CORPORATE CRIME AND PUNISHMENT: THE NEED FOR A RETHINK**

Abstract

Corporate wrong doing abounds as corporations are subject to criminal law and sentencing provisions in most legal jurisdictions in the world. The corporate form poses difficulties for traditional theories of punishment which more readily apply to traditionally guilty human offenders. Punishment for wrong doing involves suffering and corporations cannot suffer in the real sense of it as human beings. The aim of this paper is to critically analyze how punishment theories apply to corporations. The paper employed the doctrinal method of legal research. The primary and secondary sources of data were also made use of in the course of the paper. It was found out that most of the punishments under our criminal laws were basically made to suit natural persons i.e. human beings as opposed to juristic persons. A fundamental problem arises in the attempt to apply punishment theory to corporations. Thus imposing them on juristic persons like corporations would not achieve the aim intended. The paper concluded by recommending amongst others that particular sentences should be created specifically for corporations/companies.

Keywords: Corporations, Criminal Punishment, Punishment for Corporations, Sentencing for Companies.

1. Introduction

Many of the crimes most dangerous to society originate from an organization's activities and incentives. The criminal aggressiveness of organizations can be so devastating that it requires the implementation of new control techniques that exceed punishments for individual offenders. Corporate crime experts have thoroughly studied the rationales that justify punishing organizations.[1] A pertinent question comes to our mind as to why corporations indulge in criminal acts? The answer lies in the fact that corporations find the benefits from such acts accruing more than the cost of the behavior. The cost of the behavior is shared elsewhere, whereas the corporation is the beneficiary[2]. One may try to distinguish between corporate criminal offenders and the individual criminal offenders, although, the two are treated differently by the law. Perception of the society on the issue is relevant. We want individual offenders being imprisoned more than those in the corporate circle even though the corporate crimes committed by the white collar offenders are far more expensive. It is easy to punish an individual in order to prevent him from committing the same crime so that the society teaches him to improve his conduct. The logical justification for such a penal action is to deter and incapacitate the criminal from his ability to commit the crime. But the society has not been able to control the artificial entity (a company/ corporation) as if it is a natural human being. So, the corporate punishments are ineffective, the fines are moderate and as such are not deterrent and the severe corporate punishments fall only on those who are relatively blameless. Punishment theory requires a separate analysis in the case of corporations because of the many distinct problems corporate sentencing raises. Theories of punishment and sentencing are also theories of how we justify using the coercive

* **Ngozi Chisom Uzoka,** PhD, LLM, BL, LLB, Lecturer, Department of International Law and Jurisprudence, Nnamdi Azikiwe University Awka, Anambra State. Phone number: 08063212174 E-mail: nc.uzoka@unizik.edu.ng or chisongozi@yahoo.com.

** **Chioma O Nwabachili**, PhD, LLM, BL, LLB, Reader, Department of International Law and Jurisprudence, Nnamdi Azikiwe University Awka, Anambra State. E-mail: co.nwabachili@unizik.edu.ng.

[1] C de Maglie, 'Models of Corporate Criminal Liability in Comparative Law, (2005) *Washington University Global Studies Law Review*, Vol 4 <http://www.openscholarship.wuslt.edu/lawg_globalstudies> Accessed on 20th May, 2023.

[2] K Prasad, *Corporate Governance*, (PHI Learning Private Limited: New Delhi 2008) 114.

power of the state to punish people. We may punish on the basis that it will deter potential offenders from committing wrongs in the future, or from a belief that those committing certain kinds of wrongful acts deserve to be punished for them, or we may punish in order to achieve an improvement in the offender's character. All these and possibly other justifications are important reasons for punishing. This paper considers how these theories of punishment apply to corporations, or the need to be altered, to be applied to corporations. Corporations have no soul to damn, no body to kick. Punishment theory requires a separate analysis in the case of corporations because of the many distinct problems corporate sentencing raises[3]. Theories of punishment can be characterized as retributive, rehabilitative, deterrent and incapacitation.

2. Theories of Punishment

2.1. Retribution

Retributivism requires that sentence be a punishment. It posits that the offender receives a sentence in proportion to the wrong doing.[4] Retributivists generally think that the justifying purpose of criminal law is to give criminal what they deserve. This prevents future crime by removing the desire for personal avengement (in the form of assault, battery and criminal homicide), for example against the defendant. When victims or society discover that the defendant has been adequately punished for a crime they achieve a certain satisfaction that our criminal procedure is working effectively, which enhances faith in law enforcement and our government.[5] Corporations, by virtue of their sheer size and the centrality of their economic and social roles, are in a position to commit some of the most serious and devastating crimes. Corporations have the capacity to understand moral matters and make moral judgments. It follows that retributivism must be included as a component justification of corporate sentencing. Under retributive theories (sometimes called just deserts) wrong doers are sanctioned because they deserve to be, not simply because their penalty is likely to have particular consequences such as reducing future offending.[6] The company is therefore sanctioned irrespective of whether it reforms its character (policies and procedure) deters their conduct or sets an example to other.[7] Retributivism is a justification for criminal punishment of corporations, the punishment itself seems impossible. It would therefore be wise to make use of sentences that are not punishment per se for corporations. The use of higher upper limits to sentencing would be appropriate and justifiable than would be justifiable in a sentence for an individual.

2.2. Rehabilitation

This prevents future crime by altering a defendant's behavior.[8] The court can combine rehabilitation with incarceration or with probation. Rehabilitation traditionally focuses upon the idea of reformation of the offender's law-breaking tendencies. To that extent

[3] Hazel Croall & Jennifer Rose, "Sentencing the Corporate Offender: legal and social Issues' in Cyrus Tata & Neil Hutton, eds, *Sentencing and Society* (Hampshire: Ashgate, 2002.) at 535.
[4] Sylvia Rich, "Corporate Criminal and Punishment Theory", Canadian journal of law and jurisprudence, (2016) vol. 29, No 1.
[5] The Purposes of Punishment. Available at< http://www.open.lib.umn.edu> Accessed on 5 June, 2023.
[6] A Ashworth, 'Sentencing' in M Maguire, R Morgan and R Reiner (ed) *The Oxford Handbook of Criminology* (Oxford: OUP, 2nd edn, 1994) p.1096-1097.
[7] D D Dobbs, 'Ending Punishment in Punitive Damages: Deterrence Measured Remedies' (1989) *ALA Law Review.* 831 at 844.
[8] A Ashworth*, op cit,* p 1098.

rehabilitation involves a kind of transformation of character in which offenders are turned into law-abiding citizens by the application of some generalisable penal technique.[9]

There is a fuzzy line between rehabilitation and restoration. Some researchers argue that restorative and reparative theories are not theories of sanctioning or punishment as such; rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done to the victim and to the community.[10] There are two elements of restorative theories. First, there is restoration as restitution or reparation. Here a sanction is imposed to correct the damage done. If a sanction leads to customers being compensated and profits from wrong doing removed, it fulfills an important objective. The second element is restoration as rehabilitation. To the extent that restorative theories are concerned with the restoration of offenders, they are based on a behavioral premise similar to rehabilitation. Where adverse publicity leads to a change of polices as well as procedure, it may be characterized their as rehabilitative or restorative. A company guilty of wrong doing may find that to redeem itself, it need to acknowledge its wrong doing, express remorse, and explain its intention to remedy the problem leading to the misconduct.

Adverse publicity which is a form of corporate sanction may lead to 'collective soul searching' and examination of the reasons the conduct occurred… this re-evaluation furthers the rehabilitative goals of punishment.[11] One aim of sanctioning companies is to ensure that they correct errors, such as inadequate controls or supervision, which have led to the commission of an offence. This involves a form of rehabilitation, although one that focused more on deeds than remorse. Thus, a company will put up measures in place to make such mistakes less likely to occur in future.[12]

2.3. Incapacitation

One of the aims of sanctioning is incapacitation. This prevents further crime by removing the defendant from the society. Examples of incapacitation are incarceration, house arrest, execution pursuant to a dealt penalty or dissolution and other forms of sanctioning companies. Where wrong doing continues after litigation public notification of the wrong doing would allow market forces to dictate whether the conduct needs to change…consumers may not purchase the product or do business (with the wrong doer).

For the general population, an individual convicted of a crime must not be allowed to mingle with the rest of the society without any guarantees that the person will not do the same crime again.[13] In incapacitating the goal of criminal law is to effectively protect the public from the criminal acts of the defendant. In some societies, this is carried out in the form of a death sentence or banishment or in most case life impressments for individual. With respect to organization, it would mean winding up of the company.

[9] R A Duff and D Garland, *A Reader on Punishment* (Oxford: Oxford University Press, 2005) p 24.
[10] A Ashworth, *op cit,* p 1100.
[11] *Ibid.*
[12] P Cartwright, 'Publicity Punishment and Protection: The Role (s) of Adverse Publicity in Consumer Policy' (2012*) Legal Studies*, 32(2) p 179-201.
[13] A Barton, 'An Overview of the 5 Objectives of the Criminal Justice System', (2015) <https://www.lsfma.com> Accessed on 30 November, 2017.

Proponents of the incapacitation theory of punishment advocate that offenders should be prevented from committing further crimes either by their (temporary or permanent) removal from society or by some other method that restricts their physical ability to reoffend in some other way. The overall aim of incapacitation is to prevent the most dangerous or prolific offender from reoffending in the society. The concern here is with the victim or potential victim. The rights of the offender merit little consideration. Incapacitation has long been a significant strategy of punishment.[14] The most severe and permanent form of incapacitation is capital punishment. Capital punishment is often justified through the concept of deterrence but, whether the death sentence actually deters potential offenders is highly contested. Other types of severe or permanent incapacitation punishments include dismemberment, which is practiced in various forms. For example, the physical permanent removal of a company or firm from bidding public tenders. Less severe forms of incapacitation are often concerned with restricting rather than completely disabling offenders from reoffending. These include sentences such as disqualification from a particular activity. According to this incapacitation theory punishment is not convened with the nature of the offender, as it is the case with retribution. Rather, punishment is justified by the risk individuals/ (companies) are believed to pose to society in the future. As a result individuals/companies can be punished for "hypothetical" crimes. In other words, they can be incarcerated, not for crimes they have actually committed but for the crimes it is anticipated or assumed they will commit.

2.4. Specific and General Deterrence

Deterrence is the theory that justifies punishment on the basis that it creates disincentives for those contemplating committing crime in the future. Those who defend corporate criminal liability most frequently do so, on the basis that it will achieve some deterrent aim[15]. Deterrence prevents future crime by frightening the defendant or the public.[16] The purpose of criminal punishment for deterrence theorist is to alter criminal's incentives by reducing the expected utility of committing a crime. The two types of deterrence are specific and general deterrence. Specific deterrence applies to an individual defendant. When the government punishes an individual defendant, he or she is theoretically less likely to commit another crime because of fear or another similar or worse punishment. General deference applies to the public at large. When the public learns of an individual defendant's punishment, the public is less likely to commit a crime because of fear of the punishment the defendant experienced.[17] The most obvious aim of sanctioning is to prevent future harm through deterrence. Most corporate crime theory has been deterrent-based, in the sense that the purpose of instituting sanctions has been to discourage violations and encourage good practice. A distinction might be drawn between deterrence and compliance. "Deterrence" implies that in the absence of the threat of a sanction, companies will decide rationally to engage in wrong doing where that is financially beneficial. But companies may want to comply with the law for a range of reasons. First, habit may lead to compliance. Most

[14] H Ball and L Friedman, 'Use of Criminal Sanctions in the Enforcement of Economic Legislation: A Sociological View', (1965) *Stan. Law Rev*. 197 at 2169-217.

[15] A Hamdani & A Klement, 'Corporate Crime and Deterrence', (2009) *Stan. Law Review* at 271.

[16] C Wells, *Corporations and Criminal Responsibility* (2nd edn, New York: Oxford University Press, 2001) p.31.

[17] *Ibid.*

corporate actors comply with the law most of the time because it is the law.[18] Secondly there is the symbolism attached to breaches of the law, particularly criminal, law, which lead firms to try to comply. Thus, companies abhor the idea of being branded a criminal.[19] The language of deterrence might be used here, but compliance results in part form a desire to be seen as acting within the law.[20]This is viewed as a search for prestige[21]. However, there are hurdles to the deterrence theory. First, there may not always be individual criminals when a corporation commits a crime. Corporate misconduct can be as a result of organizational defects, broken channels of communication, inadequate compliance mechanisms and so forth for which no individual is responsible. Additionally, deterrent-based corporate fines draw on general corporate coffers, so they harm individual wrongdoers and innocent parties alike.

3. Sanctions for Criminal Corporations

Historically, the only practical sanction available for corporations convicted of a criminal offence has been a fine.[22] Essentially, there are two reasons for this limitation in sentencing. First, corporations are legal fictions, and as such have not been subject to sanctions designed for individuals. Second, courts are reluctant to use dissolution of a criminal corporation as a sanction.[23]

In the United States, corporations and individuals alike are sentenced in the shadow of the Federal Sentencing Guidelines. The Sentencing Guidelines for organisations measure punishment according to the seriousness of the offense as well as the defendant's culpability and history of misconduct. On the other hand, they reward self-disclosure, cooperation, restitution and preventive measures. The guidelines supply special corporate sentencing directions for fines, probation, forfeiture, special assessments, and remedial sanctions.

The issues of what sanctions are appropriate for corporate criminal activities has been the constant subject of the doctrinal debates and often times, has been the argument for rejecting corporate criminal liability. The first issue raised in the debate was the individual character of criminal responsibility. The critics argue that by sanctioning the corporate entity, all its members are sanctioned regardless of whether they had any participation in the criminal offence. Thus, sanctioning a corporation to pay a criminal fine would have the indirect effect of diminishing the income of the shareholders, or the corporation would be forced to reduce the number of innocent employees who would lose their income.[24] This would amount, in the critics' view, to a criminal liability for another's crimes, which would be unacceptable. The only person suffering the direct effect of criminal sanction is the corporation. Members are not unusually personally liable for the corporation's activity, and liability being covered by the corporation's patrimony. The side effects of losing profits are

[18] P Cartwright, *op cit.*
[19] *Ibid*.
[20] I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992) p 19.
[21] H Ball and L Friedman, *op cit* p 216.
[22] 'Structural Crime and Institutional Rehabilitation: A New Approach to Corporate Sentencing', (1979) 89 *Yale Law Journal* 354.
[23] *Ibid.*
[24] J Gobert, 'Controlling Corporate Criminality: Penal Sanctions and Beyond', (1998) 2 WEBJCLI P. 6 < http://webjcli.ncl.ac.uk/1998/issue/gobert 2.html> Accessed on 20 May,2023.

risks that members have taken from the beginning. As members may benefits from the advantages resulting from the corporations' activities, they also may suffer some inconveniency.[25] It has also been argued that corporate criminal liability would result in double sanctioning when both the individuals and the corporation are convicted for the same criminal offences.

Thus, the convicted individuals who acted on behalf of the corporation would be sanctioned through the individual penalty and also by losing income from the corporation. However, as shown above, there is no risk of violating the *non bis in idem* principle because the corporation and the individuals have separate patrimonies and identities. When a representative of the corporation commits a criminal offence we can distinguish two separate liabilities-individual liability and corporate liability which are based on separate elements.[26]

3.1. Community Service

This is one of the innovative criminal sanctions. Community service is paying the community back for harm done, through doing work that benefits the public, is the essence of community service. Sentencing courts can require corporate offenders to engage in community service that is 'reasonably designed to repair the harm caused by the offense'. Community service should not be used as an indirect means to impose financial burdens on a convicted firm since a community order is a less efficient means to achieve this end than a direct fine. Rather, courts should impose community service orders only when "the convicted organization possesses knowledge, facilities or skills that uniquely qualify it to repair damage caused by the offense. The U.S. Guidelines endorse community service when a corporate offender can efficiently repair offense damage through its own efforts. However, the U.S. Guidelines do not identify the features that distinguish corporate community service order from remedial orders. The former are described as requiring a convicted corporation to "repair the harm caused by the offense," while the latter entail efforts to "remedy the harm caused by the offense". While the common remedial focus is certainly present, there is little difference in the description of these types of orders other than the labels used. The Sentencing Guidelines do not recommend community service for punitive or deterrent purposes alone. The Guidelines provide that compelled community service should remedy offense harm, suggesting that community service imposed for purely punitive or deterrent reasons is inappropriate. Even with this restriction, courts can tailor community service obligations provide for some impact on corporate reputations along with remedial benefits and thereby serve punitive or deterrent goals as well as remedial ends. Corporate community service has previously entailed service obligations imposed on specific executives who were not themselves convicted of an offense. The involvement of high-level mangers in corporate community service activities may be necessary for community service to have the types of reputational impacts that will have significant punitive and deterrent value. The reputation of a firm and the attitudes of its managers will be less likely to change if a firm can designate a low-level employee to perform its community service than if that service must be performed by a high-ranking corporate officer.

[25] I P Anca , *op cit.*
[26] J Gobert, *op cit.*

3.2. Fine

A fine is a criminal sanction while a civil sanction is called a penalty.[27] Non-payment of a criminal fine can result in incarceration, whereas non-payment of a civil penalty cannot.[28]The amount of a fine varies with the severity of the offence. Fines are the most common type of sentence given. Fines can be given to organizations or companies as well as people. However, fines have been the primary method used to control corporate criminal liability. For example in the U. S, the Corporate Fine Guidelines began with the premise that a totally corrupt corporation should be fined out of existence, if the statutory, maximum permits.[29] A corporation operated for criminal purposes or by criminal means should be fined at a level sufficient to strip it of all its assets.[30] On the other hand, a fine need not be imposed at all if it would render full victim restitution impossible.[31] On the other side, a fine below the recommended range should be imposed when necessary to permit restitution or may be below that range, when the corporation will be unable to pay a higher fine even on an installment basis.[32] A below-range corporate fine may also be fitting in light of individual fine imposed upon the owners of a closely held corporation. The criminal fines are the most common sanction. The rationale behind the use of fines in sentencing is deterrence. Corporations are presumed to act rationally in their profit-making ventures. The establishment of a system of fines is also designed to make corporate crime unprofitable, thus deterring rational corporations from criminal conduct. Unfortunately, the use of fine as a deterrence is rendered ineffective through a phenomenon known as the "deterrence trap". The "deterrence trap" occurs when the size of the fine that is necessary to deter criminal conduct by a corporation is larger than that which the corporation is able to pay.[33]

A Pecuniary sanction has the advantages of directly affecting the corporation, it generates the capital necessary for compensation or restitution to the victims, it can be executed with minimum costs, and when appropriately individualized, it has a sufficiently strong impact to accomplish the scope of the punishment (especially the retributive and deterrent scopes).[34] Whereas the greatest threat to an individual may be loss of liberty, the greatest threat to a company is the loss of profitability. Because such a loss strikes at the essential purpose of the company, a fine holds the potential to be an effective deterrent[35]. A corporation will balance the momentary gain from the offence with the loss from the potential criminal fine. Therefore, the fines must be sufficiently high to have an impact on

[27] Fines-Sentencing Council < http://www.sentencingcouncil.org.uk> Accessed on 10 June. 2023.

[28] United States Sentencing Commission Guidelines Manual (1992). Hereinafter referred to as (U.S.S.G.) Section 8 (1) I. The Guideline calculation that falls short of a statutory minimum or exceeds a statutory minimum must be adjusted accordingly.

[29] *United States v Najjar* (2002) 300 F.3 d 466. Tri-city was exposed to $ 500,000 fine under the statute and what has been called a death penalty fine under Section 8 (c) (1) (1) of the Sentencing Guidelines…it is clear that Tri-city was conceived in crime and performed little or no legitimate activity.

[30] 18 U.S.C 3572 (b), U.S.S.G Section 8(C) 2.2

[31] U.S.S.G. Section 8(C) (3) 3.

[32] U.S.S.G. Section 8 (C) (3) 4.

[33] J D Curran, 'Probation for Corporations under the Sentencing Reform Act', (1986) *Santa Clara Law Review*Vol 26 No 3 < htpp://www.digitalcommonlaw.scu.edu. accessed on 29 May., 2023.

[34] I P Anca , 'Criminal Liability of Corporations-Comparative Jurisprudence, < http://www.law.msu.edu> Accessed on 25 May, 2023.

[35] J Gobert, 'Controlling Corporate Criminality: Penal Sanctions and Beyond, 2 Web JCU p. 7 (1998) <http://www.webjcli.nd.ac.uk/1998/issue/gbert2.html> Accessed on 20 April, 2023.

the corporations: the amount of the fines should also take into account the financial resources of the corporation.[36]

At the same time, fines have some disadvantages. A very high fine would have a negative effect on innocent third parts. Although a corporate manger usually commits the crime, he will be the last one to suffer the impacts of his actions. Even if adequate fines are imposed, however, other problems arise when monetary penalties are the sole sanction used to control corporate behavior. The use of fines may also work injustice on innocent parties. The real cost of a fine may be borne not by the corporation, but by the shareholders through lower dividends and by the consumers through the increase of the prices for the corporation's products[37]. Neither of these parties has significant control over corporate-decision making. Furthermore, depending on the characteristics of the relevant market, heavily fining a corporation may lead to non-management employee layoffs as well as other forms of detriment to innocent third parties.[38] Thus, raising the level of fines will not prevent a corporation from passing along the penalty.

Profit maximization is not a complete explanation of corporate criminal behavior. People still make decision and take the action for criminal conduct.[39] An individual manager may perceive illegal conduct to be in his interest, even if such conduct exposes the corporation to potential costs which far exceed the potential benefits. Thus, the behavioural perspective suggests that "it may be extraordinarily difficult to prevent corporate misconduct by punishing only the firm (with a fine).[40]

Fines alone do not address the complexities of corporate criminal behavior. Although a monetary penalty is a useful sanction in sentencing a criminal corporation, it is not adequate as a sole remedy to control corporate criminal activity. In response to this inadequacy, new sanctions were developed and employed in sentencing criminal corporations. Despite all its drawbacks the fine is the least expensive and most frequently applied sanction.

3.3. Remedial Order

A remedial order is also one of the innovative criminal sanctions that serve important sentencing goals that are often unsatisfied through other criminal sentences. The Sentencing Reform Act of 1984,[41] places remedial goals at the heart of federal sentencing in the U.S. The Guidelines reflect the U.S. Sentencing Commission's view that in sentencing an organizational offender, a court must, whenever practicable order the organization to remedy any harm caused by the offense.[42]If for example the company involved in the corporate crime deals on delivering health and safety services, they would be required to provide health and safety services to the community or to families or to workers, that have been affected by a workplace death (s). Remedial orders were intended by the Sentencing

[36] *Ibid* p. 8.

[37] M E Diamantis, 'Clockwork Corporations: A Character Theory of Corporate Punishment', *IOWA Law Review* (2017) Vol.103 (507).

[38] *United States v Danilow Pastry Co.* (1983) S.D.N.Y 563F. Supp 1159, 1166-1167.

[39] Coffee, 'No Soul to Damn: No Body to Kick': An Unscandalized Inquiry into the Problem of Corporate Punishment, (1981) 79 *Michigan Law Review* 393.

[40] *Ibid.*

[41] The Sentencing Reform Act of 1984 was enacted as part of the comprehensive Crime Control Act of 1984.

[42] U.S. Sentencing Commission, Sentencing Guidelines Manual (2001) 413.

Commission to be fallback sanction for corporate offenders, imposed only when restitution orders are insufficient to address victim injuries[43]. Reasons why restitution might be inadequate and remedial orders correspondingly justified include difficulty in identifying crime victims and the scope of their economic damage, the presence of small damage to numerous victims making individual recoveries procedurally inefficient, or the involvement of aesthetic or other non-pecuniary harm in an offense.[44] Two areas where these orders may be particularly important are food and drug violations and environmental offenses.[45] For example where a firm is convicted of illegally marketing drugs, the firm must be required to recall the unsold products and content users of the drug to prevent further usage. The firm also might be compelled to provide medical screening to past users of the drug to help them recognize the harm resulting from the use of the drug. In an environmental context, remedial order might be used to require an offender to clean up after an illegal oil spill,[46] to conduct follow-up studies of related environmental damage and to take affirmative action's to aid in the restoration of plant and wild life populations.[47]

3.4. Adverse Publicity

The publication of the decision or the adverse publicity order (which consist in the publication at the company's expense of an advertisement emphasizing the crime committed and its consequences) are also sanctions for corporate criminal activity.[48] This has an important deterrent effect because of the incidental loss of profits that negative publicity can cause.[49] By its nature, this sanction can be only an auxiliary sanction accompanying another corporate penalty.[50] This sanction also has a possible spill-over effect, the losses can cause the corporations to close plants or even go out of business, which in turn will negatively affect innocent employees, distributors and suppliers.[51]

Adverse publicity diminishes corporate prestige by stigmatizing the corporation and by pulling it in an undesirable spotlight thereby facilitating unwanted investigation and regulation. In certain circumstance, adverse publicity may also cause financial loss to the company. The unique value of a publicity sanction, however, lies in its ability to target aspects of corporate welfare that cash fines cannot directly affect.[52] Adverse publicity can also exploit the sensitivities of corporate management who value prestige and autonomy as end in themselves, not merely as means to profits. Corporate executive are thought to be highly deterrable by adverse publicity because those in high status occupations have more

[43] M Jefferson, 'Corporate Criminal Liability: Sanctions and Remedial Action', (1996) *Journal of Financial Crime* Vol 4 Issue 2, 176 available at https://www.doi.org accessed on 28 May, 2023.

[44] *Ibid.*

[45] R S Gruner, 'Beyond Fines: Innovative Corporate Sentences under Federal Sentencing', (2013) *Washington University Law Quarterly* Vol 71, 261 < https//openscholarship.wustl.edu accessed on 22 May, 2023.

[46] *United State v Allied Chem.Corp* (1976) 420 F. Sup. 122 (where a firm guilty of illegal pollution discharges was required to clean up affected river).

[47] *United State v Seest* (1980) 631 F. 2d 107 (The Defendant was required to restore wetland destroyed for irrigation).

[48] J Gobert, *op cit*.

[49] *Ibid.*

[50] I P Anca , 'Criminal Liability of Corporations – Comparative Jurisprudence, <http://www.law.msu.edu> Accessed on 22 May, 2023.

[51] *Ibid.*

[52] K Yeung, 'Is the Use of Informal Adverse Publicity a Legitimate Regulatory Compliance Technique?' Australian Institute of Criminology < https://www.aic.gov.au> Accessed on 20 May, 2023.

to lose in social standing and respectability by having their reputations tarnished.[53] Large scale market-surveys of consumer attitudes also support the existence of a direct relationship between corporate reputation and firm performance.[54] They report that most consumers claim that brand quality, company image and reputation have a significant impact on their purchasing decisions. Companies fear the string of adverse publicity attacks on their reputation more than they fear the law itself.[55]

3.5. Corporate Probation

As part of Federal Organisational Sentencing Guidelines enacted on November 1, 1991, the United States Sentencing Commission included organizational probation. This sanction allows courts to place convicted corporations on probation, with conditions designed to reduce the likelihood of future law violations and remedy the effects of the original offense.[56]

Organisations cannot be incarcerated. Probation is one of the criminal sanctions available to them.[57] Probation for organisations was formally codified into Federal law in November 1991, when the U.S Sentencing Commission added Chapter 8 to the U.S Sentencing Guidelines. According to Lofquist, before its codification in the guidelines, organizational probation was used for the first time in a federal criminal case of *United States v Atlantic Richfield Co.,*[58] a U.S District Court judge James B. Parsons, Jr., broke jurisprudential ground by placing Atlantic Richfield on probation so that he could monitor the company's progress in complying with his order to develop an oil spill response program. Judge Parson's innovation was widely copied by his colleagues and by the middle 1980's; probation was ordered in approximately a fifth of all federal corporate convictions. Unfortunately, the legal soil in which Parsons tried to root his precedent, the Federal Probation Act of 1925 was tenuous because it was intended originally for the rehabilitation of individuals, not organisations. As a result of this weakness, probation sentences for organisations often were successfully appealed on the grounds that they were not aimed solely at monitoring fine collection. Successful appellants generally argued that their probation conditions had nothing to do with the offense, that organisations were not properly subject to the intent of the Federal Probation Act and that organisational offenders had the right to refuse the 'grace of probation'.[59] It therefore became clear by the later 1980s that if additional conditions of organisational probation were to be allowable, such as those mandating structural changes within convicted organisations, codification into law was

[53] A Cowan, 'Scarlet Letters for Corporations? Punishment by Publicity under the New Sentencing` Guidelines (1992) 65 *Southern California Law Review*, 2387.

[54] I Devine and P Halpern, 'Implicit Claims: The Role of Corporate Reputation in Value Creation' (2001) 4 *Corporate Reputation Review,* 42.

[55] B Fisse and J Brithwaite, *The Impact of Publicity on Corporate Offenders* (New York State University of New York Press, 1984) p. 10.

[56] W S Lofquist, 'Organisational Probation and the U.S Sentencing Commission, *Sage Journals*, Available <htpps://www.journals.sagepub.com .Accessed on 29 May, 2023.

[57] G Green, Organisational Probation under the Federal Sentencing Guidelines, <http://www.uscourts.gov accessed on May 30, 2023.

[58] (1971) 465 F.2d 58.

[59] R Baldwin, 'The Application of the Federal Probation Act to the Corporate Entity'. (1974) 3 *Baltimore Law Review*, 294.

necessary. Although the Commission had no mandate to do so, it nevertheless developed sophisticated guidelines for the use of organisational probation.[60]

3.6. Dissolution or Winding Up

Dissolution or winding up represents the capital punishment for corporations. Winding up of a company involves the liquidation of the company so that the assets are distributed to those entitled to receive them. In the case of *Oredola Okoya Trading Co v B.C.C.I.*,[61] the court held that liquidation is distinguishable from dissolution which is the end of the legal existence of a corporation. Liquidation may precede or follow dissolution. However, the court went ahead to state that mere revocation of banking license of a bank without more cannot bring to an end the juristic life of a bank or corporation. Due to its drastic effects, some authors argued that the sanction of dissolution should be applied only when the corporation committed very serious crimes, or when the corporation was created for illegal purposes[62]. Others argue that such punishment should be completely eliminated from the category of corporate sanctions[63]. Firstly, too small or closely held corporations, dissolution alone does not prevent the controlling parties from simply regrouping in a new form. Secondly, as to large corporations, the socially disruptive effects of the dissolution of a whole corporation would generally be so great as to outweigh its benefits. Winding up or liquidation is putting an end to the life at a company. A winding up may be effected in any of the following ways; by the federal High court, voluntarily; or subject to the supervision of the court.[64]

4. Conclusion and Recommendations

While a corporation cannot be punished as it were, a judge can still impose a sentence that reflects deterrence, retributive and rehabilitative principles. Locating corporations within the framework of moral agency still accomplishes some of the broader goal of creating moral accountability for corporations and members acting as agents of corporation. Even while we recognize that corporate entities are relevantly different from human beings, this should alter considerations when sentencing corporations. It is recommended that these specific sentences should be applied when a corporation is found liable criminally liable.

[60] Lofquist, *op cit* p.160-161.
[61] [2015] F.W.L.R Pt 806, p. 248.
[62] J Gobert, *op cit.*
[63] I P Anca, *op cit.*
[64] Section 564 CAMA 2020.