

CORPORATE CRIMINAL LIABILITY: A CRITICAL LEGAL STUDY

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ABSTRACT

Generally, a crime is said to be committed by a person having a body and soul of its own i.e, human being. A crime can also be undertaken by a corporate body. From years back, the law is in contradiction if the company without a soul and body could be held liable for the criminal act or not. Accepting the connivance of corporations in crime, the principles of imposing liability have been developed in several jurisdictions by attributing actus reus and mens rea to the corporations. The present criminal justice system is not sufficient to deal with these situations. There is need to define the criminality of corporations and lay down penal sanctions. This research paper has been taken as an effort to study the principles of corporate criminal liability and their penal aspects.

Key words: Corporate, Criminal, Liability, Penal sanctions.

1. 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.

2. CONCEPT OF CORPORATE CRIMINAL LIABILITY

From the years together, the question has arisen for the need of doctrine of corporate criminal liability. There is no general reply to this question. It is to be examined and determined in each case and then a decision has to be taken regarding the liability of corporations.

Critics to this concept argue that the doctrine of corporate criminal liability is completely unnecessary on the following two grounds:

Firstly, they argue that it is not the corporations that commit crimes, it is the individuals who do. Secondly, that the retributive effect is borne by the shareholders and consumers. It means that the cost of corporate criminal fines and sanctions is borne by the shareholders and the consumers for the acts of corporations.

In criminal law, corporate liability determines the extent to which a corporate as a legal person can be liable for the acts and omissions of the natural person it employs. It is regarded as an aspect of criminal vicarious liability.

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:

- a. 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.
- b. 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.

4. TESTS TO DETERMINE THE CORPORATE CRIMINAL LIABILITY

4.1 IDENTIFICATION TEST:

In **Tesco Supermarkets Ltd v. Nattrass** 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 also known as alter ego test and also as directing mind and will theory. This test is applied in the English courts for identification or controlling and directing mind of the company in order to determine the criminal liability of corporations.

4.2 AGGREGATION TEST:

There may be cases where a corporate wrong may be the result of a combination of guilty mind of many persons. By aggregating the acts of two or more persons, the actus reus and mens rea can be taken out of the conduct and knowledge of several individuals.

In **United States v. Bank of New England**, 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.

4.3 RESPONDEAT SUPERIOR TEST:

The courts have provided various reasons to justify 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.**

5. JURISPRUDENTIAL POSITION IN INDIA

Prosecution for the crimes committed is undertaken as per the provisions of Indian Penal Code, 1860 under the Indian Criminal Justice System. Section 11 defines the term “person”. It includes any company or association or body of persons. It could be either incorporated or not. Therefore, the corporations can be prosecuted for the commission of crimes. However, the position of criminal liability of corporations needs to be determined when the corporations commit offences where the penal code demands for a mandatory imprisonment and fine.

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

In the case of **Assistant Commissioner v. Velliappa Textiles Ltd**, it was held by a majority decision that a company can not be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine. Where the punishment provided is both imprisonment and fine, the court can not only impose fine.

This difficulty was noticed by the Law Commission of India and in its 41st report the Law Commission of India suggested an amendment to section 62 of Indian Penal Code by adding the following lines:

“In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.”

The Apex Court in **Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.** made the scenario crystal clear. It had overruled the previous views regarding the doctrine of corporate criminal liability. The court held that there is no blanket immunity for any corporation from the prosecution of offences just because the prosecution demands a mandatory imprisonment. The apex court decided that in cases of offences which mandate both imprisonment and fine, the corporations should be punished with a fine.

In case of **Iridium India Telecom Ltd v. Motorola Incorporated Co.**, 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."

6. CONCLUSION

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. The Indian Courts have always tried to determine the mind (controlling and directing) of the corporations and this principle is used in various cases and statutes while identifying the criminal liability of these corporations. The Indian Legislature should take some steps in the form of new penal sanctions so as to curb the criminal acts of the corporations in the country.

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There are two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle

~ Albert Einstein.