

“Corporate Criminal Liability – A Critical Legal Study”

*V. Vijaya Lakshmi,
Research Assistant,
DSNLU.*

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

A crime is said to be committed by a human being. The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable. A corporation is a separate legal entity and considered a legal person but the law is in contradiction if the company without a soul and body could be held liable for the criminal act or not. A corporate body can also undertake a crime. The acts of the corporation are the acts of its officers, directors, and employees; they may commit crimes, which benefit them personally by injuring the corporation or without affecting the corporation or crimes, which benefit both themselves and the corporation. Individual agents of a corporation can engage in a wide variety of actions, they may violate economic or regulatory statutes, commit offenses involving criminal intent as well as strict liability offences and even commit offences involving personal violence, therefore a corporation can be made criminally liable for unlawful acts done by its agents when they are acting within the scope of authority, which will result in corporate criminal liability. Accepting the connivance of corporations in crime, the principles of imposing liability have been developed in several jurisdictions by attributing actus reus and mens rea to the corporations. This doctrine of corporate criminal liability is increasingly gaining importance all over the world and is a recognized principle in India, after the landmark judgment of Standard Chartered Bank v. Directorate of Enforcement(2005) 4 SCC 530.

Key words: Company Law, Corporate Criminal Liability, actus reus, mens rea, Corporations.

INTRODUCTION

With the industrialization and globalization, large-scale corporations are coming up throughout the world and are acquired dominant position since the past two centuries, with the development of corporations, they have become a significant actor in our economy, our society runs in the risk of being victimized by these corporations, and therefore they should be deterred too. Some of these corporations have assets and facilities in other countries apart from their home country as well and such corporations are known as Multi-National Corporations (MNCs). Multinational corporations have come to play a huge role in most aspects of human life today¹. Large multinational corporations have come to dominate the national and global economic scene. Corporations have their own identity, they have separate legal personality and they are different from their members², and this is not sufficient to make it possible to hold them liable and censure them. Imposition of punishment, upon offenders of any kind, can be understood by the various rationale of criminal law jurisprudence, but deterrence is the rationale that is applicable to such economic entities as corporations. For the most part, just individuals can carry out the offence; the prior view was that an organization ought not to be liable of wrongdoing. The criminal blame required a purpose and an organization not having a brain could frame no aim. What's more, an enterprise had no body of its own, which could be detained. The special case to this standard is that the corporate bodies can be held subject for the corporate wrongdoings. The courts are probably going to force the risk on the officer-in-control or chiefs or different people acting inside the extent of work³. In layman's terms, the doctrine of corporate criminal liability is essentially the doctrine of respondent superior, which has been imported into criminal law from tort law. This doctrine states that a corporation can be made criminally liable and convicted for the unlawful acts of any of its agents, provided those agents were acting within the scope of their actual or apparent authority⁴.

¹ <https://www.lawctopus.com/academike/corporate-criminal-liability/>

² Salomon v. Salomon & Co., 1897 AC 22; (1895-99) All ER Rep 9 (HL)

³ International Journal of Research and Analytical Reviews 521, Vol.5, Issue 2, April – June 2018

⁴ Ibid

Historically, the criminal law has been a vehicle for deterrence moreover the Corporations are increasingly becoming significant in our economy to the extent of which their actions can victimize the whole society, they too should also be deterred. Corporations have their own identity, separate from that of their members and this very fact makes it impossible to blame and censure them. Thus, Corporate Criminal Liability is indeed a necessity in today's world⁵.

The concept of Corporate Criminal Liability

A corporation is a group of individuals deemed in law to be a single legal entity. It is legally distinct from all the individuals who compose it. It has legal personality in itself and can accordingly sue and be sued, hold property and transact, and incur liability⁶. 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 punishment⁷. 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.

Commentators to this idea contend that the corporate criminal liability is pointless on the accompanying two grounds, firstly they contend that it is not the corporations that carry out violations; the people do. Besides, the retributive impact is borne by the investors and buyers. It implies that the expense of corporate criminal fines and sanctions borne by the inverters and the consumers for the acts of the company⁸.

Evolution of Corporate criminal liability

It was the common intent of the general population in mid-sixteenth and seventeenth hundreds of years that the enterprises could not be held criminally liable it has no soul, consequently, it cannot have "actual wicked intent". During the mid-twentieth century courts started to hold, corporate criminally at risk in different regions in which implementation would be obstructed without corporate liability. Real obstacles that confronted the attribution of criminal risk on

⁵ <https://acadpubl.eu/hub/2018-119-17/1/63.pdf>

⁶ Walker, *The Oxford Companion to Law*, Clarendon Press (1980), p.20.

⁷ Black's Law Dictionary (9th edition), p. 997

⁸ http://ijrar.com/upload_issue/ijrar_issue_834.pdf

corporates. Were factors, for example, false juristic identity and non-appearance of mens rea with respect to the corporate.

The idea of the criminal liability of companies has had an alternate advancement under common law frameworks when contrasted with its improvement under precedent-based law frameworks. In the meantime, under the common law or precedent-based law frameworks, the corporate criminal liability has grown distinctively to mirror the recorded and financial substances of various nations. The historical evolution of corporate criminal liability shows that corporate criminal liability is consistent with the principles of criminal law and the nature of corporations. Furthermore, the development of theories of corporate criminal liability reveals that criminal liability of corporations is part of an important “public policy bargain. The bargain balances privileges granted upon the legal recognition of a corporation, such as limited liability of corporate shareholders and the capability of a group of investors to act through a single corporate form, with law compliance and crime prevention pressures on the managers of the resulting corporate entity.”⁹

The advancement of corporate criminal liability has turned into a major issue for the investigators and courts that need to decide the criminal risk. In the customary law world, built up to standards in tort law, the English courts perceived corporate criminal liability amidst the only remaining century for statutory offences where mens rea was not required. The development in Indian law is similar to that in English law. Earlier, courts viewed that a judicial entity was incapable of having mens rea, and therefore a corporation cannot be indicated for an offence involving mens rea.¹⁰ However, in *Gopal Khaitan v. State*¹¹ courts have adopted a changed view and stated that a corporation can be held liable for mens rea offence referring to a dictum of Lord Denning. Courts in India like in England, while trying to attribute criminal liability to corporations for mens rea offence, have attempted to identify the mens rea, in a single individual, who is to be a high ranking official. In India, the standards of vicarious risk have additionally been stretched out to criminal law in a constrained way to specific conditions like break of statutory commitments of a business or other administrative offenses where mens rea

⁹Richard Gruner, *Corporate Criminal Liability and Prevention* 2-7, Law Journal Press ed.,2nd Release,2005, pp. 2-7.

¹⁰ *Sunil Chandra Banerjee v. Krishna Chandra Nah* A.I.R. 1949 Ca1.689.

¹¹ A.I.R. 1969 Ca1.132.

isn't a basic component of wrongdoing or where there is liability as an occupier of land as expressed in sec.154 of the Indian Penal Code, 1860¹².

Theories of Corporate Criminal Liability

Generally, a corporate entity may commit the crime in any one of the two ways: -

1. Where the crime does not require intent i.e. pollution, food adulteration and several other acts or omissions, which give rise to tortious liability
2. Where the crimes require intent, for example, offences against property, in all its forms.

Identification Theory

This theory specifically developed to hold corporations liable in case of offences, which required the presence of mens rea. This theory stipulates that the actions and the mental stage of the corporation found in the action stage of the employees or the directors are to be considered the action and mental stage of the corporation itself.

In *Tesco Supermarkets Ltd v. Natrass*¹³ Lord Reid said: "The person who acts is not speaking or acting for the company. He is acting as the company and his mind, which directs his acts, is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company." This test is otherwise called modify the sense of self test and as coordinating personality and will hypothesis. This test is connected in the English courts for distinguishing proof or controlling and coordinating the personality of the organization to decide the criminal liability of companies.

Due to the rapid pace of globalization of business and the evolution of transnational corporations, it has become very essential to determine the concept of corporate criminal liability. In *State of Maharashtra, v Syndicate Transport Co. Pvt. Ltd.*¹⁴ as quoted in *Rachana Flour Mills Pvt. Ltd. v Lalchand Bhanadiya*¹⁵ the Andhra Pradesh High Court observed that:

¹² http://shodhganga.inflibnet.ac.in/bitstream/10603/200004/14/14_summary.pdf

¹³ (1972) AC 153

¹⁴ AIR 1964 Bom.195

¹⁵ (1987) 62 Comp CAs 15 AP

“Numerous corporate bodies have come into existence. These corporate bodies necessarily act through the human agency of their directors or officers and authorized agents. These seem to be no reason to exempt them from liability for crimes committed by their agents or servants while purporting to act for or on behalf of the corporate bodies. The ordinary citizen is now very much exposed to the activities of persons acting, in the name of corporate bodies.”

Vicarious Liability (Respondent Superior) Theory

Originally, this doctrine developed in the context of tortious liability, which was later imported into company liability. This particular doctrine states that a person is liable to answer for the acts of another. In the case of companies, the company may be held liable for the acts of its employees, agents, or any person for whom it is responsible. This was adopted in the case of *Canadian Dredge & Dock Co. v The Queen*¹⁶ The courts have provided various reasons to justify the corporation's liability for the acts of agents. A corporation can be held liable for the acts of its agents -

- a) commit a crime
- b) within the scope of employment
- c) with the intent to benefit the corporation. This was clearly held in *United States v.A.P. Trucking Co*¹⁷

Aggregation Theory

The theory of Aggregation is a contribution of the American Federal Courts to the subject of Corporate Criminality. There might be situations where a corporate wrong might be the consequence of a blend of the blameworthy personality of numerous people. By accumulating the acts of at least two people, the actus reus and mens rea can be removed from the lead and learning of a few people.

Corporate Criminal liability in the USA

Initially, corporations were not held criminally liable for corporate activities as a corporation was considered a fictitious legal entity incapable of forming the requisite mens rea necessary for the

¹⁶(1985) 1SC R662)

¹⁷ 358 U.S. 121 (1958)

commission of a crime. The Supreme Court ultimately rejected this notion in 1909 in *New York Central and Hudson River Rail Road Co. v. U.N*¹⁸ clearly held that a corporation is liable for crimes of intent. In *H. L Bolton and Co. Ltd v. T.J Graham and sons*¹⁹ Lord Denning Observed: A company may in many ways be likened to a human body. They have a brain and a nerve center, which controls what they do. They also have hands, which hold the tools and act in accordance with directions from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what they do. The state of mind of these managers is the state of mind of the company and is treated by law as such. Therefore, will find that in a case where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. *Lennard's Carrying Company Ltd v. Asiatic Petroleum Co. Ltd*²⁰ Lord Haldene's held that, in the criminal law, in cases where the law requires a guilty mind of directors or the managers will render the company themselves guilty.

Corporate Criminal Liability in the United Kingdom

*Mousell v. London and North Western Railway*²¹ this is the first case in the UK. The company, in this case, was held liable for an offence, which required mens rea, the act of its manager in giving a false account with intent to avoid payment of tolls. In *R v ICR Haulage Ltd*²² the court of criminal intrigue held that there was no reason in law why such an arraignment ought not to lie. On the realities, there was obviously no inquiry that, if corporate risk were to join in any conditions, that the contemptibility of overseeing executive of a two-chief private family organization would be imputable to the organization. In applying this thinking to the custom-based law offense of trick to cheat, for this situation court took the recognizable proof or change sense of self hypothesis above and beyond. Despite the fact that the judgment stayed saved, still, it is by the by an extraordinary improvement in the criminal liability of enterprises. In the case of

¹⁸ 53 L Ed; 613: 212 U.S 481, 1908.

¹⁹ 3 ALL ER 624 at, 1956, 632.

²⁰ 1915 AC 705: 113 LJ 195.

²¹ 1917 2 KB 845.

²² 1944 KB 551,559

Tesco Supermarkets Limited v. Natrass²³, Tesco relied on the defense of the "act or omission of another person" who in this case was a store employee, to show that they had taken all reasonable precautions and due diligence necessary to not be criminally liable. Lord Reid held that, in order for liability to attach to the actions of a person, it must be the case that "The person who acts is not speaking or acting for the company. He is acting as the company and his mind, which directs his acts, is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company."

Corporate Criminal Liability in India

State of Maharashtra v. Syndicate Transport²⁴ It was held that the company cannot be prosecuted for offences which necessarily entail consequences of a corporal punishment or imprisonment and prosecuting a company for such offences would only result in the court stultifying itself by embarking on a trial in which the verdict of guilty is returned and no effective order by way of sentence can be made.

In the case of Assistant Commissioner v. Velliappa Textiles Ltd²⁵, it was held by a larger part choice that an organization can't be arraigned for offences, which require inconvenience of a compulsory term of detainment combined with a fine. Where the discipline gave is both detainment and fine, the court can't just force fine. This difficulty was noticed by the Law Commission of India and in its 41st report the Law Commission of India suggested an amendment to section 62 of Indian Penal Code by adding the lines: "In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only."

In A.K.Khosla v S.Venkatesan,²⁶ two corporations were charged with having committed fraud under the IPC. The Magistrate issued process against the corporations. The court, in this case, pointed out that there were two pre-requisites for the prosecution of corporate bodies, the first being that of mens rea and the other being the ability to impose the mandatory sentence of

²³ (1971) UKHL 1

²⁴ 1963 Bom. L.R, 197

²⁵ AIR 2004 SC 86.

²⁶ Cr LJ. 1448, 1992.

imprisonment. A corporate body could not be said to have the necessary mens rea, nor can it be sentenced to imprisonment, as it has no physical body.

It was held by the Allahabad High Court that "A company is a juristic person cannot obviously be sentenced to imprisonment as it cannot suffer imprisonment. It is settled law that sentence or punishment must follow conviction; and if only corporal punishment is prescribed, a company, which is a juristic person, cannot be prosecuted, as it cannot be punished. If, however, both sentence of imprisonment and fine is prescribed for natural persons and juristic persons jointly, then, though the sentence of imprisonment cannot be awarded to a company, the sentence of the fine can be imposed on it. The legal sentence is the sentence prescribed by law. A sentence which is in excess of the sentence prescribed is always illegal, but a sentence which is less than the sentence prescribed may not in all cases be illegal."²⁷

Assistant Commissioner V. Velliappa Textiles Ltd²⁸ in this case, the Court focused on two of the important maxims:

- “Lex non cogit ad impossibilia” which means “the law forces not to impossibilities”.
- “Impotentia excusat legem” which means, “impossibilities excuses the law”.

The Supreme Court held that the respondent organization could not be prosecuted for offences under specific segments of the ITA in light of the fact that every one of these areas required the burden of an obligatory term of detainment combined with a fine. The segments being referred to left the court helpless to force just a fine. Enjoying a strict and exacting investigation, the Court held that a company did not have a physical body to detain and thusly couldn't be condemned to detainment. Further, the Indian Supreme Court was of the view that the administrative command was to disallow the courts from going astray from the base compulsory discipline endorsed by the Act. The Court noticed that when deciphering a corrective resolution, if more than one view is conceivable, the court is obliged to lean for the development that exempts a charged from punishment as opposed to the one that forces the punishment.

²⁷ Oswal Vanaspati & Allied Industries V State Of Uttar Pradesh (1993) 1 Comp. LJ 172

²⁸ (2004) 1. Comp. L.J. 21.

In the case of Iridium India Telecom Ltd v. Motorola Incorporated Co.,²⁹ the apex court emphasized: "... a corporation is virtually in the same position as an individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons are so tense that a corporation may be said to think and act through the person or the body of persons."

The Apex Court in Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.³⁰ made the situation perfectly clear. It had overruled the past perspectives in regards to the precept of corporate criminal obligation. The court held that there is no sweeping resistance for any enterprise from the arraignment of offences in light of the fact that the indictment requests a required detainment. The summit court chose that in instances of offenses, which command both detainment and fine, the enterprises ought to be rebuffed with a fine.

In India Corporate Criminal Liability Pre-Standard Chartered Bank Case

In A.K.Khosla v S.Venkatesan,³¹ two corporations were charged with having committed fraud under the IPC. The Magistrate issued process against the corporations. The court, in this case, pointed out that there were two pre-requisites for the prosecution of corporate bodies, the first being that of mens rea and the other being the ability to impose the mandatory sentence of imprisonment. A corporate body could not be said to have the necessary mens rea, nor can it be sentenced to imprisonment, as it has no physical body. A company accused and arraigned under the Terrorists and Disruptive Activities Prevention (TADA) Act, was alleged to have harbored terrorists, trial court convicted the company Sec. 3(4) of the TADA Act- appeal SC referred definition "Harbor" sec.52A IPC – nothing to indicate mens rea excluded³².

There is uncertainty over whether a company can be convicted for an offence where the punishment prescribed by the statute is imprisonment and fine. The controversy was first

²⁹ (2011) 1 SCC 74

³⁰ (2005) 4 SCC 530

³¹ Cr.L.J.1448, 1992

³² Kalpanath Rai v State (Through CBI)(1997) 8 SCC 732

addressed by Supreme Court held that mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, but where it cannot be imposed, namely on a company then fine will be the only punishment.³³ Supreme Court held that the corporation could be prosecuted and punished, with fines, regardless of the mandatory punishment required under the respective statute³⁴. In Velliappa Material Case, the bank could be indicted and rebuffed for an offense including rupees one lakh or less as the court had an alternative to force a sentence of detainment or the fine. Notwithstanding, on account of an offense including a sum surpassing rupees one lakh, where the court isn't offered attentiveness to force detainment or fine that is, detainment is obligatory, the bank couldn't be prosecuted.

Corporate Criminal liability Post Standard Chartered Bank Case

The apex court held that a corporation is virtually in the same position as an individual and may be convicted under common law as well as statutory offences including those requiring mens rea.³⁵ The Indian jurisprudence on corporate criminal liability is limited to a few cases. The 47th Law Commission report has recommended that all criminal liability and punishment should be linked with the corporation and not merely with the name of the director or manager.³⁶ As far as punishment is concerned, the Law Commission suggested that Section 62 of IPC be amended to read, "in every case in which the offence is punishable with imprisonment only and not any other punishment, and the offender is a corporation it shall be competent for the court to sentence such offender to fine."³⁷ Besides this, punishing the individual concerned would be in order. The Draft Amendment Bill to the IPC also contains provisions relating to corporate criminal liability but the amendment is yet to see the light of the day. The present scenario in India is indeed at the most formative of stages.

Conclusion

Corporations have attracted the life of people for good and bad with the development of society. Corporate criminal liability is steadily gaining importance in the spheres of social concern such

³³ M V Javali v Mahajan Borewell & Co and Others

³⁴ Standard Chartered Bank and Ors. V Directorate of Enforcement and Ors. (2005) 4 SCC 530

³⁵ Iridium India Telecom Ltd. V Motorola Incorporated and Ors. AIR 2011 Sc 20

³⁶ Law Commission of India. 47th Report: Trial and Punishment of Socio-Economic Offences, para 8.1

³⁷ Ibid

as consumer protection, environmental law, and occupational health and safety norms. To the betterment of society and to protect the innocent public from exploitation, the crimes by the higher units of the society should be controlled or stopped if possible. India has attempted strict methodology in deciding the risk of a corporate body for the proposed demonstrations submitted by its chiefs, people utilized and different operators. Corporate crimes cannot be dealt with by implementing more laws or governance practices, but rather by effective and stringent action against the perpetrators. To combat corporate crimes, the regulatory mechanism would have to be strengthened and provisions would have to be made for the imposition of stringent legal penalties.