

## CORPORATE CRIMINAL LIABILITY IN INDIA

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### Abstract

This paper aims at determining whether the doctrine of Corporate Criminal Liability is effective in resolving Corporate Crimes under Companies Act. It is the doctrine that confers liability over the corporates for any criminal act done by its agents or employees. Although, it is the individual who commit crime but corporation is operated by that individual and the crime is committed for the benefit of the company, therefore the need has raised to impose criminal responsibility on the Corporation. In this paper, the doctrine of Corporate Criminal Liability is discussed thoroughly with the factors that constitutes it. The paper also assess the legal provisions associated with regard to this issue both under Companies Act and Indian Penal Code. Even the provisions under Model Penal Provisions on this issue is discussed in the paper. The paper elucidated the need for establishment of the doctrine. The various landmark judgments are also quoted that has been discussed on the matter of Corporate Criminal Liability. The evolution of the doctrine from the time when there was no criminal liability to today, is explicitly elaborated in the paper and its development along with the development of society. This paper compares the criminal liability of corporates in both Indian and USA legal system with the case laws related to this. Even the punishments under this doctrine for both Indian and USA law is listed out.

**Keywords :** Corporate Criminal Liability, Companies Act, agents or employees, Indian Penal Code, evolution, US legal system

## INTRODUCTION

A Corporation is a separate legal entity, which is established through some process of registration and legislation. Apart from share holders, even corporation has separate rights and liabilities. There are some corporations, who have facilities and assets in other countries from that of their own country. These corporations are known as Multi - national Corporations. These multinational corporations play a vital role in the human life day to day. Over years this has gained so much power that it has even been compared to the entire nations. Therefore, it is of paramount importance to impose some kind of accountability and control over these corporations. The Doctrine of Corporate Criminal Liability is one essential superior doctrine, imported into criminal law from tort law. According to this doctrine, a Corporation is liable and can be convicted for any of the unlawful acts of its agents, provided, agents act within the scope of their actual and apparent authority. The authority presumed by the agents to have by an average reasonable person is the apparent authority, and on the other hand, the authority which the corporation itself assigns to its agents is the actual authority. In case, if any, coherent kinship is being established between the criminal conduct of the agent and the corporate, then the corporation is held criminally liable for the employee's conduct. "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" – this is proposed by Glanville Williams. Corporations to have their own entity, that is, separate legal entity from their members is very much sufficient to held them liable. Criminal liability means legally accountable or responsible to the society for any criminal act done , enforceable by punishment. Similarly, corporate criminal liability is the doctrine under which a corporate is liable for the act done by it, that is, its agents. It defines the extent to which it can be made liable for its acts or omissions. The expansion of corporate sector through globalisation, information and technological development has led to the development of doctrine of Corporate Criminal Liability. Once there was a time when there was no criminal liabilities over companies, but today the world has come to a situation where corporates are held liable for their crimes. The Criminal liability of the Corporation is decided on the basis of the extent to which it can be held responsible for the wrongs of its employees or agents. Nowadays, Corporations have become an intrinsic part of the society. Further, with various development they have gained

significant role in our economy, which means there is a threat to the society of being victimised by these corporations and therefore they should be deterred. Imposition of punishment is only for the offence under criminal but deterrence is the principle applied for economic entities like corporations.

**Objectives:**

- To discuss the concept of Corporate Criminal Liability with the judgments governing it.
- To assess the various theories governing the Corporate Criminal Liability.
- To discuss the provisions that attract the Corporate Criminal Liability.
- To determine the punishments for corporate fraud.
- To determine the difficulties to prosecute corporations under the criminal law.

**Hypothesis:**

**Null Hypothesis:** The principle of Corporate Criminal Liability is not effective in resolving the corporate crimes and to promote good corporate governance.

**Alternative Hypothesis:** The principle of Corporate Criminal Liability is effective in resolving corporate crimes and in the promotion of corporate governance.

**Research Questions:** Whether the doctrine of Corporate Criminal Liability is effective in resolving corporate crimes under companies act ?

**Materials and Methods:**

This is a doctrinal research. The sources used for the study are secondary sources which includes books, journals, articles, magazines and websites that talks about the provisions, case laws and elaborates and discusses about the doctrine of Corporate Criminal Liability in India under the Companies Act.

### **Evolution of the Doctrine Corporate Criminal Liability**

In the eye of law, the Corporations and the members representing it are treated in a separate manner. A Corporation is a separate legal entity. It is established through a process of registration and legislation (Evolution of Corporate Criminal Liability in India). Compared to the individuals, corporations have become dangerous criminals. But, there is no proper method to punish the crimes of these corporations. The intention to commit criminal act of the corporation was unable to be proved, a corporation cannot be imprisoned and the last problem is, in every case the court asks the offender to be physically present during the hearing but a corporation cannot be produced. Therefore, similar to shareholders, even corporations are imposed with separate rights and liabilities. Various theories have been proposed by the Common law to determine the Corporate Criminal Liability (Corporate criminal liability by fredrick p lee). Among the theories, the doctrine of Vicarious Liability under tort law was said to be best, which says that corporations would be made liable for the tort committed by its workers. But there raised a problem in making the corporations liable under the tort law, because in India, there is a separate source for punishing criminal acts i. e., Indian Penal Code.

Under Section 11 of IPC, company is also included in the definition of the term 'person' (Corporate criminal liability). Therefore, in case corporation commits any crime it can be punished under IPC. But, before that certain factors are to considered. A corporation cannot be punished for acts like rape because the only punishment for that crime is, imprisonment. Mostly, the punishment imposed on corporations are both imprisonment and fine. In the landmark case of *Assistant Commissioner vs. Velliappa Textiles Ltd*<sup>1</sup>, the Supreme Court held that, in case Corporation cannot be imprisoned, they can also be not prosecuted for the offence that is punished with imprisonment under IPC. The other opposing this statement held that, while deciding a case, the judge should, first, identify whether the accused is guilty or not and second, should award him with the punishment that is prescribed for the offence he committed. And he further stated that, Corporations have become lethargic, thinking that, being a juristic person they cannot be punished easily and sent to jail, therefore, they commit so many crimes during the course of the employment. There are so many examples to this. It would be unfair on the part of the judiciary to allow a corporation freely without any liability. Taking into account all these, the judge finally held that, corporations should be made criminally liable for the crimes they commit. The case of *Standard Chartered*

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<sup>1</sup> (2003) 11 SCC 405

*Bank vs. Directorate of Enforcement*<sup>2</sup> overruled the *Velliappa case*<sup>3</sup> and stated that, a Corporation cannot be let free merely because it imposes imprisonment for its criminal act. In case where, it imposes imprisonment, it should be punished with fine. In *Iridium India Ltd. Vs. Motorola Incorporated*<sup>4</sup>, it was explicitly held that the corporations are punished under both common law and statutory law similar to an individual. It is because, a corporation is controlled and managed by a person. It acts through a person. Therefore, a court should punish a corporation with such punishment, which it would have given to a person on commission of such offence. Even, if corporation cannot be punished for certain acts, the authority acting on behalf of it is punished. This is clearly elaborated in the important case of, *U. P. Pollution Control Board vs. Modi Distillery*<sup>5</sup>, where an industry discharged its wastes in the nearby drain. This act is in breach of the Water (Prevention and Control of Pollution) Act 1974. The court held that, the authority responsible for this act of the firm will be prosecuted and punished, even if the company cannot be prosecuted. The IPC has other more provisions to charge corporations for joint liability, criminal conspiracy, aiding and abetting illegal activities etc. This doctrine has gained more importance in the modern world. This was supported by the case of *Anil Hada vs. Indian Acrylic Ltd*<sup>6</sup>. But this case was overruled by the case of *Aneeta vs. M/s Godfather Travels & Tours*. In this case, the Supreme Court stated that, incase company is viewed as criminal, the prosecution against the employees or employer of the company is not maintained. Vicarious liability exists only when there is any prosecution against the firm (Multidimensional aspect of corporate Criminal liability : An Indian Perspective). For the applicability of the doctrine of Corporate Criminal Liability, the criminal act of the employer or employee must be committed with the intention of benefitting the corporation in some manner and be committed with the intention of increasing their own personal gain, this conduct ultimately ends up benefitting the corporation.

### **Theories of Corporate Criminal Liability**

i. **Theory of Vicarious Liability**(Concept of corporate criminal liability in India : An identification Principle)this is the most important theory of the CCL. It is the first proposed theory for making the corporates liable for their criminal acts. This is the liability where, a person is made liable for the acts of the other. In the case of corporation, it acts through its directors, employers, workers and other authorities, therefore, it is made liable for their acts.

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<sup>2</sup> AIR 2005 SC 2622

<sup>3</sup> (2003) 11 SCC 405

<sup>4</sup> 2004 (1) MnLJ 532

<sup>5</sup> (1944) 1 All E.R. 691

<sup>6</sup> 1999 Supp(5) SCR 6

It follows the concept of master servant relationship, where master is liable for the acts of the servant (Corporate criminal liability). Similarly, corporation here is master which is made liable for the acts of the person working for and in it.

ii. **Identification theory** ( Corporate Criminal Liability in India)

According to this theory, first the centre of criminal mind in the company is needed to be identified. In case any criminal mind of, any of the authority is found to be the directing the criminal acts of the firm, then it is considered to be the criminal act of the company and the it is directly made liable. Under this theory, the corporation is liable for its crimes or offence directly, as stated.

iii. **Aggregation theory** (Corporate criminal liability )

Under this theory, the state of mind and acts of the employees are aggregated to identify whether in total these acts together forms any liability of the company or not or to identify whose act amounts to larger responsibility. According to Celia Wells, aggregation of employees' knowledge means that corporate culpability does not have to be contingent on one individual employee's satisfying the relevant culpability criterion. For the establishment of CCL, certain requirements are to be fulfilled:

A crime to be called as Corporate Crime, it must be established by the employee during the course of employment, it means, the employee must be doing any activity that is authorised by the company. But all agents of the corporation are not considered worthy of representing a corporation for the purpose of establishing liability. Both Common law and Model Penal Code provisions, depict different views on this issue. According to common law approach, irrespective of the status of employees, the corporation is liable for all of theirs activities (Criminal Liability of Corporate Officials in India). In the case of *Dollar Steamship vs. United States*<sup>7</sup>, the criminal liability on the company for dumping waste in the water was upheld. Whereas, Model Penal Code provisions states that the illegal act must be authorised, requested, commanded, performed or recklessly tolerated by the directors or higher authorities acting on behalf of the corporation acting within the the area of the employment. Hence, these provisions helps the corporations from escaping the liability, as long as the higher officials exhibit due diligence in the monitoring and stamping out the wrongdoing.

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<sup>7</sup> 280 US 173

i. The act of the employer or employee of the corporation, that is noted as crime by the law, must actually benefit the company. It is not necessary that the act, directly benefits the company or the benefit is completely enjoyed by the company, but it should not be conflicting the ideas of the company. It is given more attention because, an employee never commits any illegal act unless he gets some personal benefit from it.

ii. Collective Blindness Doctrine is applied. According to which, the corporation is not only made liable for the acts of single individual. But the acts of all the members of the company are sum up, drawn a conclusion( CORPORATE CRIMINAL LIABILITY IN THE GLOBALIZING WORLD: A MEANS TO ACHIEVE SOCIAL JUSTICE)

iii. Corporations are made criminally liable if they knowingly turn a blind eye to ongoing criminal activities. If a corporate agent becomes suspicious of some ongoing illegal acts but to avoid culpability, he takes no action to mitigate the damage or investigate further or bring the offender to book, the corporation becomes liable. This is wilful blindness doctrine.

iv. A corporation is also made liable for the presence of criminal conspiracy amongst its members.

v. In case any corporation merges with the other corporation, which committed criminal act.

vi. A corporation cannot escape prosecution, by dissolution, after the criminal charge against them is filed(Doctrine of Corporate Criminal Liability) .

vii. A corporation may also be held liable for misprision of felony, that is the offence of concealing and failing to report a felony. This consists of four elements:

- That the principal committed a felony
- That the defendant knew about said felony
- That the defendant failed to notify the concerned authorities at the earliest, and
- That the defendant took proactive steps for the concealment of the felonious act.

Merely failing to notify the authorities is not enough to qualify as misprision of felony and neither is merely having the intent to conceal the felony if such intention is not carried out (Corporate criminal liability - emergence, covergence and risk).

Following crimes constitute Corporate Criminal Liability(Crimes constituting corporate crimes) :

- i. Conspiracy
- ii. Contempt in disobeying the orders of the court and even decrees etc.
- iii. Bribery or conspiracy to bribe public officials

- iv. Illegal practice of medicine
- v. Maintaining public nuisance
- vi. Violations of licensing and regulatory statutes
- vii. Violations of consumer protection laws
- viii. Antitrust law violations
- ix. Liquor la violations
- x. Larceny, if corporate officers authorised or acquiesced in criminal act.
- xi. Extortion, assuming that it was authorised, requested or commanded by a managerial act having supervisory responsibility.
- xii. Obtaining money by false pretences
- xiii. Selling or exhibiting obscene matter
- xiv. Statutory federal crimes and such violations of the Occupational Safety and Health Act.

Most of the above crimes are motivated economically, these are crimes are done in the motive to gain some economic profits. It is the person who receive the profits directly and not the company . It only receives some benefits in order to protect its interests. If the corporation takes risks in that aspect it becomes a proper criminal.

According to the Model Penal Code provisions, a Corporate crime is an offence that violates the statute other than the code and is done by the members of the company during the course of employment. The act should be done against the law or omission of the duty that is imposed on the corporation to perform necessarily. The authority or the higher officials authorised the commission of the act to be performed on their behalf during the course of employment .

### **Corporate Criminal Liability in U.S.**

Earlier in U.S., as corporations are fictitious legal entity incapable of forming any criminal intention, were not made criminally liable for any acts of their agents. The judgment of the case of *New York Central and Hudson River Railroad vs. U.S .*,<sup>8</sup> rejected the above idea. In this case, the employee of this railroad company paid rebates to the shippers, which is in violation of federal law. The court held that, the company cannot be convicted for the act of its employee, as the corporation did not have any criminal intention. But later, the Supreme court held the corporation criminally liable, because the act of the employee, however,

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<sup>8</sup> 212 US 481 (1909)



benefitted the corporation. In this case, the doctrine of respondent superior was imported from the tort law to the criminal law. Most of the federal statutes are applicable to impose the corporation under the criminal liability. But this does not mean that federal statutes overrule the state laws. Both are interpreted harmoniously. A corporation is prosecuted under both state laws and federal laws. Punishment – The punishments for the crime committed by the corporation is either fine or forfeiture. In case if the punishment for any offence is imprisonment, fine can be imposed as the corporation cannot be imprisoned. The mode of punishment to be imposed on the corporation is the discretion of the court.

### **Punishment under Indian Law**

In case of commission of crime, a corporation may be punished by fine, because the only punishment that can be imposed on a corporation for a criminal wrong, is a fine or forfeiture of its possessions which can be imposed by an enforcement issued by the court. A corporation can neither be imprisoned nor prosecuted, for any offence which is punished with capital punishment or imprisonment. However, the fact that the penalty provided for the violation of a statute is a fine or imprisonment, or both in the discretion of the court, does not render it inapplicable to a corporation, and the same rule applies where the statute creating the offence provides for imprisonment if the fine imposed not paid. As per the jurisprudence evolved till then, under the present Indian law it is difficult to impose fine in lieu of imprisonment though company is included in the definition of person under Indian Penal Code. 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 alternate 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 that the author has brought about. In India, certain statutes like the Indian Penal Code talk about kinds of punishments that can be imposed upon the convict and as per Section 53 include death, life imprisonment, rigorous and simple imprisonment, forfeiture of property and fine. In certain cases the sections speak only of imprisonment as a punishment like in case of offence under Section 420.

### **Conclusion**

Corporations has attracted the life of people for good and bad with development of the society. To the betterment of the 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. As corporation is one of the higher unit, the imposition of criminal liability on it is essential. A corporation would escape from conviction if this doctrine does not exist, which is considered to be violating the morality in the society. Along with the development processes various crimes are happening or it can also be said that wrongs are done to develop the society or for industrialisation or globalisation, this doctrine keeps a check on this issue. For a long time government is fully concentrated on the financial issues, so these problems has increased. Therefore strict laws, rules and regulations are made to govern this issue under Companies act and even Indian Penal Code made steps regarding the issue. Various serious punishments has been made to punish the corporate criminals to make this into a serious matter and prevent the corporations from indulging in any criminal act. Taking it into a serious issue and taking necessary steps can only stop any corporate crimes. This idea not only applies to the Corporate crimes but also to other serious issues prevailing in the society. Only Judiciary has the key to stop the hazardous activities happening in the society. Only this path helps a society to grow positively.

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