**Corporate Criminal Liability And Its Evolution Through Judicial Trends**

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**Research Methodology**

The method adopted for the research is casts the content analysis of the available fledged data. Content analysis is a methodology in the social sciences by which texts are studied as to authorship, authenticity, or its meaning.

Content analysis is a summarizing, quantitative analysis of messages that relies on the scientific methods including some prerogative methods as well, and is not limited as to the types of variables that may be measured but has its vastness up to sky high limits that is unfeasible.

In this research the methodology of content analysis is used for analysing researched data comprising of various articles, news articles, reports of various institutions etc. & books on the relevant topic to bring forth useful & appropriate information as it is the doctrinal type of research.

**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, corporations.

**Literature Review**

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)

**Introduction**

Large scale corporations are everywhere. These corporations are aid to be the defining force across the globe in almost every aspect of our lives. Corporations have become dangerous criminals. As a general rule, only human beings can commit the offence. The exception to this rule is that the corporate bodies can be held liable for the corporate crimes. The question of research is that whether a corporate body is capable of committing a crime and if yes, then how a corporation can be held criminally liable by the law. The earlier view was that a corporation should not be guilty of a crime. The criminal guilt required an intent and a corporation not having a mind could form no intent. Also, a corporation had no body of its own which could be imprisoned. The courts are likely to impose the liability on the officer-in-charge or directors or other persons acting within the scope of employment.

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. )

**The Concept Of Corporate Criminal Liability**

A corporation is a group of individuals deemed in law to be a single legal entity. It is legally distinct from all the individuals who compose it. It has legal personality in itself and can accordingly sue and be sued, hold property and transact, and incur liability[[1]](#footnote-1). Criminal Liability is the quality or state of being legally obligated or accountable, legally responsible to another or to society, which is enforceable by criminal punishment[[2]](#footnote-2). Therefore, Corporate Criminal Liability means the extent to which a Corporation as a legal person can be held criminally liable for its acts and omissions and for those of the natural persons employed by it. Commentators to this idea contend that the corporate criminal liability is pointless on the accompanying two grounds, firstly they contend that it is not the corporations that carry out violations; the people do. Besides, the retributive impact is borne by the investors and buyers. It implies that the expense of corporate criminal fines and sanctions borne by the inverters and the consumers for the acts of the company[[3]](#footnote-3) .

**Essential Requirements For Establishing The Criminal Liability Of Corporations**

There are some necessary elements which must exist in order to impose criminal liability on a corporation. These are as under:

The intended act must be within the scope of employment: The first requirement that must be met is that the employee committing the offence must act within the course of his employment. He must be performing activities authorized by his company.

The act must be benefiting the corporation: The second element is that the employee behaviour or act must benefit the corporation. It is extremely irrelevant that an employee commits an act selflessly with no intent to make any personal gain or benefit.

 **Tests To Determine The Corporate Criminal Liability**

**Identification Theory**

This theory specifically developed to hold corporations liable in case of offences, which required the presence of mens rea. This theory stipulates that the actions and the mental stage of the corporation found in the action stage of the employees or the directors are to be considered the action and mental stage of the corporation itself. In Tesco Supermarkets Ltd v. Nattrass[[4]](#footnote-4) Lord Reid said: “The person who acts is not speaking or acting for the company. He is acting as the company and his mind, which directs his acts, is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company.” This test is otherwise called modify the sense of self test and as coordinating personality and will hypothesis. This test is connected in the English courts for distinguishing proof or controlling and coordinating the personality of the organization to decide the criminal liability of companies. Due to the rapid pace of globalization of business and the evolution of transnational corporations, it has become very essential to determine the concept of corporate criminal liability. In State of Maharastra, v Syndicate Transport Co. Pvt. Ltd.[[5]](#footnote-5)as quoted in Rachana Flour Mills Pvt. Ltd. v Lalchand Bhanadiya[[6]](#footnote-6) the Andhra Pradesh High Court observed that:

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

**Vicarious Liability (Respondent Superior)**

 Theory Originally, this doctrine developed in the context of tortious liability, which was later imported into company liability. This particular doctrine states that a person is liable to answer for the acts of another. In the case of companies, the company may be held liable for the acts of its employees, agents, or any person for whom it is responsible. This was adopted in the case of Canadian Dredge & Dock Co. v The Queen.[[7]](#footnote-7) The courts have provided various reasons to justify the corporation's liability for the acts of agents. A corporation can be held liable for the acts of its agents - a) commit a crime b) within the scope of employment c) with the intent to benefit the corporation. This was clearly held in United States v.A.P. Trucking Co[[8]](#footnote-8)

**Aggregation Theory**

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

In United States v. Bank of New England**[[9]](#footnote-9)**, the court of appeals confirmed that a collective knowledge is appropriate because corporations would divide duties and avoid liabilities. This test has been applied in Australia but is rejected in England.

**Doctrines Established In Corporate Criminal Liability:**

**Doctrine of Vicarious liability:**

In Vicarious liability, the accused is blamed for the offence of another. This doctrine is based on the principle of Respondeat Superior which means let the master answer. This doctrine is applicable in criminal as well wherein corporate may be held liable and punishment can be fine and seizure of property. Similarly, in the case of Ranger vs. The great western railway company**[[10]](#footnote-10)**, it was held that the company is held vicariously liable for the acts committed by its employee if it is done in the course of its employment. For vicarious liability, the act and intent of the employee must be imputed to the company and the employee should act within the course of employment.

**Doctrine of Identification:**

It requires that corporations should take responsibility for the persons having decision making authority for the policy of the corporation rather than the persons implementing such policies. The doctrine focuses on the fact that the intention and action of the company are the results of the employees of the company. The underlying principle of this doctrine is the detection of the guilty mind.

**Doctrine Of Collective Blindness:**

Under the doctrine of Collective Blindness, courts have held that corporations will be held liable even if single individual was not at fault and considered sum total knowledge of all employees in order to make a corporation liable.

**Doctrine Of Willful Blindness:**

Under such doctrine if any illegal or criminal act is committed and the corporate agent does not take action or measures to prevent happening of such activities then doctrine of willful blindness is applicable.

**Doctrine of Attribution:**

Under the doctrine of Attribution, as in case of sentencing or imprisonment in event of act or omission leading to violation of criminal law, the mens rea i.e. the guilty mind is attributed towards the directing mind and will of the corporations. This doctrine is being used in India however this doctrine was developed in United Kingdom.

**Doctrine of Alter Ego:**

Under this doctrine of Alter Ego, it is described as someone's personality which is not seen by others. The owners and persons who manage the company are considered as the Alter Ego of the company. The directors and other persons who manage the affairs of the company can be held liable for the acts committed by or on the behalf of the company under this doctrine since the corporation has no mind, body or soul so the people are the directing mind and will.

**Evolution Of Coroporate Criminal Liability Through Judicial Trends**

Some landmark decisions settled this issue and helped in the evolution and development of corporate criminal liability.

In an old pronouncement State of Maharasthra v. Syndicate Transport**[[11]](#footnote-11)** It was held that the company cannot be prosecuted for offences which necessarily entail consequences of a corporal punishment or imprisonment and prosecuting a company for such offences would only result in the court stultifying itself by embarking on a trial in which the verdict of guilty is returned and no effective order by way of sentence can be made.

But, the approach of judiciary changed in 2005 after the judgment of Apex Court in A.K.Khosla v S.Venkatesan**[[12]](#footnote-12)**, two corporations were charged with having committed fraud under the IPC. The Magistrate issued process against the corporations. The court, in this case, pointed out that there were two pre-requisites for the prosecution of corporate bodies, the first being that of mens rea and the other being the ability to impose the mandatory sentence of imprisonment. A corporate body could not be said to have the necessary mens rea, nor can it be sentenced to imprisonment, as it has no physical body.

In the case of *Assistant Commissioner v. Velliappa Textiles Ltd[[13]](#footnote-13),* a private company was prosecuted for violation of certain sections under the Income Tax Act ("ITA"). Sections 276-C and 277 of the ITA provided for a sentence of imprisonment and a fine in the event of a violation. The Indian Supreme Court held that the respondent company could not be prosecuted for offenses under certain sections of the ITA because each of these sections required the imposition of a mandatory term of imprisonment coupled with a fine. The sections in question left the court unable to impose only a fine. Indulging in a strict and literal analysis, the Court held that a corporation did not have a physical body to imprison and therefore could not be sentenced to imprisonment. Further, the Indian Supreme Court was of the view that the legislative mandate was to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the Act.

In, Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors. etc.**[[14]](#footnote-14)** the SC had made the scenario crystal clear. It overruled the previous views regarding the Corporate Criminal Liability and had given a new touch to the said doctrine. In this case, Standard Chartered Bank was being prosecuted for violation of certain provisions of the Foreign Exchange Regulation Act of 1973 ("FERA"). Ultimately, the Indian Supreme Court held that the corporation could be prosecuted and punished, with fines, regardless of the mandatory punishment of imprisonment required under the respective statute.

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 [23] 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 Court also referred to the recommendations made by the Law Commission; which had noticed the legal conundrum arising out of the aforementioned situation. The Law Commission recommended the following provision to be inserted in the Penal Code:

 1) In every case in which the offense is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.

 2) In every case in which the offense is punishable with imprisonment and any other punishment not being fine, and the off ender is a corporation, it shall be competent to the court to sentence such offender to fine.

3) In this section, "corporation" means an incorporated company or other body corporate, and includes a firm and other association of individuals

Standard Chartered Bank argued that the Indian Parliament enacted laws knowing well that a corporation cannot be subjected to custodial sentence, and, therefore, the legislative intention was not to prosecute the companies or corporate bodies. According to the defendant, when the sentence prescribed cannot be imposed, the very prosecution itself is futile and meaningless, and, thus, the majority decision in Velliappa Textiles had correctly laid down the law.

In the end, for the SC, the legislative intent to prosecute corporate bodies for the offenses committed by them was clear and explicit. The statute in question never intended to exonerate corporations from being prosecuted. To follow Velliappa Textiles would be to presume that the legislature intended to punish the corporate bodies for minor and silly offenses while it extended immunity of prosecution for major and grave economic crimes. As a specific illustration, the court pointed out that in the case of cheating and dishonestly inducing delivery of property covered under Section 420 of the IPC, the punishment prescribed is imprisonment, which may extend to seven years and fine. However, for the offense under Section 417, that is, simple cheating, the punishment prescribed is imprisonment for a term which may extend to one year, a fine, or both. If Standard Chartered Bank's argument were accepted, it would mean that for the offense under Section 417 of the IPC, which is a minor offense, a company could be prosecuted and punished with a fine, whereas for the offense under Section 420, which is an aggravated form of cheating, the company could not be prosecuted as there is a mandatory sentence of imprisonment. This interpretation clearly produced an illogical result.

**Whether Companies can be immune to prosecution on the ground that they do not posess Mens Rea?**

In the other case of Iridium India Telecom Ltd vs. Motorola Inc.,**[[15]](#footnote-15)**[(2011) 1 SCC 74], the Supreme Court held that in all jurisdictions across the world which are governed by the rule of law companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are not capable of possessing mens rea.

The two principal points on which court passed the ruling were: firstly that a corporation is capable of having mens rea and second that the firm test of labeling of the directing mind of the business has to be identified to ascertain the essential guilty mind.

The court depended on the case of Tesco Ltd. wherein it was established that the individuals who are exclusively entrusted with the powers and duties for the company stated in the, Articles of Association ("AOA") and Memorandum of Association ("MOA"). An individual who is approved by the directors or permitted of control in the general meetings of the corporation will be held accountable and their actions will be influential in assigning criminal liability of the company. The court added that non-declaration of appropriate information would be held as distortion thus establishing corporate criminal liability.

The apex court held that “, the apex court emphasized: “… a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so tense that a corporation may be said to think and act through the person or the body of persons.”[[16]](#footnote-16)

**Doctrine of Vicarious Liability and Alter Ego**

In Sunil Bharti Mittal v. Central Bureau of Investigation**[[17]](#footnote-17)**, the Supreme Court further deliberated on the principle of alter ego and added more texture to its prevailing stand on the matter, filling some of the gaps that remained. The bench of the Supreme Court laid two crucial criteria to determine the circumstances in which directors could be implicated for the actions of the company: when there was sufficient incriminating evidence to signify their role and requisite mens rea for the commission of the crime in question, or when there exist statutory specifications of liability to be meted out vicariously to directors for criminal acts committed by the company. These findings served as a crucial counterbalance to the ever-widening net of individuals and circumstances where individuals in charge of the functioning of the company could be liable for the company's actions.

Another essential limitation that the Court placed on the application of the principle of alter ego was that although corporations could be penalized for the actions of the directors, the imputation of criminal liability to directors for criminal offences committed by the company would not be permissible and that would necessarily require the fulfilment of the two criteria it detailed above. This judgement encouraged a more nuanced approach to this subject and made way for similar positions taken by lower courts and tribunals.

**CONCLUSION & 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. The issue of criminal liability of corporations for corporate acts has been controversial in nature. Legal position of corporate criminal liability has evolved over the years and is still evolving and with time the courts in India have undertaken strict approach in determining liability of a corporate body for the intended acts committed by its directors, persons employed and other agents

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 impossible, 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 courts decision.

1. Walker, The Oxford Companion to Law, Clarendon Press (1980), p.20. [↑](#footnote-ref-1)
2. Black’s Law Dictionary (9th edition), p. 997 [↑](#footnote-ref-2)
3. Vijay Veer Singh, Corporate Criminal Liability: A Critical Legal Study http://ijrar.com/upload\_issue/ijrar\_issue\_834.pdf [↑](#footnote-ref-3)
4. Tesco Supermarkets Ltd v. Nattrass; (1972) AC 153 [↑](#footnote-ref-4)
5. Maharastra, v Syndicate Transport Co. Pvt. Ltd.; AIR 1964 Bom.195 [↑](#footnote-ref-5)
6. Rachana Flour Mills Pvt. Ltd. v Lalchand Bhanadiya; (1987) 62 Comp CAs 15 AP [↑](#footnote-ref-6)
7. Canadian Dredge & Dock Co. v The Queen; (1985) 1SC R662) [↑](#footnote-ref-7)
8. United States v.A.P. Trucking Co; 358 U.S. 121 (1958) [↑](#footnote-ref-8)
9. United States v. Bank of New England, (1987) 821 F2d 844. [↑](#footnote-ref-9)
10. Ranger vs. The great western railway company; [1859] 4 De G & J 74 [↑](#footnote-ref-10)
11. 1963 Bom. L.R, 197. [↑](#footnote-ref-11)
12. Cr LJ. 1448, 1992. [↑](#footnote-ref-12)
13. Commissioner v. Velliappa Textiles Ltd ; AIR 2004 SC 86. [↑](#footnote-ref-13)
14. Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors. etc.; AIR 2005 SC 380. [↑](#footnote-ref-14)
15. Iridium India Telecom Ltd vs. Motorola Inc.; (2011) 1 SCC 74, [↑](#footnote-ref-15)
16. Ibid [↑](#footnote-ref-16)
17. Sunil Bharti Mittal v. CBI; (2015) 4 SCC 609
 [↑](#footnote-ref-17)