A Critical Study on Corporate Criminal Liability with Reference to Indian Case Laws

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Abstract
The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable. Legal thinkers did not believe that corporations could possess the moral blameworthiness necessary to commit crimes of intent. It was the common intent of the people that a corporation has no soul, hence it cannot have “actual wicked intent”. It cannot, therefore, be guilty of crimes requiring “malus animus.” Treason, felony, perjury, and violent crimes against the person could be committed only by natural persons. Courts in England drew some distinctions, however, between crimes requiring specific intent and those for which general intent would suffice. In one sense the acts of the corporation are the acts of its officers, directors, and employees. During the early twentieth century courts began to hold corporations criminally liable in various areas in which enforcement would be impeded without corporate liability. Indeed, courts were soon willing to hold corporations criminally liable for almost all wrongs except rape, murder, bigamy, and other crimes of malicious intent. The old school of thought was that the corporate acts through its directors and officers, and should not attract criminal liability.

Key Words: Company law, corporate criminal liability, actus reus, mens rea, corporations.
1. Introduction

“Corporate bodies are more corrupt and profligate than individuals, because they have more power to do mischief, and are less amenable to disgrace or punishment. They neither feel shame, remorse, gratitude nor goodwill Hazlitt.”

The origin of the concept of criminal liability of corporate bodies is identified by the judiciary’s relentless struggle to overcome the crisis of assigning the criminal blame to the fictional entities. The communication technologies and advancement in information have made the world borderless and corporate activities have become global through these network systems, thus making commission of corporate crime easier, more sophisticated and at the same time more complicated. This has become particularly relevant in a legal system which is solely based on the moral accountability of individuals. The Corporation is a body that is granted a charter and can be recognised as a separate legal entity which has its own privileges, rights and liabilities distinct from its members. With the onset of the new trends and trade regime, national laws are being empowered to change the corporations to get the first right over natural and community resources and also the right to hire and fire at will. Under the existing legal rule in courts of law and in most states, the corporate bodies can be held criminally liable for any act committed by an employee as long as that act is committed only within the scope of employment and with some intent to benefit the employer. This principle of corporate criminal liability is based on the doctrine of respondeat superior which is commonly known as ‘The rationale for imposing criminal liability upon corporations’ and is often expressed in terms of justifications sole for the purpose of punishing corporations for their actions. The basic rule of criminal liability is that it revolves around the Maxim ‘actus non facit reum, nisi mens sit rea’. 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 victimise 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 an necessity in today’s world. Therefore this paper tries analyse the punishment for CCL and its impact of the CCL in modern industrial world.

Research Question

Whether the failure to identify company as a natural person promotes the intent of the corporation to commit crime?

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1 Celia Wells, Corporations and Criminal Responsibility.
2 Shouvik Kr. Guha & Abhyudaya Agarwal, Criminal Liability Of Corporations: Does The Old Order Need To Change?.
2. Reviews of Literature

Corporate crime is evil the conduct of a Corporation. Occurs due to the employer or employees acting on its behalf (Singh 2013). The origin of this corporate Liability started in the 1990’s with the advent in the USA. The popular case was the Euron case (Ilia pop 2006). It evolved to tackle the offences committed by individuals. Because with growth the corporations are susceptible to more economic crimes (law report 2013 india). Ordinary criminal law together with conceptual tools to attach liability can be used. This helps to regulate corporate behaviour (Bhaskar. Umakanth 1996). For the past 50 years the US. Scholars have rejected the idea of CCL. They argued that it was strictly eliminated/strictly limited (Beale 2009). This is based on the economical theory of Optimal Penalties. This has developed considerably since Becker’s insight (Cohen 1996) The jurists treat corporate defendants as less favourable than individual defendants. This was inferred from the deep pockets theory favoured by the jurists (MacCoun 1996). This involves the action and mental stage of directors as well as the company. This was held by SC Canda in the famous of ‘Dredge and Dock’ (V.K.Aggarwal 2015). The Corporate criminality challenges or nags the act of our sense of reality. This is a peculiar feature that makes CCL a tricky one (Kamble 2008). Many critics argued about this undue extension of this concept. But this would deviate in the actual purpose and scope (Wells 1993). Usually the punishment ends with imprisonment. But corporates are only confined to punishment (Singhvi 2006). This is a new area of law where judiciary and legislative should work together. In 2002 Donald a Rumsfeld spoke about ‘known knowns’ (Andharia 2003). Revolves around the maxim of ‘Actus non facit reum nisi mens sit rea’. This is the Principle of CCL in technical sense (Sahu 2001). The legal thinkers did not believe in the corporate personalities. So no moral, blameworthiness to commit crimes with criminal intent (Elkins 1976). The modern criminal law forces the possibility of this. Corporates can be held liable for their criminal perpetration of an offence (Thiyagarajan T.Sivanathan). CCL lead to increase in demand for law and to recognise the change/suit its applications. In the last few decades complexities have evolved (Balakrishnan. K). The criminal Liability is attached only for a criminal offence. This is based on two elements the Actus reus and Mens Rea (Anand 2000). The corporations play a significant role in regulating business. But the modern system of law overlooks this concept (Russell 2001). It has become very difficult to define the CCL in the present day scenario. This covers a wide range of offences (Williams 2012). This is based on the conduct of the corporation or the employees. They who act on behalf of the corporation (Ditton 1985).

3. Objective

To acknowledge the present status of India as to where it stands on Corporate Criminal Liability and how the judicial decisions are inconsistent with the existing legal provisions. Furthermore, to provide the current situation about the
corporate criminal liability in the International scenario.

**Null Hypothesis**

The common intent is that the corporations cannot have ‘an actual wicked intent’.

**Alternate Hypothesis**

The corporations can be held liable as they have separate legal personalities.

4. **Methodology**

This paper depends on secondary data. The secondary data is collected from books, journals, articles and e-sources. This research paper is analytical and descriptive in nature.

5. **Sources of Study**

The data are collected from various sources like newspaper, journals, websites and books. The data gathered will help in identifying key parameters to examine through further exploration and thus help in defining the objectives of the research.

The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable. Legal thinkers did not believe that corporations could possess the moral blameworthiness necessary to commit crimes of intent. It was the common intent of the people that a corporation has no soul, hence it cannot have "actual wicked intent". It cannot, therefore, be guilty of crimes requiring "malus animus." Treason, felony, perjury, and violent crimes against the person could be committed only by natural persons. Courts in England drew some distinctions, however, between crimes requiring specific intent and those for which general intent would suffice. In one sense the acts of the corporation are the acts of its officers, directors, and employees. During the early twentieth century courts began to hold corporations criminally liable in various areas in which enforcement would be impeded without corporate liability. Indeed, courts were soon willing to hold corporations criminally liable for almost all wrongs except rape, murder, bigamy, and other crimes of malicious intent. The old school of thought was that the corporate acts through its directors and officers, and should not attract criminal liability. It has been argued that punishment for criminal offences such as imprisonment cannot be conferred on companies and, hence, there cannot be criminal liability on companies. Major hurdles that faced the attribution of criminal liability on corporates were factors such as artificial juristic personality and absence of mens rea on the part of the corporate.

**Criminal Liability of Corporation in India**

All the Penal liabilities are generally regulated under the IPC, 1860 in India. It is this statute which needs to be pondered upon in case of criminal liability of
corporation. Corporations play a significant role not only in creating and managing business but also in common lives of most people. That is why most modern criminal law systems foresee the possibility to hold the corporation criminally liable for the perpetration of a criminal offence. The doctrine of corporate criminal liability turned from its infancy to almost a prevailing rule.

In India, the need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and under-takings as well as by Transnational Corporations. Many of these industries are engaged in hazardous or inherently dangerous activities which pose potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though working of such factories and plants is regulated by a number of laws of our country, there is no special legislation providing for compensation and damages to outsiders who may suffer on account of any industrial accident.

**Standard Chartered Bank and Ors. v. Directorate of Enforcement (2005) 4 SCC 530**

This is the landmark case in which the apex court overruled the all other laid down principles. In this case, Standard Chartered Bank was being prosecuted for violation of certain provisions of the Foreign Exchange Regulation Act, 1973. Ultimately, the Supreme Court held that the corporation could be prosecuted and punished, with fines, regardless of the mandatory punishment required under the respective statute. The Court did not go by the literal and strict interpretation rule required to be done for the penal statutes and went on to provide complete justice thereby imposing fine on the corporate. The Court looked into the interpretation rule that that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. The Court initially pointed out that, under the view expressed in Velliappa Textiles, the Bank could be prosecuted and punished for an offense involving rupees one lakh or less as the court had an option to impose a sentence of imprisonment or fine. However, in the case of an offense involving an amount exceeding rupees one lakh, where the court is not given discretion to impose imprisonment or fine that is, imprisonment is mandatory, the Bank could not be prosecuted. The Supreme Court in Standard Chartered Bank observed that the view of different High Courts in India was very inconsistent on this issue. For example, in State of Maharashtra v. Syndicate Transport, the Bombay High Court had held that the company could not be prosecuted for offenses which necessarily entailed corporal punishment or imprisonment; prosecuting a company for such offenses would only result in a trial with a verdict of guilty and no effective order by way of a sentence. Justice Paranjape had stated: “the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of the offence disclosed by the allegations in the complaint.
or in the charge-sheet, the relative position of the officer or agent, vis-a-vis, the corporate body and the other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act…’”

On the other hand, in Oswal Vanaspati & Allied Industries v. State of Uttar Pradesh, the appellant-company had sought to quash a criminal complaint, arguing that the company could not be prosecuted for the particular criminal offense in question, as the sentence of imprisonment provided under that section was mandatory. The Full Bench of the Allahabad High Court had disagreed: “A company being 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 fine can be imposed on it. 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 may not in all cases be illegal”.

Inference

The well known maxim ‘judicis est jus dicere, non dare’ best expounds the role of the court. It is to interpret the law, not to make it. This read with the Doctrine of Separation of Powers has bound the Court’s hands in imposing various kinds of punishments and all that it is left with is to impose fines. In order to avoid compelling the Courts to go out of the statute and interpret and therefore define the law which is essentially the task of the legislature, it is advised that the legislature amends the various penal statutes in a way so as to bring in various forms of punishments for the corporations as well, thereby maintaining the separation of powers regime and hence the rule of law.

It must be stated that environmental degradation resulting from industrial pollution in recent years has become a positive danger to social security. Legal provisions are therefore incorporated in the Indian Penal Code, to punish industrial and business organizations which create danger to public life by polluting water, and District Magistrate can initiate proceedings against them under Section 133 of the code of Criminal Procedure, 1973. Section 16 of Environment (Protection) Act, 1986 and Clause 2 of Section 47 of Water (Prevention and Control Pollution) Act, 1974 also explicitly lays down provision for the offences by companies. It states companies can be prosecuted under certain circumstances and thus, reflect the concept of vicarious criminal liability.

Can Criminal Liability of Corporation be Determined through Imprisonment?

It is always a debatable issue and almost agreeable that Corporation cannot be sentenced for imprisonment. Imprisonment, transportation, banishment,
solitude, compelled labour are not equally disagreeable to all persons under the penal code. It totally depends upon the circumstances of the person for the imposition of punishment. But, in case of corporation, Imprisonment cannot be recognised even for serious offences mentioned under the IPC. Since, there is no explicit provision relating to it, Hence the apex court in various cases have held that it is better to impose fine upon the corporation even in the cases where there is a punishment for imprisonment. The imposition of fines may be made in four different ways as provided in the IPC. It is the sole punishment for certain offences and the limit of maximum fine has been laid down; in certain cases it is an alternative punishment but the amount is limited; in certain offences it is imperative to impose fine in addition to some other punishment and in some it is obligatory to impose fine but no pecuniary limit is laid down. However, Section 357, CrPC, empowers a Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence. The argument that a corporation has no soul to damn and no body to imprison cuts both ways. Critics use it to argue that there is no reason to prosecute a corporation. Supporters of corporate criminal liability might turn the argument around and ask what’s the big deal, since the corporation can’t go to jail? Corporate liability may appear incompatible with the aim of deterrence because a corporation is a fictional legal entity and thus cannot itself be “deterred.” In reality, the law aims to deter the unlawful acts or omissions of a corporation’s agents. To defend corporate liability in deterrence terms, one must show that it deters corporate managers or employees better than does direct individual liability. The legal difficulty arising out of the above situation was noticed by the Law Commission and in its 41st Report, the Law Commission suggested amendment to Section 62 of the Indian Penal Code by adding the following 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.” As per the jurisprudence evolved till then, under the present Indian law it is difficult to impose fine in lieu of imprisonment though the definition of ‘person’ in the Indian Penal Code includes ‘company’. It is also worthwhile to mention that our Parliament has also understood this problem and proposed to amend the IPC in this regard by including fine as an alternative to imprisonment where corporations are involved in 1972. However, the Bill was not passed but lapsed. Such a fundamental change in the criminal jurisprudence is a legislative function and hence the Parliament should perform it as soon as possible by also considering the following arguments. Till now, the Courts in India have been able to impose only fine as a form of punishment because of statutory inadequacy and lack of new forms of punishments which could be imposed upon corporates. But the recent judgments in India make it clear that corporations are liable to be prosecuted for offences under Indian Penal Code. With this, India is now in same platform with other jurisdictions such as the US and the UK when it comes to law in relation to criminal liability on corporation.
**International Scenario**

In the modern day world, the impact of activities of corporations is tremendous on the society. In their day to day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the category of crimes. For instance, the Uphaar Cinema tragedy or thousands of scandals especially the white collar and organized crimes can come within the categories that require immediate concern. Despite so many disasters, the law was reluctant to impose criminal liability upon corporations for a long time. A basic principle of German law is societas delinquere non potest, which means that a corporate body cannot be liable for a criminal offence. The argument is that the human element is missing and that the creation and operation of slush funds, as well as giving bribes, are all human acts and not the acts of the company itself. But Germany has developed an elaborate structure of administrative sanctions, which includes provisions on corporate criminal liability. These so-called Ordnungswidrigkeiten are handed down by administrative bodies. The key provision for sanctioning the corporation is Section 30 Ordnungswidrigkeitengesetz, which calls for the imposition of fines on corporate entities. The criminal sanctions are quite high and criminal liability of a company is recognized by the Australian Legislation. Moreover, the Australian legislature have introduced criminal liability of directors. For more than fifty years, most criminal law and corporate scholars in the United States have been opposed to corporate criminal liability, arguing that it should be eliminated or at least strictly limited. In the US and the UK, it has been a settled principle that corporates can be held criminally liable. Companies have been open to manslaughter proceedings since 1965. Until then, English law abided by the principle laid out by a 17th century judge, who deemed, "Companies have a soul to damn, but no body to kick". Way back in 1909, in New York Central and Hudson River RailRoad Co v. United States, Supreme Court in the US had held that a corporation is liable for crimes of intent and stated: "We see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of the respected, as are the rights of natural persons, the Court nonetheless stated that the law "cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interstate commerce is almost entirely in their hands." In HL Bolton (Engg) Co Ltd vs TJ Graham & Sons, Lord Denning stated that, "The state of mind of these managers is state of mind of company, and it is treated by law as such. So, in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of company."Beginning in the 1970s, nations throughout western European began creating or expanding corporate criminal liability, rather than contracting or eliminating it. France had also not recognized corporate criminal liability since the French Revolution, the new Code Pénal of 1992 makes specific mention of this concept in section 121(2). The resistance to not including corporate criminal liability in the criminal code had increased.
over the years, and in 1982 the “Conseil Constitutionnel” had made it clear that the French Constitution did not prohibit the imposition of fines on a corporation. Corporate criminal liability is an integral part of Japanese law. There are currently more than 700 criminal provisions on the national level alone, which can punish entities other than individuals, and this number is likely to increase in the coming years. China’s Criminal Code, which was first introduced in 1979, did not contain a provision on corporate criminal liability until 1997. Prior to the introduction of “unit crime” into the Criminal Code in Article 30. The Concept of Criminal liability of Corporation is also mentioned under various International document. A number of conferences have dealt with the same issues since the end of World War II. Among them are the 8th International Conference of the Society for the Reform of agents, acting within the authority conferred upon them. Recognizing that the rights of corporations Criminal Law in 1994 in Hong Kong and the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment in Portland, in 1994. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders of 1985 in Milan mentioned that “due consideration should be given by Member States to making criminally responsible not only those persons who have acted on behalf of an institution, corporation or enterprise, or who are in a policy-making or executive capacity, but also the institution, corporation or enterprise itself, by devising appropriate measures that could prevent or sanction the furtherance of criminal activities.” In 1998, the Council of Europe passed the Convention on the Protection of the Environment through Criminal Law, which stipulated in Article 9 that both “criminal or administrative, sanctions or measures” could be taken in order to hold corporate entities accountable.

6. Conclusion and Suggestions

India is hunting to curb the incessant pace of corruption in its governance, which is generally being hit by a spate of large-scale corporate scandals. In this context, to fix liability for corruption and bribery offences, it becomes relevant to examine criminal liability, not just of individual directors or agents of a corporation, but also of the company itself. Although considerable debate surrounds society’s increasing reliance on criminal liability to regulate corporate conduct, few have questioned in depth the fundamental basis for imposing criminal liability on corporations. Accordingly Courts is based on the maxim lex non cogit ad impossibilia, which tells us that law does not contemplate something which cannot be done. The statutes in India are not in pace with these developments and the above analysis shows that they do not make corporations criminally liable and even if they do so, the statutes and judicial interpretations impose no other punishments except for fines. It is apparent from the current action that some serious measures must be taken in relation to the criminal liability of corporation of India so that it could be stopped from the multiple dimensions of the court’s decision.
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