
CORPORATE CRIMINAL LIABILITY

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ABSTRACT

The study examines the beginnings and development of corporations' criminal liability under Indian law. The paper explores the difficulties this field of law encounters in India owing to issues with common law jurisprudence concepts and practice. The study effort explains the development of corporate personality, the corporate veil idea and the exceptions that have merged through time, and the famous *Solomon v. A. Solomon & Co.* ruling.¹ The case launched a new period in English civil law that was adopted by other legal systems, including India. The English judiciary cut through the idea of corporate personality's use as a cover for illicit activity by creating exceptions that served the interests of justice. English law maintained corporate entities outside of the purview of criminal law up until the 19th century. Actus reus and mens rea are the two prerequisites for the Common Law offence. Due to the Companies' lack of mental faculties, it was determined that they lacked men's rea. This led to the legal issue of the corporation's culpability for strict liability offence. The firm may be held accountable for offence if men's rea is not necessary. Even the so-called "strict liability crime," meanwhile, just presumes men's rea against the accused rather than negating it. In order to penalize businesses for crimes containing men's rea, the English courts created the notion of alter ego.

Due to the lack of comprehensive legislation in this area, Indian law focused on punishment when evaluating the company's criminal liability. In the matter of *Assistant Commissioner v. Valliappa Textiles Ltd.*², Even if the offence carries a jail sentence and a fine, the Hon. Apex Court ruled that a firm could not be subjected to obligatory incarceration. In the Court's opinion, the term "and" cannot be construed as "or," hence the corporation could not be fined. *Directorate of Enforcement v. Standard Chartered Bank and Others*, 2005, the Apex Court took the opposite stance. The researcher also discusses the technological aspects of the company's arraying and non

¹ (1895-99) ALLER REP 33: 1897 AC 22

² A.I.R. 2004, S.C.

arraying as well as its legal reaction. These issues are brought up by the researcher, who believes that an organization's criminal liability cannot be based on interpretation rules. An all- encompassing law to address the responsibility of the company in criminal law for offence Men's ream and other factors must be involved. A model law is provided by the researcher in the last chapter

Keywords: Criminal liability , Apex court , jurisprudence , Imprisonment, Crime

INTRODUCTION

The term "business" is neither legally nor technically defined in a precise sense. A company is defined as one that was established under this Act or any earlier company legislation under Section 2(20) of the Companies Act, 2013. A corporation is an organization made up of several individuals who invest cash or cash equivalents into common stock, work in a trade or business, and share in the associated profit or loss. The capital of the firm is shown in common stock that has been thus given. Members are those who contribute to it or to whom it applies. Individually member's share of the capital is the amount to which they are each entitled. The ability to transfer the shares is always possible, albeit it is frequently somewhat constrained.

An artificial, invisible, immaterial creature that only exists in the mind of the law is a corporation. Being only a product of law, it only possesses the qualities that its formation charter expressly or implicitly bestows upon it. Having a distinct identity, continuous succession, and a common seal, a corporation is an artificial person founded by law.

FUNDAMENTAL ELEMENTS OF CRIME

There are four elements to constitute a crime

- 1) A human being.
- 2) The existence of such a human being's mens rea, or guilty purpose.
- 3) Actus reus, an unlawful deed or neglect
- 4) An injury to another person.

Even animals were subject to punishment in ancient times. However, India no longer follows this practice. The term "person" is defined under Section 11 of the Indian Penal Code, 1860 as "a business or association or group of individuals, whether incorporated or not. According to Section 2 of the Indian Penal Code of 1860, anybody who violates the provisions of that law by acting or failing to act within India is subject to punishment under that code."

The following factors prevent the English legal system from holding businesses criminally liable

- 1) Lacks a physical body and is not incarcerated.
- 2) Men's ream - no mind
- 3) The extra virus theory places restrictions on business operations. The conduct of a crime can never be approved by a firm.

ENGLISH CASES

In *Lenard Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd.*, it was determined "A corporation is an abstraction. Since it lacks both a mind and a body of its own, its acting and directing will must be carried out by someone who is actually the corporation's guiding mind or will, its own ego, and the core of its personality." Accordingly, the alter ego thesis holds that the corporation's higher officials, who represent the corporation's controlling mind or will, are to blame.

INDIAN SCENARIO

Standard Chartered Bank v. Directorate of Enforcement was decided by the Supreme Court Constitution Bench³.

- 1) It goes without saying that businesses are subject to criminal prosecution and punishment.
- 2) The Court can only fine a corporation when both imprisonment and a fine are the appropriate penalties.

The High Court order was overturned and the trial began by a three-member court in the *Iridium* case. It discriminates even though the corporation can be fined and punished. In contrast to the firm, who just pays a fine for the same offence, an individual faces jail time. The *East India Firm*, a foreign company that has no business in India, was the first business to operate on Indian land. Laws were drafted with the idea that both the corporation and the monarch were infallible.

³ AIR 2005 SC 2622

UNDERSTANDING THE LIABILITIES OF CORPORATIONS AND SCAMS

In the Indian legal system, the concept of corporate personhood has existed since the East India Company was founded in 1600 as a result of Her Majesty Queen Elizabeth's charter. A business may file suit or be sued on its behalf. The second chapter seeks to explain the notion of companies and obligations at their most basic level. This chapter focuses on understanding corporate liability using a holistic approach. It looks at what responsibility means and how it differs from other notions like remedial and punitive liability as well as liability exemptions. If a crime is committed by a corporate person as opposed to a natural person, the researcher investigates whether there are different legal remedies or penalties. Contracts and torts are used in this lesson to assess the idea of civil responsibility. The researcher examines the mental component, remedy, and penalties in relation to the criminal culpability imposition of alter ego. To underscore the issues in determining responsibility, this chapter also provides an aerial perspective of several corporate frauds.

Liability

Liability develops when someone commits a wrong. Those who ignored legal orders must deal with the repercussions. Sanctions are used when these repercussions are connected to legal requirements to enforce compliance. Justice is served when the culprit is made accountable by the consequence for their actions. Offender and the negative effects of their wrong are legally bound together. The quote from Salmon that reads, "A man's liability consists of those things which the man must do or suffer because he has already failed to do what he ought" is accurate. Liability and power are related. Liability and the legal concept of immunity conflict. Liability's antithesis is immunity. When you X are liable, it indicates Y has the authority to impose the responsibility. There are two categories of obligations recognized by law.

The Concept of Criminal Liability

Vicarious liability cannot always be used and is often viewed with scepticism in cases of significant crimes with men's ream. As a result, the company's direct culpability has become more important in criminal law. "Only recently, following the promising work done in this field by Prof. Edwin H. Sutherland, have the anti-social behaviours of people of upper strata in their occupations—which have come to be known as white-collar crimes—been given their proper importance." "Prof. Sutherland was preceded by others who saw the harm done to society by

top socioeconomic classes who abused the established economic system. System to the disadvantage of the general populace." "Prof. Albert Morris draws attention to a paper by Edwin C. Hill titled "Criminal Capitalists" that was delivered in front of the International Congress on the Prevention and Repression of Crime in London in 1872. According to the cooperation of real estate owners, the author of this study emphasized the rising relevance of crime as an organized enterprise. Traders, producers, and other upright individuals. White-collar crime, according to Sutherland, is any crime done in the course of employment by a respectable or highly-placed individual. He went on to describe a white-collar criminal as "a person of higher socioeconomic standing who breaches the criminal law while engaging in his or her professional or occupational activity." Because of the significant financial losses and subsequent harm to public morale, he noted that "white-collar crime was more harmful Sutherland popularized the phrase "white-collar crime" in the context of breaking the law, but it has now come to refer to immoral but legal behaviors like tax evasion and undercutting the cost of goods as examples on the point. Another tendency is to include legal infractions that aren't always committed by people in higher social strata or by those in white collar jobs or professions. Taxpayers of all income levels engage in crimes like violence, which are not done in the course of their employment.

The Concept of Civil Liability

In *Union of India v. Kadhar International Construction Ltd*,⁷ Kerala High Court stated that a company could file a suit in a Civil Court as a pauper. The company can prefer an application to file a pauper suit under order 33 Rule 3 of Civil Procedure Code, 1908 and need not necessarily be an insolvent company. Likewise, in *Bank of Maharashtra v Racman Auto (P) Ltd*, The Delhi

High Court held that managing director of Company is not a necessary party in a corporate proceeding. The companies are allowed to file all kinds of a civil suit on the property or having pecuniary interest involved. However, companies incorporated under Section 8 (old Section 25 of the Indian Companies Act, 1956) of the Indian Companies Act, 2013, may prefer suit on non- pecuniary matters also

CRIMINAL LIABILITY OF THE CORPORATIONS IN INTERNATIONAL PERSPECTIVE

Business rules have evolved on a global scale. In light of this, it is equally important to take into account how developed and emerging nations worldwide approach the legislation relating to modern commercial activities. Given that India adheres to the Anglo-US Model of Corporate Governance and also has a common law history with these nations, this chapter seeks to evaluate the perspectives of a few specific jurisdictions, such as the United States and the United Kingdom. However, despite our attempts to include international standards, the problem has not been solved, and an India-centric solution that takes into account the predominant local and cultural elements is urgently required. This chapter explores the criminal responsibility of companies from a worldwide standpoint and the ongoing global change in legislation governing contemporary businesses. These include the United States of America, Canada, England, Finland, and Australia. The researcher discovers that the US prosecuted B.P. Company and passed Bhopal-related measures into the Clean Air Act, 1990. In Canada, Bill C-45 was introduced to modify the Criminal Code to hold corporations and senior executives who have a part in establishing policies and overseeing a crucial aspect of the company accountable. Therefore, the method of punishment is an appropriate Criminal Law in place to limit corporate offense and fines. In Australia, the Criminal Code Act 1995 provides specific laws that address corporate crime in Division. Corporate Criminal was included in the Finnish Code in Finland. The Corporate Manslaughter and Corporate Homicide Act of 2007 was passed. The researcher investigates judicial rulings to determine if Trust and other incorporated partners are subject to criminal law liability. In this case it is examined that the inadequacy of corporate criminal liability in the Indian context using cases like Assistant Commissioner, Assessment-II, Bangalore and Ors. v. Valliappa Textiles Ltd and Ors., A.I.R. 2004, S.C. 86, Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors. Etc., 2005, 4 S.C.C. 53, and Iridium India Telecom Ltd. v. Motorola For the purpose of examining corporate criminal responsibility, the researcher selects the following nations.

Canada

In Canadian *Dredge & Dock Co v. The Queen*⁴, "The corporate Identification doctrine operates where the action was taken by the directing mind (a) was within the field of operation assigned to him or her; (b) was not totally in fraud of the corporation and (c) was by design or result party for the benefit of the corporate further," the Supreme Court stated in its ruling. In the case of *Deloitte & Poncho v. Liven Inc.* the court can refuse to assign the knowledge of a directing

⁴ (1985) 1 S.C.R. 662

mind to a business if doing so would not be in the public interest, according to Canadian Dredge & Dock Co., supra. The Supreme Court ruled in *Rhone v. Peter A.B. Widener* that "The crucial characteristic which differentiates directing minds from typical workers is the capacity to exercise decision-making authority on questions of company policy, rather than just to give such policy effect on an operational basis."

England

According to the principle laid down by the English Court in *Solomon v. A. Solomon Co. Ltd*⁵ A legal person, the company has the right to bring legal action and to be sued. The criminal responsibility of the business for the actions of its employees, however, was a later development in English law. There are some crimes that a company can never be held accountable for, such

- 1) Bigamy
- 2) Incest
- 3) Rape, etc

Even perjury is not something a business may do, according to Smith and Hogan's. The researcher, however, is hesitant to agree with this position since, if there is no accommodation made with regard to the men era-based criminal culpability offense committed by corporations, a false affidavit made in court by a corporate official should be regarded as perjury. The English Courts ruled in *R v. Robert Millard (Contractors) Ltd* that although the Company might be held accountable as a principal, there are few grounds to charge it as an accessory. According to the Court, "It is difficult to envisage a circumstance in which the firm might be found accountable as principal for unsafe driving, but it may undoubtedly be convicted as a subordinate party."

Australia

Body Corporate is governed by Division 12 of the Code. The same rules that apply to individuals also apply to the body corporate. In section 2.5 of the Code, the modification needed for the application was supplied. A few of such principles are those that the researcher wants to convey. The law attaches the physical aspect of an offence to the corporate body when it is

⁵ (1895-99) ALLER REP 33: 1897 AC 22

committed by an employee, agent, or officer of the corporate body while acting within the real or apparent authority of their position. This clause recognizes the acts Reus. Mental element other than negligence when intention, knowledge or recklessness is a fault element to the earlier mentioned physical element of the offence (actus reus)⁶ The company shall bear responsibility for the aforementioned fault element, which explicitly or subtly or implicitly approved of or facilitated the conduct of the offence. In order for the authorization or approval to be judged to have been formed, it must be demonstrated that the body corporate board of directors engaged in the relevant behaviour with knowledge or recklessness.

India

Company is a separate legal entity who can sue and be sued therefore starting from Solomon v. A.Soloman Co.⁷ On the Company's civil liabilities, everything seems to be in order. The Company has the right to bring claims against it and to be sued. To what extent, though, a firm may be considered an accuser or even a complainant in a criminal prosecution has been a topic of much debate in recent years. Because of this, under the previous common law, criminal culpability of the Company was never widely discussed nor considered. A firm being held criminally responsible only due to a philosophy fiction shows that legal entities are regarded equally to human beings, even if the same justification may make sense in theory but not always make sense in practice. Can we penalize the Company even when we can readily identify the criminals hiding behind the Company's facade and even if the Company is otherwise determined to be responsible under criminal law? The most common forms of punishment in criminal legislation are incarceration, death, fines, and forfeiture. These are the punishments that are permitted even under the Indian Penal Code of 1860.⁸ No other penalty may be effectively imposed on a firm among these, with the exception of fine and forfeiture. Even while there were several suggestions—including outlawing the company and forcibly winding it up—none of them can be regarded as an effective and long-lasting solution. What if every member of the disbanded firm founded a new business under a new name, continuing the previous enterprise? People that establish such a new Company will benefit from the corporate veil idea, which is the cornerstone of contemporary corporate law.

CRIMINAL LIABILITY OF CORPORATIONS IN GENERAL AND SPECIAL

⁶ 12.2 of the Criminal Code Act, 1995

⁷ (1897) A.C. 22

⁸ Indian Penal Code, 1860, Section 53.

STATUTES IN INDIA

1) **Securities Exchange Board of India Act, 1992**

In Section 27 of this Act, there is a particular provision for the offense committed by the corporations. The corporation and the individuals in charge of the company's business are both subject to vicarious criminal culpability under this Section. The case is *Rashima Verma v. SEBI*.⁹ A director, manager, secretary, or any other officer of the company would also be deemed guilty of an offence if it was carried out with his consent, with his knowledge, or as a result of any negligence on his/her part, and furthermore if he/she had not been in charge of and accountable to the company.

2) **Goods and Services Tax Act, 2017**

The Central Goods and Services Tax Act of 2017's Section 137 addresses offence committed by businesses. The Central Goods and Services Tax Act of 2017's Sections 137(1) and (2), which deal with corporate offence, are pair material with other central statutes. However, the partner, Karta, and Managing Trustee are individually responsible in a Partnership, Limited Liability of Partnership, and Hindu Undivided Family and Trust. Hindu undivided Limited Liability Partnership As an entity, Family and Trust were exempt from the Act's penalties. The definition of a corporation under Section 137 is a "body corporate includes a business or organization of persons." This means that in cases involving companies, partnerships, and limited liability partnerships, the entity as a whole may be penalized. Despite different opinions stated in the past by the High Court and occasionally the Supreme Court in this respect, the Parliament omitted to specify whether Hindu Undivided Family or Trust would fall inside the company's description.

3) **Income Tax Act, 1961**

The Act has a special provision for the violations of Section 278B by corporations. It puts vicarious liability on those who are accountable for the management of affairs. According to Section 279A, the offence committed in violation of Section 278B is not punishable by law. According to Section 280B of this Act, a Special Court will try these offences committed by corporations covered by the chapter. It will only proceed after the authorised authority who

⁹ (2009) 95 SCL 1 (Delhi)

took cognizance of the offence has committed it for trial. According to Section 280C, the Special Court may impose a sentence of two years to five years in jail or both as in a summons case. The 1973 Code of Criminal Procedure's requirements that pertain to the summons case trial should be applied properly

4) Consumer Protection Act, 1986

Social and economic justice flow from consumer justice. To better safeguard the interests of consumers is the major goal of the Consumer Protection Act of 1986. Consumer Protection Act of 1986. Acts have a civil aspect. Clause 2 (d)¹⁰ "Consumer means any person who, - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment, when such use is made with the approval of such buyer."

(ii) Any services for a consideration that has been paid, promised, or partially paid and partially promised, or under any system of deferred payment, and includes any beneficiary of those services besides the person who the services for a consideration that has been paid, promised, or paid, promised, or under any system of deferred payment, when those services are utilized with the first-mentioned person's consent.

NEED FOR CORPORATE CRIMINAL LIABILITY

In the need of corporate criminal liability examines how the rules outlined above are applied using elements of theories like the alter ego, mens rea, and actus reus as well as different levels of corporate prosecution in India. The chapter makes an effort to highlight the necessity for further fines and compensation provisions, including increasing the current sum. The fact that compensation is rarely used by criminal courts as a form of punishment is stressed here since these courts lack the authority and clarity to do so. In accordance with the Public Responsibility Insurance Act of 1991 and the Civil Liability for Nuclear Damage Act of 2010, the researcher examines the civil liability of businesses It examines the need for compensation measures in criminal law and how the current systems for civil damages are insufficient.

¹⁰ Consumer Protection Act, 1986, Section 2(d), Main citation

FINDINGS

The researcher's analysis of the chapters mentioned above yields the following conclusions:

- 1) A business is accountable in criminal law as a separate and distinct entity from the people in charge of managing its activities.
- 2) Although a business cannot be imprisoned, it may be punished. The Company may be charged with and fined for an offence even if there is a need of obligatory incarceration.
- 3) Common law and statutory men's ream offense against the Company are punishable by fines and imprisonment.

SUGGESTIONS

The researcher suggests the following amendments to the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973, and the Indian Penal Code, 1860. These ideas will more thoroughly close the gaps in the administration of corporate criminal responsibility. In spite of anything stated in this code or any other law currently in effect, if a company violates one of these laws or another, both the company and the officers in charge of running its affairs are jointly and severally liable for the offence and will be subject to double the fine amount that would be imposed if the offence were committed by someone else. Directors, secretaries, and other individuals who are in fact in charge of managing the company's activities as per Section 2(60) of the Companies Act, 2013, are among the officials who are accountable for doing so.

A company for purposes of this section is one that is registered under the Companies Act of 2013 or any other earlier Acts, as well as any firm, Limited Liability Partnership, Trust, whether or not it is registered, Registered Society, Hindu Undivided Family, and other entities that the Central Government may from time to time specify by rules.

CONCLUSION

Utilizing penalties and rewards is one technique to guarantee efficient enforcement. The State is fined, and the victim is given compensation for whatever losses they sustained. According to legal advancements, it is necessary for the law to establish a system of punishments. Occasionally, the offender will compensate the victim, and in rare circumstances, the State will

do so as well. The Expert Firm Law Committee also made the point that, in addition to the specifics of the offence, the severity of the sanctions should be based on the size of the company. When it comes to the imposition of fines in situations of corporate criminal culpability, the Code of Criminal Procedure, 1973, is crucial. The Apex Court used its constitutional authority granted by Article 142 in the Maraud apartments demolition case to order the State Government to compensate each of the buyer Rs. 25 lakh. Trial and appellate courts do not, however, have access to these authorities. Likewise, the current penalties and payouts allowed by law are pitifully little and require urgent improvement. In order to fulfil legislative objective, market standards must be in accord. For instance, the Public Liability Insurance Act of 1991, a civil liability, offers compensation in the event of death of Rs. 25,000 per person and medical reimbursement of Rs. 12,500. 25,000 rupees in the event of total incapacity, and 1,000 rupees each month for three months, which comes to 3,000 rupees, for wage loss. The compensation is only worth Rs. 6,000 in cases of property damage. Because of this, there is a deficiency and a need for comprehensive legislation governing the scope of the penalty.

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