
CORPORATE CRIME AND THE CRIMINAL LIABILITY OF CORPORATE ENTITIES WITH REGARD TO INDIA: A COMPARATIVE STUDY

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ABSTRACT

Corporate crimes are white collar crimes committed by the rich, wealthy and most important the criminal offenders are powerful and at times encouraged by the other powerful authorities to carry out their motives. The motive behind carrying out is committing wrongful gains. A corporation is a legal entity is governed by the members/ association of members. These kind of crimes are generally non-violent in nature and have financial angles of crimes.

The corporate criminal liability is generally of the members/ association of members. There are several kinds of white collar crimes one is bribery, bank frauds, counterfeiting, Ad-hoc, forgery, professional crimes, Insider Trading cybercrime, money laundering, tax evasion, identity theft, food and drug adulteration, hoarding and black marketing, ponzi schemes, embezzlement, frauds, espionage. There are several kinds of liabilities involved with regard to the corporate criminal nature I e vicarious liability, Doctrine of Wilful Blindness, Doctrine of Collective Identification, Doctrine of Alter Ego and the Doctrine of Attribution. The concept of corporate crime as specified as white collar crimes has been specified under various statutes such as the Companies act to catch hold of the frauds or the financial defaults that place through the companies. There are acts committed food safety and adulteration control. The criminal liability is drawn out from the maxim The legal maxim upon which the basic rule of criminal liability stands is 'actus non facit reum nisi mens sit rea means' which basically means that act is not wrongful unless it is done with a wrongful state of mind. These are crimes that committed during the course of the business by the corporations. There are a lot of lessons in terms of corporate criminal liabilities that India can learn from other countries in strengthening the legal system to keep a check on the financial systems of the country. India has seen some infamous cases and financial debacles due to the weak legislations and various loopholes.

KEYWORDS: Counterfeiting, Doctrine of Alter Ego, Doctrine of Collective Identification, Doctrine of Wilful Blindness , Doctrine of Attribution, Vicarious Liability, Corporate Criminal Liability, Corporate Crimes.

INTRODUCTION

Company is an association of persons formed to achieve some common objective. It means an organisation formed/registered under Companies Act, 2013. Companies are created with sanctions of law and not human beings. Therefore, they are called an artificial person. It covers certain rights and obligations is called a person. After the registration of the company, the association of persons becomes a corporate body as per the memorandum. As company is an artificial person, so it cannot act on its own. Corporate crime is a type of white collar crime concerning economic offences. India has seen a rise in white collar crimes from 90's decade. The corporate crimes include such as money laundering, ad hoc crimes, Corruption, financial scams, tax evasions, food adulteration, public fraud, corporate fraud, smuggling, insider trading, credit card fraud, environmental crime, intellectual property infringement, stock manipulation, counterfeiting of coins, currencies forgery, bank frauds, bribery, professional crimes, cyber crime, food and drug adulteration, hoarding and black marketing, ponzi schemes, embezzlement, frauds, espionage. The inception of corporate liability is marked from the time industrial revolution in the Britain came into existence. This malpractice of companies exploiting the countries resources and extracting money, started from the British East India Company's existence.

The legal maxim used to bring out the criminal liability of the corporate crimes is "**Actus Non Facit Reum Nisi Mens Sit Rea**" which means that the intent and act must be there to prove the guilt of the accused. This rule is not enough, as there several limitations to this rule. Firstly, it must be proved before the court of Law and which is prohibited by law. The major elements required for proving the accused guilty are mental element and physical element(R Balakrishna Pillai V.State of Kerala. In other case of Mens Rea is generally taken to be a necessary element of Crime. This was explained through the maxim *furiosi nulla voluntus est*. which means that a person who is not in sound mind cannot be held guilty.

The intention and act, both constitute the crime(State of Rajasthan Vs. Shera Ram). Again in the this case, it was proved that two constituents that are to be considered Actus Reus and Mens Rea. The act should be prohibited by law. (C.K. Jaffer Sharief). The first time corporate crimes came into light in India was through the introduction of Indian Penal Code in 1860. As per the Section 11 of the Code, which suggests that a "Person" includes a company whether incorporated or not. Company refers to an artificial person. There are several other acts like the Food and Safety Standards Act 2006, Narcotic Drug Psychotropic Substance Act 1985, Code

Of Criminal Procedure 1973, Essential Food and Commodities Act 1955, Environmental Protection Act 1986, The Negotiable Instruments Act 1881, The Indian Contract Act 1872, other than the Companies Act 2013. There are several criticisms with regard to the Doctrine of Corporate Criminal Liability. Under Companies Act, 2013 Section 447 explains Fraud has been laid down to prosecute in case of a corporate crime. For the commission of an offence there should be sufficient Mens Rea to hold a company liable. Mens Rea is considered a necessary element that needs to be proved.

TYPES OF CORPORATE CRIMES AND CORPORATE LIABILITIES AND DOCTRINES

Ponzi Scheme- This kind of scheme is an investment scam to attract investors offering high returns. When there is no influx of new investors then the scheme collapses leaving the investors in huge losses and debts.

Identity Thefts and Cyber Crimes- This kind of corporate crime is hacking of computer system. This kind of crime is becoming increasingly rampant.

Fraud – Intentional deception of an individual by the other person is called fraud. Under the Indian Contract Act, 1872 it means an act committed by a party or an agent, with the deceive another party or to induce him/her to enter into a contract. Fraud constitutes elements such as facts that are projected to be true but are untrue. There is a vigorous hiding of facts. A promise made with the intention of non performance of the promise. Committing any other act to deceive or any such act that is fraudulent in the eyes of law. Section 25 of the Indian Penal Code, 1860 explains that a person who intends to do things fraudulently, if he does that thing to defraud but not otherwise. There are several kinds of frauds such as

Types of Corporate Frauds- all these kinds of corporate frauds have one thing in common I e Deceit and Trickery.

Fraudulent Financial Statements

Employee Fund

Vendor Fraud

Customer Fraud

Investment Fraud

Bankruptcy Fund

Misappropriation of Assets

Corruption

Types of Financial Frauds

Manipulation, Falsification, Alteration of Accounting Records.

Misrepresentation of Intentional Omission of Amounts

Misapplication of Accounting Principles

Misappropriation Of Assets Includes

Theft of Tangible assets by internal or external parties

Sales of proprietary information

Corruption includes

Making or receiving improper payments

Bribery

Deceptive Accounting- Under the Companies Act, 2013 the corporates are expected to reveal every information of their organisation relating to finances. This information is supposed to be shared with the investors, shareholders, creditor and other equity holders of that corporation. Deceptive accounting in the literal sense means when a corporation manipulates audit reports are circulated to equity holders of that corporation.

Embezzlement- Embezzlement is a kind of corporate theft that an employee makes by misappropriating the funds of a company, withdrawing money without informing company officials into his/her own account.

Counterfeiting of coins and currency- Printing and issuing of fake currency notes and coins.

Money Laundering- This is a kind of crime where the criminals deal with large amount of money, then it is manipulated to earned to be through a legally legitimate source by shifting into various bank accounts.

Insider Trading- Using private data for manipulating information for personal benefits and gains. This information is used for hiking the share prices of the stocks in the stock market. This also makes it more prone to stock market manipulation for the buying and selling of the stocks in stock market.

Infringement of IP Rights – The infringement of Intellectual Property Rights include hacking of the systems of the rival or competitor company. Leaking or misusing the sensitive and confidential information. Copying of a symbol/ logo or using without their permission or without giving them credits. Misuse of a Trade Secret is also Intellectual Property Right Infringement.

Conditions required to establish corporate criminal liability-

- 1) **Act should be committed by an employee or servant.**
- 2) **It should be during the course and ambit of employment.**
- 3) **It should be done in the order to benefit the company/ corporation.**

DOCTRINE OF CORPORATE LIABILITY

There are several kinds of doctrines of corporate liabilities

Doctrine of Vicarious Liability

The concept vicarious liability has originated from the law of torts. This concept throws upon the duty of the principal, if an act was committed by his/ her agent in the due course of employment. The relationship is supposed of principal-agent for holding vicariously liable. This is discussed in Companies Act, 2013 through the increase in the liability of the directors. Principal will be held liable under Section 145 of the Negotiable Instruments Act,1881.

Doctrine of Identification

This doctrine lays down the responsibility of the person who shall be making policies on behalf of the corporation. The governance of the company is dependent on their conduct and their

mind. They consider the liability of the employee for any criminal offence. The ambit of this doctrine is smaller than vicarious liability because its extend to the course and ambit of the employment as held in the case **Moore V. Bristler**.

Doctrine of Collective Blindness

Courts have found this liability doctrine I e a all the employees irrespective of their knowledge of company's misgovernance and malpractice they all will still be held liable.

Doctrine of Wilful Blindness

This doctrine was laid down under the principle, if an unlawful act is committed in the company and the concerned authority does not take action, hence this doctrine shall be applied.

Doctrine of Attribution

This doctrine lays down the principle if people working on the behalf of the company such as the directors and key managerial personnel acting as an agent of the corporation can be held liable if they have committed an act prohibited by law. Under this doctrine the Mens Rea will be held guilty. *Motorola v. Iridium Telecom Ltd.*

Doctrine of Alter Ego

In the case *Tesco Supermarket Ltd. V. Natrass* it was held that corporation is an artificial entity, which is not acting through its members but instead working on the doctrine of alter ego which means the company will also be held liable if a prohibited act is committed.

Doctrine of Corporate Criminal Liability

The doctrine of corporate criminal liability stands for the fact that the corporation can be held liable for the malafide conduct of its employee or an agent act under the purview of employment. This doctrine is being highly recognised after the famous judgement of *Standard Chartered Bank V. Directorate of Enforcement* .

As per the case of *Iridium India Telecom Ltd. Vs. Motorola and Ors* as well as in *Sunil Bharti Mittal V. Central Bureau of Investigation*, it was held that the position of corporation shall be treated the same way as an individual and shall be penalised for the similar offences, where in

Mens Rea shall be required. The criminal liability of a corporation shall arise, if any offence has been committed in relation with the Company.

Organisational Model

This model of organisation is based on the organisation specific approach in comparison to the

Derivative model. The Mens Rea and Actus Reus are the prerequisite elements. Even though the actus reus is prima facie, the matter in issue arises when the Mens Rea of a juristic person needs to be proved, as it cannot be judged whether the mens rea is present or not and many cases have been dismissed on this principle. The Mens Rea of the person committing the offence therefore the doctrine of alter ego will be applied as per the case supreme court case *Asst. Commissioner Bangalore & Ors. Vs. M/s. Velliappa Textiles Ltd. & Anr.*

OTHER PROVISIONS TO PREVENT CORPORATE CRIME

Under Companies Act, 2013 there are other sections under which the corporations and its members can be penalised. This legislation was passed with the intention to prevent corporate crimes. This act makes fraud a punishable offence and awards a punishment for a duration of a minimum 6 months to 10 years. There is also punishment for producing and providing forged documents for furnishing fake evidences from the proviso of Section 8 of the act provides the punishment for 6 months and 10 years. Section 212 refers to the in investigation of the affairs of the company by Serious Fraud Investigation Office. Section 447 refers to punishment for fraud. Section 448 refers to false statement. Section 449 refers to punishment for False Evidence. Section 450 refers to punishment where no specific Penalty or Punishment is provided. Section 451 refers to repeat offenders. As per the report of the company law committee, the section 447 is too broad and this can lead to injustice in terms of the accused who have been proven guilty for minor acts. These are likely to be punished more harshly.

Prevention of Corruption Act, 1988

This act was amended in the year 2008 with intent to eradicate bribery as this act shall be held liable for taking a bribe as well as offering a bribe to a company official.

Securities Exchange Board Of India,1992 (Prohibition of Insider Trading Regulations), 2015

Insider trading is completely banned in India. The Companies Act strictly prohibits the influx of sensitive and confidential information to be leaked out of the company. There is a fine for 25 crores or three times the profit earned through trading or imprisonment for 10 years or both.

Prevention of Money Laundering Act, 2002

This act lays down the rules and regulations for the proper maintenance and furnishing of proper financial books and records disclosing the nature and value of the transactions carried out by a company. Companies here refers to banking and financial institutions as well as intermediaries as per the rules of 2005 amendment and Companies Act, 2013.

If there is a fault in the accounting of the financial transaction a fine 5 lakhs and year imprisonment shall be given to the company.

INDIAN PENAL CODE,1860

Section 23 refers to wrongful gain.

Section 171-B refers to bribery.

Section 465 -punishment to forgery

Section 25- explains the meaning of fraudulently.

Section 489- Tampering with property mark with intent to cause injury.

Section 489A- Counterfeiting currency notes or bank notes.

Section 489B- Using as genuine, forged or counterfeit currency notes or bank notes.

Section 489C- Possession of Forged or counterfeit currency notes or bank notes.

Section 489D- Making or Possessing Instruments or Materials for forging or counterfeiting currency notes or bank notes.

Section 489E- Making or using documents resembling currency notes or bank notes.

INDIAN CONTRACT ACT, 1872

Section 17 refers to Fraud. Fraud means an act committed with the intention to deceive the other party.

NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT(NDPS)

The section 38 of the Act lays down the offences by companies and also defines what is meant by a company and directors. If an offense has been committed under chapter IV by a legal entity or company/corporation. Where any offence has been committed by the company/corporation.

NEGOTIABLE INSTRUMENTS ACT

Section 138 defines the offence committed by corporations states that

- (1) Every person who, at the time the offence was committed, was in charge of, and responsible at that time during the conduct of the employees and company shall be held guilty.
- (2) If any offence has been committed by the company and the proven guilty and the offence has been committed with the consent or is in the knowledge of the manager, secretary, manager, director or any other official shall be held guilty for the offence and shall be prosecuted and punished.

BANK REGULATION ACT

Section 46(3),(4) and (5) carve out the procedure and liabilities in case of default in payment is committed by a company.

- (1) If any deposits are received by a banking company was breached under Sub Section(4) of Section 35 every director or officer of the banking company, unless the breach took place without his knowledge or all the necessary due diligence has been exercised to prevent misuse shall be held liable.
- (2) As per the sub section (7) of section 45 by any such person shall be liable with a fine which may extend to one lakh per day or until the default continues.

CHIT FUNDS

The section 78 of the Chit Funds explains the offences committed by a company or person who was in charge of the conduct of the business of the corporation along with the company shall be held guilty and shall be prosecuted and punished accordingly. If an offence has been committed with or without the knowledge of the any director, manager, secretary or any other officer of the company. They shall be held liable and punished accordingly.

RESERVE BANK OF INDIA

The Section 58 of the Act explains that the act committed by a person at was in charge and was in power position to govern the company as well. Where the offence has been committed with the knowledge of the company, or is attributable to neglect on their part by any director, manager, secretary or any other employee of the corporation shall be deemed to be guilty of that offence and shall prosecuted and punished accordingly.¹

FINANCIAL DEBACLES AND SCAMS

Satyam Scam, 2009

This scam shattered the share market yet again. The Chairman Ramalinga Raju manipulated the financial statements and book accounts. The company over hiked the assets worth 490 Crores. It created a fake cash balance of 5000 crores in the balance sheet. The interest component that never flowed into the company's treasury. Company had undisclosed liabilities worth of 1,230 crores. Investors panicked as Indian Stock Market broke. The employees of that company were also arrested. This scam majorly affected the Indian IT sector and broke major backbone of the Indian IT industry. There was a loss of trust of the international outsourcing companies upon the Indian IT sector. The Chairperson, Managing Director, Chief Financial Officer, Chief Executive Officer, partners were also arrested. There was calculated loss of whopping 100 billion the investors lost at the Bombay Stock Exchange as the tripped down by 78 % to Rs 39.98.

Harshad Mehta Scam Case

In this case Harshad Mehta was involved in Insider the Trading and Manipulation of share prices. He also took a security worth 5000 crores from the State of Bank Of India. The money

¹ <https://indiankanoon.org/doc/591351/>
<https://thecompany.ninja/landmark-corporate-crimes-cases-in-india/>

was missing from the book accounts of all the banks. He also manipulated the stock prices through this money that he has obtained. One of the chairman of these small subsidiary bank committed suicide. He obtained the fake bank receipts and further goes on to borrow money from other banks. This manipulation of increasing the prices of the stocks came into picture, when this scam came out in the public. The fault in the financial at that time was that the SEBI had no control over the stock brokers and investors. Aftermath this scam SEBI was given the powers to control and check the transactions between brokers and investors. Also, the money was invested in the benami and unlisted companies in order to mint money.

Abdul Karim Telgi Case

Abdul Karim Telgi case is also known as the Counterfeiting Stamp Paper Case. the watermark of these stamps was copied and sold in the market, that to when the authority to publish is only with the government. In this case the Rs. 5,10 stamp papers were sold at Rs10000, also at 1lakh rupees. There was constant misappropriation of stamp paper and it was sold at sky rocketing prices.

2G Spectrum Scam

2G was telecommunication scam. There were a lot of politicians and the government of that period was involved. The scam was based on the suspicion of a unified licencing that was introduced by then telecommunication and IT ministry.

CONCLUSION

The major shortcoming of the Indian Corporate Legal System is the fact that the Indian Penal Code, 1860 does not provide the ambit, extend and explanation of the Corporate Crimes. There has not been any amendment to the Indian Penal Code,1860. Also the Indian Legal System is such it does not list down the Corporate Criminal Liability in a detailed basis, which gives rise to loopholes to escape. The Code of Criminal Procedure (CrPC) and Indian Penal Code largely do not explain or exactly list down the liabilities of the Directors and Managerial Personnel holding pivotal role oriented positions in the company. The statutes which list down the Criminal Liability are as follows Under Foreign Exchange Management Act and Negotiable Instruments Act are the specific legislations that lists out the corporate criminal liability. Also as per the case of **Iridium India Telecom Limited Vs. Motorola Incorporated & Ors.** the only definition given in the Indian Penal Code, 1860 under section 11 “ Companies are

considered legal entities” and therefore should be held liable. The major prosecution and punishment is held under Companies Act, 2013.