

CRIMINAL LIABILITY OF CORPORATES AND THEIR OFFICIALS

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ABSTRACT

“A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself. The importance of incorporation is that it makes the company itself liable in certain circumstances, as well as the human beings”

- Glanville Williams

Section 11 of the Indian Penal Code states that “the word ‘person’ includes any company or association whether incorporated or not.” Section 2 of the Indian Penal Code, on the other hand, states that every person under this Code shall be liable and punishable. The corporation is an association of persons working for a company with a common objective. Criminal liability occurs when there is a violation of any criminal law. And to make a person liable, it must be shown that there was an act committed by the person which violates the law (Actus non facit reum mens sit rea) with a guilty mind (mens rea). Thus, Corporate Criminal Liability can be defined as the crime which is committed by an individual or an association with an aim for the benefit and improvement of the company they are working with or for a common purpose in the course of their occupation commits an act which is forbidden by the law with a guilty mind. When a company becomes criminally liable, it not only affects the business of the corporation but also destroys the individuals, who are engaged in such crime, mentally and financially. However, it has been suggested that a fine should be imposed on such criminals rather than imprisonment.

Keywords: liability, imprisonment, criminal liability.

INTRODUCTION

The corporation has now become a very important factor in our society and in the development in economy of the country. Large businesses can be a substantial factor for the economy of a country. At the same time, it can also be a threat to society. Multinational corporations not only

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have assets and functions in their own countries but also for the other neighbouring countries which makes them a very important type of corporation in modern society. A corporation cannot easily be held liable and punishable as they have their own legal identity in society. [1] *Corporations have their own identity, they have separate legal personalities and they are different from their members.* A crime, in general, is said to have been committed by a person with his own body and soul and he, only, he is to be held responsible for the same. Earlier, it was thought that a corporation could not be held accountable for any crime. Criminal offences need a goal, and an organization did not have a brain to formulate one. Later on, the liability of companies in crimes developed the concept of criminal liability of corporations by attributing actus reus and mens rea to it. [2], *and this is sufficient to make it possible to hold them liable and censure them.* [3] *Criminal Liability is the quality or state of being legally obligated or accountable; legally responsible to another or to society which is enforceable by criminal punishment.*[4] *And therefore, Corporate Criminal Liability means the extent to which a corporation as a legal person can be held criminally liable for its acts and omissions and for those of the natural persons employed by it.*

The doctrine of corporate criminal liability states that a company may be held criminally accountable and convicted for any unlawful activities by its agents as long as it acted within its actual authority. Corporate Criminal Liability is very much efficient in today's world as it poses various numerous issues at different levels due to the size, power, and reach of such businesses as compared to an individual committing a crime.

DOCTRINES ESTABLISHED IN CORPORATE CRIMINAL LIABILITY

The doctrine of Vicarious Liability: In the law of torts, it is stated that the Master is held vicariously liable for the acts committed by the servants. In the case of *Ranger v. The Great Western Railway Company*¹, it was held that the company is vicariously held liable for the offence committed by the employees if it's done in the course of employment. In the case of *Gunston and Tee Ltd v. Ward*,² it does not find criminal law where it states that every person is liable for his own act of offence and not for acts committed by others.

¹ *Ranger v. Great Western Railway* [1859] 4 De G & J 74

² *Gunston and Tee Ltd v. Ward*, 1902

The doctrine of Identification: The act committed by the corporate officers are identified with that of a company where the corporation has no physical existence of the acts committed or guilt of mind by the superior officers in their official capacity, the company shall be held liable.

The doctrine of Collective Blindness: If any single individual, who is considered as a sum total of all the employees to make a corporation liable, is not at fault, then also the corporation will be held liable.

The doctrine of Willful Blindness: If any criminal act is committed and the corporate agent did not take any relevant steps or measures to prevent such act from happening, then this doctrine is applicable.

The doctrine of Attribution: This doctrine was first developed in the U.K. However, it is being used in India now as well. Men's rea (guilty of mind) is attributed towards the directing of mind and will of corporations in the case of imprisonment in the act of violation of criminal law.

The doctrine of Alter Ego: The persons who manage the company are considered to be the alter ego of the company. These persons can be held liable for the acts committed on behalf of the Company. Since the corporation has no body or soul these persons are directing mind and will.

MODELS OF CORPORATE CRIMINAL LIABILITY

Identification Doctrine: It is an English Law Doctrine. This doctrine identifies the liability of the persons who act on the behalf of the company and whose directing mind can be attributed to the corporation is limited to the scope of them working in employment or authority.

The Organizational Model: It defined the corporate criminal liability of an organization. The corporate culture can provide such an environment that will lead to the Commission of Crime.

The Derivative Model: The Corporate Criminal liability of an organization is derived from the individual committing the crime, who is in connection with the organization.

CONCEPT OF CORPORATE CRIMINAL LIABILITY IN INDIA

Earlier before the establishment of the concept of criminal liability in India, Courts did not hold the corporation liable for the crimes. The Court felt that the corporation did not have a guilty mind (*mens rea*) which is an essential ingredient for proving any crime. Being a fictitious legal entity it had no physical existence so there was no one who could be brought to the Court physically for the proceedings. The Law Commission in its 41st report of Law Commission of India first saw that there was an amendment suggested in Sec 62 of IPC. However, the bill which was made lapsed. But the landmark case of *Standard Chartered Bank and Ors. v. Directorate of Enforcement*³ changed the concept of Criminal Liability in the eyes of the Court. Legal proceedings were taken against a bank because it violated the provisions of the Foreign Exchange Regulation Act, 1973. Supreme Court held that a corporation can be held liable despite the mandatory punishment stated under the statute. When a company is held criminally liable, the employees engaged in such crimes are made to suffer a lot- both mentally and financially. There are no levels of liability in the corporate field. There may be directors or officers of the corporation who constitute penalties like civil and criminal or loss of government contracts etc.

The case of *Assistant Commissioner Vs. Velliappa Textiles Ltd.*⁴ is a famous judgment of the Supreme Court of India. The main legal provisions of the case were Sections 276C, 277, 278, and 278B of the Income Tax Act, 1961. The Court held that corporations cannot be held liable and be imprisoned because they cannot be prosecuted under IPC which directs imprisonment. The concept of criminal liability was then established under the Companies Act. Certain amendments had been made regarding the Liability of Directors which replaced The Companies Act, 1956 with The Companies Act, 2013. The Companies Act, 2013 holds the Directors liable and also included whole time directors, key managerial personnel, and such other officers in absence of KMP, specified by the Board of Directors who has participated, in the act without raising any objection under the corporate criminal liability in India.

DEVELOPMENT OF CORPORATE CRIMINAL LIABILITY IN INDIA

Earlier, Indian Courts have held that corporations could not be tried for offences requiring *mens rea* which is an essential requirement of most criminal cases and corporations could not be held for prosecution for offences requiring imprisonment because the corporation is not a physical

³ *Standard Chartered Bank And ors v Directorate Of Enforcement And ors* AIR 2005 SC 2622

⁴ *Asstt. Commissioner vs Velliappa Textiles Ltd.* 2003 TAXMAN 165 SC 132

body and it could not be imprisoned. In the case of *A.K. Khosla v. T.S. Venkatesan*,⁵ two corporations were charged with fraud under IPC. The defendant's counsel claimed that the corporation cannot be held liable for offences falling under IPC due to the lack of mens rea. The court agreed to state the two basic needs for prosecuting corporate bodies: mens rea and the ability to impose mandatory imprisonment, and that a corporation cannot be sentenced to mens rea or imprisonment because it did not have a physical body.

Previously Indian Courts only recognized that companies may act through their directors or officers. However, present judgements solidify the view that the companies are equally guilty as any living person and can equally be held responsible and punishable for committing an act of crime. In the case of *Iridium India Telecom Ltd. v. Motorola Inc.*,⁶ the issue was whether a company could be held liable under Section 420 of the Indian Penal Code, 1860. The Court affirmatively held that even if the offence requires proof of mens rea, a company can be held liable for the act as the guilty mind of the person is controlled by the company and it is 'attributed'. After this case, the doctrines of attribution and imputation were accepted.

RECENT APPROACH TOWARDS THE CRIMINAL LIABILITY OF A CORPORATION AND ITS OFFICIALS

By referring to the law of attribution, it is not clear that a company can still be found guilty even in the offences requiring mens rea. Thus, the corporation can be held liable for offences committed by attributing the criminal intent of the company's directors to the corporation. On question may arise here that can the corporate officials be held liable for the company's action? The Supreme Court, in the case of *Sunil Bharti Mittal vs CBI*,⁷ has answered this question. The Court held that an individual who commits an offence on behalf of the company can be held liable alongside the company. However, to prove an individual liable, there must be adequate evidence of his active engagement as well as criminal intent.

According to the general rule, a director can only be held liable if there is proof of intent against him. The directors must be careful while committing such offence in the Company's name; however, the onus will remain on them to prove that the offence was committed in absence of

⁵ A.K. Khosla And Ors. vs T.S. Venkatesan And Ors. (1992) 1 CALLT 77 HC, (2) CHN 321, 1994 80 CompCas 81 Cal, CriLJ 1448

⁶ Iridium India Telecom Ltd vs Motorola Incorporated & Ors 2010 SC

⁷ Sunil Bharti Mittal vs CBI 2015 SC

their knowledge or approval. In a recent approach in Indian Court, a person cannot be held liable only on the basis of his title. A person who holds the post of chairman cannot be proved guilty only because he is a chairman. A person must fulfill both the legal conditions i.e., being a 'person' in law responsible to the company for the conduct of the company's business, and the 'factual requirement' of being a person in charge of the company's business. In the recent case, *Shiv Kumar Jatia vs State Of Nct Of Delhi* ⁸ the Supreme Court rejected the criminal proceeding which was brought solely on the basis of holding the accused liable as he was the company's managing director and the only non-independent executive director. Also, he was not vicariously liable under IPC due to the lack of insufficient proof of his criminal intent and active engagement. Therefore, until and unless there is adequate evidence against the individual in question the Indian Courts have taken a cautious step and safeguarded corporate officials from harassment by investing authorities.

RECOMMENDATIONS AND CONCLUSION

Though corporations are a boon to the economy, they can pose a serious threat to society as well. Therefore, for the welfare and development of society, the law controlling such corporations must investigate the root cause of the crimes committed. The provisions should also focus upon carrying a business with ease so that no directors have the mind of fear of being criminally liable only on the basis of their designation. While controlling the crime rate, it is only the duty of the legislature to maintain a balance between the welfare of the society and the functioning of a corporation.

The 47th Law Commission has suggested various solutions to deal with the problem:

The judges can impose a penalty if they deem fit for the case.

- Para 8(3) of the 47th law commission report stated that "*in every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is the corporation, it shall be competent to the court to sentence such offender to fine only.*"

⁸ Shiv Kumar Jatia vs State of NCT of Delhi 2019 SC

- In any case, where the offender is a corporation and the offence committed is punishable with imprisonment and any other punishment in which there is no fine imposed, the court shall sentence such an offender to fine.

Legislature failed to incorporate these provisions ignoring these recommendations. This is the reason why it is still very difficult to hold corporations liable and punish them. The corporate scandals are, thus, increasing day by day and are imposing a bad effect on the country. Though there is much development in India, corporations are still not held criminally liable and even if punishments are given to them, no punishment of imprisonment is given. Only fines are imposed on them. The significance of the corporate culture must be attached both formally and informally, in rules and practices wherein the corporation is considered as a conduct element of the offence which has been committed by it when the cause of the crime came from the culture of the Corporation. Various laws and regulations should be made under several Acts to give proper punishments in such criminal liability. Corporate immunities cannot claim immunity only on the basis that they don't have a physical body and they lack mens rea. The person involved in such a crime can be held liable for their acts in the company. Though corporate crimes are much in volume today, there are certain major changes needed in the methods to tackle them because the methods are still in their pre-mature stage and the statutes are out of sync with the developments.

