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## BUSINESS AND CRIME

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### ABSTRACT

*crime, corporate crime is also referred to as organizational or occupational crime. In contrast to a natural person, a corporate crime is committed by a separate legal entity, and the corporation is responsible for it. Is the corporation's employee responsible for the crime? Under the vicarious liability theory, the corporation, not the employee, was held liable in the question preview. Our society is at risk of being exploited by these corporations, so they must be discouraged as well. Corporations have now become an integral part of our society, and as they continue to grow, they will likely become a major player in our economy. The first factor is the nature of the company's structure, which contributes to the complex and exclusive problem of corporate crime. The occurrence of company criminal liability resulted from the extension of the vicarious liability to mens rea violations. The history, nature, and type of corporate crime, liabilities, and doctrine that is developing on capital markets are discussed in this paper. Because they are less receptive to disgrace or punishment, corporate bodies are more prone to corruption and waste than individuals. They don't feel remorse, shame, gratitude, or goodwill.*



**KEYWORDS:** *Corporate, Criminal, Liability, Legal Personality, Offence, Separate Legal Entity.*

### INTRODUCTION

A human being who commits an offense on behalf of or for the benefit of a company will be held personally liable for that offense. A human being can only act on behalf of a company. The significance of incorporation lies in the fact that it makes the corporation itself liable in certain situations, in addition to the individuals. -Glanville Williams<sup>1</sup> In layman's terms, a corporation is a group of people forming a business. A corporation is a legal form of business. The development of the idea of corporate crime, which was characterized by the courts as a solution to the issue of assigning criminal responsibility to fictional entities. The doctrine of respondent superior serves as the foundation for corporate crime. Our society's most significant component are corporations<sup>2</sup>. The corporation is run by real people, and their actions may have resulted in crimes, but they may also have caused economic and human suffering for society. Therefore, knowing about the history, nature, and types of corporate crimes is essential for better comprehension. In the age of technology, corporate crime is also known as white collar crime; The society is negatively affected. When it comes to corporate crimes, India is not a new country. Corporate criminality seriously threatens the welfare of society, considering its presence and impact in most aspects of social and community life, as well as the number of people it affects, and it is a serious contemporary concern due to the multidimensional nature of these types of crime.<sup>1</sup> Development of any country depends largely on the corporate sector, although the stability of the

economy must not depend on its corporate sector.<sup>2</sup> Corporate criminality seriously threatens the welfare of the society. As a result, businesses can cause significant harm, both physically and financially.

"A company or corporation exists independently of its owners and those who oversee its day-to-day operations. Although the idea of a company having its own separate legal personality is well-established, the question of whether a company's wrongdoing can be punished by criminal law has been contentious. While it is common sense that the people in charge of a company may be held criminally liable for any wrongdoing they cause, the more difficult question is whether the actions of these managers can be attributed to the company (despite its separate legal existence) and subject it to the penalties of a criminal offense.

### **THE NOTION OF CORPORATE CULTURE AS A FOUNDATION FOR CORPORATE CRIMINAL LIABILITY**

In general, "pattern of shared beliefs and values that give the members of an institution meaning and provide them with the rules for behavior in their organization" can be used to describe corporate culture. This rather broad concept lends itself well to a variety of investigations into a company's personality. Corporate culture is primarily concerned with the decision-making structure, the chain of command, and the general atmosphere of obedience to the law for the purpose of attributing criminal liability. Corporate culture features that are relevant in the context of criminal liability are frequently identified by the following indicators:

To begin, a significant sign of a law-abiding corporate culture would be the establishment within the company of clearly delineated responsibilities for the development, evaluation, and implementation of procedures and standards intended to guarantee employees' compliance with the law. This would indicate a corporate culture designed to evade law enforcement if, for instance, the structure of the company is so structured that senior managers are deprived of the information they require to exercise such powers. In most cases, insufficient structures for the internal dissemination of information would also be suspicious. Indeed, it must be demonstrated that the corporate culture instigated, encouraged, or led to the commission of the offense or that the failure to maintain a law-abiding atmosphere was deliberate if it is to be used as the basis for a charge of intentionally committing a crime—which, in my opinion, is simply negligence.

### **OBJECTIVES**

- To Thoroughly Investigate Corporate Criminal Activity And Its Impact On Society;
- To Critically Examine Corporate Criminal Activity Mired In Judicial Impasse.
- To Recommend The Relevant Provision Based On Established Case Law

### **HISTORY OF CORPORATE CRIME**

The corporation was a type of organization that was created in the 14th century and could only be established and given by an act of parliament or the crown. During the sixteenth and seventeenth centuries, corporations were grown up as hospitals, universities, and other similar associations that were adapted to the corporate form. The crown attempted to build up the ideas and encouraged organizations to become legally authorised. The corporation was expanding as a joint stock company at the end of this period. The promotion of new industries greatly benefited from the use of this joint stock company. In the beginning, corporations were established for non-profit purposes; however, by the seventeenth century, they were increasingly focused on making a profit. At the end of the seventeenth century, a lot of incorporated businesses were started on a large scale. However, the majority of these businesses were run for the benefit of the investors as well as the profit of the employees, and most of them only lasted a short time.<sup>4</sup> This was because the investors suffered losses in the business and were involved in wrongdoing. However, business-related special acts were enacted by the British parliament. The basic Latin maxim *actus non facit reum, inconclusive mens sit re* is the central tenet of criminal liability. It implies that in order to establish a person's liability, it must be demonstrated that the act or omission was committed with a guilty mind and was against the law. During the first half of the 20th

century, the courts began to hold businesses culpably liable in a variety of contexts where social control would be compromised without involving company liability. In fact, courts were soon willing to hold the company guilty of all wrongdoings, with the exception of rape murder and other crimes.

### **NATURE OF CORPORATE CRIMES:**

In addition to being understood in relation to activity crimes, corporate crimes are regarded as general categories of white collar crimes. The term "corporate crimes" refers to the criminal act committed by corporate managers for the benefit of the corporation, whereas "occupational crimes" refer to individual employees who are acting against the corporation itself.<sup>5</sup> Examples of occupational crimes include "money laundering," "theft," and other similar offenses. When discussing "corporate crime," the wrongs committed by managers or employees for the benefit of the company as well as the individual are considered acts against the corporation.<sup>6</sup> Corporate crime is distinct from traditional crimes committed by individuals. As a result, the corporate's crimes do not fall under a separate jurisdiction. Corporate crime can take many forms. Bribery, counterfeiting, embezzlement, bank fraud, and blackmail are among the most common forms of corporate crime. In the case of *A. K. Khosla v. S. Venkatesa*<sup>7</sup>, two businesses were accused of IPC fraud. The corporations were served with legal action by the magistrate. During the course of this case, the Court learned that there are two requirements for the prosecution of business entities: first, provision; second, mens rea; and third, the capacity to impose a mandatory prison sentence.

### **CIVIL CORPORATE MISCONDUCT**

The majority of nations currently agree that corporations can be punished by civil and administrative laws. Corporate crimes, on the other hand, are more contentious. In its 41st and 47th reports, the Indian law commission suggested that corporate criminal liability should result in a fine, particularly for white-collar offenses. Sadly, these suggestions were never implemented. despite the fact that numerous Indian laws contain provisions against fraud, corruption, bribery, insider trading, etc. is punished by civil regulations, but the company is not punished by penal statutory provisions in Indian law.

A corporation cannot be imprisoned, and prosecution for a criminal offense that could only result in death or imprisonment was not changed. However, the fact that the statute's penalty for a violation was either a fine or imprisonment—or both—does not make it inapplicable to corporations; the same rule only applies when the statute authorizing the offense stipulates imprisonment for nonpayment of the fine. It is also important to note that our Parliament was aware of this problem and planned to amend the IPC in this regard in 1972 by including a fine as an alternative to imprisonment when corporations are involved.<sup>10</sup> However, the Bill was not passed and has since expired.<sup>11</sup> Since making such a change in the criminal law is a legislative function, the Parliament ought to carry it out as soon as possible. Sections 45, 63, 68, 70(5), 203, and other sections of the Indian Companies Act contain some penalties for corporations' criminal liability.

### **Practical Problems faced by Corporations in India.**

The types of sanctions and punishments that can be imposed on a corporation if it has done something that is prohibited by law were a major issue that needed to be resolved. Since a corporation is an artificial legal entity, imprisonment was obviously not an option, so the question of whether the courts could impose fines instead of the law's mandated sentence had to be considered. This issue had a number of other repercussions in India. In many parts of the Indian Penal Code, punishments can include both fines and prison time—or even both. Since a corporation is an "artificial person," it cannot be imprisoned for such offenses that require both imprisonment and a fine. This was a moot point because corporations cannot be imprisoned. This issue has been addressed in groundbreaking cases. Companies cannot avoid being prosecuted simply because the offense for which they are required to be prosecuted entails a mandatory prison sentence. In the case of *Iridium India Telecom Ltd. Motorola Incorporated and Ors*<sup>7</sup>, the apex court made it very clear that corporations do not have immunity from

criminal prosecution based on the argument that criminal mens rea was not present when the act was committed. Instead, the position of the corporation is the same as that of any individual who attracts conviction under common law and statutory offenses, including those where mens rea is necessary.<sup>8</sup> The idea that a business cannot be held liable for the committing of a crime has been quashed by adopting the attribution and imputation principles.

### DOCTRINE OF DIRECT LIABILITY

The doctrine explains how the person who committed the crime assumed criminal responsibility. In terms of nature, it is comparable to that of a legal personality—a corporation in which an individual's actions and conduct fall under the purview of authority and the theory of corporate organ is enforceable on behalf of the corporate body.<sup>12</sup> However, ironically, it is rigid rather than complex that a corporation is criminally liable. The following circumstances of the case will determine whether the corporation acted without intent or knowledge, either implied or expressed:

1. Carried responsibility: body of corporate organs is more powerful than the legal personality because it acts in the person's best interest.
2. offense committed with intent: An offense of nature was committed by a company that, through evidence, knowingly or purposefully implied the nature.
3. Culture at work: when the company failed to establish a corporate culture and did not encourage compliance with relevant provisions

### DOCTRINE OF MENS REA

The company has no intention of committing the crime; only its employees will engage in such conduct. A legal issue has been brought up; Because the corporation is a fiction, the law should not create a corporate fiction. Here, the corporation's fines and punishment have been deducted. <sup>13</sup> The query regarding the nature of the fictions to be put into perspective was answered with regard to the aspect of fiction.

Since a few years ago, the idea of corporate criminal liability is becoming more and more popular in India. Authorities are feeling the need to have clearer and stricter laws and norms in order to deter corporate crimes and defaults from becoming more widespread. Additionally, courts have begun enforcing a more stringent approach to corporate criminal liability and are expanding its traditional, limited scope further. The concept of corporate criminal liability has spread to a variety of statutes and legal provisions in addition to the IPC, 1860.<sup>9</sup> Since the concept of corporate criminal liability first emerged, its understanding has evolved. The majority of the common obstacles to its practical application have been overcome. Understanding of the kinds of evidence that would help establish corporate criminal liability as well as the procedural tests for those evidences have emerged and been accepted in both Indian and other countries' legal systems. Corporate criminal liability has been more difficult to establish than individual criminal liability.

Corporate criminal liability and its consequences have also been gradually redefined by Indian courts. In two recent cases, Sunil Bharti Mittal v. Central Bureau of Investigation ("CBI") and others and Iridium India Telecom Ltd. v. Motorola Incorporated and others, courts attempted to clarify the legal definition and implications of corporate criminal liability. A corporation can be found guilty of both common law and statutory offenses, including those requiring mens rea, just like any individual. When a person or group of people in charge of a corporation's affairs commits an offense involving the corporation's business, the corporation is subject to criminal liability. In such a situation, it would be necessary to determine whether a corporation can be said to think and act through a person or group of people if the degree of control over them is so great. Corporate Punishment In India, certain relevant provisions in section 53 of the Indian Penal Code include the death penalty, life in prison, simple and severe imprisonment, property forfeiture, and a fine. The question of who will be held accountable under which statute has been raised in the event that a corporate crime has been committed.

### **DEVELOPING CAPITAL MARKETS**

The global recognition of the capital market as the driving force behind the worldwide expansion of the national economy marks the beginning of the globalization and liberation era. Through financial instruments like shares, bond, company liabilities, and so on, it provides the country's particular wealth to potential investors. As a result, the capital market will have a negative impact on the environment, which will have a significant impact on the economy. In regards to crimes of this kind, the market's regulatory agencies ought to communicate with one another. The nation's economy and corporate criminality will be separated by marketing.

### **ROLE OF ECONOMIC DEPRESSION**

Corporate crime has increased as a result of technology's rapid urbanization and industrialization, resulting in an incorrect economic depression in most developing nations. In the current state, the best way to reduce and prevent crime is through the implementation of policies. There are a number of dangerous risks in our country, many of which are in residential areas that could be considered high-risk areas. 15 Because the law isn't always the same, it's important to keep regulations in place. The compliance with legal procedure and reduction in criminal behavior ought to be the goals of the various punishments that are included.

### **HOLDING CORPORATIONS RESPONSIBLE FOR THEIR CRIMINAL ACTS**

Laws to hold corporations accountable are being systematically dismantled in India and around the world. The corporate sector has significantly more rights than the general public. National laws are being changed to give corporations the right to hire and fire at will, giving them first priority over natural and community resources, as the new trade regime takes effect. It is past due to regulate these crimes now. The question of whether a corporation can be held criminally liable has been debated. This is the subject of the "Realistic" and "Nominalist" theories. According to the nominalist theory of corporate personality, businesses are merely collections of individuals. In this, the offense is first committed by an individual; The corporation is then assumed to be responsible for that individual. Companies, according to the realist perspective, exist independently of their members' existence to some extent. The corporation bears the primary responsibility in this area. The "Realist" theory appears to be more convincing and practical.

The argument in favor of corporate criminal liability is that, in many instances, the corporation itself is to blame for the wrongdoing due to its policies or practices, and that the real culprit should be punished. In many instances, there is no single person who has committed a crime. The harm has been caused by the combination of several people's practices, all of which are in accordance with sloppy or nonexistent company procedures. Alternately, it can be difficult, if not impossible, to pinpoint the true source of a problem due to the complex structures that many businesses have, with responsibility spread across numerous levels of the corporate hierarchy.

The approach has been adopted by common law jurisdictions, which acknowledge that corporations may be held criminally liable. However, they do emphasize the conceptual difficulty of applying a theory of criminal liability based on a view of fault centered on human psychological processes to a fictional individual. The concept of fault needs to be adapted to the particular structure and method of operation of corporations right now. The current methods for determining corporate criminal liability are only a partial solution; they should be enhanced.

In terms of negligence as a factor in fault, it may be necessary to stipulate that criminal negligence refers to a significant departure from a prudent and diligent corporation's standard of conduct. The conduct of the body corporate as a whole or evidence of negligence by its employees, agents, or officers—in the absence of any individual negligence—is what constitutes corporate negligence. Evidence that the prohibited behavior was substantially attributable to inadequate management control or supervision or the absence of adequate information-transfer systems within the body corporate may establish collective negligence.

## SUGGESTIONS

The following steps should be initiated by the legislature.

- ❖ corporate criminal liability requires the development and incorporation of novel forms of punishment.
- ❖ Fines should be differentiated according to their economic and social nature.
  
- ❖ Punishments like direct compensation orders and compulsory winding orders ought to be effectively enforced.
- ❖ The problem of corporate crime is widespread.
- ❖ An agreement in accordance with international law ought to exist .
- ❖ Take for instance public sector businesses, which exhibit numerous irregularities.
- ❖ contributed to the sickening of these facilities was extravagant management.
- ❖ Corporations have been given free reign by governments all over the world to exploit community and natural resources, denying the common people their right to these resources.

## CONCLUSION

Corporate criminal liability's primary goal is to ensure that businesses improve their work practices. The harmful practices would continue unabated in the absence of a mechanism for corporate prosecution and the identification of criminals. Companies ought to be subject to the same general rules for the construction of criminal liability as individuals and should be prosecuted and convicted for the same general offenses. The public's widespread belief that businesses have their own existence and are capable of committing crimes as separate entities from the employees that make up the business should be recognized and implemented by the law. Companies can be motivated to improve their practices or to reform the law in order to raise safety standards if they are prosecuted, especially if the media is involved.

Corporate crimes, in my opinion, are the most prevalent social ills. In order to have a more positive impact on society, loopholes in corporate crime should be addressed by the judicial system. The legal offenses committed by the corporation or by an individual acting on its behalf are referred to as "corporate crime." The law needs to be changed in order to make corporate crimes' sentences even more effective. The capital markets are harmed as a result. In the current situation, it has become a threat to society. The principle of vicarious liability holds that even when an employee acted on behalf of a corporation, both the employee and the corporation should be severely punished. The employee may take advantage of the situation. Intentionally, the concept of corporate criminal liability is still in its infancy in India. Even though legislation like the Companies Act of 2013 aims to curb corporate criminal activity, the very concept of corporate criminal liability is still in its infancy. The Indian government is making strenuous efforts to combat corruption, which is a growing threat. It is still up for debate how effectively laws and regulations can control corporate behavior because these crimes are of the kind where not only individuals but also businesses must share the civil and 18 liability. Again, it's up for debate as to how strict these standards are and which strategy is best for dealing with corporate criminal liability. As a result, rather than adopting a standard approach, the majority of courts are attempting to determine the most practical outcome under the circumstances. Many corporate crimes remain uncontrollable despite the current legal framework. The need to define corporate criminal liability evolves with the crimes. In most cases, it has been observed that businesses are not held criminally liable. The Companies Act of 2013 is a commendable effort to enhance corporate governance practices and increase companies' accountability. Clearly, there is a lot of work to be done in the area, but the efforts made up to this point shouldn't be overlooked. Conflicting interpretations of corporate criminal liability and its implications for businesses must be avoided by making provisions. In a similar vein, the laws in the United States are superior to those in India, but their methods for handling cases are superior to ours.

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