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Corporate Criminal Liability: Assessing Legal Accountability

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ABSTRACT

The notion that only humans can commit crimes is outdated. Initially, it was believed that corporations, as separate legal entities, couldn't commit crimes due to their lack of a soul or body. However, this perspective evolved, and the concept of corporate criminal liability emerged through legal precedents like the Standard Charter Bank v. Directorate of Enforcement case. It became apparent that a company, acting through its representatives, could indeed engage in criminal activities and be held accountable.

This development stemmed from the Latin maxim "Actus non facit reum, nisi mens sit rea," which implies that to establish liability, it must be proven that an act or omission was committed, forbidden by law, and done with a guilty mind. The doctrine of corporate criminal liability gained global significance following the influential judgment in the Standard Charter Bank Case.

This article delves into the historical progression of corporate criminal liability and explores the diverse principles underpinning the accountability of directors, employees, officers, and other agents for the actions of a company. It extensively examines the contentious concept of special vicarious liability, which remains a topic of debate in contemporary times. The final section of this article focuses on Indian court jurisprudence concerning the imposition of penalties on corporations. It highlights landmark judgments that have significantly shaped the landscape of corporate criminality in India.

Keywords: Vicarious Liability, Criminal Liability, Corporate, Accountability.

I. INTRODUCTION

Corporate criminal liability refers to the responsibility of a company or organization for illegal actions committed by its employees or agents while acting on behalf of the company. When these individuals engage in unlawful activities like fraud, bribery, or environmental violations within the scope of their employment, the company itself can be held accountable for these wrongdoings. This concept recognizes that companies, despite being entities made up of individuals, have their own separate existence and can be legally

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liable for the actions taken on their behalf. It's essential because it ensures that companies are not immune to prosecution when their representatives engage in criminal behavior, holding them accountable for their actions. The idea of corporate criminal liability aims to encourage ethical behavior within companies, promoting a culture of compliance with the law. By imposing legal consequences on corporations for illegal conduct, it strives to deter wrongdoing and encourage organizations to implement robust compliance programs and oversight to prevent such misconduct. In many legal systems around the world, laws and regulations have been established to define and address corporate criminal liability. These laws set out the criteria under which a company can be held criminally responsible, taking into account factors like the intent of the company, the actions of its employees, and the level of oversight and compliance measures in place within the organization. Understanding corporate criminal liability is crucial not only for legal professionals but also for businesses and society as a whole. It sheds light on the importance of ethical conduct within companies, the consequences of failing to adhere to legal standards, and the need for effective mechanisms to prevent corporate wrongdoing.

II. HISTORICAL BACKGROUND

The origin of corporate criminal responsibility can be traced back to common law nations like Canada, England, and the USA, which experienced the industrial revolution earlier than other parts of the world. In contrast, civil law countries initially gave little importance to corporate criminality. Initially, legal historians believed that corporations, in their corporate capacity, were incapable of committing crimes like felony, treason, or perjury. Instead, only individual members could be held accountable for such offenses. This perception persisted until the concept of corporations as legal entities emerged. As companies increasingly pooled resources for business ventures and protection against potential losses. Thereafter, once they began to own property and engage in business, leading to their recognition as legal entities in the eyes of the law.

The issue at hand revolved around the potential legal consequences that these corporate entities might face for their actions. Initially, there was a reluctance to hold corporations accountable. However, a significant turning point occurred in 1842 within the English Courts, where a corporation was fined for neglecting a statutory obligation. This marked the inaugural instance of imposing criminal liability on corporations. The concept of corporate criminality originated from the common law notion that masters could be criminally responsible for their servants' actions in causing public nuisance, fundamentally grounded in the concept of vicarious

liability³. The development of this doctrine into comprehensive corporate criminal liability resulted from the judicial interpretation of both common law principles and existing statutory regulations.

Corporate criminal liability progressed at a slower rate compared to the civil liability of corporations. In civil law countries, where there's a tradition of constrained judicial interpretation of statutes, the development of corporate criminal liability faced hurdles. This resulted in a lack of advancement in holding corporations criminally liable within these jurisdictions.

III. CONCEPT OF CORPORATE CRIMINAL LIABILITY IN INDIA

Before the establishment of corporate criminal liability, Indian courts refrained from penalizing corporations, perceiving them as lacking the essential element of mens rea and being fictional entities without physical presence, thus unable to be physically brought forth for legal proceedings. However, this concept led to numerous legal complexities, which were recognized by the Law Commission in its 41st report. In this report, an amendment to section 62 of the Indian Penal Code (IPC) was proposed to address these issues. Although a bill was drafted, it lapsed without enactment. The perception of courts regarding this concept underwent a significant shift in a landmark case, *Standard Chartered Bank and Ors. v. Directorate of Enforcement*. In this case, the bank faced prosecution for violating provisions of the Foreign Exchange Regulation Act, 1973. The Supreme Court, departing from strict adherence to penal provisions, asserted that a corporation could indeed be held accountable, regardless of the prescribed mandatory punishment stipulated under the statute.

The imposition of criminal liability on a corporation can lead to severe repercussions affecting both individuals within the company and the corporate entity itself. This liability extends to officers, directors, and the corporation as a whole. The penalties encompass a broad spectrum, including civil and criminal sanctions, the possibility of losing government contracts, temporary or permanent forfeiture of deposit insurance, and the imposition of conservatorship, all of which can have substantial financial and operational consequences.

The Supreme Court in the case of **Assistant Commissioner v. Velliappa Textiles Ltd, 2004**⁴ established that corporations cannot face imprisonment or direct punishment under the Indian Penal Code (IPC) as it primarily directs imprisonment, rendering it inapplicable to corporations.

³ Wells, Celia. (2001). "Corporate Criminal Liability: What Purpose Does it Serve?" *The Cambridge Law Journal*, 60(2), 352-372

⁴ AIR 2004 SUPREME COURT 86, 2003

However, the concept of corporate criminal liability has found its footing under the Companies Act. Notably, the Companies Act 2013 has replaced its predecessor, the Companies Act 1956, and has significantly expanded the scope of liability for directors. Under this newer legislation, not only directors but also individuals categorized as "officers in default" bear responsibility. This broader framework encompasses whole-time directors, key managerial personnel (KMP), and other officers specified by the Board of Directors. Additionally, it holds accountable every director who possesses relevant information or has participated in such acts without raising any objection, all within the context of the established concept of corporate criminal liability in India⁵.

IV. LEGAL FRAMEWORK OF LIABILITIES IN INDIA

Corporations bear criminal responsibility under a myriad of laws such as anti-corruption statutes, income tax regulations, the Indian Penal Code ("IPC"), money laundering provisions, Negotiable Instruments Act, Securities and Exchange Board of India guidelines, among others. Legal principles dictate that for severe IPC violations, a corporation can be found culpable. In a landmark 2005 case, the Supreme Court ("SC") ruled that a company can be prosecuted and penalized for criminal offenses. Although a company cannot be physically imprisoned, in instances where imprisonment and fines are mandated, courts have the authority to impose and enforce monetary penalties. Put differently, legal precedents establish that companies aren't exempt from criminal prosecution merely because they cannot possess a guilty mind (*mens rea*); instead, the actions of its directors should be linked to the corporation's actions, holding it accountable for the deeds of those in decision-making roles steering its trajectory.

The Companies Act of 1956 underwent a substantial overhaul with the enactment of the Companies Act, 2013 ("CA 2013"), which introduced more rigorous provisions to criminalize a broad range of activities conducted by companies. These amendments aimed to establish accountability for both officers and directors in cases of fraudulent actions carried out by the company's employees. The Companies Act, 2013 incorporates provisions delineating liabilities for directors and key managerial persons ("KMP") who can be held responsible for a company's unlawful activities. Liability is determined based on their roles and the nature of their responsibilities, without the necessity of proving direct involvement in a specific act. In essence, when a company commits an offense, individuals in charge and responsible for its operations at the time of the transgression are considered culpable alongside the company, subject to

⁵ Wells, Celia. (2001). "Corporate Criminal Liability: What Purpose Does it Serve?" *The Cambridge Law Journal*, 60(2), 352-372

appropriate legal proceedings and penalties. This responsibility has gradually extended to include individuals within the reporting hierarchy, those involved in financial matters, actively contributing through their actions or inactions, and the company's directors. However, exoneration from liability is possible if the individual can demonstrate a lack of awareness of the offense or prove that all necessary precautions were taken to prevent its occurrence.

V. DOCTRINES ESTABLISHED IN CORPORATE CRIMINAL LIABILITY

(A) Doctrine of Vicarious Liability

The Doctrine of Vicarious Liability, well-established in the law of torts, dictates that the Master is held vicariously responsible for the actions carried out by their servants. Similarly, in the precedent-setting case of *Ranger v. The Great Western Railway Company*, it was affirmed that a company bears vicarious liability for the actions of its employees if those actions occur within the scope of their employment. While the doctrine finds application in cases like *Gunston and Tee Ltd v. Ward*, akin to the civil law principle of "Respondeat Superior," it doesn't hold the same weight in criminal law. Criminal law stipulates that individuals are personally liable for the actions they commit and not held accountable for the actions of others.

(B) Doctrine of Identification

According to the Doctrine of Identification, the actions undertaken by corporate officers are attributed to the company itself. Given that a corporation is an artificial legal entity without a tangible presence, the actions or culpability of senior officers in their official roles are imputed to the company, rendering it liable for those actions.

(C) Doctrine of Collective Blindness

As per the Doctrine of Collective Blindness, courts have established that corporations can be held accountable for their actions even if a single individual is not personally at fault. Instead, the courts consider the collective knowledge possessed by all employees, amalgamating this information to determine the corporation's liability.

(D) Doctrine of Wilful Blindness

In cases where illegal or criminal actions occur within a corporation and its agents deliberately avoid taking measures to prevent such activities, the Doctrine of Wilful Blindness comes into play.

(E) Doctrine of Attribution

The Doctrine of Attribution applied in the context of sentencing or imprisonment due to acts or

omissions resulting in criminal law violations, attributes the mens rea, or guilty mind, to the directing will of corporations. Although utilized in India, this doctrine originated in the United Kingdom.

(F) Doctrine of Alter Ego

The Doctrine of Alter Ego pertains to an individual's inner personality that remains unseen by others. In the context of a company, the owners and those responsible for managing its operations are viewed as the company's Alter Ego. This doctrine holds that directors and other individuals managing the company can be held accountable for actions carried out by or on behalf of the company, given that a corporation lacks a mind, body, or soul. Therefore, individuals essentially become the directing mind and will of the company. However, it's essential to note that the principle of Alter Ego typically attributes the actions of these individuals managing the company to the company itself, rather than the other way around.

VI. INDIAN COURTS ANALYSIS ON CORPORATE CRIMINAL LIABILITY

For an extended period, the Indian legal system did not acknowledge the concept of holding corporations accountable for criminal actions. Courts in India hesitated to embrace the notion of attributing criminality to corporations and pursuing legal action against companies for intentional wrongdoing⁶. This reluctance stemmed from the principle that liability for an offense revolves around the Latin maxim "actus non facit reum, nisi mens sit rea," indicating that to establish liability, the act must be committed with a guilty intention. Since companies are legal entities devoid of human conscience, the idea of them possessing a criminal mindset was a fundamental challenge.

Furthermore, a substantial impediment to prosecuting corporations lies in the challenge of holding them accountable in cases where the prescribed punishment encompasses both imprisonment and a financial penalty. The convergence of legal principles and practical constraints presents significant hurdles in acknowledging corporate liability within the Indian legal framework.

In the legal matter of **AK Ghosla v. S. Venkatesan**⁷, the Indian courts grappled with the intricate issues surrounding corporate liability in instances of alleged fraud, as per the provisions outlined in the Indian Penal Code (IPC). Numerous cases brought before the courts faced dismissal due to the inherent difficulty in attributing the necessary mens rea, or guilty intention,

⁶ Ramirez, Steven A. (2018). "The Shifting Sands of Corporate Criminal Liability." *Notre Dame Law Review*, 94(4), 1675-1734.

⁷ (1992)1CALLT77(HC)

to a corporate entity, which is a vital component in establishing criminal liability. The challenge persisted as courts confronted the impossibility of infusing a corporation with the requisite mindset typically associated with criminal actions. Additionally, the legal system's requirement for prosecuting offenses that mandated imprisonment presented a considerable hurdle in holding corporations accountable.

This quandary resulted in the widespread exoneration of corporate entities from liability in numerous cases. The underlying reason for this outcome lay significantly in the strict and literal interpretation of statutory laws by Indian judges. The adherence to the precise wording of the law acted as a barrier rather than facilitating the determination of corporate criminal liability.

The courts, in their assessment, asserted that holding a company criminally liable necessitated changes within legislative texts through amendments to relevant statutes⁸. A pivotal recommendation in this regard came from the 41st Report of the Law Commission. This report suggested essential modifications to Section 62 of the IPC, aiming primarily to designate the imposition of fines as the solitary punishment for offenses that mandated both imprisonment and fines in the case of corporate indictment. However, despite these proposed amendments, the bill addressing these concerns failed to pass through the legislative process. This failure underscored the lingering complexity and challenges associated with reforming laws to effectively address corporate criminal liability within the Indian legal framework.

The pivotal case of **Standard Chartered Bank & Ors. v. Directorate of Enforcement, 2005**⁹ marked a significant shift in the perspective of Indian courts regarding corporate criminal liability. This legal turning point occurred when the company faced charges of breaching the Foreign Exchange Regulations Act 1973. Rather than strictly adhering to a literal interpretation of the statute, the court took a different stance. It asserted that in instances where an offense carries both imprisonment and a fine as punishment if a company is found guilty, the penalty of a fine can be imposed upon them¹⁰.

The court clarified that there existed no ambiguity in the legislative intent to exempt corporations from criminal liability. This clarity was evident in the inclusive definition of 'person' outlined in Section 11 of the IPC, which explicitly encompasses "a company, or an association, or a body of persons whether incorporated or not." Consequently, concerning legal entities, the courts have the discretion to levy fines in cases mandating both imprisonment and

⁸ Coffee, John C. (2007). "Law and the Market: The Impact of Enforcement." *Columbia Law Review*, 107(6), 1530-1577.

⁹ AIR 2006 SUPREME COURT 1301

¹⁰ Ramirez, Steven A. (2018). "The Shifting Sands of Corporate Criminal Liability." *Notre Dame Law Review*, 94(4), 1675-1734.

finer, given the impracticality of imposing a sentence of imprisonment on a corporate entity.

The dilemma surrounding whether a corporation can be subjected to imprisonment for committing a crime presents a intricate set of challenges. It is widely acknowledged that a corporation is a legal fiction and, as such, cannot be physically incarcerated. However, the individuals associated with the company—such as directors, shareholders, and employees—who are classified as natural persons and engaged in its operations can undoubtedly face imprisonment if found guilty of criminal acts. Notably, there is no explicit statutory provision outlining the imprisonment of a corporation, despite its potential involvement in serious offenses detailed in various Acts. The use of imprisonment as a punitive measure primarily aims to deter individuals from repeating criminal behavior. However, the abstract legal nature of a company undermines the fundamental objective of this punitive approach.

The case of **Iridium India Telecom Ltd. v. Motorola Incorporated & Ors. ,2011**¹¹ extensively delved into the quandary surrounding whether corporations possess the necessary mens rea. Building upon the precedent set in the Standard Chartered Bank case, the Supreme Court firmly asserted that the concept of corporate entities capable of engaging in offenses requiring mens rea cannot be refuted. Moreover, the court established that a corporation can indeed be held criminally accountable for actions conducted within the realm of its business by individuals exercising control over its affairs.

The court emphasized that when an individual's degree of control over a corporation is substantial, the corporation essentially operates as though it is thinking and acting through the mind of that individual or a collective body. This concept was intricately linked to the "identification principle," a doctrine derived from common law and now firmly entrenched in the Indian legal system as established law. Ultimately, the court concluded that there exists no impediment to imposing criminal sanctions on a corporation, given its capacity to operate with its own cognitive process and foster an environment conducive to criminal behavior.

VII. CURRENT APPROACH

The **Sunil Bharti Mittal v. Central Bureau of Investigation,2015**¹² case judgment originated from a special leave petition challenging the order of a Special Judge. This judge had acknowledged the allegations raised in the 2G spectrum allocation scam case and issued summonses to Bharti Airtel Ltd., Hutchison Essar, and Sterling Cellular. These companies were accused of defrauding the Government of India in the auction and allocation of 2G spectrum.

¹¹ (2011) 1 SCC 74

¹² (2015) 4 SCC 609

At the time, Mr. Sunil Bharti Mittal served as the Chairman-cum-Managing Director of Bharti Airtel, while Mr. Ravi Ruia held the position of Director at Sterling Cellular. According to the perspective of the Special Judge, individuals in such high administrative positions within these organizations were inherently regarded as the "coordinating mind and will" behind the alleged offenses committed by these entities¹³.

Consequently, the Special Judge summoned these individuals, attributing the company's criminal actions to those occupying high managerial positions. This approach mirrored the principle of attribution established in the Iridium case but in a reversed manner. Instead of specifically determining the guilt of these individuals, the Special Judge inferred their responsibility based on their control within the company, moving from the company's alleged criminal actions to those considered to be in charge.

VIII. CONCLUSION

The analysis provided above offers a conclusive view that the jurisprudence concerning the criminal liability of corporations has undergone significant evolution, albeit at a slower pace compared to corporate civil liability. This gradual development can be justified due to the intricate complexities inherent in this domain, necessitating judicial interpretation that extends beyond the literal legislative text. Corporate entities can no longer rely on the vague defense of lacking a personality concerning the attribution of mens rea. Moreover, a substantial portion of corporate criminal liability revolves around imposing fines as the primary form of punishment and remedy, irrespective of the gravity of the offense committed. The inability to imprison juristic persons stands as an undeniable truth, serving as a significant obstacle in enforcing penalties. This limitation poses a considerable challenge in the imposition of punishment on corporations.

Our perspective aligns with the American approach that emphasizes "respondeat superior" as the foundational principle for establishing a company's criminal liability. We believe that this doctrine has also found acceptance in Indian courts and has served as the basis for prosecuting corporations in numerous cases. However, we find the "doctrine of identification" to offer a more comprehensive set of rules. This doctrine is more specific, attributing the actions of directing minds directly to the company itself.

Hence, it appears to be a more accurate theory compared to the principle of vicarious liability. The case of Iridium India Telecom Ltd. notably highlighted this principle. The development of

¹³ Coffee, John C. (2007). "Law and the Market: The Impact of Enforcement." *Columbia Law Review*, 107(6), 1530-1577.

the concept of special vicarious liability, lacking legislative support, signifies the necessity for a series of amendments. Without these adjustments, there might be instances of miscarriage of justice and violations of equitable principles. The Sunil Bharti Mittal case was controversial precisely because the principle of vicarious liability couldn't be applied in its reverse form. This underscores the complexities and limitations surrounding these legal principles, warranting a critical need for legislative clarifications and amendments.

A notable challenge emerges from the inability of companies to undergo imprisonment, leading to numerous corporations evading penalties for their criminal actions. We contend that if the key decision-makers within these companies can be held responsible and fined based on their mental state (*mens rea*), then they should also be liable to imprisonment, commensurate with the gravity of the committed offense. It is imperative for the Indian Judiciary to engage in thorough deliberations regarding the evolving challenges in this realm, which continues to contend with loopholes and inconsistencies. Effectively addressing these issues is crucial to establish a definitive stance on this matter.

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