with exemplary fines, forfeiture of their properties and even with corporate death.

4.2.2 Companies Ordinance, 1984

Every individual who gets the attention of investors by issuing a prospectus of any company containing wrong or false statement shall be punished with an imprisonment for a term of two years or with fine or with both imprisonment and fine.³¹³

Companies Ordinance, 1984, declares any such provision void as exempts any person associated with a company or corporation who commits some kind of violation of law or commits omission in respect of some legal obligation relating to the company or corporation.³¹⁴

If any person is found guilty of corporate crime, the corporate law authority in Pakistan shall prosecute that guilty individual working in relation to a company or corporate body and corporate law authority shall be entitled to get all relevant information from and can

³¹³ Section no: 60, The Companies Ordinance, 1984.

³¹⁴ Section no: 194, The Companies Ordinance, 1984.

ask relevant questions to the management and other workers of that company or corporation.³¹⁵

If any person associated with any company or corporation commits violation of the Companies Ordinance, 1984, for the benefit of that company or corporation, he shall be released on bail as such criminals committing corporate crime can be released on bail.³¹⁶

After going through the relevant provisions of the Companies Ordinance, 1984, it is obvious that the said ordinance punishes only the persons associated with the company or with corporate entities but does not punish the corporate body itself.

However, there seems a dire need of some major amendments to be made in Companies Ordinance, 1984, by subjecting the corporations themselves to any form of punishments including heavy fine or otherwise to deter corporate crime either committed by a local corporation or transnational corporation.

4.2.3 Criminal Procedure Code, 1898

It is a complete code for prevention of very harmful and dangerous effects caused by some business activities inflicting some deep physical and mental health problems to people at large. Under the Code of 1898, such business activities of companies or corporations dealing in material injurious to health of people at large are restricted as these injurious corporate activities amount to public nuisance.³¹⁷

The Judicial Magistrate 1st Class is empowered under the Code of 1898 to pass orders on being informed by police or by any evidence relating to business criminal activities which affect general health and peace of mind of people badly, to stop a person or group of persons

³¹⁵ Section no: 270, The Companies Ordinance, 1984.

³¹⁶ Section no: 475, The Companies Ordinance, 1984.

³¹⁷ Section no: 133, The Criminal Procedure Code, 1898.

from carrying on such injurious business activities or to do otherwise according to the directions given by him.³¹⁸

As section 133 of Criminal Procedure Code, 1898, enables the Judicial Magistrate to take strict injunctive as well as criminal actions against the persons involving in the offences falling within the ambit of public nuisance.

However the word person used in the above said provision of law is not defined well as to whether it means only natural person or also fictitious person like body corporate. It also remains unclear as to either national or transnational corporations come within the scope of person subjecting to the strict actions of the Judicial Magistrate. So, the scope of person remains unclear and ambiguous. The Criminal Procedure Code, 1898, prescribes the procedure to be followed by the courts of law at all forums in criminal matters. The code of 1898 also delegates certain powers to all forums of law for proceedings and deciding criminal cases so as to prevent abuse of process of court of law for continued dispensation of adequate relief and justice. The code of 1898 can be altered on the basis of necessity by the legislature at provincial level.³¹⁹

Although the Criminal Procedure Code, 1898, lays down certain provisions describing the detailed procedure to be adopted against accused in conventional crimes, there is a great need to incorporate some important amendments in Criminal Procedure Code, 1898, by subjecting the executives of transnational corporations to go through strict trials themselves. As the Code of Criminal Procedure, 1898, consists of different chapters and sub chapters³²⁰, a separate chapter in respect of contemporary issues of transnational corporate crime, procedure to be followed by the courts of law and forms of punishments and penalties in

³¹⁸ Section no: 133, The Criminal Procedure Code, 1898.

³¹⁹ Preamble of the Criminal Procedure Code, 1898.

³²⁰ Ibid.

respect of transnational corporate crime need to be incorporated into the Criminal Procedure Code, 1898.

Transnational corporations are commonly found indulging in relocation of their hazardous operations to developing countries which cause social and physical discomfort to the society men. The role of every country in building a society free from haphazard bad effects resulting from harmful criminal activities of transnational corporations is very important. It must contribute in maximum to combat and control criminal corporate actions in transnational context.³²¹

4.3 Other Allied Legislations

4.3.1 Pakistan Environmental Protection Act, 1997

Pakistan Environmental Protection Act, 1997, imposes criminal liability not only upon the officers of the corporation but also declares the body corporate guilty if it is proved that any act of corporate entity in Pakistan causes environmental pollution and if a corporation is found being involved into such activities as exposing workers to poor working conditions and also exposing customers and society at large to hazardous materials then such corporate culprit officers along with corporate body itself shall be prosecuted and then punished accordingly.³²²

This is worth appreciating that the task of Pakistan Environmental Protection Act, 1997, is twofold. Firstly the person who plays an active role in and the other who exercises control over activities hazardous to the society at large, both shall be liable for such criminal activities after being prosecuted.

³²¹ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 35.

³²² Section no: 18, Pakistan Environmental Protection Act, 1997.

Secondly, any person who gets any sort of profit from such hazardous environmental activities will also become liable to pay damages. So, if a corporation will be subject to civil and criminal penalties when it violates laws of the host country where they are operating in.³²³

Pakistan Environmental Protection Act, 1997, is a complete code as it protects environment but there is a problem in making corporations liable for such environmental contamination due to filing of Environmental Impact Assessment Report by the corporations with the Federal or Provincial Environmental Protection Agency before the proper start of any corporate activity contaminating environment. Later on is that corporation engages into some criminal activity which degrades environment then it would be difficult to take action to put criminal liability upon the guilty body corporate.³²⁴

In Pakistan, as there are many inadequacies in every field of life, it seems impossible to ensure perfection of Environmental Impact Assessment Reports. Local and transnational corporations put influence by using their strong economic and political position upon the relevant authorities to get clearance of the Environmental Impact Assessment finally to start their business operations in Pakistan.

For transnational corporations to get their desired reports is not a big and impossible task to do in host developing countries which is actually a nightmare when it comes to their home stations. So, there is a great need to make strong legislations in respect of every essential aspect of life to strengthen the enforcement policies in Pakistan.

³²³ Section no: 18, Pakistan Environmental Protection Act, 1997.

³²⁴ Section no: 12, Pakistan Environmental Protection Act, 1997.

There are many problems in the way to prepare good quality Environmental Impact Assessment reports in developing countries including Pakistan which need to be seriously addressed and are as follows:

- Less resources
- Lengthy process
- Lack of legislation and regulations
- Lack of skilful consultants to prepare Environmental Impact Assessment reports
- Least participation of persons affected by environmental degradation in preparation of EIA reports
- No proper information provided to Environmental Impact Assessment review body³²⁵

4.3.2 National Accountability Ordinance, 1999

In order to hold investigation and prosecution against the public officials or against any other person if found involved in corrupt practices in relation to his official duties, the National Accountability Ordinance, 1999, was introduced. This Ordinance of 1999, went through different improvements to have a variety of issues of corruption and corrupt practices into its ambit.³²⁶

The word person as used in Section 9 of the National Accountability Ordinance, 1999, has a very wide scope as it encompasses directors, chief executives, managers or any one controlling the affairs of the company or body corporate.³²⁷

For the first time in Pakistan, the National Accountability Ordinance, 1999, has treated the public official and manager of a company or a corporation on equal basis. The

³²⁵ S. Momtaz, "Environmental Assessment in Bangladesh: A Critical Review," *Environmental Impact Assessment Review* 22 (2002), 163-179.

³²⁶ The Preamble of the National Accountability Ordinance, 1999.

³²⁷ Section no: 5 (o), The National Accountability Ordinance, 1999.

Supreme Court of Pakistan gave an equal status to both public office and office of a public company and therefore issued a writ of quo-warranto.³²⁸

It is very encouraging aspect that accountability courts have been established in Pakistan under the Ordinance of 1999. But the word person as described in section 5 (o) of the Ordinance of 1999 does not elaborate whether the scope of person extends to transnational companies or not.

In case of huge transnational corporations, a proper procedure of prosecution is not laid down if they get involved into corrupt practices. So, the scope of corrupt practices in case of transnational corporate actors remains untouched.

4.3.3 Prevention of Electronic Crimes Ordinance, 2007

Talking about electronic crime, it comes from the family of conventional crime wherein computer is utilized for committing criminal activities. These crimes can easily and frequently be committed with even insufficient resources. The criminal committing different electronic crimes though are investigated and go through prosecution proceedings under criminal law yet they find an easy way out due to inadequacies found in criminal justice system.³²⁹

When a corporation is found involved in cyber crime, it will be subject to mandatory punishment. Not only corporate entities, the natural persons committing or abetting the criminal activities in relation to internet shall also be prosecuted and convicted under the respective criminal law.³³⁰

³²⁸ Salahuddin VS Frontier Sugar Mills and Distillery Limited PLD 1975 Supreme Court, 244.

³²⁹ Available at http://www.naavi.org/pati/pati_cybercrimes_dec03.htm (Last accessed: August 16, 2014).

³³⁰ Section no: 9, The Prevention of Electronic Crimes Ordinance, 2007.

The Electronic Transaction Ordinance was first promulgated in 2002 by the then President of Pakistan to protect the records and transactions in electronic form.³³¹ Then a bill was passed by the National Assembly of Pakistan in 2007 in which corporations were made liable for electronic crimes under criminal law.³³²

As legislations are made in respect of cyber criminal activities, law enforcement agencies should take strict actions against such criminal activities committed by the corporate bodies for their personal monetary benefits.

Talking about FIA, this is the federal investigating agency in Pakistan which is fully involved investigating loads of conventional crimes.³³³ It does not have proper knowhow about dealing with electronic crimes fully. So, there is an utmost need of having a special federal regulatory cum enforcement agency with proper technological knowhow about electronic crimes.

The Prevention of Electronic Crimes Ordinance, 2007, is not fully practical as section 21 of the said Ordinance talks about corporate liability and conviction under criminal law if found involved in electronic crimes and requires a safe and sound record of 90 days data of usage of internet by the suspected company or corporation right to be provided by the internet service providers to Federal Investigating Agency which seems to be a very tough task to achieve.

No right is given to the corporate entities and to the natural persons to protest and to take legal action against if computers of the suspected company are seized thereby restricting its routine operations till the end of legal operation against it. In addition to this the

³³¹ Preamble of the Electronic Transaction Ordinance, 2002.

³³² Section no: 21, The Prevention of Electronic Crimes Ordinance, 2007.

³³³ Available at http://www.fia.gov.pk/dep_crime.htm (Last accessed: August 17, 2014).

corporations suspected to be indulging in cyber crimes are not provided with full assurance regarding protection of their intellectual property and all other important data.

Furthermore, the authorities to have power to investigate the criminal activities of transnational corporations are not defined which makes it a safer place for electronic crimes in transnational context.

Analyzing the controlling aspect of the Prevention of Electronic Crimes Ordinance, 2007, it seems to be a complete failure. Rather it has made Pakistan a safe place for criminals to operate in cyber criminal activities.

4.3.4 Securities and Exchange Commission of Pakistan

The theme to be followed by the Securities and Exchange Commission of Pakistan to control any form of corporate crime is to impose three types of responsibilities upon corporations in Pakistan.³³⁴

Criminal liability should be imposed upon the body corporate if its management gets involved in some criminal activity with full planning to get the desired results even at the cost of society at large. In this case, the persons who physically participate in that corporate criminal act or omission would be subject to criminal penalties including fine and imprisonment.³³⁵

It is the duty of decision makers and management to exercise their powers carefully to stop a corporation from violating the laws of the country where it is operating in. If they remain unsuccessful in doing so, they should face civil penalty including compensation in money to victims.³³⁶

³³⁴ Manual of Corporate Governance, Securities and Exchange Commission of Pakistan 3: 1(2004), 15.

³³⁵ Ibid., 12.

³³⁶ Ibid., 38.

Mild penalties should be inflicted upon the corporate entities or they should be ordered to train and educate their workers to comply with the respective laws of the country in case of minor breach of law by them.³³⁷

But Securities and Exchange Commission of Pakistan has not placed strict rules and regulations regarding civil and criminal liabilities of transnational corporations. No specific legal frame work for execution of such liabilities in transnational context is laid down by the said commission.

4.3.5 The Anti Money Laundering Ordinance, 2007

In case of crime of money laundering if committed by any person including any natural person and corporations, the financial institution wherein some suspicious transaction of money got from illegal ways is taken place is entitled to file a transaction report to the Financial Monitoring Unit for further required investigation proceedings.

The federal government may involve Federal Investigation Agency, National Accountability Bureau and even Anti Narcotics Force into investigation and prosecution proceedings under the Anti Money Laundering Act, 2007.³³⁸

But if there is some specializes anti money laundering agency or force in Pakistan for dealing money laundering crimes committed by corporations both local and transnational, the Act of 2007 would be more practical and fruitful to deter money laundering crimes committed by corporations even in transnational context.

4.3.6 Offences in respect of Banks (Special Courts) Ordinance, 1984

Bank is a company which is incorporated under either Companies Act or any other relevant law.³³⁹

³³⁷ Manual of Corporate Governance, Securities and Exchange Commission of Pakistan 3: 1(2004), 20.

³³⁸ Section no: 20, The Anti Money Laundering Act, 2007.

Crimes and other acts disrupting business of banks are tried under the Offences in respect of Banks (Special Courts) Ordinance, 1984 for expediency and public policy. Any matter of corrupt activities including fraud and other wrongful acts committed by corporate entities shall be tried and decided by the special courts under the Ordinance of 1984.³⁴⁰

The federal government has established special courts which have jurisdiction to try criminal acts or omissions affecting the business of banks under the Ordinance of 1984.³⁴¹

But in respect of governance and compliance system, the said Ordinance of 1984, does not demands a proper code of ethics for directors and managers of transnational financial companies. Such a code of conduct is strictly required to reduce the criminal activities committed by the transnational financial companies.

Furthermore it is very essential to establish and promote proper enforcement system to comply with the rules and regulations of the nation state wherein the transnational banking companies are conducting their business activities to control and counter the corporate criminal activities.

4.3.7 Punjab Consumer Protection Act, 2005

The rights and interests of consumers need to be protected in order to have a civilized society keeping in view expediency and public welfare.³⁴²

Where a consumer is affected of non-disclosure in respect of defective goods or services or where rate exhibiting list is not displayed or consumer is not given any receipt, the affected consumer shall be provided with legal remedy under the Punjab Consumer Protection Act, 2005. The said Act of 2005 provides a complete body for its enforcement:

³³⁹ 1986 P. Cr. L. J. 561.

³⁴⁰ PLD 1985 Lah.48.

³⁴¹ Section no: 3, Offences in respect of Banks (Special Courts) Ordinance 1984.

³⁴² Preamble of the Punjab Consumer Protection Act, 2005.

- Consumer Protection Council
- District Coordination Officer
- Consumer courts³⁴³

On receiving a complaint from affected consumer or a reference from consumer protection council, the District Coordination Officer shall conduct inquiry in respect of crime against the person who commits any act in violation of the said Act of 2005 and then will take action against the criminal along with the help of police.³⁴⁴

An affected consumer claims being victim of corporate crime shall file a claim for damages before the consumer courts which have jurisdiction to imprison the culprit and to fine him.³⁴⁵

However, the said legislation contains no provision pertaining to corporate social responsibility in transnational context in case of consumers being affected of their goods or services. Furthermore, no procedure for taking legal action against affiliates of transnational corporations is laid down in case these transnational corporations commit any act in violation of the Act of 2005.

4.3.8 The Pakistan Intellectual Property Rights Organisation Ordinance, 2005

Acquiring the intellectual property rights for a business at national and international level enhances the scope of business. It is a very common argument that developing countries should not protect their intellectual rights if they want to get foreign investments. This is clear exploitation of weak economic condition of developing countries.³⁴⁶

³⁴³ Section no: 27, Punjab Consumer Protection Act, 2005.

³⁴⁴ Section no: 23, Punjab Consumer Protection Act, 2005.

³⁴⁵ Section no: 25, Punjab Consumer Protection Act, 2005.

³⁴⁶ G. M. Chaudhry, Chaudhry M. Zafar Iqbal, *The Intellectual Property, Intellectual Property Laws in Pakistan and International Treaties on IPRs* (Rawalpindi: Federal Law House, 2005), 61-62.

It is up to the governments of these poor countries to utilize the advantages of human intellect for good economic effects and economic betterment as it is becoming very difficult day by day to protect intellectual work at national and international level.³⁴⁷

Under such crucial circumstances, it is of utmost importance that proper education and guidelines must be provided in all disciplines of intellectual property and researchers in the field of intellectual property should be bucked up to make better use of their extraordinary intellectual activities.³⁴⁸

Intellectual property laws in Pakistan lack proper and suitable infrastructure to control crime committed by transnational corporations in all fields of intellectual property.

4.3.9 The Factories Act, 1934

The rights and interests of workers working in both national and transnational corporations and industries need to be protected in order to have a well civilized social set up keeping in view the betterment of workers.³⁴⁹

The manufacturing works are to be performed by the workers under proper light, air and non pollutant environment.³⁵⁰ In order to avoid any chance of physical injury to the poor workers, the administration is under duty to equip the workers fully with safety measures.³⁵¹

According to section 22, 23-A and 33-A of the Factories Act, 1934, the workers need to go through proper medical checkups and updated information in respect of casualties should be provided by the executives of the business entities employing not less than twenty

³⁴⁷ G. M. Chaudhry, Chaudhry M. Zafar Iqbal, *The Intellectual Property, Intellectual Property Laws in Pakistan and International Treaties on IPRs* (Rawalpindi: Federal Law House, 2005), 63.

³⁴⁸ *Ibid.*, 64.

³⁴⁹ Preamble of the Factories Act, 1934.

³⁵⁰ Section no: 13-22, The Factories Act, 1934.

³⁵¹ Section no: 26, 27, 29-33, The Factories Act, 1934.

workers. But the above said legislation on occupational safety and health does not require safety measures to be established by the management employing less than twenty workers.

The labour inspectors are empowered by the government to visit the working sites to check if the labour is working under safety measures directed by the Ministry of Labour.³⁵² No doubt, the laws on OSH seem to be useful for domestic businesses but the present laws do not concern the transnational business entities as they are purposely found to relocate their operations to the developing host countries in order to avoid strict legal restrictions they come across while running their operations in their home countries.³⁵³

By the time, laws need to be updated in relation to the changing circumstances and needs of society men. Such up-gradation of laws and existence of counsel of occupational safety at national level as mentioned in para.30 and 47 of the labour policy, 2002, seems to be a dream not coming true.

4.3.10 The Minimum Wages Ordinance, 1961

It is worth condemning that the workers earn hunger, misery and injury after working hard under tough working conditions in Pakistan.³⁵⁴

The legislation on determination of minimum wages is based on the principle that all the workers both male and female doing a job of same nature should be paid without discrimination and their minimum wage for a variety of work is to be determined by the minimum salary boards established at provincial level. It would be criminal activity on the part of corporations to give wages below the prescribed minimum rate.³⁵⁵

³⁵² Section no: 70, The Factories Act, 1934.

³⁵³ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context", *Social Problems, University of California Press* 34: 1 (1987), 39.

³⁵⁴ Ibid., 37.

³⁵⁵ Section no: 3, 4, 5, The Minimum Wages Ordinance, 1961.

The national legislation on minimum wage encompasses certain world class standards which need to be implemented effectively by the concerned public authorities. The legislations of 1961 requires certain standards to be set for transnational business entities to be followed on relocation of their manufacturing plants and strict punishments to the culprits so that they might not take developing countries quite easy to commit their criminal activities therein.

4.4 Case study of U.S. Legislative Scheme in respect of Controlling Transnational Corporate Crime

Before 1929, there was no legislation in United States of America at federal level.³⁵⁶ Then Great Depression³⁵⁷, New Deal³⁵⁸ and Wall Street Crash³⁵⁹ proved to be the starting points of American Legislation.

The list of federal legislations in United States of America to control and regulate the securities business is as follows:

- a) Securities Act, 1933.
- b) Securities Exchange Act, 1934.
- c) Trust Indenture Act, 1939.
- d) Investment Companies Act, 1940.
- e) Investment Advisors Act, 1940.
- f) Sarbanes Oxley Act, 2002.
- g) Dodd Frank Wall Street and Consumer Protection Act, 2010.³⁶⁰

³⁵⁶ *Congressional Record*, Vol. 144 (Washington DC: United States Government Printing Office, 1998), 14262.

³⁵⁷ www.history1900s.about.com/od/1930s/p/greatdepression.html (Last accessed: August 25, 2014).

³⁵⁸ www.hermes-press.com/wshist1.html (Last accessed: September 2, 2014).

³⁵⁹ www.bbc.co.uk/bitesize/higher/usa/newdeal/revision/3/ (Last accessed: September 5, 2014).

³⁶⁰ www.sec.gov/about/laws.html (Last accessed: September 10, 2014).

In 1925, the business of real property was at its height in United States of America but then there started economic decline including stock exchange crash which caused Great Depression in America.³⁶¹

After the economic crisis in 1929 in America, the American president Roosevelt reassured the Americans by his passionate address that their money would be safe in banks of America and offered different progressive strategies in different fields of life. This period of boosting public confidence in American government did last from 1933 to 1941. This promise of American President was a New Deal to the American people.³⁶²

On 19th of October, 1987, America faced stock market crash due to corporate crime of insider trading. That disaster did last for one day but after effects of the disaster were terrible and is famously called as Black Monday. As that stock market was located at wall street, it is known in history as wall street crash.³⁶³

In 1920s, there was no legislation at federal level but state laws. Those state laws are known as Blue Sky Laws and were not implemented in all the states of America as all the stakeholders were not on the same page. So, federal laws were required at that time and congress passed the federal level legislation called as the Securities Act, 1933³⁶⁴ to increase the public confidence and trust in business market and to make them aware of all factors of risk that may come in the business of securities.³⁶⁵

³⁶¹ www.history1900s.about.com/odd/1930s/p/greatdepression.html (Last accessed: September 10, 2014).

³⁶² www.bbc.co.uk/schools/gcsebitesize/history/mwh/usa/newdealrev1.shtml (Last accessed: September 12, 2014).

³⁶³ www.thebubblebubble.com/1987-crash (Last accessed: September 12, 2014).

³⁶⁴ Jonathan R. Macey, Geoffrey P. Miller, "Origin of the Blue Sky Laws," *Faculty Scholarship Series*, 70: 2 (1991), 348.

³⁶⁵ Section no: 7, Securities Act, 1933.

In particular, the Securities Act of 1933 was enacted to stop fraudulent transactions between different states of America and between a foreign country and any state of America.³⁶⁶

As there was no federal regulator to regulate the companies and stock exchanges in America,³⁶⁷ Securities and Exchange Commission was made pursuing the Securities Exchange Act, 1934.³⁶⁸

To boost up the confidence of investors in financial companies and to prevent fraudulent activities used to happen therein, the Trust Indenture Act was passed in 1939 which required a trust contract between investor and financial institution.³⁶⁹

Then the Investment Company Act was passed in 1940 to enhance the trend of investment by one company in the securities of another company.³⁷⁰ Then in the same year, the Investment Advisors Act was passed to protect the interests of investors by requiring registration of investment advisors.³⁷¹

Few years back in the history of America, some prominent examples of corporate crime came on the scene. A big number of very famous companies were found involved in corporate crimes due to weak governance of these companies.³⁷²

A few of those companies found involved in corporate crime were:

i. Enron

³⁶⁶ Section no: 17, Securities Act, 1933.

³⁶⁷ Section no: 15, Securities Act, 1933.

³⁶⁸ Section no: 4, Securities Exchange Act, 1934.

³⁶⁹ Section no: 305, Trust Indenture Act, 1939.

³⁷⁰ Section no: 203, Investment Advisors Act, 1940.

³⁷¹ Section no: 15, Investment Company, 1940.

³⁷² Safdar A. Butt, *Corporate Governance* (Islamabad: Capital Academic Publishers, 2010)" 25.

This energy company concealed its actual economical condition from the outside world by using the name and goodwill of its affiliates. Executive managers made the company bankrupt by giving big bonuses to themselves by fraud.³⁷³

ii. World com

The phone company went through economic crisis due to criminal behaviour of corporate executives as they misstated the expenses and total expenditure of the company.³⁷⁴

iii. Tyco

The company was investigated due to criminal activities of its officers. The corporate officers were charged with tax evasion.³⁷⁵

iv. Rite Aid

This was a chain of medical stores, the executives of which were found involved in committing corporate fraud in accounts.³⁷⁶

v. Adelpia Communications

This was a family oriented company and was investigated and charged with corporate illegal activities by lending desired borrowed amounts to the family members owning the company.³⁷⁷

vi. Peregrine Systems

This company was charged with corporate fraud by misstating its earnings and expenses. The directors of the company were found responsible for such corporate crime.³⁷⁸

³⁷³ Safdar A. Butt, *Corporate Governance* (Islamabad: Capital Academic Publishers, 2010), 25.

³⁷⁴ *Ibid.*, 26.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*

After such corporate crimes got happened, there arose a dire need to impose corporate social responsibilities and in case of breach of such responsibilities imposed by the Securities and Exchange Commission of America to impose both civil and criminal penalties to public companies.

It is commonly seen that corporate culprits are provided with extra ordinary defence during investigation and prosecution against such corporate offenders. In United States of America the Sarbanes-Oxley Act, 2002 plays a vital role by providing protection against criminal behaviour of corporations.

The Act of 2002 sets a latest strict standard of financial reporting in corporate sector as it requires corporate officers not to misguide in any way in these financial reports.³⁷⁹ The corporations are required to certify that they have gone through their financial condition periodically and that they comply with the laws made to control corporate crime.³⁸⁰

A proper code of conduct for all officers including chief executive officer is required for promoting good corporate governance.³⁸¹ The corporate directors and senior financial officers including management should be held liable for poor business strategies and out coming results according to the Congress³⁸² and the stock exchanges of United States of America.³⁸³

³⁷⁸ Safdar A. Butt, *Corporate Governance* (Islamabad: Capital Academic Publishers, 2010), 26.

³⁷⁹ Section no: 302, The Sarbanes Oxley Act, 2002.

³⁸⁰ Section no: 302 (a) (3) The Sarbanes Oxley Act, 2002.

³⁸¹ Section no: 406, The Sarbanes Oxley Act, 2002.

³⁸² Policy Recommendations for Congress, *Cato Hand Book for Congress* (Washington D.C.: CATO Institute, 2003), 218.

³⁸³ Available at <http://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policy-makers/2003/9/hb108-22.pdf> (Last accessed: August 26, 2014).

The U.S. Sentencing Commission puts great stress on complying by the directors and all other officers with the proper code of corporate governance issued by the Securities and Exchange Commission to produce good business and social outcomes.³⁸⁴

Securities and Exchange Commission of United States of America has been displaying a proactive character in promoting a proper code of corporate governance and certain rules of compliance to respective legal frame work.³⁸⁵

For the protection of consumers, the Securities and Exchange Commission have authority to make rules in pursuit of Dodd Frank Wall Street Reform and Consumer Protection Act 2010. The Act of 2010 also prescribes rules to regulate banks and other financial companies so as to protect the customers from the criminal activities of such financial institutions.³⁸⁶

The Sarbanes Oxley Act, 2002 in United States of America³⁸⁷ and The Companies Ordinance, 1984 in Pakistan impose criminal penalties upon the shoulders of directors and managers in case of breach of their corporate governance.³⁸⁸

To the extent of placing criminal liability upon decision makers and senior officers of corporations and promoting good corporate governance and compliance strategies, the same purpose is adopted and pursued by the Code of Corporate Governance 2012 in Pakistan.

³⁸⁴ Diana E. Murphy, " The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics," *IOWA Law Review* (2002), 700.

³⁸⁵ Available at http://www.secp.gov.pk/cg/codeofcorporategovernance_2002.pdf (Last accessed: May 5, 2014).

³⁸⁶ www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

³⁸⁷ Section no: 906, Sarbanes Oxley Act, 2002.

³⁸⁸ Section no: 270, The Companies Ordinance, 1984.

4.5 Compensation for Victims of Corporate Crime

Restitution of victims of corporate crime is very important in a civilized society as individuals of society become victims of corporate crime in different aspects. Somewhere they suffer from environmental pollution caused by the corporations both national and transnational. At the other time they being consumers get unhealthy and substandard products produced by manufacturing corporations pursuing their illegal goals.

Moreover, the workers in poor countries become victims of inhuman behaviour of transnational corporations by exposing them to unsafe and dangerous working conditions and by getting very low wages.³⁸⁹

The victims of corporate crime are commonly compensated by the courts of competent jurisdiction according to the circumstances of the case and depth of injury suffered by the victim.³⁹⁰

The victims of corporate crime in Pakistan are economically compensated by the mandatory orders of the courts of law. Not only criminal sanction is to be imposed upon the corporate criminals, the injury of victims of corporate crime must be considered while punishing the corporate offenders.

So, the victims must be preferred over state in case culprit corporation is ordered to pay both monetary compensation to the victim of corporate crime and monetary fine to the state. They must be compensated to the extent of economic loss suffered by them in case of minimal consequences of corporate crime.³⁹¹

³⁸⁹ Henry N. Pontell, Gilbert L. Geis, *International Handbook of White Collar and Corporate Crime* (Springer Science and Business Media, 2010), 672.

³⁹⁰ *Ibid.*, 674.

³⁹¹ *Ibid.*

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

This chapter deals with the conclusive study of corporate crime in transnational context as conclusions are sought out of the detailed research. Then suitable recommendations will be given to prevent the society men from becoming victims of transnational corporate crime by determining the rights of society men and duties of transnational corporations.

5.1 Conclusion

The concluding points having sought out in this research are as follows:

a) Relocation of production plants by transnational corporations causing environmental pollution and other hazards resulting from such pollution affecting human health in developing countries prove to be disastrous elements of transnational corporate crime.

The subsidiaries of transnational corporations commonly deal in dangerous health killing materials which are restricted to be used in developed countries. These giant corporations make full use of weak socio-economic conditions and poor legislative scheme of developing countries.³⁹²

The growing trend of getting monetary benefits at the cost of infringement of legal rights of others is worth condemning as to increasing number of incidents resulting from environmental pollution.³⁹³

³⁹² Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 37.

³⁹³ Albert Stickney, "Corporate Trusts," *Columbia Law Review* 1: 4 (1901), 5.

The environmental hazards cause injurious effects not only to natural beauty but also to human health and lives. Polluting natural resources like water, air and soil of countries with submissive approach to pollutant transnational industries leave long lasting hazardous effects upon social fabric of such countries.³⁹⁴

Living in the period of globalization, it becomes very easy to have access to the land of other countries thereby having manufacturing plants in developing countries by transnational corporations. These global business entities make abuse of such global forces by polluting the environment of developing countries.³⁹⁵

b) Exporting low standard products to poor developing countries thus affecting consumer safety and health in general prove to be essential thought provoking element of corporate crime in transnational context.

The corporations export substandard products varying from household to life saving products to third world countries in transnational context. The poor people in such countries become victims of the lust of transnational corporations to get worldly profits.

The transnational corporations are widely seen to deal in hazardous products in their host nation states. The poor consumers are affected of their such criminal behaviour. It would not be untrue to state that the poor consumers are vulnerable in developing societies.³⁹⁶

c) Workplace illness and injuries as a result of poor working environment of transnational business entities and paying unfair wages to workers in pursuance of their veneration for becoming rich at the cost of misery of others.

³⁹⁴ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 38.

³⁹⁵ Ibid.

³⁹⁶ Henry Shue, "Export of Hazard," *Ethics* 91: 4 (1981), 582.

The poor workers go through adverse physical illness particularly eye and skin infections due to working late hourly without rest breaks and precautionary measures.³⁹⁷

d) The corporate crime in both national and transnational context is a social, moral and legal wrong in the light of consumer protection laws of Pakistan. Whereas it is an offence in the light of criminal laws of Pakistan as severe and dangerous in its effects upon a society as other conventional crimes.

The transnational corporations relocate hazards to consumers in developing countries like drugs and different chemicals banned to use at their home countries. People of every age group become victims of such hazardous products.³⁹⁸

e) The public in general being consumers and employees or poor labour pay heavily against the criminal activities of transnational business bodies when consumers lose their health and lives and workers in earning poverty.

f) The consumers as victims can be monetary compensated by paying them exemplary damages by the consumer courts in Pakistan. The workers being victims of transnational corporate crime can be compensated by paying them monetary relief as well as by helping them substantially, recovering from injury caused by poor working conditions.

In case of accident resulting of wrongful activities committed by employer corporation, the injured employee is entitled to get compensatory relief by the civil courts in Pakistan under The Employer's Liability Act, 1880.³⁹⁹

³⁹⁷ Available at www.labourwatchpakistan.com/?p=8847 (Last accessed: February 4, 2015).

³⁹⁸ Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context," *Social Problems, University of California Press* 34: 1 (1987), 38.

³⁹⁹ A. M. Chaudhry, *The Law of Torts* (Lahore: PLD Publishers, 2009), 42.

g) The state regulatory authorities, the corporate sector, mass media, society men being consumers and poor workers should raise their voices against the criminal activities of transnational corporations in developing countries. They must establish proper forums in their own ways to deal in the issues of relocation of corporate hazards from developed to developing countries and poor working conditions in transnational corporations.

h) The legal system of Pakistan seems to be insufficient to deter the transnational corporate crime and its implications upon society.

5.2 Recommendations

The recommendations for preservation of environment, safety of consumers and better management of working conditions are as follows:

5.2.1 Environmental Preservation⁴⁰⁰

The summary of the current situation in Pakistan in respect of environmental pollution caused by the relocation of corporate hazards in transnational context may be explained as follows:

5.2.1.1 Brief Account of the Current Situation in Pakistan

a) Water, air and soil pollution seems to be increasing particularly in urban areas due to dangerous life threatening chemicals and other releases from manufacturing plants relocated to Pakistan by transnational corporations.

b) The level of air pollution in most busy cities is above the certain standards set by the World Health Organization.

c) Improper disposal of health killing waste released from relocated industries of transnational corporations produces bad smell in the suburbs of industrial areas.

⁴⁰⁰ The writer presented the Article "Proposal for Improvement of the country's Environmental Conditions for the Training Course, Environmental Management and Pollution Control in South West Asia," at EIP, Hiroshima, Japan on 3rd December, 2003.

5.2.1.2 Issues Regarding Environmental Preservation

The issues and problems in respect of preservation of environment are as follows:

- a) Unsatisfactory measures of enforcement of national statutory framework to control environmental pollution.
- b) Existence of weak socio- economic conditions.
- c) Lack of standards for preventing environmental.
- d) Degradation of air, water and soil quality in the busy areas.
- e) Poor legislative scheme.

5.2.1.3 Recommendations for Improvements

- a) The legislators in Pakistan should legislate to secure the ends of justice without the fear of consequences to be faced in the international market. They must work for the betterment of society at large not at the expense of their being economically developing country.
- b) Regulatory authorities in Pakistan should address the criminal activities of transnational corporations by making effective rules so as to control the happening of environmental crime by transnational corporations.
- c) The state regulatory bodies in Pakistan should issue a proper code of conduct regulating the behaviour of transnational corporations towards society at large. The code must set standards for environmental protection.
- d) All the activities of transnational should be covered by the code of conduct in respect of environmental preservation drafted by the state regulatory bodies at national level.
- e) Well formulated monitoring system aiming at preservation of environment is required to be enforced.

f) A realistic picture of present environmental condition is required for proper monitoring system.

5.2.1.4 Points for Implementation

a) Proper surveys need to be conducted by collaborative efforts at both federal and provincial level to get a complete picture of environmental hazards produced by transnational corporations. Environmental protection agencies should work in consultation with industrial sector entailing both national and transnational industries.

b) Proper training of staff is required to have proper knowhow about determining different aspects of environmental hazards.

c) Environmental protection agencies need to be equipped with latest technology so as to be helpful in actions against environmental crime by transnational corporations.

d) Researchers should play their vital role towards protection of society from environmental hazards and betterment of society at large in this regard.

5.2.2 Protection of Consumers

The brief detail of the present situation in Pakistan regarding vulnerability of consumers due to transnational corporate crime is as follows:

5.2.2.1 Brief Account of Current Situation in Pakistan

a. Export of sub standard products seems to be increasing to developing countries including Pakistan. This affects health and safety of consumers badly.

b. Such export of life killing products by relocation of plants manufacturing low standard to Pakistan seem to be contemporary issue of corporate crime in transnational context.

c. Customers are becoming victims of criminal activities of transnational corporations from domestic products to medicine.

- d. The health of people is becoming poor by the time due to intake of sub standard products.

5.2.2.2 Issues Relating to Consumer Safety

The issues relating to safety of consumers are as follows:

- a. Lack of awareness among public about rights of consumers.
- b. Misrepresentation in advertisements.⁴⁰¹
- c. Un-satisfactory performance of regulatory and monitoring authorities.
- d. Lack of set manufacturing and marketing standards to be followed by the transnational corporations.
- e. Lack of effective and proper legislative protecting consumers from hazardous activities of transnational corporations.
- f. Lack of proper policies to fight against criminal activities of corporations working in transnational context thereby affecting health and life of consumers.
- g. e) Un-satisfactory performance of law enforcement agencies.

5.2.2.3 Recommendations for Improvement

- a. The state regulatory authorities in Pakistan should issue a complete code of conduct regulating the behaviour of transnational corporations towards society in general. The code must cover the conduct of transnational corporations to have respect for national laws of the host nation states in respect of rights of consumers. The code must set certain standards for consumer protection.
- b. Mass media in Pakistan including newspaper, television and radio should put emphasis on corporate social responsibility. They must play their vital role in driving the attention of decision makers towards control of transnational corporate crime.

⁴⁰¹ Kramer, "The Space between Laws," 38.

- c. The transnational corporations should not be allowed to interfere into political matters of host countries to get their monetary benefits at the stake of health and life of consumers.

5.2.2.4 Points for Implementation

- a) Workshops and seminars ought to be conducted at both national and international level so as to make consumers aware of their rights to get safe and healthy products and also of getting relief in case of violation of their consumer rights by transnational corporations.
- b) Investigation and law enforcement agencies must work with their collaborative efforts at both provincial and federal level to fight against criminal activities of transnational corporations infringing the rights of innocent consumers to get safe and healthy products and services.
- c) The state regulatory bodies in Pakistan should issue a proper code of conduct regulating the behaviour of transnational corporations towards society at large. The code must cover the conduct of transnational corporations to have respect for national laws of the host countries, human rights and consumer rights.
- d) The law enforcement agencies in Pakistan would have to secure an efficient position in controlling transnational corporate crime. They would have to bring the transnational business entities accountable to the courts of law to uphold national integrity.

5.2.3 Management of Working Conditions

The account of existing situation in respect of working conditions of poor labour in transnational corporations in Pakistan is as follows:

5.2.3.1 Brief Account of Current Situation in Pakistan

- a) Workers are not provided with up to mark working instruments at work places.

- b) Workers suffer from mental and physical illness due to constant hard working eventually for earning misery.
- c) Workers are to work in unfriendly environment under huge pressure.
- d) Poor economic condition of country gives a big advantage to the transnational corporations as they exploit present weak socio economical situation in the country to achieve their monetary benefits.
- e) Poor workers earn equal to nothing in subsidiaries of transnational corporations if compared to earnings of workers in parent corporation.

5.2.3.2 Issues Regarding Working Conditions in Transnational corporations

The issues regarding working conditions for poor labour in transnational corporations are as under:

- a) Lack of statutory sketch for working conditions in transnational corporations.
- b) Unsatisfactory performance of law enforcement agencies in controlling transnational corporate crime.
- c) Unsatisfactory performance of investigating departments in deterring criminal activities by transnational business entities.
- d) Lack of strict penalties and punishments to transnational corporate entities and least exposure of corporate executives to exemplary punishments so as to give a lesson to like-minded.

5.3.3.3 Recommendations for Improvement

- a) The transnational corporations should not be allowed to take part into political issues of the host country to get monetary advantages at the cost of poor health and misery of workers.

b) Proper law making is required to fight against the criminal activities of transnational corporations at work places in Pakistan.

5.3.3.4 Points for Implementation

a) The law enforcing agencies should secure the ends of justice without fear of consequences to be faced in the international market.

b) The law enforcement agencies in Pakistan would have to secure an efficient position in controlling transnational corporate crime. They would have to bring the transnational business entities accountable to the courts of law to uphold national integrity.

c) Mass media in Pakistan including newspaper, television and radio should put emphasis on corporate social responsibility. They must play their vital role in driving the attention of decision makers towards control of transnational corporate crime occurring in the form of workplace hazards.

d) Seminars and workshops ought to be organised at both national and international level so as to make workers aware of their rights to work in safe working conditions and also for relief in case of violation of rights of workers in transnational corporations.

e) What is required by the legislators in Pakistan is to add up global standards set by United Nations concerning activities of corporations in transnational context⁴⁰² to the legal regime of Pakistan so as to take strict legal actions against criminal activities of transnational corporations in national jurisdiction.

⁴⁰² Raymond J. Michalowski, Ronald C. Kramer, "The Space between Laws: The Problem of Corporate Crime in a Transnational Context", *Social Problems, University of California Press* 34: 1 (1987), 44.

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