

CORPORATE CRIMINAL LIABILITY - WHITE COLLAR CRIME

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ABSTRACT

A company is regarded as a different legal entity from its stockholders. It may be defined as a group of people who work together to achieve a shared goal, and it has no legal or technical significance. It is accepted that if there is a breach of criminal law, criminal culpability is attached. The criminal liability of any act is based on the Latin maxim Actus non facit reum mens sit rea, which states that in order to hold a person or entity liable, it must be demonstrated that there is an act or omission that is prohibited by law, as well as mens rea, which is legally defined as having a guilty mind. It is under the purview of white-collar crime.

Keyword: Corporate, criminal, liability, crime, stockholders, Actus, facit, company

1. INTRODUCTION

Corporate criminal liability is defined as a crime committed by an individual or an association of individuals who, in the course of their occupation, commit acts or omissions that are prohibited by law and with a guilty mind for the benefit of the corporation or any individual out of the association of individuals. Previously, when the idea of holding a corporation responsible was not developed, no corporation was held liable for any criminal conduct since it is an artificial legal entity, thus it could not be imprisoned, and because the corporation is not a natural person, there was an absence of mens rea.

When a company is held criminally responsible, it not only impacts the firm's operations but also the individuals inside the corporation who are engaged in illegal behaviour, and they may suffer legally and financially as a result. However, it has been argued that in the event of a corporation's punishment, a fine should be given rather than jail.

2. DEVELOPMENT OF CONCEPT OF CORPORATE CRIMINAL LIABILITY

Corporate crimes are defined as crimes perpetrated by companies or members of corporations in which accountability is imposed for any conduct or omissions that are criminal by law. In *Zee Telefilms Ltd. v. Sahara India Co. Corp. Ltd.*, a business was released from responsibility for defamation because there was a lack of mens rea, which is considered an implicit condition under law. In the case of *State of Maharashtra v. Syndicate*, the High Court held that a company could not be prosecuted for offences that entailed corporeal punishment or imprisonment. Prosecuting a company for such offences

would result in a trial with a guilty verdict but no effective order could be implemented. However, in the case of *Iridium v. Motorola*, the Supreme Court took a different stance than in the preceding case, holding that a business may be held responsible for both statute and common law offences, even those requiring mens rea.

3. HOWEVER, IN EARLIER TIMES MAJOR ISSUES WERE FACED FOR EVOLUTION OF CONCEPT OF CORPORATE CRIMINAL LIABILITY WHEREIN:

There was a failure to identify the presence of mens rea in corporations because there was a lack of criminal intent by corporations, which are fictional and artificial legal persons in the eyes of the law. A corporation could not be imprisoned or given the death penalty, as is usually given in criminal law.

According to the Court, the accused must be physically present throughout the proceedings, which is impossible in the case of companies because they are artificial legal people.

Today, however, directors or officers are made liable for acts committed in actual authority to perform in when they direct their subordinates to commit any crime and fail to exercise any due care or supervise their acts, which falls under the category of accomplice theory, and this theory also states that due to the concept framed of responsible relation that a person will be made criminally liable due to responsible relation found regardless of whether he is. However, it may be argued that, in addition to being a valuable asset, corporations can also be harmful to society.

Indian social legislations such as the Essential Food Commodities Act of 1955, the Environment Protection Act of 1986, and the Negotiable Instruments Act of 1881 state that along with the corporation, its employees will be held liable for the offence, and if convicted, those involved in the crime will face imprisonment. In this day and age of economic growth, such a notion has taken on new significance in corporate governance.

However, there are several critiques of the Corporate Criminal Liability Doctrine, the first of which is Imprisonment, and the second is Mens Rea. When certain crimes are committed, there is mandatory incarceration in the case of punishment, which covers both corporations and natural individuals. In the case of fraud under Section 447, there is a required sentence of jail; however, because corporations are artificial legal persons, they cannot be imprisoned and may only be fined.

There must be required Mens rea for committing the crime for the crime to be committed; but, in the case of companies, there is an absence of Mens rea to hold a company accountable for crime. The courts have used the Alter ego concept to find companies/corporations responsible in cases of Mens Rea, which is considered a necessary component of committing a crime.

The Supreme Court initially endorsed in the case of New York Central and Hudson River Railroad Co. v. United States, which was decided in 1909, that companies that were held responsible in civil proceedings would also be held guilty in criminal cases. In the matter of Municipal Corporation of Delhi v. J.B Bolting Company (P) Ltd, the Court faced an intriguing question: how can the Company be punished with a fine while the statutory punishment is both jail and fine?

4. DOCTRINES ESTABLISHED IN CORPORATE CRIMINAL LIABILITY

I. The Doctrine of Vicarious Liability-

According to the Doctrine of Vicarious Liability, as established in tort law, the Master is considered vicariously liable for the acts done by the slaves. Similarly, in *Ranger v. The Great Western Railway Corporation*, the company was deemed vicariously responsible for the acts committed by its workers if they were done in the course of their employment. In the case of *Gunston and Tee Ltd v. Ward*, this concept is applicable in the same way that Respondent Superior was applicable in civil law, but it does not apply in criminal law since criminal law stipulates

that everyone is accountable for their own actions and not for the actions of others.

II. The Doctrine of Identification-

The activities of corporate officials are equated with those of a business under the Doctrine of Identification, wherein the corporation, being an artificial legal person with no physical existence, is held responsible for the acts done or guilt by senior officers in their official position.

III. The Doctrine of Collective Blindness-

Courts have concluded that under the doctrine of collective blindness, companies will be held responsible even if a single individual was not at fault and evaluated the sum total knowledge of all workers in order to hold a business guilty.

IV. The Doctrine of Wilful Blindness-

If an illegal or criminal conduct is performed and the corporate agent does not take action or efforts to prevent such actions from occurring, the theory of wilful blindness applies.

V. The Doctrine of Attribution-

The mens rea, or guilty mind, is ascribed to the guiding mind and will of the companies under the Doctrine of Attribution, as in the case of punishment or incarceration in the event of an act or omission resulting to a breach of criminal law. This theory is utilised in India, however it was created in the United Kingdom.

VI. The Doctrine of Alter Ego-

It is defined as someone's personality that is not visible to others in the Doctrine of Alter Ego. The proprietors and those who handle the company's affairs are referred to as the company's Alter Ego. Under this concept, the Directors and other persons who run the operations of the company can be held responsible for acts performed by or on behalf of the firm since the corporation has no mind, body, or soul and the people are the controlling mind and will. However, it has traditionally been assumed that the concept of Alter ego has been applied in reverse, such that the actions of persons handling the business of the Company are attributed to the Company rather than vice versa.

5. CONCEPT OF CORPORATE CRIMINAL LIABILITY IN INDIA

Until the concept of corporate criminal liability was established, courts in India did not punish corporations because they believed that the essential ingredient, i.e. mens rea, was missing in corporations, which were

fictitious legal entities with no physical existence and thus could not be physically brought into the proceedings. However, many legal difficulties arose as a result of this concept, which was noted by the Law Commission of India in its 41st report, where an amendment was suggested in section 62 of the IPC, but the bill which was made was lapsed, but the view of Courts in terms of this concept changed in a landmark case of *Standard Chartered Bank and Ors. v. Directorate of Enforcement*, in which the bank was prosecuted for violation of provisions of the Foreign Exchange Regulations.

When a business is judged criminally responsible, the illegal activity of its workers may result in criminal and financial consequences. Everyone in the corporate entity is held accountable, including executives, directors, and even the corporation, with consequences ranging from civil to criminal fines, loss of government contracts, permanent or temporary loss of deposit insurance, conservatorship, and so on.

In the case of *Assistant Commissioner v. Velliappa Textiles Ltd*, it was determined that companies cannot be imprisoned since they cannot be punished or prosecuted by the IPC, which orders incarceration. Under the Companies Act, the idea of corporate criminal responsibility has been established. The responsibility of directors has been enhanced under the Companies Act 2013, which has replaced the Companies Act 1956. Under the Companies Act 2013, it holds not only the Directors liable, but also the officer in default, which includes, in broad terms, a full-time director, key managerial personnel, and such other officers in the absence of KMP who have been specified by the Board of Directors, as well as every other director who has information related to it or has participated in that act without raising an objection under the concept of corporate criminal liability in India.

9. CONCLUSION

The 47th Law Commission Report proposed a number of ways to deal with corporate criminal responsibility, including granting judges discretionary authority to apply fines as they see right. In the event of a company, it would be competent to sentence the criminal to a fine alone rather than imprisonment and fine or simply imprisonment. However, lawmakers have rejected the Law Commission's suggestion and have refused to integrate any of this, making it impossible for courts to punish criminals. It should be emphasised that corporate criminal responsibility can come from a variety of situations.

In India, business scandals are having a negative impact. However, with the growth and development that is taking place in India, companies are not deemed legally responsible, and if sanctions are enforced, they are limited to fines. There is a need to attach the importance of Corporate Culture in both official and informal policies, regulations, and practises whereby the company is viewed as a conduct element of offence which has been committed by it when their cause was promoted by the Corporation's culture. It is conceivable for a company to use this notion in instances when there is no participation of an individual in committing an infraction.

The present rules for evaluating corporate criminal culpability have frequently been challenged and labelled as unrealistic and contradictory with the principles of criminal legislation. In the corporate environment, the state should incentivize businesses to implement policing measures in order to discourage crime. In the event of a professional evaluation of the company, the court should have the authority to select a qualified individual or persons to write a report on the corporation.

When a company is punished, in addition to or instead of imposing a fine, it should issue one or more orders that it believes would achieve the sentencing goals. Stricter penalties, such as corporate dissolution, should be enforced so that the courts can determine if reincorporation is possible in situations where the company has been fined.

Nowadays, the government's claimed idea of Sustainable Development has mostly failed in its efforts to regulate such crimes that have a major impact on society.