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# Corporate Criminal Liability in Context to Sexual Harassment of Women at Workplace

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KODURI SUBBA LAKSHMI<sup>1</sup> AND DR. SITA MANIKYAM<sup>2</sup>

## ABSTRACT

*It is a fallacy to believe that only humans are capable of committing a crime. An artificial person, like a business, is a separate legal entity that can conduct crimes. It was formerly thought that a company could not commit any crimes in the 16th and 17th centuries. There were several inconsistencies in the notion of a corporation being a separate legal entity with its own soul and body. As a result, they are unable to commit any criminal or objectionable behavior for which they may be held responsible. However, the notion of corporate criminality has increasingly gained traction. Various rulings, such as Standard Charter Bank V. Directorate of Enforcement, have established liability. It was recognized that a business might commit a crime through its agents and be held responsible. The notion of corporate criminal responsibility stems from a Latin adage, Actus non facit reum, nisi mens sit rea, which states that in order to hold someone responsible, it must be proven that they committed an act or omission that was illegal and done with a guilty mind.*

## I. INTRODUCTION

Since its conception, the notion of putting criminal responsibility on a company has been a contentious one. The dispute focuses on a number of contentious issues, including whether the criminal justice system, which is geared toward individual punishment, should be used to artificial entities such as companies, if criminal culpability provides any value to the current civil remedies for corporate wrongdoing, or whether this notion imposes extra criminal accountability on corporate executives. Critics of corporate criminal responsibility say that, first and foremost, businesses do not commit crimes, Individuals are responsible for this; second, the impact of corporate punishments in the form of fines is shared by shareholders and customers. However, courts have effectively addressed the former concern, and the latter argument can be challenged by the fact that shareholders are well aware of the dangers associated with such transactions. Despite the absurdity involved, the theory of corporate criminal responsibility is an essential element of the criminal justice system in today's society.

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<sup>1</sup> Author is a Research scholar at Dr. BR Ambedkar College of Law Andhra University, India.

<sup>2</sup> Author is an Associate Professor at Dr. BR Ambedkar College of Law Andhra University, India.

Vicarious criminal responsibility is recognized and applied at two separate levels in the Indian setting. For starters, companies are criminally liable for offenses committed by their workers in the course of their employment for the profit of the business. Furthermore, given the required circumstances described above, certain corporate officers in significant leadership positions might be held reversely responsible for the corporation's offenses. We investigated the application of the idea of corporate criminal responsibility from an Indian viewpoint, as well as the judicial application of the concept in Indian instances, in this article. The theory is still in its infancy in India. In the absence of a universal application of the doctrine from an international standpoint, a necessity for determining the most practicable model for idea execution rather than a standardized method develops, since corporate crime is on the increase. Though we are making progress, there is still a long way to go because companies are seldom held criminally responsible in most cases. The Companies Act of 2013 includes provisions for vicarious criminal responsibility. However, practical challenges are unavoidable given the lack of a specified corporate sentencing strategy or legislatively mandated model for dealing with instances involving corporation criminal responsibility.

In the Indian context, the theory of corporate criminal responsibility has evolved similarly to that of the United Kingdom. Previously, the Indian judiciary did not charge businesses for crimes requiring mensrea. However, in subsequent decisions, the courts used the identification theory and held corporations responsible for mensrea offenses. Gone are the days of severe patriarchy, when women were forced to do home chores and were not encouraged to work to support their families. Even in these days of gender equality, women are working hard to build a successful profession and pursue their goals. Male coworkers frequently become sexual predators of their female coworkers, and as a result, such ladies are sexually harassed at work. Sexual harassment is a deplorable act. Every 12 minutes, a woman in India is sexually harassed. Sexual harassment at work creates a hazardous environment for women, infringing on their Fundamental Rights as guaranteed by Articles 14, 15 and 21 of the Indian Constitution, which provide equality of position and opportunity, as well as personal liberty. Sexual harassment not only harms a woman's physical appearance, but also her emotional and mental development.

#### **(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**

The researcher in this study shall adopt doctrinal approach to formulate this research. The doctrinal approach shall be utilized as follows: Firstly, the researcher has utilized primary sources of information like the International and National Statutes and Case Laws to ascertain and analyzed current legislation with regard to the concepts of corporate criminal liability

## **II. REQUIREMENTS FOR ESTABLISHING CORPORATE CRIMINAL LIABILITY**

### **(A) Act within the scope of employment**

Certain conditions must be met in order for corporate criminal responsibility to develop. To begin, the employee committing the offense must be operating within the scope of his or her employment. This implies that they must have a master-servant relationship, which establishes a vicarious liability between them, i. e. Master and servant, and he must be carrying out the responsibilities delegated to them by their parent firm. This ticket was sold by their employee Mr. Hobday, not Mr. Shah or Mrs. Shah. Unfortunately, but unavoidably, his offense became their offense at the same time, as described in *Mousell Bros Ltd v London and North-Western Railway Co.*<sup>3</sup>

### **(B) Benefit to the corporation**

The second criterion that must be met for corporate criminal responsibility to arise is that the corporation should have benefited from the employee's or agent's actions. It is not essential for the firm to have gotten any profit; all that is required is that the act be performed by the employee or agent in order to benefit the corporation. The collective and intentional blindness doctrines are two means through which companies can be held responsible. Collective blindness doctrine holds that it is not required for an individual to be held responsible for a conduct that benefits the company; rather, group members can be held liable for this, demonstrating that each member of the group has entire awareness. In the willful blindness concept, if the company is aware of illegal actions but chooses to turn a blind eye to them, the employees and agents will be held responsible for the illegal practices. Apart from that, in corporate criminal responsibility, both workers and agents can be held responsible for conspiracy.

## **III. THE JURISDICTIONAL EVOLUTION**

The decision in *Standard Chartered Bank v. Directorate of Enforcement*<sup>4</sup> by the Supreme Court ignited a discussion in India about corporate criminal liability. The Court decided in this case

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<sup>3</sup> [1917] 2 KB 836

<sup>4</sup>2005 SCC (Cri) 961

that Indian law recognized that businesses may be prosecuted and convicted for a crime that involved a mandatory prison sentence and a fine. This judgment also established that if the offence called for both imprisonment and a fine, the court may only impose the fine if the accused party was a corporation. This was a break from the established line of precedents in which courts rejected to convict corporations for crimes since the court could not impose only a fine rather than mandatory imprisonment at its discretion. Six years later, the court decided in favor of Iridium in *Iridium India Telecom Ltd. v. Motorola Inc. (Iridium)*<sup>5</sup>. For the first time, the Supreme Court extended mensrea to Indian corporations. In the case of Iridium, a company was charged with deceiving and criminal conspiracy for allegedly making misleading promises in its prospectus in conjunction with the public sale of shares.

#### IV. TESTS TO DETERMINE THE CORPORATE CRIMINAL LIABILITY

##### (A) Identification Test

In *Tesco Supermarkets Ltd v. Nattrass*<sup>6</sup>, Lord Reid observed, "The person who acts is not speaking or acting for the corporation. " He is acting like a company, and his thinking, which drives his actions, is the mindset of the organization. If it is a guilty attitude, then the corporation is responsible for that guilt. The alter ego test and the guiding mind and will hypothesis are other names for this exam. This test is used in English courts to determine a company's criminal responsibility by identifying the controlling and guiding mind of the business.

##### (B) Aggregation Test

In certain cases, a corporate wrong may be the product of a collaboration of guilty minds from a number of people. By integrating the acts of two or more persons, the actus reus and mensrea can be derived from the conduct and knowledge of several individuals. In *United States v. Bank of New England*<sup>7</sup>, the court of appeals held that common knowledge is acceptable since companies would split duties and avoid liability. This test was used in Australia but was rejected in England.

##### (C) Respondent Superior Test

The courts have presented a number of arguments to justify a corporation's liability for the actions of its agents. A corporation can be held liable for the acts of its agents if they a) commit a crime, b) act within the scope of their employment, and c) act with the intent to benefit the corporation. This was made abundantly evident in the case of *United States v. A. P. Trucking*

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<sup>5</sup> (2011) 1 SCC 74

<sup>6</sup> 8[1972] A.C 153

<sup>7</sup> 9821 F.2d at 854

Co<sup>8</sup>.

## V. JURISPRUDENTIAL POSITION IN INDIA

As part of the Indian Criminal Justice System, prosecution for crimes committed is controlled by the regulations of the Indian Penal Code, 1860. The term "person" is defined under Section 11. It encompasses any company, organization, or collection of individuals. It may or may not be included. As a result, businesses that commit crimes may face penalties. Regardless, when businesses commit offenses that entail mandatory imprisonment and penalties under the penal code, the status of their criminal obligations must be examined. Some significant cases addressed this issue while simultaneously expanding and developing corporate criminal responsibility.

A majority decision in the case of *Assistant Commissioner v. Velliappa Textiles Ltd*<sup>9</sup> determined that a company cannot be punished for violations that carry a mandatory term of imprisonment and a fine. When both jail time and a fine are mentioned as punishment, the court cannot impose only the fine. The Law Commission of India acknowledged this difficulty and suggested a modification to section 62 of the Indian Penal Code<sup>10</sup> in its 41st report by adding the following words *In any situation where the offence is punished solely by imprisonment or by imprisonment and fine and the offender is a business, other body corporate, or an association of persons, the court has the authority to sentence such offender to fine only.* In *Standard Chartered Bank and Others v. Directorate of Enforcement and Others*<sup>11</sup>, the Supreme Court made the scenario very clear. It had overthrown prior beliefs about corporate criminal responsibility. The court decided that no company has blanket protection from an indictment of charges since the arraignment seeks mandatory detention. In situations when both imprisonment and fine are needed, the Supreme Court ruled that the businesses should be punished. In the case of *Iridium India Telecom Ltd v. Motorola Incorporated Co.*<sup>12</sup>, the Supreme Court held that a corporation is virtually in the same position as any individual and can be convicted of both common law and statutory offenses, including those requiring mensrea. A company's criminal liability would emerge if an offense related to the corporation's business was committed by someone or a group of persons on top of its activities. Under those circumstances, it would be necessary to demonstrate that the degree of control of the individual or group of persons is such that a corporation may be regarded to assume and act through the

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<sup>8</sup> 1958 SCC OnLine US SC 195

<sup>9</sup> (2003) 11 SCC 405

<sup>10</sup> Section 62 of Indian Penal Code, 1860

<sup>11</sup> *Supra* Note 4.

<sup>12</sup> *Supra* Note 5

individual or group of individuals.

### **Interpretations with IPC**

A 'person,' according to Section 11<sup>13</sup>, is "any Company or Association or collection of persons, whether incorporated or not." Corporations can now be punished for offences committed under the IPC. It is an obvious fact that corporations cannot be punished for crimes committed by people, such as assault, for which the IPC only provides for imprisonment. The grey area at the time was assessing the situations in which corporations committed violations for which the IPC demands both a prison sentence and a fine. Some notable cases helped to settle the issue and contribute to the growth of corporate criminal liability.

## **VI. FIXING THE LIABILITY**

An Indian Court has attempted to discern between the controlling and coordinating mentality of the corporations, and this rule is used in several legislation. The question will be whether the coordinating individual authorized to follow up in the firm's interest may be prosecuted if the companies are not indicted. The court in his Catena of judgment, the court ruled that if the corporation is named as a defendant, the actions against the director or the business would be thrown out. To put it another way, there can be no vicarious responsibility until the corporation is prosecuted.

## **VII. SEXUAL HARRASMENT AT WORKPLACE**

"Sexual harassment" may be found in nearly every society. It may be seen in both the organized and unorganized sectors. However, the severity of the phrase "sexual harassment" varies by culture. In layman's terms, "sexual harassment" is sexually oriented behaviour that is unwelcomed by a person and interferes with that person's dignity. "Sexual harassment" at work may be defined as any unwanted sexual behavior that hinders a person's capacity to perform better or has a negative impact on their job output, whether physical or verbal<sup>14</sup>. "Sexual harassment in the workplace is a worldwide problem. It is deeply ingrained in Indian culture. It must be eliminated since it behaves in a disease-like manner. The government must ensure that both women and men have access to a safe environment. Because people spend about a third of their day at work, they need to know that their company will provide them with an environment free of sexual harassment. Every organization with at least one member with a legal experience or profession must have the "Constitution of IC" as a requirement. Not only

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<sup>13</sup> Section 11 of Indian Penal Code, 1860.

<sup>14</sup> 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).

should the government make modifications to the laws, but it should also keep track of how the law is being implemented at the primary level. It is past time for the government to take decisive action to reduce, if not eliminate, the number of workplace incidents of "sexual harassment" and to give meaning to the term "gender equality. "

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

The government has taken action, but it has not proven to be sufficient in preventing workplace sexual harassment. Discrimination against women occurs on a daily basis. People in positions of authority obstruct their rights and dignity, leaving them in a terrible situation. Since 1997, when the Supreme Court in the Vishakha case first acknowledged the gravity of the crime and established rules to be followed at the local level to combat sexual harassment in the workplace.

<sup>15</sup> There have been incidences such as gang rape in the Bhandari Devi and Nirbhaya cases, where the Supreme Court has defined Sexual Harassment as a violation of the golden triangle established in the Maneka Gandhi case. After that, the 2013 act took effect, but the government's first attempt to address the issue was when it drafted the Protection of Women Against Sexual Harassment Bill in 2010, with the main goal of effectively resolving the issue through a proper investigation by a committee established under the command of district officers. Following a thorough inquiry, they may grant jail, fines, or both, depending on the circumstances. The law outlined correct rules and procedures to be followed, as well as how to put them in place at the municipal level to address the issue. To appropriately channel the body and assure fast correction, there is a structure of power.

### **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: This condition indicates that the employee committing the crime must be engaged in the course of his work and that the act must be sanctioned by the firm.
2. The planned act must benefit the organization: This aspect demands that the employee behavior/act constituting the offence benefit the firm. Only when all of the aforementioned conditions are met may the corporation be held vicariously responsible for the actions of its workers performed on its behalf.

Need for a Progressive Legal Framework Governing Corporate Criminal Responsibility: The requirement for corporate criminal liability is seen as an undeniable truth by many model legal systems across the globe, and the continually rising severity of corporate crimes supports this

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<sup>15</sup> *Ibid*



need logically. Because this notion is not a universal element of the world's current legal systems, different countries have chosen different approaches related to it. The United States has adopted the respondeat superior (vicarious liability) model, whereas the United Kingdom and India currently operate along the lines of the doctrine of identification, under which liability is imposed on superior management of the corporation because they are identified as the corporation's directing mind. However, a new paradigm has been noticed in Australia, in which companies are held directly responsible for their own acts and omissions. This approach holds the organization accountable because its culture, practices, management, rules, or other features facilitate or promote the offense. The Indian legal system has not embraced this paradigm, either judicially or legislatively. However, given the clearly significant influence that businesses have on social interests and different elements of human existence, it is critical to assign culpability to firms whose culture encourages the conduct of the violation. A question was provided in the author's questionnaire disseminated for research purposes for authoring the paper, asking respondents to indicate the most progressive model/approach followed by modern legal systems in the United States and the United Kingdom. 70% of respondents said the current framework in the United States was the most useful and progressive.

## **IX. FORMULATION OF A CORPORATE SENTENCING POLICY**

The present legal punishment for corporate sanctions is that the offending corporation is fined monetary fines, even for offenses where a sentence of imprisonment is obligatory, because the corporation has no body of its own and so cannot be imprisoned. However, there is a need to investigate additional corporate punishments based on criminal jurisprudence punishment theories and establish a corporate sentencing strategy. The kind of punishment must be founded on criminal punishment ideas of deterrence, retribution, reformation, and prevention.

## **X. SUGGESTION AND RECOMMENDATION**

To reduce the unlawful activities of the nation's companies, the governing body should take appropriate steps, such as implementing extra sanctions.

- The Courts should be prepared to give some beneficial order rebuffing the corporation with the fine imposed on them.
- 1. Stricter penalties, such as corporation dissolution. In such instances, courts should almost likely decide whether the penalized corporation should be reincorporated. While dealing with crimes that harmed members of society, social sanctions were sought.

2. International arranges between nations should act so that the culprits don't get away from the risk with their associations with different nations.
3. If circumstances necessitate, the courts should be able to appoint technical and skilled experts to provide evaluation reports on the corporation.

## **XI. CONCLUSION**

The necessity for companies to be held criminally liable was not apparent until the growth of corporations weakened the idea of enforcing individual responsibility under criminal law. Previously, businesses were tiny in size, and their infamous acts could be readily linked to certain persons. However, as a result of industrialization and globalization, companies grew in terms of power and scale, resulting in the creation of the theory of corporate criminal responsibility. Initially, this doctrine was not acknowledged. The earliest instance of its application was seen in the United Kingdom in 1842, when a company was found responsible for failing to comply with a legislative duty. Corporations were once held responsible exclusively for non-feasance. Over time, the courts broadened the doctrine's reach to impose responsibility for misfeasance, which was founded on the concepts of vicarious criminal liability. However, the courts ruled that corporations could not be held responsible for crimes requiring mensrea since they do not have their own minds.

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