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Corporate Criminal Liability: An Analysis with aspect of India and USA Law

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ABSTRACT

In this research paper, the author discusses the main argument that deals with the issue regarding “corporate criminal liability”. In distinguish between the corporate criminal liability under Indian penal code as well as companies act. While analysing my topic the author also highlights the role of judicial interpretation for determining the liability under companies act. Beside this aspect of corporate criminal liability in the USA is an important aspect of my research paper

This research paper is structured as follow after giving overview of the topic, later discussing the growth of industrialization and control of multinational corporation in capitalist world. It will also address the how company as a legal bodies commit a crime and how they get punished. the role of memorandum of association and article of association regarding the determination of power of the company to perform the act which make the liable for any criminal offence and the test determining the corporate criminal liability in India.

Keywords: *Industrialization, Corporate, Judicial interpretation, Punishment, Capitalist*

I. INTRODUCTION

In the era of 21st century, or, as we say, when world globalization and industrialization took place and created a new era, Due to emergence of industrialization and globalisation in this world, companies came into existence, and large-scale companies took birth and controlled the economies of the world as well as the nation. A multinational corporation has significant control over the existence of human life. Large MNCs have grown to control both the domestic and global economic sectors. And these cooperations operate independently; they have a rate of existence; they are considered to have a separate identity and considered as to be different from their members. Then the issue is that when they are considered as separate legal identity then they should be penalise for their act done or the act done on behalf of them and the member of the cooperation done that act. But this is not enough to make them answerable for their actions and punish them. Natural people obviously commit crimes because they are physically

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and mentally able to do so, but a company cannot, even if it is legally regarded as a person. Because company cannot think.

The concept of corporate criminal liability in India does not come into existence suddenly it took times where judicial decision evolved with the different opinion on regarding the liability for corporate criminal liability. Not even in India but there are some other countries like USA, England, Canada also working on the concept of the criminal liability but everyone was facing the same issue like how to penalise the company in the form of imprisonment.

In India there is a maxim *lex non cogit ad impossibilia* which means law does not compel a man to do anything vain or impossible or to do something which he cannot possibly perform. Through this maxim it conveys that we cannot put companies behind the bar².

Through this research paper I want to explore the corporate criminal liability in India and a comparative analysis with United State of America. The problems arise during penalising the corporate and the development of corporate criminal liability in India through different judicial pronouncement.

In India Commercial scandals are having a negative effect in India. However, due to rapid growth and development, businesses are no longer held legally accountable in India. If penalties are imposed, they are only fines, as it was determined in the case of *Velliappa Textiles*³ that businesses cannot be penalised for crimes that call for mandatory imprisonment.

As a general rule that company can be penalised for the act which is prohibited under Indian penal code. The Latin principle known as "*Actus non facit reum, nisi mens sit rea*" serves as the cornerstone of what constitutes criminal liability.

The current stance is that a business can commit any crime, with the exception of those that call for a specific amount of intentionality on the part of the accused⁴. This is typically the case when economic crimes are involved, such as those covered by the Foreign Exchange Act, the Food Adulteration Act, etc. The process for dealing with the accused firm is outlined in Section 305 of the Criminal Procedure Code, however it becomes difficult to penalise violators when the law stipulates a minimum sentence of jail as a penalty.

Statement of Problem

For constituting any crime whether it is done by human body or a human agent for any company, *mens rea* is an important aspect, but corporate body is juristic or legal person which

² <https://lawtimesjournal.in/lex-non-cogit-ad-impossibilia/>

³ *The assistant commissioner verses Ms. Velliappa Textile Limited and others*, AIR 2004 SC 86

cannot think and here there is lack of intention (guilty mind).member of that corporate world, work for the company. They think on the behalf of the company, they act on the behalf of the company and for performing of such act, nowhere in the memorandum of association is mention so that corporate should be not held liable vicariously but the member who is responsible for the act which he perform by using own authority should be held liable but in the case *iridium v. Motorola*⁴,The Supreme Court ruled that a business might be held accountable for both common law and statutory offences, including those that require mens rea.

Relevance of the Study

Due to rapid growth of industrialisation and the impact of globalisation in the world leads to the birth of the company. Company becomes an integral parts of human life and some how they control them as well. Multinational corporation has a vital role in the economy of any country they control the economy of the company. As in the same way Indian economy is mixed economy where capitalism as well as socialist economy exists together. And they also contributes vast majority of percentage to Indian economy but there are chances of crime also took place and India has a witness of that kind of crime like Harshad mehta scam a, Nirav Modi Scam.so there is chances of fraud, cheating and many other crimes which is criminal in nature in the future as well. There are lots of individuals associated with the corporate association. Company and members are two separate legal identities. But both of them act for each other members work for the benefit of company and for that company pay them. so that if any criminal act done by the member of the company then who is responsible. so company as well as the member who done that act should be held liable and get punished under corporate criminal liability according to law of the land.

Literature review

- Rukmani Sachdeva (2022) : This author article on “an analytical study on corporate criminal Liability: comparative study on India and USA” has immensely helped me in understanding the concept related to my research paper, like how corporate criminal liability is determined in united state of America and India, what is the difference between in both the company when multinational corporation come into existence for making them liable.

⁴ *Iridium India Telecom Limited v. Motorola Inc*

- Vijay Veer Singh: This author article on “corporate criminal liability: A critical Legal study” has immensely helped me in understanding the concept related to my research paper like how actus rea and mens rea play a role in corporate criminal liability.
- Manjit Sahu: This author article on “Criminal Corporate Liability : an Indian perspective” has immensely helped me in understanding the concept related to my research paper like how the concept of corporate criminal liability evolved in India through different judicial pronouncement as well as helped me in the understanding the various observation regarding making corporate liable.
- Kunal Kaushik: this author article on “A critical study on Corporate Criminal Liability with special reference to USA and Indian Law” has helped me lots in understanding the concept of law regarding corporate criminal liability in India and USA.
- Celia wells: This Author book titled “ corporate and criminal responsibility” helped me lots in understanding different aspect regarding my research paper as like natural person and second way is how company is separate legal identity from its member.

Objective of My Study

The objective of my research paper as follow-

- To analysis the reason of development of corporate liability in India.
- To explore the liability of corporate in the world of crime and procedure to established corporate is violate law of land.
- To analyse new trend of crime in the world of corporate.

Hypothesis

If any crime held on the name of company then member only should be held be liable because company cannot think and due to lack of mens rea and member of that company should pay different penalties in the form financial as well imprisonments.

Company is considered as separate legal identity and equated with the natural person. section 11 of the Indian penal Code define the term person as the word person includes any Company or Association or a body of persons, whether incorporated or not. Under section 2 of the IPC every person shall be held liable for the act and get punished. Section 2 of the Code imposes penalties on everyone, including companies, without making any exceptions for bodies corporate. Therefore, the concept of corporate criminal culpability can be inferred from reading these two provisions, however it is not the only piece of legislation that does so; other examples include the Companies Act of 2013, the Income Tax Act, etc.

These days corporations are now an essential component of our society and have grown as important aspect for our economy, there is a possibility that these businesses will harm society as a whole, so they should also be discouraged. There are many ways to understand why punishment should be imposed on criminals of any kind, but deterrence is the justification that applies to businesses like corporations.

Corporation is considered as separate legal identity than its member⁵. Corporation can sue or can be sue. and this is sufficient reason to make them liable along with the members.

Criminal Liability is the attribute or state of having a criminal offence as a means of enforcing one's legal responsibility for one's actions towards another person or society. The extent to which a corporation as a legal person can be held criminally accountable for both its own actions and those of the natural persons it employs is what is meant by corporate criminal liability. This essay aims to investigate numerous intricacies surrounding corporate criminal culpability and, at the conclusion, to offer various recommendations that should be included in laws.⁶

Research question

How corporate criminal liability developed in India? What are the test to determine corporate criminal liability?

The idea of corporate criminal culpability originated in common law nations like Canada, England, and the United States, whose economies were affected by the industrial revolution much earlier than the rest of the globe. In countries with civil law, where corporate criminality was given little to no importance, such developments were unclear. The earlier belief among legal historians was that only the individual members may conduct crimes like treason, felony, or perjury in their individual capacities and be held accountable for them.

Corporate crimes are those that are perpetrated by corporations or by people who are employees or shareholders of corporations and for which there is legal culpability.

In the case *zee telefilms ltd v. sahara corp. co. ltd*⁷, court held that When a firm was released from responsibility for defamation because there was no evidence of mens rea, which is regarded as a legally required element. Later in the case of state of Maharashtra v. syndicate, The High Court ruled that a company could not be tried for crimes that carry corporal

⁵ Solomon v. solomon

⁶ V Vijaya Laxmi (5 January 2019), Corporate criminal liability- A critical Legal study, available at : <http://www.penacclaims.com/wp-content/uploads/2019/03/V-Vijaya-Lakshmi.pdf>, (visited on 27th July 2023)

⁷ Zee telefilms limited vs Sahara India corp. co. ltd (2001) 1 CALLT 262 HC

punishment or imprisonment. If a company were to be charged with such crimes, a trial would result in a guilty conviction, but no effective order could have been made.⁸

However in the case *iridium v. Motorola* in this case The Supreme Court took a different stance than in the previously cited case, ruling that a firm might be held accountable for both common law and statutory offences, including those requiring mens rea.

The landmark case of *Standard Chartered Bank & Ors. v. Directorate of Enforcement*, changed the position and perspective of the Indian courts as regards the corporate criminal liability. In this case, the company was charged for violating the provisions of Foreign Exchange Regulations Act. The court instead of a literal interpretation of the statute, went on to state that in a situation where “the punishment prescribed is both imprisonment and fine, and if the company is found guilty, the punishment of fine can be imposed on them.”

In the case of the *assistant commissioner v. m/s velliappa textile ltd and co.* court held that corporation is held liable to punishment of imprisonment and fine and then it should be liable for fine only because it is not possible to drag company into imprisonment.

But it was not easy it took lots of issues A corporation, which is a fictitious and artificial legal person in the eyes of the law, could not be imprisoned or given the death penalty, which is generally granted in criminal law, therefore it was impossible to determine whether there was mens rea present in the corporation. The court mandates that the defendant be physically present throughout the proceedings, which is impossible for corporations because they are created legal persons.

The test to determine corporate criminal liability are as follow:

1. Identification test

In the case *Tesco supermarket V. Natrass*, justice Lord Reid state that, that the individual acting does not speak for or represent the company. He is acting and thinking like the business, and the mindset of the business governs his behaviour. If there is a guilty attitude, then the company is responsible. The guiding mind and will hypothesis and the alter ego test are other names for this test. To determine a company's controlling and guiding mind and determine its criminal guilt, English courts utilise this test.

2. Aggregation test

There may be times when a company's wrongdoing is the result of several culpable individuals.

⁸ State of Maharashtra vs Syndicate Transport Co.Ltd, AIR 1964 Bom 195,(1964)66 BOMLR 197,1964 CriLJ 276

By combining the actions of two or more people, the actus-reus and mens rea can be drawn from the actions and mental states of many people.

In the case *United State v. Bank of New England*, court held that It is acceptable for groups to act and think collectively because doing so would split responsibilities and reduce liabilities. Australia has been using this test, but England has rejected it.

Criminal liability for corporation is established under IPC as well as under companies act 2013 is established the help of *Standard Chartered Bank and Ors. v. Directorate of Enforcement* (2005) 4 SCC 530. Corporate bodies are more corrupt and profligate in this modern era. They are more powerful and because they are the one who misusing their power in more mischief way. They neither feel shame, remorse. In India most of the penal law is governed by the Indian Penal code. If any act done by anyone which is prohibited by law of land then they punished according to Indian penal code 1860.⁹

Company is a separate legal identity than its member. And company is equated with legal person. Section 11 of the Indian penal code define the term person. The word “person” includes any Company or Association or body of persons, whether incorporated or not.

In the case of *Standard Chartered Bank and Ors v. Directorate of Enforcement*, the Supreme Court disregarded all other established rules. In this instance, Standard Chartered Bank was facing legal action for disobeying the rules set down in the Foreign Exchange Regulation Act of 1973. In the end, the Supreme Court ruled that the corporation could be sued and fined regardless of the mandatory penalty stipulated in the relevant statute. In order to fully uphold justice and impose a punishment on the corporation, the Court did not follow the rigid and literal interpretation standard required under the penal statutes. The Court considered the interpretation rule that states that all penal statutes must be strictly interpreted in the sense that the Court must ensure that the action 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 action is so obviously within the mischief that it must have been intended to be included and would have included if thought of. The Court first emphasised that, in accordance with the viewpoint expressed in *Velliappa Textiles*, the Bank might be charged with an offence that resulted in a fine or imprisonment for rupees one lakh or less. However, the Bank could not be prosecuted for an offence involving more than Rs. 1 lakh, for which the court has no choice to impose

⁹ M Arshiya Thansum and M Kannapan (2018), A critical study on Corporate Criminal Liability with the reference of Indian case law; available at : <https://acadpubl.eu/hub/2018-119-17/1/63.pdf> (visited on 27th July 2023)

either a fine or imprisonment, that is, incarceration is required.

In the case of Standard Chartered Bank¹⁰, the Supreme Court noted that the opinions of the several High Courts in India were incredibly uneven. For instance, in *State of Maharashtra v. Syndicate Transport*, the Bombay High Court ruled that the company could not be prosecuted for crimes that required imprisonment or corporal punishment because doing so would only result in a trial with a guilty verdict and no actual order of punishment.

According to justice Paranjape, "the nature of the offence disclosed by the allegations in the complaint must depend on whether or not a corporate body should or should not be liable for criminal action resulting from the acts of some individual.

What is the criminal liability of corporation in USA? Is there any difference between India.

When workers or agents break the law, the Corporation may be held accountable even if they did so against specific directives so long as they were operating in the corporation's best interest and within the bounds of their actual or perceived authority. A company is responsible for the actions of its employees if they are at least partially driven by a desire to serve the company, however this need not always be the case. And even if the employees were acting in their own best interests when they broke the law, the company may still be held criminally responsible if its managers failed to notice and put an end to the misconduct, either out of willful disrespect for the law or out of simple indifference to its requirements.

Corporation is defined as, "a large business or organization that under the law has the rights and duties of an individual and follows a specific purpose"¹¹

In the past, corporations in the United States were thought of as fictitious legal entities, and since they lacked the *Mens Rea* necessary to commit a crime, they were not held criminally liable. However, this idea has since changed, and in the current situation, although federal statutes may apply, they cannot supersede state laws in cases where they conflict, so a corporation can be prosecuted for both federal and state laws. The penalty provided by the country's laws is a fine or the confiscation of property that can be imposed by a court's orders.¹²

In general, a violation of a statute results in a fine, imprisonment, or both, depending on the court's order, but corporations are also subject to this law, which states that if the fine is not

¹⁰ *Standard Chartered Bank and Ors. v. Directorate of Enforcement* (2005) 4 SCC 530

¹¹ Vikrant Sopan Yadav, *Corporate Criminal Liability: A comparative analysis of judicial trends*, available at: <https://deliverypdf.ssrn.com/delivery.php?ID=0> (visited on 27th July 2023)

¹² Vikrant Sopan Yadav, *Corporate Criminal Liability: A comparative analysis of judicial trends*, available at: <https://deliverypdf.ssrn.com/delivery.php?ID=0> (visited on 27th July 2023)

paid, incarceration may result.

U.S. Supreme Court in *New York Central and Hudson River Rail Road Co. v. U.N*¹³. the court held that corporation is held liable for the crime done with the intention.

In *H. L Bolton and Co. ltd v. T.J Graham and sons*¹⁴, lord Denning held that A firm can be compared to a human body in many aspects. They have a brain and a nerve centre that govern their actions. Additionally, they have hands that hold the tools and follow instructions from the centre. Some of the employees in the organisation serve only as servants or agents, serving only as tools to do tasks and not as representatives of the intellect or will. The company's directing mind and will are represented by directors and managers, who direct what they do. These managers' mental states are the mental states of the corporation, and the law treats them as such.

*Lennard's Carringing Company Ltd v. Asiatic Petroleum Co. Ltd 1915 AC 705: 113 LJ 195*¹⁵.

In this case court 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.

So from the above conclusion it held that both in India as well as united state of America liability depends on the circumstances.

II. CONCLUSION

Corporate criminal liability is an emerging issue in today's world where MNCs play a vital role in the economy. but these corporation also do some fraud and act which is prohibited by the law. And it is a big issue nowadays so every country coming with the concept of corporate criminal liability and making company as well as the member of the company liable for that and get penalised in the form of imprisonment as well as monetary. Different country has different concept regarding the corporate criminal liability. In India, different case leads to development of the corporate criminal liability.

¹³ *New York Central and Hudson River Rail Road Co. v. U.N* 53 L Ed; 613: 212 U.S 481, 1908

¹⁴ *H. L Bolton and Co. ltd v. T.J Graham and sons* 3 ALL ER 624 at, 1956, 632.

¹⁵ *Lennard's Carringing Company Ltd v. Asiatic Petroleum Co. Ltd 1915 AC 705: 113 LJ 195.*