A Study on Civil and Criminal Liability of Directors

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Abstract

The present paper manages one of the critical parts of organisation law i.e. Civil and criminal liability of directors. Directors are recognised as agents and are regularly viewed as the cerebrum of the organisation. The duty of director is to direct, oversee and control the undertakings of the company firm. Along these lines it is important to manage the power and elements of directors with the goal that they can't act ultra vires. The researcher through present paper will endeavour to get light the obligation of director for each wrong dedicated by him while practicing his energy and capacity. Directors are operators of the Company in exchanges they go into in the interest of the Company, however they are not specialists for singular investors or individuals. An executive might be a representative, a hireling or even a “specialist” of the Company. He possesses the situation of a trustee, however he isn’t a trustee in the strict sense in regard of the Company's properties and assets. Executive's risk emerges in light of their situation as specialists or officers of the Company as additionally to be in the situation of trustees or having guardian connection with the Company or its investors. A portion of these liabilities are in get, some are in tort, some are under the criminal law and others are statutory, i.e., under the Companies Act, 1956 and different laws. The courts have, in choosing the risk of Directors, mulled over an executive's situation in general .The researcher will likewise talk about different arrangements of law and further discusses the civil and criminal risk of directors.

Key Words: Company firm, investors, civil liabilities, statutory and risk, trustee, assets.
1. Introduction

An enterprise is a fake being existing just in consideration of law. It has neither the psyche nor the body of its own so with a specific end goal to out its activities, certain talented individual are required. These people are known as directors. Section 2(13) of the Companies Act characterises a 'director’ as including "any individual involving the situation of a director by whatever name called". Investors claim a Limited Company however they don't run them, that activity is given to the Directors. In this way it isn't the name by which a man is called however the position he possesses and the capacities and obligations which he releases that decide if in certainty he is a chief or not. Section 291 has depended the administration of the organisation in the hands of executive. They let out the general strategy of the organisation inside the system of the notice of the organisation. They name the company’s officers and prescribe the rate of profit. The directors of the company are all things considered alluded to them and they are called as Board of Directors (The Companies Act, 1956)\(^1\) As it was expressed on account In Re, Forest of Dean Coal Mining Co,(Debayan N Sen)\(^2\)in this case it was mentioned as work is everything and so, name is nothing. To condense their need in the company it won't not be right to state that the Directors are the overseers of the enthusiasm of the partners. There exists a relationship of trustee and trust between the directors and the investors of the organisation. They are the trustees for the benefits and properties of the Company, aside from this they are additionally the specialists of the organisation as the directors all in all go about as Board, for the benefit of Company on every one of the issues with the exception of those where the organisation is particularly required to act which in a way proposes the requirement for illuminating the obligations of Directors.

Bath v Standard Land Co (Allen & overy).\(^3\)In this instance case it was mentioned that the Board of directors is the cerebrum and the main mind of the organisation, which is the body and so the firm can and acts just through them". An organisation is a counterfeit being existing just in thought of law. It has neither a brain nor its very own body which it requires to do its tasks thus here Directors come into the photo and company's business is depended to them as human specialists. Executives are regularly regarded as psyche and will of the organisation. Consequently, it isn't the name by which a man is called yet the position he involves and the capacities and obligations which he plays out that decide if he is a chief of an organisation

This paper looks to feature the exchange of Directorial Roles, obligations and Liabilities in its legitimate setting, to be specific, inside the organisation

\(^1\) (Companies Act) Sec.2(13) of Companies Act 1956;https://indiankanoon.org/doc/664205/
\(^2\) (1878) 10 Ch. D. 450 | English Trust ... In Re, Forest of Dean Coal Mining Co (1878)10 Ch D 450
\(^3\) (Dog-leg claims - a dog’s dinner - Pub...)Bath v Standard Land Co [1910] 2 Ch 408
association. As the greater part of the Indian Statutes and Laws owe their cause to the English Law. Along these lines, the researcher in this bit of work tries to make an examination with the Directors liabilities towards 1956 and 2013 of companies act, go about as revered under the English Law with that of Indian Law. This paper tries to condense enter liabilities in different conditions as gave under the laws of both these countries and so the paper tends to what kinds of move are to be made towards the directors liabilities by the laws of both the Indian and common law. The aim of the study is to prove the liabilities towards the directors despite in increased monetary penalties so far as mentioned in both the companies act of 1956 and 2013.

Research Problem

Due to the lack of evidence to prove the personal involvement of directors they escape liability and consequences in India?

2. Review of Literature

kinds of punishments for those acts will still be a complicated issue, The biggest challenge would be the applying the concept of mens rea and criminal intent on the guilty corporates, Government of Canada,(2002) (Canada publication 2002), corporations and there are plenty of researchers, who have given open calls for corporations to be brought within the full scope of the criminal law. T Woolfe(1997), (Woolf, Tahnee 1997),law of contract, who recognize that a corporate body is very much capable of thinking and of exercising a will. This form of acceptance of liability is especially necessary where failure to perform a specific duty imposed by the statute on a corporate body. Sadhana q Singh,(2010). A rule by the English courts, who had developed a doctrine of identification under which corporations could be prosecuted for crimes of possessing an intent of doing wrong, In the United States, although some earlier state cases recognized corporate criminal liability , Pamela H. Bucy,(Robert E. Wagner 2013), in the case of statutory offences, the language of the provisions, their content and policy, serve to indicate the persons whose state of mind would constitute the state of mind of the corporation, Amanda Pinto and Martins Evans,(2003) (Amanda Pinto QC, Martin Evans 2003) Unprecedented concentration of economic power in corporations and combinations of business concerns (called “trusts”), after the Civil War produced a demand for new laws—including criminal laws—to respond effectively to increasingly powerful corporate entities. V.S. Khanna,(1996) (William S. Laufer 1996). Fraudulently inducing people to invest money: As per section 68 of the Companies Act, 1956 it is a punishable offence to fraudulently, induce people in investing money in your companies Ramaiya,2008 (A Ramaiya 2008) Criminal Liability of a Director can be defined as the liability of a person who was so authorized by the company, and the liability, the provisions of Indian Penal Code can be actually applied for the illegal act he committed. These provisions of criminal liability have always been in conflict. Mortimore,2009, (Simon Mortimore QC 2009), Directors hold
the highest position, the decision making position in a company. But in the case where they fail to exercise reasonable care, skill and diligence, they shall be deemed to have acted negligently and shall be held personally liable for the damage. Section 248 of the Companies Act, 2006 of provides for a bit of relief to directors in UK. bowman 2006.(Researchers club 2006) Malafide Acts: Directors are the trustees of the assets of a Company including money, property and also exercise power over them. So if in such a situation they exercise this power dishonestly or act in a mala fide manner, they shall be held personally liable for breach of trust. Sunday Times, 2007, (Francis Kean 2007) The notion of corporation was incompatible, the individualist aspirations of the revolutionary government, new government thought that, due to their economic and political influence. Guy Stessens, (shodhganga 2015) In Sunil Bharti Mittal case (supra) the Supreme Court struck down the summon issued by the special court to Directors, special court has erroneously applied the doctrine of alter ego to implicate the Directors, when such offence requires mens rea.;Nishith Desai, (Inflibnet 2012) Criminal code, term is defined as “[meaning] an attitude, policy, rule, course of conduct, within the body corporate generally or in the part of the body corporate Stuart, Don. (1995) (Don Stuart 1995), corporate crime update – our round up of developments in relation to corruption, money laundering, fraud, sanctions and related matters. Our update now covers a number of jurisdictions, Herbert smith, May 2014. (Corporate-crime 2014) Corporate liability has been introduced in most jurisdictions enabling courts to sanction corporate entities for their criminal acts; but that there is also a general trend in most countries towards bringing corporate entities to book for their criminal acts or the criminal acts of their officers, Clifford Chance LLP 2012. (Corporate liability in Europe 2012) there is no criminal liability per se, there is either quasi-criminal liability or the introduction of corporate criminal liability is being considered. vidya vishnu kamble, 2008. (Sanjay sharma 2008) to highlight the discussion of Directorial Roles, duties and Liabilities and tries to make a comparison of Indian Laws with that of the laws prevailing in England. To establish this, the authors talk about the importance of director in company management which cover roles and power of the director in a company management. Singh Avtar, 2010. (Company-Law-Avtar-Singh 2010) Paper dealing with corporate killing has brought about legal debates concerning how to hold corporations criminally liable for manslaughter. In addressing these legal issues, this thesis first traces the historical development of corporate criminal liability, Calia walls, 1993 (Sugawara, Masayuki 1993). The principle areas of civil and criminal liability corporate officers and directors face involve fraud and other misconduct in connection with buying or selling securities, and in conducting the corporation’s business. George Coppolo, Chief Attorney 2002 (George Coppolo, Chief Attorney 2002) From a practical perspective, it can be very difficult to identify the employee who committed the wrongful act or had the culpable state of mind. From a conceptual perspective, this approach does not reflect the complex interactions between human actors and the corporate matrix, Allens Arthur Robinson. (bishwajit dubey 2017)
Objectives

- To analyse the civil liability.
- To analyse the criminal liability and its consequences faced by directors in the company firm.
- To analyse that the laws of both the countries hold Directors for criminal as well as civil wrongs.
- To analyse the Judicial decision regarding the liabilities of Directors in regard to the English and the Indian Laws.

Hypothesis

Companies act 2013 has not increased the liabilities towards the directors despite increased monetary penalties so far mentioned in the companies act of 1956.

Research Question

Whether the non-Involvement of Directors in day to day affairs of the company be the reason to escape from the liability?

In comparison with the companies act 1956 and 2013 act, Companies act 2013 has not increased the liability of Directors despite increasing the monetary penalties.

3. Research Methodology

The proposed study will lead to a more descriptive and comprehensive understanding of the Company law and along with the role of relevant case laws regarding the civil and criminal liabilities of Directors, in today’s context to the new emerging threat which need to be combat effectively. The researcher has drawn help from various books, gazettes, Articles, newspapers, and judicial decisions. Use of internet is also made together in order to take important information related to the research is uniform throughout the work. This topic for study is chosen as the researcher is of the view that to identify portion of these liabilities are in get, some are in tort, some are under the criminal law and others are statutory, i.e., under the Companies Act, 1956 and different laws. The courts have, in choosing the risk of Directors, mulled over an executive's situation in general. The researcher will likewise talk about different arrangements of law and further discusses the civil and criminal risk of directors.

4. Liabilities and Position of Directors

Position and Liabilities of Directors

Directors of the company involve an imperative position in the administration and issues of the organisation. Executives are qualified men named by the company firm so as to take care of the undertakings of the company. They are not hirelings of the organisation rather they are the officers who oversee everything in the organisation improbable to the investors who are the
proprietors of the firm. An executive may likewise go about as a representative in various limit. They can likewise work in some cases as operators, now and again as trustees and once in a while as overseeing accomplices. Be that as it may, every one of these articulations is utilised not as comprehensive of their forces and duties, but rather as demonstrating valuable perspectives from which they may for the minute and for the specific object, be considered. “It isn't anything but difficult to portray the liabilities of an executives and so it was mentioned in the case In Imperial Hydropathic Hotel Co v Hampson, (1882)23 Ch (D v Co-v-Hampson) 4The Director can’t assign their power which is particularly forced on them, and which include the activity of their own judgment and perspectives. Nonetheless, General tort standards make the executives actually obligated in the event that they have either deliberately or carelessly made mischief outsiders. Here it is to be likewise noticed that the directors who act in compliance with common decency and inside the extent of their power, won't be held subject for the convenient demonstrations of the affiliation. It is just when the directors act in lacking honesty or outside the extent of their power, will they have an issue. For instance, a representative might be let go without noble motivation, however the rejection might be to the greatest advantage of the affiliation.

Civil Liability to the Company- director's liability to the Company may arise where
- the director are blameworthy of negligence .
- the director are submitted with the breach of trust.
- there has been misfeasance and
- the director has acted ultra vires and the assets of the company firm have been connected for such a demonstration.

A director is required to act genuinely and persistently applying his psyche and releasing his obligations as a man of judiciousness of his capacity and learning would do. It has been clarified in the obligations of chiefs in the matter of what is standard or due care and persistence anticipated from him as clarified by Justice Romer in Re City Accountable Fire Insurance Company (duties-of-a-director). 5 Any headstrong offence or guilty carelessness falls inside the classification of misfeasance. Consequently, Directors would positively be subject for precluding to do what they could have done in the conditions.

A Director is at risk to make great with intrigue all sum paid every once in a while out of the assets of the firm for the buy of offers of the company side.. He isn't qualified for burn through cash for a reason not secured by the Memorandum of Association albeit such instalment is endorsed by the Board of

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4 (Imperial Hydropathic Hotel Co v Hamps...) In Imperial Hydropathic Hotel Co v Hampson, (1882)23 Ch D
6 (DUTIES OF A DIRECTOR 2009), DUTIES OF A DIRECTOR, Re City Accountable Fire Insurance Company
Directors and by the lion's share of investors. An investor can keep up an activity against the executive to constrain them to reestablish to the organisation its assets utilised in exchanges that the chiefs have no expert to go into. The assets of the company can't be utilised by the Directors to pay their case costs, despite the fact that these would have been acquired on the off chance that they had not been chiefs. A Director will, be that as it may, not be subject for any such unlawful act on the off chance that he had no information of such instalments and so, within the body corporate generally or in the part of body corporate (shodhganga.inflibnet) 7.

Case Law

"Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (uniset)⁸ is a famous decision by the House of Lords on the ability to impose liability upon a corporation.

From this instance case, a ship was possessed by Lennard's Carrying Co was transporting a few merchandise to the Asiatic Petroleum Company, a joint wander of the Shell and Royal Dutch oil company. The ship sank and the load was lost because of the careless demonstrations of Mr. Lennard infringing upon the Merchant Shipping Act 1894. Asiatic sued the company for the act of negligence as per the Act. At issue was whether the blameworthy demonstrations of a chief would be forced upon the firm. The House of Lords held that risk could be forced on a partnership for the demonstrations of the directors by goodness that the executives are the controlling personalities of the company.

Mr. Lennard own perspective was, Whatever isn't thought about Mr. Lennard's position, this is known for certain, Mr. Lennard took the dynamic part in the administration of this ship for the benefit of the proprietors, and Mr. Lennard, as I have stated, was enrolled as the individual assigned for this reason in the ship's enlist. Mr. Lennard in this manner was the characteristic individual to go ahead sake of the proprietors and give full confirmation not just about the occasions of which I have talked, and which identified with the stability of the ship, however about his own particular position and in the matter of regardless of whether he was the life and soul of the company. For if Mr. Lennard was the coordinating personality of the organisation, and afterward his activity must, unless a partnership isn’t to be obligated by any stretch of the imagination, have been an activity which was simply the activity of the firm. " In this manner, an company in spite of the fact that having a corporate identity is considered to have human identity through its officers and agents;and in whom the coordinating personality and will of the firm is found and so it was mentioned in the case of Tranco Nig Ltd v African Real Estate & Investment Co Ltd & Anor

⁸ (Lennard’s Carrying Co., Ltd. v. Asiat...) Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915)AC 705
The demonstrations of these officers and specialists are ascribed to the organisation as the company’s demonstration and the company is criminally and commonly responsible and so has to face, the vicarious, for these acts. Prior to this case the essential methods for forcing obligation on a partnership was through vicarious risk, in any case, that lone connected to workers of the company, which avoided the demonstration of the executives. After the Lennard case, it has turned out to be especially viable for forcing criminal obligation (Lennard's Carrying)\(^9\)

**Organic Theory**

One of the result is that the Company turns into a legitimate identity fit for owning property, suing and being sued with never-ending progression and regular seal.

Be that as it may, the idea of lawful identity of company is an abnormality since an form does not, in the genuine feeling of the word, has a brain, will or hand of its own. Of need, in this way, an organisation needs to act through the human operators. The exercises of these specialists through which it acts are credited to it. Their psyches and wills are 'its'. Basic leadership in dissolvable organisations is partitioned between the chiefs and the investors. The premise on which the basic leadership is partitioned relies upon the law and the company's inward administration (Criminal Liability)\(^11\). The impact of the legitimate administer overseeing division of energy is this: a choice legitimately made by the appropriated body, is a choice of the firm. Put another path, to the degree that the executives or the investor settle on choices that are dealt with as an issue of law as choice of the organisation, they are going about as what is alluded to as organs of the organisation. These organs are the top managerial staff and a general gathering of investors. Every ability is to tie the organisation in their own regions of impact, one isn't liable to the next, and control is partitioned among them. Unless the constitution gives else, they each have control over issues inside their own circles. The natural hypothesis prompts the accompanying four essential standards about the administration structure of the company and some of the points are listed below,

- The leading body of director and the investors when all is said in done gathering, are each an organ of the organisation firm.
- Every organ of the company has energy to settle on specific choices.
- The separate energy of the every organ of the organisation firm is dictated by the law and the company’s interior administration rules.
- That power is an energy to go about as the company.\(^12\)

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\(^9\) (LawPavilion Electronic Law Report (LP...)Tranco Nig Ltd v African Real Estate & Investment Co Ltd & Anor

\(^10\) (Lennard)Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915)AC 705

\(^11\) (Tiwari 2013)Daya shankar Tiwari

[^https://www.researchgate.net/publication/272301706_Criminal_Liability_of_Director]

\(^12\) Singh Avtar, Company Law, Edn 15\(^{th}\), 2010
5. **Provisions Relating to Directors Liabilities in Comparison with the 1956 And 2013 of Companies Act**

**Provisions Relating to Directors Criminal Liable**

So, the Companies Act, 1956 imposes criminal liability either in the form of fine or imprisonment or both on the directors for breach of certain statutory duties (corporate liability 2012)\(^\text{13}\) Apart from civil liability under the Companies Act or under the common law, directors of a company may also incur criminal liability under common law, as well as under the Companies Act, and other statutes. Some of the provisions of the Companies Act which make directors criminally liable (fine or/ and imprisonment) are as follows:

\textbf{I) Section 63}

Issuing a prospectus containing untrue statements

This segment peruses concerning any false proclamation in the outline, each individual who approved the issue of the plan might be culpable with detention for a term which may reach out to two years, or with fine which may stretch out up to Rs.50, 000/or both.

\textbf{ii) Section 68-}

Knowingly making a false, deceptive or misleading statement and thereby inducing person to invest money.

It is a culpable offence to deceitfully initiate the outsider to put cash in Companies. This segment can be summoned when speculation is achieved by intentionally putting forth any expression which is false or misdirecting or disguising of material certainties. Risk would likewise be brought about even one is endeavouring to do as such It pulls in the detention up to five years or fine up to Rupees One lakh.

\textbf{iii) Section 73}

Failure to repay excess application money

Where the authorization of a stock trade has been conceded and in this way, the designation finished is legitimate, the outline being overbought in segment of cash got must be sent back to the candidates forthwith. This over-bought in cash ought to be sent back to the candidates inside the edge of eight days.

\(^{13}\) (Clifford Chance | Corporate Liability...)Clifford Chance LLP, Corporate Liability in Europe publishers.in

Any default in reimbursement of use cash and premium is culpable with fine up to Rupees Fifty Thousand yet in the event that reimbursement isn't made inside a half year from the expiry of the eighth day, likewise with detainment for a term up to one year. Covering the name of a leaser or distorting the nature or measure of the obligation or claim of any lender.

IV) Section 105

It furnishes for discipline with detainment reaching out to one year or with fine or both, if any officer of the organization purposely covers the name of any leaser or distorts the nature or measure of case or obligation or abets such disguise or deception.

v) Section 202(1)

Undercharged insolvent acting as a director

On the off chance that a man who is an undercharged bankrupt is excluded from being named to any administrative office. On the off chance that any such individual releases the elements of a Director or partakes in the administration of any organization, he is culpable with fine up to Rupees fifty thousand and detainment up to two years.

vi) Section 207

Default in Distributing Dividends:

With a specific end goal to guarantee incite installment of Dividend to investors. Segment 207 forces a punishment if a profit has been announced and isn't paid inside thirty days from the date of the revelation. The punishment is brought about by each chief, gave on the off chance that he was a gathering to the default.

The discipline for this is straightforward detainment up to seven days and fine.

vii) Section 210(5)

Failure to lay balance sheet, profit and loss accounts etc at the annual general meeting.

At each Annual General Meeting, it’s the obligation of Board of Directors to lay before the gathering the archives like asset report, benefit and misfortune account and so forth coming up short of which they are qualified for detainment up to a half year or/and fine up to Rupees ten thousand.

viii) Section 217(5)

Failure to attach balance sheet of the board of directors.

It says that a report made by the Board of Directors is to be appended compulsorily with the Balance sheet. In inability to which, the discipline is detainment up to a half year or/and fine up to Rupees Twenty Thousand.
ix) Section 221(4)

Failure to supply information to auditors

Under this it's the obligation of Director to uncover to the organization the particulars of any issue relating to them which is required to be reflected in accounts. The punishment for this is detainment up to a half year or/and fine up to Rupees fifty thousands.

x) Section 299(4)

Failure to disclose interest

On the off chance that the executive makes an agreement with the organization without unveiling his enthusiasm for the agreement, he should bear the fine which may stretch out to Rupees 50,000 (Sjuris 1956).14

Companies Act 2013 Regarding the Liabilities of Direction and their Penalties

Under the Companies Act 2013 certain defaulters can put in detainment, for the most part non-cognizable. Anyway offences associated with misrepresentation or aim to extortion are cognizable (no warrant required for capture). Like smothering any material data or outfitting false data is cognizable under Section 7 (6), giving deceiving proclamation in the plan under Section 34, inciting deceitfully for venture is cognizable under Section 36, exchange or transmission of offers with purpose to cheat under Section 56 and offences identified with diminishment of offer capital under section 66.

In Companies Act 2013, under Section 245, Shareholders or gathering of least 100 Shareholders in the interest of every single influenced gathering can bring "class activity suit" against the Company and the Directors for any wrongdoing. This will be taken up by National Company Law Tribunal for sped up determination for the investors. Notwithstanding Companies Act 2013, loads of different acts are interrelated and can draw in punitive activity in light of numerous contentions. So, the Director should know about the interdependencies of various laws and how they can impact the choices they will actualise. (Companies act)15

The punishment sums material under Companies Act 2013 are more higher in division and extremely stringent contrasted with the 1956 revision. The base fine relevant is INR 25,00/ - , though can be considerably more than INR 25 Crore. Demonstrated Default on Section 166 can be fined anything between 1-5 lakhs. A few cases of infringement which can draw in punishments of 1 crore

14 (Sjuris) http://www.sjuris.net/userfiles/THE%20COMPANIES%20ACT,1956.PDF
15 (Ministry Of Corporate Affairs - Compa...) https://www.google.co.in/url?sa=t&source=web&cd=4&ved=2ahUKEwiPx5Tr_qXbAhUTT30KHd5BzkQFjADegQiCBAB&url=http%3A%2F%2Fwww.mca.gov.in%2FMCASearch%2Fsearch_table.html&usg=AOvVaw3EsKK4LgVSKWcMNle4oAN5(COMPANIES ACT 2013)
or more are infringement for arrangements under
- Section 8: Non revenue driven organizations,
- Section 42: Subscription of securities on Private Placement
- Section 46: Duplication and issuance of offer testaments with purpose to cheat
- Section 74 (3): Failure in reimbursement of stores inside determined time
- Section 195 (2): Insider Trading
- Some criminal liabilities related with a Directors lead are as per the following:
  - Cheques Bounced or disrespected: Under Negotiable Instruments Act 1881, marking of shamed by a Director may prompt arraignment alongside of company.
  - Offences under Income Tax Act, 1961
  - Offences under Labor Laws, particularly in the event of Employees Provident Funds and Miscellaneous Provisions Act, 1952 and Factories Act, 1948

Subordinate activity is characterised as an activity by at least one investors of a company where the reason for activity is vested in the firm and help is in like manner looked for its benefit. In spite of the fact that it must be gotten an agent frame. An investor may bring an activity against the company and its Directors in regard of issues which are ultra vires the Memorandum or the Articles of the association and which no greater part investors can endorse. Executives and the firm would likewise be subject if the direct of most of the investors constitutes an "extortion on minority", i.e., a prejudicial activity. To protect the interests of the company, any part or individuals may bring a subsidiary activity.

The Liability of any or every one of the Directors of a restricted firm can be boundless if so determined in the Memorandum or endorsed through a Special determination approved by Articles of association All arrangements gave in Article of Association to repay chiefs against default, carelessness, break of obligation or trust is void according to Companies Act. Anyway on the off chance that blamelessness of the executive is demonstrated such reimbursement can be implemented. Henceforth this is an essential statement for Directors and one ought to dependably know about and endeavour to use this to the greatest advantage conceivable. The Companies Act permits a company for taking protection for security against misfortune caused to it by Directors, additionally the Director can take protection strategy to make up for misfortune acquired because of risk to the firm for which premium can be paid by company itself (Anubhav Pandey in General)  

6. **Directors may be Liable for Act Committed**

Effect of the Act Amending Provisions of Laws Relating to Criminal Liability of Juristic Person Representatives on Directors’ Criminal Liabilities Under the Act Prescribing Offences Related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundations (1956). It is normally realised that separated from the obligations to deal with an organisation under the organisation’s extent of targets and under the control of investors’ gatherings, the executives of a restricted organisation additionally have obligations under the law with which they should agree. These obligations are set out in the Civil and Commercial Code. Moreover, the Act on Offences of Partnerships and Companies likewise endorses criminal punishments for the directors in an occasion the organisation neglects to consent to the arrangements of this Act. It is this issue which offers ascend to the contention in connection to the lawful assumption that executives are to be together criminally at risk when an organisation contradicts the arrangements of this law by alluding to a few judgments of Constitution Tribunals which have set down rules and switched judgments of the courts of first occurrence denying the utilisation of lawful assumption utilised as a part of different territories of law in a similar way to such an extent that the chiefs will be held mutually criminally subject with the organisation.

The Act Amending Criminal Liability of Juristic Person Representatives has changed Section 25 of the Act on Offences of Partnerships and Companies with the point of nullifying the legitimate assumption of outright risk of executives when the company carries out an offences under Section 7-24 whereby the directors was banned from demonstrating generally. This section of the Act on Offences of Partnerships and Companies has been changed such that the chiefs may be mutually criminally at risk with the firm if the bad behaviour of the firm is caused by the requests or activities of the executives or for the situation that those chiefs had an obligation to request or act, yet precluded requesting or acting against what made the firm perpetrate the offences.

It can be expressed that the Act Amending Criminal Liability of Juristic Person Representatives ensures that the director of the company who are not associated with or identified with administration of the firm. In any case, executives must not overlook that regardless of whether they may not be together criminally subject with the organisation in an occasion the offended party can’t demonstrate that they are associated with or have any obligation in connection to such bad behaviour, the Act on Offences of Partnerships and Companies has endorsed criminal risk for all chiefs neglecting to explicitly play out the accompanying obligations:

- The obligation to send a duplicate of the rundown of all investors to the enlistment centre at any rate once per year; The obligation to summon an
uncommon general gathering of investors when asked for by the investors or when the organisation endures a misfortune up to half of the measure of capital;

- The obligation to send a duplicate of monetary record to the enlistment centre inside 1 month from the date such accounting report is affirmed by the yearly broad gathering of investors;
- The obligation to set up the record demonstrating the firm pay and cost, including the firm benefits and liabilities; and
- The obligation to set up the minutes of all gatherings and the resolutions passed, and the obligation to stay with record at the enrolled office.
- The above obligations are not the duty of the company but rather the particular obligations of all executives. If there should be an occurrence of resistance, all executives will be consequently criminally subject as per the Act on Offences of Partnerships and Companies. This is alternate from where executives will be together criminally obligated with the company under the Act Amending Criminal Liability of Juristic Person Representatives (criminal and civil liability).


In this case it was mentioned that a corporation cannot form any intent to commit any act whether it off both civil or criminal and so Courts has held that the corporation are held to be vicarious liable for the torts committed by their agents, US Supreme Court that corporations may be held liable for the criminal acts done by them and so in addition, corporate officers and directors, held liable for the misconduct of the agents, even so if they are not aware of the misconduct.

**Comparison between the English and the Indian Laws**

While making an examination between both the laws, it is essential to say the particular arrangements accessible under the English laws yet did not discover their in the Indian statute. Such arrangements can be recorded as:

- Under Section 232 of the Companies Act, 2006 (bowmanslaw). 19, Legislature has proclaimed every one of the arrangements as void which tries to excluded an executive of a company (to any degree) from any risk that would some way or another join to him regarding any carelessness, default, rupture of obligation or break of trust in connection to the firm.

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A Director of a company will undoubtedly be considered dependable under segment 37 of the Act, if an auxiliary profits or other property to, or gives any security or gives any assurance in regard of any commitment of, its holding company or a kindred backup, yet not an auxiliary of itself, and the directors has neglected to demonstrate the particulars of that credit or security in its yearly money related articulations for consistently amid which such advance, security or certification exists. The alteration demonstration, 2006 terms it as a culpable offences.

Section 50(3) makes it an offences for any chief to issue or approve the issue of any notice or other authority distribution of the firm, or to sign or approve to be marked for the company, any bill of trade, promissory note, and so forth, wherein the company name isn't said in neat characters. Strict obligation applies (i.e. genuine information of the guilty party isn't a component of this offences such circumstances.

Another area that is accessible under the UK laws yet misses its place under the Indian Act is Section 266 which expresses that if a chief has conferred any “wrong, breach of trust or lack of confidence” and, therefore, the firm has endured harms or misfortune or has been denied of any advantage, and the company has not started procedures against the executive, at that point any investor under section 266 may serve composed notice on the firm calling upon it to establishment such procedures (directors liability 2013).

7. Conclusion and Suggestions

Responsibility is the most imperative element in any business, in light of the fact that until and unless the individual is been made responsible to his/her demonstration he may do the demonstration in compatibility of his own advantage, it is certain that Director assume a crucial part in the issues of the company. Director must play out his capacity with sensible care and due industriousness, in any event with such standard which may be normal from a man of customary judiciousness to take in a similar circumstance all alone sake. So there must be some system for assessing the execution of the chiefs. The degree of obligation of an executive would rely upon the idea of his directorship. degree of risk of an executive would rely upon the idea of his directorship. Also, as a large portion of the Indian Statutes and Laws owe their starting point to the English Law, So there is a need of making a correlation of Directors Liabilities as revered in the English Law with that of Indian Law obtains extraordinary essentialness. In the wake of breaking down every one of the things talked about in the paper and making an examination of the laws of both the demonstrations of 1956 and 2013 of companies act, Companies act 2013 has not expanded the liabilities towards the executive in spite of in

expanded severe punishments so far said in the company’s act of 1956 thus the analysis would be basically dissecting the entire situation. It is apparent that the laws of both the nations hold the Directors for criminal and civil liabilities. It would be stated that, in spite of the fact that Directors have diverse liabilities however in the event that they practice their forces for the benefit of the Company remembering the advantage of the partners and with no evil, they won’t be made subject and neither one of the ought to be influenced obligated for the act they to have not done and just based on their position.

In applying the general principles standards to company directors, four separate principles have developed and suggested regarding the liabilities of directors,

- That director must act in accordance with some basic honesty in what they accept to be the to the greatest advantage of the company.
- They should not practice powers presented upon them for purposes not quite the same as those for which they are given.
- They should not chain their act in the matter of how they might act and
- That without the educated assent of the director, they should not put themselves in a situation in which their own advantages or obligation to different people are at risk to strife with the obligations to the firm.

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the highest position i.e. the decision making position in a company

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