



A Study on Corporate Criminal Liability

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Abstract : Corporations are an essential component of the global community that has emerged as a result of globalisation. Corporate criminal culpability has become increasingly controversial over time, particularly in areas of social standing like consumer protection, environmental law, occupational health, and safety standards. When a corporation is found to be guilty of a crime, it not only has an impact on the organisation's operations but also on the company's criminally-inclined employees, who may suffer both legally and financially.

IndexTerms – Corporate, Corporate Criminal Liability, Vicarious Liability, 47th Law commission

I. INTRODUCTION

Corporations are an essential component of the global community that has emerged as a result of globalisation. They have rapidly grown to become one of the most significant institutions in the modern economy. In accordance with the legislation, a corporation is regarded as a separate legal entity from its members¹.

The idea of corporate criminal culpability has become increasingly controversial over time. Legal regimes in many nations have varying interpretations of this tempo. Criminal responsibility is the punishment a corporation faces for its unlawful behaviour.

"*Actus non facit reum, nisi mensit rea*" is a latin proverb that supports the idea of criminal culpability. This basically indicates that a person is not guilty simply by doing something unless their thinking is also guilty. As a result, the maxim gives rise to the two components that make up a crime: (a) actus reus, which refers to the physical act, and (b), mens rea, which refers to the mental component or intention.

II. CORPORATE CRIMINAL LIABILITY

A corporation is an entity established by a number of interested parties for financial gain. Its legal entity is distinct from that of its owners. The law acknowledges it as a distinct legal person from its owner. Any criminal act carried out by a corporation is referred to as a corporate crime.

Corporate crime, according to Australian criminologist John Braithwaite, is behaviour that is illegal and punishable under the law, whether it comes from a corporation or its agents.

The most typical business offences include:

- Bribery
- Counterfeiting
- Embezzlement
- Bank fraud
- Tax evasion

These crimes have a significant negative impact on society, the environment, and the economy.

In contrast to a person, corporations have a separate assignment of criminal culpability. A corporation is a legal fiction even if it is acknowledged as a distinct legal entity. The blame cannot conceivably be placed on the corporation, but rather on those who carried out its instructions.

In the late 18th century, Lord Chancellor Edward Thurlow said that because corporations don't have crimes to be punished or souls to be condemned, they are free to act however they like.

Consequently, other explanations have been evolved over time to demonstrate the corporation's unlawful intent. These include:

1. Theory of Vicarious Liability

The allocation of corporate criminal culpability is the subject of the first ever theory proposed. It started in Britain and spread to other legal systems after that. In order to assign corporate criminal responsibility, British courts established and utilised the

¹ Salomon v A Salomon and Co Ltd [1897] AC 22

vicarious liability theory. It later became known in American Jurisprudence as the Respondeat Superior theory. Since it is the most popular and commonly accepted idea, it should be noted.

2. Theory of Identification

While the United States was developing the respondeat superior theory, the United Kingdom was developing the identification theory. The "theory of alter ego" is another name for this notion.

The test of alter ego was first used in the historic case of *Lennard's Carrying Co. Ltd. vs. Asiatic Petroleum Co. Ltd.* (1915), where it was adopted. It sought to ascertain the corporation's true direction. According to Lord Viscount Haldane, "the person who is really the directing mind and will of the corporation is at the very ego and centre of the personality of the corporation."

In the case of *Tesco Supermarket vs. Nattrass* (1971), Lord Reid ruled that in order for someone to be held liable for their activities, it must be proven that they are not speaking or acting on behalf of the business. He is performing on behalf of the firm, and the organization's thinking is the one that commands his actions. If someone is culpable, then the company is also guilty.

The court further determined that a store manager was considered "another person" and that a system of assigning duties to that person constituted exercising due diligence rather than avoiding it.

The idea of identification holds the company personally, rather than vicariously, responsible for the conduct of crimes. The phrase "corporate mind" refers to the minds of senior personnel who have authority over the company's actions, such as a manager or director. The transfer of criminal culpability to a company for crimes including mens rea is thus permitted by this view.

3. Theory of Aggregation

The first Circuit Court of the USA originally proposed the notion of aggregation in the 1987 case of *United States v. Bank of New England*, where it was determined that a corporation's knowledge is the sum of the information of its agents or workers. The vicarious liability and identification theory has culminated in this notion. It stops businesses from hiding behind different departments to escape legal responsibility. In situations of fraud and tax evasion in particular, it has aided the courts.

III. POSITION IN INDIA

The criminal law in India defines corporate criminal liability as the extent to which a firm, as a separate legal person or entity, is accountable for the actions of its employees. In India, the vicarious liability standards govern corporate criminal liability.

It is typically questioned whether a corporation, which is an artificial person, is capable of committing a crime and whether it is legally responsible for the aforementioned criminal conduct when it comes to corporate liability. In the past, it was believed that since intent is the key component of criminal behaviour, businesses could not commit crimes. However, the Companies Act has recognised the idea of corporate criminal culpability.

In India, the idea of corporate criminal culpability has become more significant in recent years, particularly in areas of social standing like consumer protection, environmental law, occupational health, and safety standards. The idea of corporate liability is intimately related to an organization's corporate governance policy because, if a corporation adheres to good governance principles, the possibility of crime is eliminated, and the issue of corporate criminal culpability is also resolved.

Even the Indian judiciary has acknowledged in the past that a company can participate in a criminal conspiracy and be held criminally accountable. The Supreme Court made this declaration in the case of *Iridium India Telecom Limited vs. Motorola Incorporated & Ors* for the first time. Therefore, it may be claimed that both the Companies Act and the criminal laws in India recognise corporate criminal liability as one type of corporate liability.

Criminal Responsibility of Corporations:

The directors' corporate liability has increased by the Companies Act of 2013, which superseded the Companies Act of 1956. Along with increasing fines and jail time, the Act also enhanced penalties. Companies Act of 2013 recognises civil obligations in addition to criminal ones for corporations. According to the Indian idea of corporate criminal liability, the Companies Act, 2013, not only makes the director legally accountable, but also includes officers in default.

The following sections of the Companies Act of 2013 recognise corporate criminal liability:

- Section 53 - Prohibition on an Issue of Shares on Discount - The corporation will be subject to a fine of at least one lakh rupees but up to five lakhs. The offending officer may also face a minimum fine of one lakh and a maximum fine of five lakhs, or both, for their actions.
- Section 57 - Punishment for personating a shareholder - Such person in default: Minimum 1 year to Maximum 3 years in prison or Fine: Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.
- Section 58(6) - Refusal to register and appeal against refusal - Such person in default - Minimum 1 year to Maximum 3 years in prison or Fine - Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.
- Section 118(12) - Minutes of proceedings of general meetings, board meetings, and other meetings, as well as resolutions passed by postal ballot - If a person is found tampering with the minutes of meetings, that officer may be sentenced to up to two years in prison or fined not less than \$25,000 but as much as one lakh.
- Section 128(6) - Books of account, etc., shall be preserved by Company - Officer in default - Maximum imprisonment of 1 year - Fine - Not less than Rs. 50,000 and may increase to Rs. 5 lakhs - or with both.
- Section 129(7) - Financial Statement - Officer in Default - Maximum Penalty of 1 Year or Fine - Not Less Than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.
- Political contribution prohibitions and limits are outlined in Section 182(4).
- Section 187(4) requires companies to hold their investments in their own names. If a company violates this requirement, the company may be fined up to Rs. 25 lakhs. If an officer violates this requirement, they may be sentenced to up to six months in prison, a fine of up to Rs. 25,000, both, or both.
- Section 447, "Punishment for Fraud," provides that anyone found guilty of the crime faces a maximum sentence of 6 months in prison, which may be increased to 10 years. Such a person is also subject to a fine that could be up to three times the sum at issue.

The following conditions must be satisfied in India in order to establish corporate criminal liability:

1. Criminal act must have been committed in the course of employment: In order for an employee to be found guilty of committing a crime or to be accused of doing so, the act must have been done while carrying out the official duties that the employer has given him permission to perform. It is claimed that when an act is carried out within the course of employment, the firm becomes the principle of the person carrying it out, and as a result, corporate criminal culpability may be invoked due to the agent-principal relationship.
2. The benefit to the corporation: In order to establish corporate criminal culpability in India, the employee's unlawful act must have benefited the company in some way. It is not necessary for the organisation to directly gain from such employee actions, nor is it necessary for the organisation to fully reap the rewards. Simply put, the employee's illegal or criminal behaviour does not conflict with the organisation.

In the case of **State of Maharashtra v. Syndicate**, the High Court ruled that companies could not be charged with crimes that carry corporeal punishment or imprisonment. If a company had been charged with such a crime, it would have resulted in a trial and a guilty verdict, but no actionable order could have been made. In contrast to the preceding decision, the Supreme Court took a different stance in *Iridium v. Motorola*, ruling that a firm might be held accountable for both common law and statute violations, including those requiring the presence of mens rea.

The Supreme Court recently rejected criminal proceedings that were initiated only on the ground that the accused was the company's managing director and the only non-independent executive director in the case of **Shiv Kumar Jatia v. State of NCT of Delhi (2019)**. However, he was not held vicariously liable under the IPC since there was insufficient evidence of his active participation and criminal intent.

IV. CONCLUSION

When a corporation is found to be guilty of a crime, it not only has an impact on the organisation's operations but also on the company's criminally-inclined employees, who may suffer both legally and financially. However, it has been argued that fines should be given rather than jail in cases when a corporation is to be punished.

The 47th Law Commission Report included a number of recommendations to address corporate criminal liability, including giving judges the option to apply sanctions as they see fit. If the perpetrator were a corporation, the corporation would be competent enough to sentence the offender to a fine only rather than a fine plus imprisonment or merely incarceration. However, the legislatures have disregarded this Law Commission advice and refused to include any of this, making it more challenging for courts to penalise violators. It should be emphasised that there are several situations in which corporations may be held criminally liable.