
CORPORATE CRIMINAL LIABILITY IN CONTEXT TO SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

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ABSTRACT

The idea that criminal behavior is exclusive to humans is erroneous. Similar to a corporation, an artificial person is an independent legal entity with the capacity to commit criminal acts. For a long time, people in the 1600s and 1700s believed that businesses could not possibly break the law. The idea that a business has its own spirit and body as a distinct legal entity has several flaws. Consequently, they won't be able to do anything wrong that may land them in jail. But the idea of corporate crime is becoming more popular. *Standard Charter Bank v. Directorate of Enforcement* is only one of several decisions that have established liability. "It has been recognized that a corporation might face consequences for the criminal acts of its representatives. The concept of corporate criminal responsibility is derived from a Latin adage, *Actus non facit reum, nisi mens sit rea*, which states that in order for someone to be held responsible, it must be shown that they knowingly and willingly committed an illegal act or omission with wicked intent."

I. INTRODUCTION

Charging a corporation with a crime has been a divisive idea from the beginning. Many controversial issues are at the heart of the dispute. These include whether corporations should be subject to the criminal justice system's emphasis on individual punishment, whether the existing civil remedies for corporate wrongdoing are adequately addressed by criminal culpability, and whether this idea imposes additional criminal accountability on corporate executives. First, those who disagree with the idea of corporate criminal responsibility point out that people, not companies, are to blame when it comes to criminal activity. Second, shareholders and consumers also bear some of the financial burden when corporations pay penalties. The former issue, however, has been adequately handled by the courts, and the second argument may be rebutted by pointing out that shareholders are sufficiently informed about the risks involved with such deals. Criminology in modern culture would be incomplete without the notion of corporate criminal liability, however ridiculous that may be.

In the Indian context, vicarious liability is acknowledged and enforced on two distinct angles. First of all, businesses may be held legally responsible for crimes that their employees commit while working for the company. Also, under the conditions mentioned before, top-level corporate executives can face double punishment for the wrongdoings of their employer. For this paper, we looked at corporate criminal responsibility from an Indian perspective and how the courts have used the theory in Indian cases. Within India, the idea has only just begun to take shape. With corporate crime on the rise and no worldwide standard for the doctrine's implementation, the question of how best to put ideas into action becomes more pressing than ever. Because corporations are seldom legally liable, there is still a long way to go before we achieve substantial progress. Articles regarding vicarious criminal culpability are included in the Companies Act of 2013. However, without a defined corporate sentencing approach or a model required by law to handle cases involving corporate criminal liability, practical difficulties are inevitable.

Like its British counterpart, the idea of corporate criminal liability has developed in the Indian setting. It used to be that corporations could get away with mensrea-requiring crimes in India's courts. On the other hand, later rulings used the identification principle

to hold companies liable for mens rea violations. Gone are the days of rigid patriarchy, when women were expected to stay at home and take care of the household rather than entering the workforce to contribute financially to their families. Despite the fact that we live in an era of gender equality, women are still putting in long hours to advance their careers and achieve their dreams. Unfortunately, it's very uncommon for male coworkers to act inappropriately toward their female colleagues, leading to instances of sexual harassment or assault. Sexual harassment is an abomination. Women in India experience sexual harassment at a rate of one incident every twelve minutes. Workplace sexual harassment puts women in danger and violates their Fundamental Rights, which include the right to personal liberty, equality of status and opportunity, and protection from discrimination under Articles 14, 15, and 21 of the Indian Constitution. The psychological and emotional growth of a woman is just as negatively impacted as her physical attractiveness by sexual harassment.

(A) Research Question

- “What are the various forms of criminal penalties that can be introduced into the Indian Criminal Justice System and enforced on businesses under the corporate criminal responsibility umbrella?”
- What does “sexual harassment” at workplace means?

(B) Research Methodology

In order to develop this research, the researcher will use a doctrinal method. What follows is the procedure for using the doctrinal approach: To start, the researcher has researched and determined the present legislation concerning the notions of corporate criminal responsibility by consulting primary sources such as international and national statutes and case laws.

II. “REQUIREMENTS FOR ESTABLISHING CORPORATE CRIMINAL LIABILITY

(A) Act within the scope of employment

In order for corporate criminal culpability to arise, several conditions must be met. Before the employee may commit the offense, they must be acting in the course of their work

obligations. Because of the inherent master-servant dynamic and the resulting vicarious accountability, it is essential that they carry out the responsibilities delegated to them by their parent firm. This ticket was sold by an employee called Mr. Hobday and not by Mr. or Mrs. Shah. It was sad but unavoidable that his crime become their guilt simultaneously, according to the case of *Mousell Bros Ltd v London and North-Western Railway Co.*”¹

(B) Benefit to the corporation

The second requirement for the existence of corporate criminal culpability is that the company ought to have gained an advantage from the conduct of the agent or employee in question. All that is necessary is that the employee or agent carry out the act in a way that benefits the company; the fact that the business has made a profit is not crucial. Companies may be held accountable under the collective blindness doctrine and the deliberate blindness theory. According to the collective blindness concept, it is not necessary to hold an individual accountable for actions that benefit the firm. Instead, all members of the group may be held responsible for this, as long as they all demonstrate full knowledge. Employees and agents may be held liable for unlawful conduct under the willful blindness notion if the corporation knows about them but chooses to ignore them. In addition, employees and agents alike may face conspiracy charges under the doctrine of corporate criminal liability.

III. “THE JURISDICTIONAL EVOLUTION

The decision in *Standard Chartered Bank v. Directorate of Enforcement*² prompted a discussion over the issue of corporate criminal liability after an opinion from India's top court. The Court decided in this case that Indian law recognized that businesses may be prosecuted and convicted for a crime that involved a mandatory prison sentence and a fine.”

Furthermore, this decision made it clear that courts may only impose fines on businesses as defendants when the law mandates both imprisonment and a fine. “The ruling deviated from previous precedents that had previously rejected the prosecution of firms for criminal crimes because the court could not impose a fine instead of compulsory imprisonment at its discretion. The court's decision in the *Iridium India Telecom Ltd. v.*

¹ [1917] 2 KB 836

² 2005 SCC (Cri) 961

Motorola Inc. case was made six years later, in favor of Iridium.³ Indian companies were granted mensrea by the Supreme Court for the first time. The case of Iridium involves accusations that a corporation made false claims in its prospectus while selling shares to the public, resulting to charges of deceit and criminal conspiracy.

IV. TESTS TO DETERMINE THE CORPORATE CRIMINAL LIABILITY

(A) Identification Test

In *Tesco Supermarkets Ltd v. Natrass*⁴, Lord Reid observed, “The person who acts is not speaking or acting for the corporation.” His thoughts and behavior reflect the company's philosophy, and he is behaving in a businesslike manner. The company should shoulder the blame if it's a guilty attitude. This examination goes by many titles than just the alter ego test; it is also known as the directing mind and will hypothesis. By determining who the firm's controlling and directing thought is, this test helps English courts establish whether a company is criminally liable.

(B) Aggregation Test

It is possible for many individuals to work together to commit a corporate wrong in certain instances. The actus reus and mensrea may be generated from the actions and knowledge of several people by combining their acts. In *United States v. Bank of New England*⁵, “Since firms would divide up tasks and shield themselves from responsibility, the court of appeals ruled that common knowledge is admissible. While this test was accepted in England, it was not in Australia.

(C) Respondent Superior Test

The courts have provided several arguments to support the premise that a business may be held accountable for the activities of its agents. A corporation may be held liable if (a) its agents commit a crime while serving the company's interests, (b) the agents are working within the scope of their employment, and (c) the agents' goal is to benefit the business. This was made abundantly evident in the case of *United States v. A. P Trucking*

³ (2011) 1 SCC 74

⁴ 8 [1972] A.C 153

⁵ 9821 F.2d at 854

Co⁶.

V. JURISPRUDENTIAL POSITION IN INDIA

The Indian Penal Code, 1860 governs the procedures for criminal prosecution under the Indian Criminal Justice System.” The meaning of the word “person” is provided in Section 11. It includes any group of people, whether they are individuals or a business. Including it is totally up in the air. So, companies that break the law may have to pay the price. Regardless, the criminal responsibilities of corporations need to be reviewed if they commit crimes that carry obligatory jail terms and punishments as outlined in the penal law. This issue was addressed in a number of landmark judgments that also advanced the concept of corporate criminal liability.

“A majority decision in the case of *Assistant Commissioner v. Velliappa Textiles Ltd*⁷ decided that a business cannot face fines and jail time for infractions that are obligatory. When a fine and/or prison time are both listed as possible punishments, the court cannot impose only the fine. Recognizing this challenge, the Law Commission of India proposed revising section 62 of the Indian Penal Code.⁸ by including the following language in its 41st report When a corporation, other body corporate, or association of individuals commits an offense that carries a fine only penalty rather than a mandatory minimum punishment, the court retains the discretion to impose a fine only. The case of *Standard Chartered Bank v. Directorate of Enforcement et al.* (2015)⁹, The situation was made very plain by the Supreme Court. Previous ideas on the accountability of corporations for criminal acts were disproved. Considering the arraignment demands mandatory detention, the court ruled that no firm has blanket protection against an indictment of charges.” Businesses should be penalized when a combination of fines and jail time is necessary, according to a Supreme Court ruling. There was a case between *Motorola Incorporated Co. and Iridium India Telecom Ltd.*¹⁰, A company may be found guilty of common law and statute crimes, even those requiring mensrea, according to the Supreme Court's ruling. The firm could face criminal charges if an employee or employees commit a crime while working for the company. That being the case, you'd have to prove that the

⁶ 1958 SCC OnLine US SC 195

⁷ (2003) 11 SCC 405

⁸ Section 62 of Indian Penal Code, 1860

⁹ *Supra* Note 4.

¹⁰ *Supra* Note 5

person or people in question had enough influence over the situation for a business to be considered as if it were functioning via them.

Interpretations with IPC

A 'person,' according to Section 11¹¹, is “any Company or Association or collection of persons, whether incorporated or not.” The Indian Penal Code (IPC) currently includes provisions for the punishment of corporations. An attack, for which the Indian Penal Code solely allows for imprisonment, is an evident example of a human-committed crime that cannot be punished by businesses. When it came to determining whether a business deserved a jail term and a fine under the IPC, there was a lot of wiggle room at the time. The matter was eventually resolved and the concept of corporate criminal culpability expanded thanks to a number of high-profile instances.

VI. FIXING THE LIABILITY

The ability of an Indian court to differentiate between companies' controlling and coordinating mindsets has been used in several statutes. The key issue is whether, in the absence of indictments against the corporations, the coordinating person with the authority to pursue the firm's interests may face prosecution. The judge said in his decision that any proceedings against the director or the company will be dismissed if the corporation is mentioned as a defendant. Another way of putting it is that vicarious responsibility cannot exist until the company is brought to justice.

VII. SEXUAL HARASSMENT AT WORKPLACE

One may find “sexual harassment” in almost every culture. You could find it in the structured and disorganized parts of society. On the other hand, the term “sexual harassment” has different connotations in different cultures. Common parlance defines “sexual harassment” as unwanted, degrading actions based on a person's sexual orientation. “Sexual harassment” in the workplace may take many forms, including physical and verbal abuse, but it always has the same effect: it makes people feel

¹¹ Section 11 of Indian Penal Code, 1860.

uncomfortable and reduces their ability to do their jobs well¹². Everywhere you look, sexual harassment is an issue in the workplace. This practice has long been part of Indian culture. Because of its infectious behavior, it must be eradicated. It is the responsibility of the government to provide a safe environment for all citizens, regardless of gender. Staff members want assurance that they will work in a safe and supportive workplace free from sexual harassment as they spend a significant portion of their day there. The “Constitution of IC” is an essential document for any group that includes a lawyer or other qualified individual. The government need to do more than only tweak the rules; it ought to monitor the basic level's implementation of the laws as well.

No longer will we tolerate “sexual harassment” in the workplace; the government must act now to define “gender equality” and put a stop to this unacceptable practice.

(A) What Are The Remedies Under Indian Law For Victims Of Sexual Harassment?

There has been some government intervention, but it hasn't been enough to stop sexual harassment in the workplace. The mistreatment of women is something that happens every single day. Their rights and dignity are violated by those in power, putting them in a dreadful position. There has been an effort to end sexual harassment on the job ever since the Vishakha case, in which the Supreme Court first recognized the seriousness of the crime and laid forth regulations for local governments to follow.¹³ In instances like Bhandari Devi and Nirbhaya, including group rape, the Supreme Court ruled that sexual harassment violates the golden triangle that was set up in the Maneka Gandhi case. The government's initial effort to tackle the issue was in 2010 when it drafted the Protection of Women Against Sexual Harassment Bill. The main goal was to settle the matter through an appropriate investigation by a committee appointed by district officers. Subsequently, the act of 2013 came into effect. They will investigate the matter thoroughly and then decide whether to impose fines, prison time, or both. The legislation laid forth the proper protocols to be followed and the steps to be taken at the local level to resolve the matter. There is a hierarchical power structure to direct the body correctly and guarantee quick repair.

¹² legal Service India (no date b) *Vicarious Liability of Employers in Sexual torts committed by employees - CEDAW*, *Legalserviceindia.com*. Available at: <http://www.legalserviceindia.com/article/1235-Vicarious-Liability-of-Employers-in-Sexual-torts-committed-by-employees.html> (Accessed: July 4, 2021).

¹³ *Ibid*

VIII. “DEFINITIONAL ASPECT OF VICARIOUS CORPORATE CRIMINAL LIABILITY

Imposing criminal responsibility on a company necessitates the following ingredients:

1. The intended conduct constituting the offense must be performed within the scope of the employment:” The offender must have been acting in the course of his employment and have had the green light from the company for the crime to be committed, according to this criterion.
2. The planned act must benefit the organization: For this part to be satisfied, the offending employee must have acted in a way that benefited the company. A company may only be held vicariously liable for the acts of its employees where each of the elements listed above are satisfied.

Need for a Progressive Legal Framework Governing Corporate Criminal Responsibility: Many model legal systems across the world hold that corporations must be held criminally liable, and the fact that corporate crimes are becoming more and worse only lends credence to this view.

This idea is not a part of every country's existing legal structure, thus various nations have taken different approaches to it. The idea of identification, which holds senior executives liable for firm acts because they are regarded the brains behind the organization, differs from the respondeat superior (vicarious responsibility) model used in the US. However, there has been a change in attitude in Australia, where companies are increasingly held personally responsible for their own wrongdoing and carelessness. In this method, the company is brought to justice because the crime is enabled or promoted by its culture, practices, management, regulations, or any other aspect. Judgment and statute in India's legal system have not adopted this paradigm. It is vital to hold companies accountable whose culture promotes the violation's activity because of the obviously large impact that businesses have on society and people's lives. A question in the author's survey that was sent in order to compile data for the piece inquired as to which model or approach is more advanced in the modern legal systems of the United States and the United Kingdom. The current American system is considered the most progressive and beneficial by 70% of respondents.

IX. FORMULATION OF A CORPORATE SENTENCING POLICY

Since corporations do not have a physical existence of their own, the current legal penalty for corporate punishments consists of monetary fines rather than jail, even in cases when a term of imprisonment is mandatory. Nevertheless, a corporate sentencing approach should be developed after more research into extra corporate sanctions consistent with notions of punishment from criminal law. The principles of deterrence, retribution, reformation, and prevention as they pertain to criminal punishment must underpin the intended manner of punishment.

X. SUGGESTION AND RECOMMENDATION

The government should do what's needed, such impose harsher penalties, to curb the illegal practices of the country's businesses.

1. In response to the penalties levied on the company, the courts should be ready to issue a beneficial order.
2. Tougher punishments, including dissolving a firm. In such cases, the question of whether the punished company should be reincorporated should presumably be decided by the courts. Society sought social consequences while dealing with crimes that affected its members.
3. So that criminals can't avoid responsibility by associating with other countries, international agreements between states should take action.
4. In extreme cases, the courts should have the authority to choose qualified professionals in the field to assess the company.

XI. CONCLUSION

The premise of holding individuals accountable under criminal law was undermined by the expansion of businesses, making it clear that firms needed to be held criminally culpable. In the past, enterprises were much smaller, and criminal activities were often associated with specific individuals. But as the world became more interconnected via industrialization and globalization, corporations became more powerful and the notion

of corporate criminal responsibility was born. People first ignored this theory. It was first used in 1842 in a case involving a corporation found guilty of disobeying a statutory requirement in the UK. The sole responsibility for non-feasance used to rest with corporations. This theory, which originated from the ideas of vicarious criminal culpability, has been gradually expanded by the courts to include the imposition of responsibility for wrongdoing. Since companies lack the mental capacity to commit crimes involving mensrea, the courts have decided that they are immune from prosecution in such cases.

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