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## **CORPORATE CRIMINAL LIABILITY: AN ANALYSIS**

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### **INTRODUCTION**

This is a legal principle wearing the badge of ‘corporate criminal liability’ to assign legal responsibility for the criminal actions of individuals to the corporation they work for. Due to corporate fraud and imperative for corporate governance, this idea has been transformed drastically. In previous years criminal accountability was considered as a liability that was provided to persons only but with time the act has considered the corporations as legal persons capable of committing crimes. The latest trends in the concept as a legal category rely on the vision of how companies are capable of committing crimes on their part by their policies, organizational culture, and management decisions. When it is tried to hold the corporations accountable, it is used as a tool to enforce ethical standards, demand corporations to act responsibly, and prevent wrong doing. This evolution is in response to the changed comprehension of the fact that it is not just the subscribers of social resources, but business structures as such, that engage in perpetrating social wrongs and must therefore be supervised by the law and punished when necessary to restore public confidence and secure the stability of the commercial world.

### **ANALYSIS**

#### **Historical Background**

##### **Early Developments:**

To some extent, the primary theory that the corporations are unable to be prosecuted as criminals existed mainly because of the principle known as *actori incumbit probatio*, or the burden of proof rests upon the performer. The history of corporate criminal liability was preceded by the impossibility of the criminal liability of corporations because the latter were not individuals. Firstly, criminal responsibility was admissible only for a natural person, because it was assumed that only he could have the necessary *mens rea* – criminal intent to

commit a crime. However, this perception apparently began to shift only in the last quarter of the 19th century and more distinctly in the first half of the 20th century<sup>1</sup>. The occurrence of industrialization and the growing power of organizations showed the necessity of all these subjects having their actions regulated. Thus, courts and legislators began to realize that corporations, through their policies and conduct, could commit a wrongdoing.

### **Modern Developments:**

The beginning of the twentieth century can be indicated as the turning point in the process of acknowledging the notion and intervention of corporate criminal liability with the help of proper cases and adjustments. One such critical case was; *United states v/ I. & G. N. Ry. Co.* (1904) the court led to the corporation to be held liable for criminal offences hence leading to corporate governance. This case proved that corporations could be subjected to criminal charges opening doors to further law advancements. They realized that corporations and their employees or agents could commit crimes, which called for the accountability issue, creating higher ethical standards in the business world, and reestablishing the notion that corporations were legally responsible for their actions.

### **Theories of Corporate Criminal Liability**

#### **1.Vicarious Liability:**

This theory just postulates that it is possible for a corporation to be held legally responsible for criminal conduct of its employees if the conduct was committed within the course of their work. The rationale for this is rather simple since the corporation reaps the benefits of the employee's output, it should also be made to suffer the consequences of the employee's malfeasance. This approach serves to eliminate situations where corporations appear to have no responsibility for the tort since the torts are committed by employees. Thereby, through deterring the failure of the law in preventing misconducts from being performed while directing the violation of the law to be committed by anyone, let alone an entity, to be followed with the consequences of not being able to reap huge benefits out of unlawful deeds, the law seeks to enable higher standard of control, ethical conduct, and a considerable degree of failed responsibility among corporations.

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<sup>1</sup> Dr. V. S. Krishnamurthy, *Corporate Criminal Liability: A Commentary* (2017).

## 2. Corporate Attribution Theory:

It asserted that a corporation could be held criminally liable if the criminal act was committed by individuals a court considered as the “directing” or “mind” of the corporation. These include the top management officials, or the persons who hold influential positions within the running of the firm<sup>2</sup>. Regarding the actions and/or intentions, the theory posits that they are due to the corporation since they act for the entity in this case. This way, the directing minds are considered guilty while holding corporations legally responsible for the deeds of their subordinates which in turn provides shareholders with legal incentives for ethical corporate management.

## 3. Aggregate Theory:

According to Aggregate Theory, legal responsibility can be attributed to a corporation if the sum of all those involved in a corporation’s operation commits a crime. This approach considers all the activities and information within an organization, because ‘failure to meet the required standard of care may result from ignorance, recklessness, or negligence on the part of one employee as well as the others. Technique in which the cumulative conduct and awareness within the corporation is evaluated helps to ensure that the corporations are held to accounts for systematic and/ coordinated activities, making it a great contributor to – and embracing aggregate responsibility for criminal offenses within a corporation, therefore encouraging efficiency and accountability among all corporate members.

## Case Laws

### A. State of Maharashtra v. Syndicate Bank (1990):

There were certain accusations against some officials of the Syndicate Bank regarding financial misappropriation and fraud. Certain officials therein had been accused of practicing deceit, which had led to losses in finances for the bank and a dent in its prestige. Such activities included manipulating the accounts, making unauthorized transactions, and other fraudulent activities that were allegedly carried out on behalf of the bank. The principal question brought before the court for determination was whether

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<sup>2</sup> Ramanuj Mukherjee, Anirudh Krishnan, and Vaneeta Patnaik, *Corporate Criminal Liability in India* (2nd ed. 2018).

Syndicate Bank could be criminally liable for actions by its employees, that is, whether vicarious liability extended to criminal acts by holding the corporation liable for such fraudulent actions of officers while performing service for that company<sup>3</sup>. The Bombay High Court, in the instant case, laid down that a company can be criminally liable for the actions of its employees. It was further remarked by the court that the liability would ensue if an employee commits any criminal act while working with the intention to benefit the company, thus strengthening the concept of vicarious liability under criminal law.

#### **B. Standard Chartered Bank v/s Directorate of Enforcement (2004)**

About corporate criminal liability the most significant Judgement of Supreme Court of India is the Judgement in the case of Standard Chartered Bank v/s Directorate of Enforcement (2004). The court decided that corporations could be prosecuted for the activities that are apparently criminal as they entail mens rea. The judgment also indicated that the principle of auxiliary liability was incorrect, and it rejected a defence of immunity for a corporation based on the fact that the offence necessary for mens rea is involved. It is the opinion of the court that a corporate entity's directors and officers whom acted in that capacity can be indicted for crimes committed in the course of business<sup>4</sup>. This case illustrated the fact that under certain circumstances corporations can be held criminally liable for the actions of their representatives and that the corporate structure will not protect antol legal conduct. This has important implications for enforcing corporate governance and accountability, in India as it ruling make it clear that companies are not above the law of criminal code when they engage action that is unlawful.

#### **C. Dalmia Cement (Bharat) Ltd. v. State of Tamil Nadu (2005)**

This case registered Dalmia Cement against the state for causing pollution from its cement manufacturing factory. The plant was charged with various kinds of violations of the environment that resulted in severe environmental degradation and health hazards to the people in the area surrounded by it. The emission of particulates and other harmful gases was way above the permissible limit. In effect, the question presented

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<sup>3</sup> State of Maharashtra v. Syndicate Bank, 1990 A.I.R. 310 (Bom. H.C.).

<sup>4</sup> Standard Chartered Bank vs Directorate of Enforcement, (2004) 4 SCC 657

before the Supreme Court was to determine that Dalmia Cement could be held responsible under the Indian environmental laws for environmental pollution. It had to examine a very pertinent issue of whether actions on the part of a corporation had breached the environmental norms and whether the corporation should be held responsible for the pollution and damage brought by it to the environment and public health.

The Supreme Court held Dalmia Cement responsible for violating the environmental laws and regulations causing pollution<sup>5</sup>. It also stated that every company carrying on industrial activity should ensure strict adherence to the environmental norms and regulations. The court again iterated that every non-compliance comes with remarkable penalizing circumstances and liabilities. This court ruling has categorically defined the role of corporate responsibility in ensuring environmental standards and public health, making this a landmark case that other corporations must take to be held accountable for environmental violations.

#### **D. New York Central & Hudson River Railroad Co. v. United States (1909):**

In this case, allegations were brought against the railroad company as a violator of the Elkins Act. The Elkins Act had been put in place to rid the field of transportation of rebates and bribery so that everybody gets a fair rate and has equal competition. It was discovered that employees of New York Central & Hudson River Railroad had bribed their way to preferential treatment for some shippers and rebates, which was contrary to the Elkins Act. One of the main questions the Supreme Court asked was whether a corporation would be liable for criminal acts that originated from employees within the course of employment<sup>6</sup>. More precisely, the court wished to make a ruling on whether the doctrine of vicarious liability stood in holding a corporation liable for anti-bribery violations its employees perpetrated in the course of duty. The Court held that the conviction of New York Central & Hudson River Railroad Co. was proper under the Elkins Act and further enthroned its ruling that a corporation could be liable, criminally so, for an act of its employee or agent at a minimum if such act were within the ambit and for the benefit of the corporation. Essentially, this further solidified the doctrine of

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<sup>5</sup>Dalmia Cement (Bharat) Ltd. v. State of Tamil Nadu, (2005) 3 S.C.C. 228.

<sup>6</sup> New York Central & Hudson River Railroad Co. v. United States, 212 U.S. 481 (1909).

vicarious liability by holding companies liable for keeping their employees within legal and ethical parameters. It pointed to the company being responsible and guilty for preventing or committing such wrong acts as bribery so that the cause of fair practices and competition remains maintained and served in the respective industrial order.

## **Statutory Framework and Enforcement**

- **The Companies Act, 2013**

It improves corporate governance, compliance, and accountability and prosecution of companies and their officers for offenses related to financial misfeasance or any other regulatory violation. Notable provisions include Section 447 dealing with prosecution of corporate fraud and Section 448 relating to the falsification of accounts and documents, thereby making it a specific provision for corporate liability in cases of misrepresentation.

- **Prevention of Corruption Act, 1988**

It deals with matters relating to corruption and bribery between public officials and companies. Under this umbrella come major clauses: Section 7, which concerns the bribery committed by public officials, and Section 13 about corrupt behaviour by officials and business persons that provides for accountability and harsh penalties engaging in corruption.

- **Indian Penal Code (IPC)**

It contains terms relating to several criminal offences against the corporation, including fraud, criminal breach of trust, and conspiracy<sup>7</sup>. The key provisions are as follows: Section 406, on criminal breach of trust, makes entities liable for misusing property entrusted to them; Section 420 deals with cheating and dishonestly inducing delivery of property and makes corporations liable for fraudulent and deceitful activities.

## **Challenges and criticism**

Major issue in corporate criminal liability is the issue of proving who is guilty. It becomes common to prove senior management involvement when a corporation is held criminally liable.

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<sup>7</sup> Kavita Sharma, *Corporate Criminal Liability: Evolution and Issues in the Indian Context*, 34 Co. Law J. 231 (2019)

This task is made difficult by the fact that, in large organizations, decision-making is often decentralized.<sup>8</sup> This is particularly so since corporations operate through their agents and employees and hence isolate liability from any given factor is extremely difficult. Legal sanctions and particularly monetary fines are the most common with regards to corporate criminality. However, the critics opine that these penalties may not adequately dissuade corporate wrong doings or bring about a change in corporate behaviour. Businesses and companies always use legal technicalities in a bid to escape legal responsibility or to reduce repercussions. This may involve advocacy for legislation that is advantageous for the organization, bending the law where and when possible and hiring numerous lawyers to help overcome numerous laws.

## CONCLUSION

Corporate criminal liability is a dynamic and important part of the contemporary legal regimes relating to corporate entities' responsibility for crimes. Through history, corporations could not be held liable for committing crimes because they stood as incapable of a guilty mind. As industrialization set in and the following growth in corporate power came, so did the need for adjustments in the legal outlook. In the development of this concept, various theories emerged to be used together in holding corporations liable for actions committed by employees and organizational policies, which include vicarious liability, corporate attribution theory, and aggregate theory. In such crimes like financial fraud, environmental pollution, industrial disasters, among others, it is developing the role of judiciary in making corporations liable. Statutory frameworks the Companies Act 2013, Prevention of Corruption Act 1988, and the Indian Penal Code make for tight mechanisms to combat corporate wrongdoing. They underline the fact that tight measures of governance incorporate, coupled with ethical standards, will ensure there is no wrongdoing which will erode public confidence. Most importantly, it is necessary to have continuous legal development and enforcement so that the societal interest may be safeguarded from corporate malfeasance.

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<sup>8</sup> Ramesh Kumar & Alok Verma, *Challenges in Imposing Corporate Criminal Liability in India*, 12 Ind. J. Corp. L. & Pol'y 67 (2018).