IJFANS INTERNATIONAL JOURNAL OF FOOD AND NUTRITIONAL SCIENCES
ISSN PRINT 2319 1775 Online 2320 7876
Research Paper UGC CARE Listed (Group -I) Journal Volume 11, S.Iss 6, 2022

A STUDY ON THE CRIMINAL LIABILITY IN INDIA

[1]Khushboo Singla, [2]Dr. Vikram

[1]Research Scholar, Dept. of Law, Shri Khushal Das University, Hanumangarh (Rajasthan).
[2]Research Supervisor, Dept. of Law, Shri Khushal Das University, Hanumangarh (Rajasthan).

ABSTRACT

One of the factors that contributed to the expansion of corporate liability was the establishment of the respondeat superior notion in customary law. The vast majority of the first instances of corporate responsibility were considered to be public harms, such as nuisances, which were not expected to arise in private settings. As a result, public enforcement was necessary in order to ensure that the firm effectively internalised the costs of its activities to society. Not until after the concept of corporate criminal liability became widely applied did civil lawsuits become the vehicle by which public enforcement was administered. In order to keep the deterrent system functioning properly, the organisation needed to be held accountable. In light of the fact that there was a dearth of meaningful public civil enforcement prior to the early 1900s, it seems that the only option that could have achieved both the goals of corporate accountability and public enforcement was the concept of corporate criminal liability.

INTRODUCTION

In light of the fact that industrialization and globalisation are both on the rise, an alarmingly high number of businesses have been establishing themselves and expanding their operations throughout the course of the past two centuries. At this point in time, multinational businesses wield a large amount of influence around virtually every aspect of human existence. There is no question that regular people are capable of committing crimes because they are physically and mentally capable of doing so within that spectrum; however, a corporation cannot, regardless of whether or not it is considered a person through the legal system. Despite the fact that the conditions are always the same, these are the kinds of stories that are essential. The entire acknowledgment of criminal culpability has not yet reached its pinnacle, despite the fact that the laws relating to corporate criminal liability have been filled in numerous regions.

REVIEW OF LITERATURE

According to Carlos, GomezJara Diez, (2020), the research that was just mentioned provides one of the most insightful perspectives on the excessive criminalization of corporate criminal responsibility.The author takes a very welllanced approach in this post, stressing the truth that corporate criminal liability has evolved to represent a severe danger to the legal systems of e ach and every country, including the legal systems of the United States of America.Neverthel ess, he also makes the observation that this idea has been criminalised in an excessive manne. The acts of corporations are taken into consideration by the general public, which becomes so mething that has to be balanced for every calamity that occurs in the contemporary world.A f urther point to consider is that the government makes a fuss over each catastrophe that has an impact on the businesses.If new legal procedures are not devised to handle the issue of corpor

IJFANS International Journal of Food And Nutritional Sciences

ate criminal culpability, the author of the article has emphasised that the concept of corporate criminal liability will ultimately be eliminated.The reason for this is that it is difficult to apply the antiquated rules of criminal law when dealing with it.

The author of this article, Andrew Weissmann (2015), has investigated the manner in which t he United States Congress and the United States Supreme Court have dealt with the issue of c riminal culpability for corporations.As a result of his analysis of this notion, he arrives to the conclusion that the current framework of state law has not sufficiently handled the concept of corporate criminal liability. This is due to the fact that it presents all corporations in an equal manner.In order to ensure that regulatory standards are maintained, the author recommends th at responsibility should be separated from the scope of criminal liability.The individual make s the observation that a legislation of this kind would encourage firms to enhance the manner in which they care for their employees and the environment.

In accordance with Akhil Mahesh (2021), a firm is considered to be both a legal person and a separate legal entity. The corporation, on the other hand, may be held legally liable in the event that an agent breaks the law while operating in the course of their job. To serve the interests of both the agent and the firm, it is necessary to engage in the illegal behaviour that is being discussed. The notion of corporate criminal liability is gaining more and more significance on a worldwide scale, and it is also recognised in India. This is especially true in light of the landmark decision that was made in the case of Standard Chartered Bank v. Directorate of Enforcement.

Abhimanyu Kumar investigates the origins and breadth of corporate criminal responsibility in India in his book titled "2020." He makes an effort to address concerns of mens rea, the time of a corporation's guilt, and the basis for such liability. In the Indian legal system, criminal liability is restricted to actions that are in violation of criminal laws. To put it another way, there is no way to be held accountable for a crime if there is no criminal legislation that prohibits certain actions or behaviours. Taking into account the growing impact that companies are having in the political, social, and economic spheres, a number of nations throughout the world are contemplating the introduction of criminal liability for corporations. owing to the fact that a certain object have a legislative standing in specific nations. The Indian government will also take into account the reports that were issued by the Law Commission, the decision that the Supreme Court made in the case of Standard Chartered, and any other instances that are pertinent.

THE IDEA OF CORPORATE CRIMINAL RESPONSIBILITY

Corporate criminal liability may be traced back to its origins

In the late 1800s, the notion of corporate criminal liability was the topic of academic disputes. Its origins may be traced back to ancient legal systems. The selection and evolution of the concept of criminal liability for corporations have been significantly impacted by a variety of factors, including history, law, economics, and governmental issues that are relevant to each and every nation. Through the use of point-of-reference based legal frameworks, the possibility for criminal responsibility of partnerships has developed in a manner that is distinct from the way it has developed under customary law systems. In the meanwhile, corporate criminal liability has evolved in a variety of ways to reflect the

IJFANS INTERNATIONAL JOURNAL OF FOOD AND NUTRITIONAL SCIENCES
ISSN PRINT 2319 1775 Online 2320 7876
 UGC CARE Listed (Group -I) Journal Volume 11, S.Iss 6, 2022

demonstrable and financially legitimate aspects in a number of countries that operate under legal frameworks that are based on precedent or that are entirely based on fundamental principles. The substantial progress that has been recorded in the area of corporate criminal liability provides evidence that corporate criminal responsibility is in line with the standards of criminal law and has the potential to facilitate cooperation.

THE EVOLUTION OF THE CORPORATE CRIMINAL LIABILITY CONCEPT

1. **Public Nuisance -** Recently, courts in England and the United States have limited the criminal risk posed by companies in situations that include the non-dealing of quasi-public entities like municipalities, which may result in public nuisances.
2. **Crimes not needing criminal aim** - As the number and prominence of companies rose, the courts enhanced the criminal culpability of corporations for all acts, including public nuisances that did not need a criminal intent. As a result of this evolution, the courts gradually became more inclined to extend the scope of corporate criminal culpability to include all offences that did not need the objective.
3. **Crimes of aim -**The use of the courts was postponed in order to reduce the criminal duty of corporations to offences of objective nature. It was the prerequisite for the effective authorization of the legislation prohibiting partnerships that was the driving force behind this conclusion. In any event, the development of corporate character had created an excessively large void in comparison to the application of criminal law to partnerships.
4. **Expansion of corporate criminal obligation** - The creation and expansion of corporate criminal liability was also contributed to by a number of documented developments that occurred in Western Europe simultaneously with those that occurred in the United States. On the other hand, it is possible that the primary reason why criminal risk was prioritised above normal duty was due to the fact that the public normal implementers did not have as much necessary authority as lawbreaker authorities.

INDIA'S VARIOUS PROVISIONS THAT ATTIRE CORPORATE CRIMINAL LIABILITY

Any individual who has committed a crime at any time in accordance with Section 138 of the Act will be held liable for the criminal demonstrations and acts of the company, as stated in Section 141 of the Negotiable Instruments Act, which was passed in 1881. Even if the individual in question is a corporation in and of itself, the company will be held responsible for the crime, will be held responsible for any measures taken against it, and will be required to react similar to the penalties taken against it.

A description of the penalties that are included in this provision may be found in provision 7 of the Essential Commodities Act of 1955. To be more specific, it stipulates that any individual who violates any of the solicitations made in accordance with Section 3 of the Act would be subject to imprisonment for a maximum of three months and a maximum of seven years, in addition to the potential of being required to pay a fine.

PURPOSE OF CORPORATE CRIMINAL LIABILITY

To ensure that the choice of liability strategy is ultimately defined by the goal of corporate liability, it is essential to have a thorough understanding of the purpose of corporate liability. In other words, the strategy that is most effective in achieving the objective should be put into practice.

Ideas of corporate culpability may be justified for a variety of reasons, and these reasons have been advanced in the past.Global aims of criminal law include the promotion and endorsement of essential values in our society by the imposition of punishments for those who violate such values.

The second objective is to discourage behaviour that is not desired. Consequently, the purpose of corporate responsibility should be to provide incentives for businesses to keep an eye on the acts of their representatives. This argument restates the basis of corporate accountability for acts that fall within the categories of vicarious, absolute, and strict liability. The threat of criminal culpability for corporations serves to discourage both corporate management and workers. Individuals take a significant amount of their behavioural standards from corporations and other organisations as a significant source. A bigger company is more likely to be a highly developed organisation that communicates its standards to its members.

LIABILITY STRATEGIES DERIVATIVE MODEL OF CORPORATE CRIMINAL LIABILITY

Corporation as a fictional identity

According to the nominalist idea, corporations are imagined to be collectivities of persons. Therefore, corporate responsibility is equivalent to the responsibility of the people who are affiliated with the company. According to this approach to the concept of corporate personality, the idea that the company itself, apart from its members, may be held accountable is completely meaningless. This strongly suggests that the concept of corporate responsibility is derived. Specifically, Smith and Hogan think that a corporation "is a legal entity but has no physical existence and cannot act or form an intention of any kind except through its directors and servants." This perspective is a short expression of the belief that a company is a legal entity. Because each director is likewise a legal person that is very separate from the company, it follows that all of the legal obligations of a corporation are, in a way, vicarious. What this would essentially imply is that individuals are the ones who conduct crimes, not businesses. In light of this perspective, two models have emerged.

OBJECTIVES OF THE STUDY

1. To determine if a corporate entity is intended to commit a crime and, naturally, how a business may be legally held criminally accountable.
2. To evaluate and examine the many laws and rules that control criminal liability for corporations in India.
3. To evaluate the range of offences for which a company may be held accountable.
4. To assess the extent of a multinational company's criminal culpability and ascertain the outcome.

CHANGING FACE OF CORPORATE CRIMINAL LIABILITY IN INDIA

A corporation is a separate legal entity that is established through the application of legislation and the process of registration. Corporations have their own rights and duties, in addition to the rights and obligations their shareholders enjoy. There are certain businesses that own facilities and assets that are situated in countries other than their own. Corporations that operate on a global scale are referred to as multi-national corporations. These multinational corporations are indispensable to individuals' day-to-day lives. Over the course of human history, this has grown to such a degree of strength that it has even been compared to whole nations. It is of the utmost importance to take some kind of accountability and exercise some level of control over these entities.

INDIA'S CORPORATE CRIMINAL LIABILITY GENESIS

The case of Standard Chartered Bank v. Directorate of Enforcement was the first Supreme Court verdict in India that ignited a discussion on the question of whether or not corporations may be held criminally accountable for their acts. According to Indian law, the court decided that the mandatory sentences and fines for this violation had the same effect on businesses as they did on individuals.

In addition, this ruling made it very plain that in the event that the accused party was a firm, the court may only impose the punishment, despite the fact that the violation contained both a fine and the possibility of a jail term. This constituted a convergence from the established line of precedents in which courts rejected to condemn firms for criminal offences. This was due to the fact that the court was unable to exercise its discretion and choose to impose just the fine rather than the mandatory jail.

THE CORPORATE CRIMINAL LIABILITY DEALERS

Imprisonment

According to the Indian Penal Code, 1860 (often known as "the Code"), a "person" is defined as "any Company, Association, or group of persons, whether incorporated or not." Furthermore, as has been mentioned in Section 2, the penalties that are outlined in this Code apply to each and every individual. As a result, section 2 of the Code imposes penalties on all individuals, including companies, since there is no exception for corporations. It is possible to develop the concept of corporate criminal culpability by reading these two parts, despite the fact that other laws, such as the Companies Act of 2013, the Income Tax Act of 2013, and so on, also permit the punishment of corporate bodies. As a result of the fact that a company is not a natural person, it is not possible for it to be imprisoned for its illegal conduct; rather, it can only be fined for those crimes. When a corporation is accused under rules that call for obligatory imprisonment, the courts run into a wall.

PRINCIPLES OF CORPORATE COMPLICITY AND CORPORATE CRIMINAL LIABILITY OF INDIA AND INTERNATIONAL

The war crimes trials that took place at Nuremberg shed light on the progression from the theory of "no criminal liability" to the principle that companies are capable of committing crimes in accordance with international law. The United

States of America v. Krupp, also known as the Trials of War Criminals Before the Nuremberg Military Tribunals, was included in the Krupp trial. It is abundantly obvious that the corporation was held accountable for the criminal acts committed by its directors. Despite the fact that the court did not formally proclaim the Krupp business to be a criminal organisation, the tribunal inferred that the business had criminal intent because of the Krupp firm's intention to use forced labour. Additionally, corporations were accused as criminal instrumentalities in the prosecution of Farben, which was known as United States v. Krauch. In the case of Farben, the court makes reference to the obligations of corporations and treats the corporation as if it were a criminal instrument. In addition to this, Nuremberg acknowledged the possibility that a corporate entity, specifically the state security service (the SD), could be responsible for a criminal act.

INDIA'S CORPORATE CRIMINAL LIABILITY:

Since the beginning of Indian criminal law, the fundamental concept that has been upheld is the recognition of the notion of corporate culpability. Among the many factors that have contributed to this phenomenon is the impact of English common law, which acknowledges the existence of corporate illegality. There are a variety of legislation that take into consideration the possibility of a criminal conduct being committed by a legal person. Some examples of these statutes include the Essential Commodities conduct, the Indian Penal Code, the Prevention of Food Adulteration Act, the Negotiable Instruments Act, and the Companies Act 1956 (which has since been repealed). In cases where the required punishment is mandatory imprisonment with or without fine, and when fine is not an alternative form of punishment, the stance that the courts in India take towards prosecuting legal persons is crucial. The attitude that Indian courts (not the law) take towards corporate criminality can be broken down into two distinct phases.

IN THE USA, COMPANY CRIMINAL LIABILITY:

From the beginning, the legal system in the United States has been the first to attach criminal liability to "Legal Persons." The term "attaching criminal liability" refers to the process of holding the juristic person or the corporate body accountable for the actions of its officers. This includes Directors, any officer who is entrusted with the responsibility of managing the Corporation's affairs, and even an employee who may not be at the top of the decision-making hierarchy. Criminal proceedings and convictions can be brought against businesses in the United States for crimes committed by individual directors, managers, and even low-level employees. businesses are considered to be entities.

GERMANY'S CORPORATE CRIMINAL LIABILITY

Since the beginning of time, the principle of societas delinquere non potest, which translates to "a legal entity cannot be blameworthy," has precluded any kind of criminal culpability from being imposed on entities in Germany. Germany has steadfastly refused to penalise corporations criminally for the actions of their individual directors or workers. This determination has been maintained. Administrative and civil laws are the primary means by which Germany regulates the behaviour of public corporations. Corporate entities in Germany are not subject to the possibility of being held criminally liable. However, they are unable to prevent the investigation and prosecution of specific employees since they lack the authority to have such ability. For instance, there is no such thing as the attorney-client privilege for corporations, nor is there any regular practice of providing indemnification to employees who are the subject of an investigation.

CONCLUSION

In India, there are pieces of legislation, such as the Indian Penal Code, that explain the various forms of punishments that can be handed down to those who have been found guilty. There are a number of penalties that are listed in Section 53, including the death penalty, life in prison, harsh and simple imprisonment, the seizure of property, and fines. There are other sections, such as Section 420, that just reference jail as a kind of punishment. When seeking to apply such sections to businesses, this presents a hurdle because criminal statutes need to be read in a restrictive manner in order to eliminate the prospect of incarceration for corporations. In accordance with the aforementioned viewpoint and the growing prevalence of corporate criminality, Indian courts have finally acknowledged that a company may possess the elements of a guilty mentality. This mentality is frequently required in conjunction with mens rea in order to prove criminal liability, which implies that the company committed an unlawful act. B.N. Srikrishna J. stated in The Assistant Commissioner, Assessment- II, Bangalore and Ors. v. Velliappa Textiles Ltd. and Ors.3 that it is not possible to establish corporate criminal liability without concomitant legislative modifications. This was stated in the context of the case.

BIBLIOGRAPHY

[1] Hanna, D.:, “Corporate Criminal Liability,” CLQ,Vol.31, No.3, 1988-89,pp.452-80

[2] Khanna, V.S., :“Corporate Criminal Liability.” Harvard Law Review. Vol. 109, No. 7, 1996, pp.1482 -1485

[3] Alexander, L, 'Criminal Liability for Omissions: An Inventory of Issues' in S Shute and A Simester (eds), Criminal Law Theory: Doctrines of the General Part (2002).

[4] Allens Arthur Robinson, 'Corporate Culture' as a basis for the Criminal Liability of Corporations, A report for the United Nations Special Representative of the Secretary General on Human Rights and Business February 2008 American Law Institute. Model Penal Code: Proposed Official Draft. Philadelphia, Pa..: ALI, 1962.

[5] Anca Luila Pop, "Criminal Liability of CorporationsComparative Jurisprudence‖, MSU College of law(dissertation) 2006 Andrew Ashworth,

Principles of Criminal Law 117 (5th ed., 2006) (1991) Australian Securities Commission, Annual Report 1991/92, Canberra, AGPS, 1992

[6] Balakrishnan. K; ―Corporate Criminal Liability - Evolution of the concept‖ (1998) Böse Martin, Corporate Criminal Liability in Germany, Ius Gentium-Comparative Perspective on Law and Justice, Volume 9, Springer, 2011, 227

[7] Braithwaite, John; Corporate Crime in the Pharmaceutical Industry, 1st Edition, Routledge and Kegan Paul, London, 1984.

[8] Braithwaite, John. To Punish or Persuade, Enforcement of Coal Mine Safety. Albany, N.Y.: State University of New York Press, 1986

[9] Brickey, Kathleen. Corporate Criminal Liability, 2d ed. New York, N.Y.: Clark Boardman Callaghan, 1991. Wells, Corporations and Criminal Responsibility 96 (Claredon Press, 1993)

[10] Coffee John C., Corporate Criminal Liability: An Introduction and Comparative Study, Criminal Responsibility of Legal and Collective Entities, 1999, 9-14

[11] Dalal Praveen, ―Corporate Entity in existing legal system-Its rights and liabilities under the Constitution and other enactments‖, (2004)

[12] Dan K. Webb et al., ―Understanding and Avoiding Corporate and Executive Criminal Liability,‖ (1994) F. McAuley, & J. P. McCutcheon, Criminal Liability (Dublin: Round Sweet & Maxwell, 2000) at 273.

[13] Fieberg, Gerhard. ―National Development in Germany: An Overview,‖ p. 3. Paper presented at the International Colloquium on Criminal Responsibility of Legal and Collective Entities. 4-6 May 1998.