

Changing Face of Corporate Criminal Liability in India

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ABSTRACT

As an alternative to the concept of issuing a warning to the firm, the Public Power Courts capitalised on the possibility to exercise vicarious liability. Following the initial use of this concept by the courts, particularly in situations where the mens rea was not considerable, the ruling was later modified to embrace instances and crimes of this nature as well. In the event that all other options are exhausted, criminal accountability refers to actions that violate penal legislation. This means that culpability cannot be imposed for such brief or oversights, as it is necessary for them to be specific to the country. are constrained and prosecuted by the system. This is the proposition that is being put forward. Since these groups do not represent the average person, it is neither reasonable nor permissible for them to engage in such behavior. Because of the corporate crime wave, some very risky ideas have been floating around, and it doesn't help that the criminal CEOs of these companies seldom grasp "standard reality." Two of the first countries to hold corporations criminally liable were the US and UK. When quasi-public bodies, like municipalities, misbehaved and caused public distress, this was done. It was the first time in Earth's history that a proposal was actually passed into law.

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. Despite the fact that many areas' legislation regarding corporate criminal responsibility have been finalized, the full recognition of criminal guilt has not yet reached its peak.

A lack of a necessary claim from various legal aspects of the company was one of the concerns and disputes that surrounded those who were acquitted of corporate criminal liability. The decision to penalise firms was a dubious one, especially when one considers that the absence of satisfactory subjects might be used as a kind of coercion for corporate parties.

Criminal Responsibility in Companies

Enthusiastic discussions raged in the academic community on corporate criminal liability from the late 19th to early 20th centuries. Originating from preexisting legal systems is not completely ruled out. A wide variety of factors have come together to shape and advance the concept of criminal liability for corporations over time. The laws, economics, government, and history of a country are all important factors. One of these variables is the influence of politics. There is now a possibility of criminal culpability for partnerships due to the establishment of point-of-reference legal frameworks. This is a remarkable departure from its original form, which was based on customary law systems. Companies' criminal culpability has evolved in various ways in different countries' legal systems that adhere to fundamental principles or precedent. These nations have come up with these ideas so that they may correspond to the parts that are both legally binding and easy to track. It has been shown that CSR may foster cooperation while still conforming to the standards of criminal law. The field's impressive track record of success in addressing corporate criminal responsibility provides sufficient evidence.

REVIEW OF LITERATURE

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 that responsibility should be separated from the scope of criminal liability. The individual makes 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.

The author of this piece, Khanna, V.S. (2019), expresses his discontent with the way the United States Congress handled the issue of criminal responsibility for businesses.

Following this, he goes on to state that while corporate criminal responsibility acknowledges the need of civil accountability, it disregards unfavourable policies such as stigma, punishment, and sanctions, which ought to be the foundation of a criminal liability that is firmly implemented. Since it would be difficult to punish a business and it is yet unknown if corporate criminal responsibility can influence and affect corporate conduct, he proposes boosting civil liability rather than highlighting the need of corporate criminal culpability. This is because it would be difficult to punish a corporation.

This method has to be reevaluated since the author is making an attempt to apply the rationale in circumstances when there is criminal action on the side of the organisation, as stated by Weissmann, A. (2020). It was established by him that the firm is nevertheless corporately accountable for crimes committed by employers when workers are working for the benefit of the company, regardless of the size of the organisation. Throughout this piece of writing, the author argues that the government has the power and the responsibility to design strategies that encourage boardrooms to make decisions that prevent them from breaking the law, and that none of the activities that result in corporate criminal liability are carried out by them. Desislava Stoitchkova (2021) examines the need of stringent legislation to hold MNCs accountable for their worldwide activities throughout this book. One of her main points is the importance of having stringent rules. It is the duty of large multinational businesses to safeguard human rights by acting accordingly. A lot of companies are acting in a manner that doesn't even remotely align with human rights. Reason being, no corpus of international law has the authority to regulate such a violation. Because of this, this outcome has transpired. If huge firms who are seen as global powerhouses want to stay in business, they must have a publishing strategy. Their use of the concept of an independent legal authority must be closely monitored on a worldwide basis if they are to avoid punishment, which is of the utmost importance. We must immediately address the issues of genocide, crimes against humanity, and serious human rights breaches if we are to develop strategies for detecting these kind of systemic failures. To further investigate a potential strategy to lessen companies' criminal liability, researchers are looking at the Rome Statutes as a starting point. This method is under investigation. K.F. Brickey Jr. is his known name. Case studies and important U.S. federal legislation including the Foreign Concept Practices Act, RICCO, CERCLA, and the RLRA are now being used to investigate the concept of corporate criminal liability in 2019.

Within the scope of this study, Richard S. Gurner (2018) provides a comprehensive and in-depth explanation of corporate crime. An rising number of convictions for corporate crimes, according to the author's argument, indicates that sanctions and punishments may have an effect on the owners, trustees, or employers of a corporation at any given moment. Within the context of his writings, the author makes the observation that corporate criminal liability not only protects an organisation from the possibility of being prosecuted, but also, with an appropriate comprehension of the concept, protects the company, its managers, and its directors from the unfavourable effects of fines, rules, penalties, and legal action.

The Evolution of The Corporate Criminal Liability Concept

1. **Public Nuisance** - In recent years, courts in the United States and England have taken steps to reduce the criminal responsibility of enterprises in situations that include the non-dealing of quasi-public organizations, such as municipalities, that might result in public nuisances.
2. **Crimes not needing criminal aim** - As the number of companies continues to grow and their significance continues to grow, the courts have rendered firms increasingly legally accountable for any action, including public nuisances that do not need criminal intent. As a result of this increase, the courts have a tendency to widen the scope of criminal culpability for corporations to cover all violations, regardless of whether the aim was essential.
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. The need of obtaining the appropriate permission for the legislation that prohibits partnerships was the driving force behind this decision. The move toward corporations had created a far greater gap than the way the criminal law treats partnerships, regardless of the circumstances surrounding the relationship between the two.
4. **Expansion of corporate criminal obligation** - In addition, the development and expansion of corporate criminal responsibility was aided by a number of well-documented occurrences that took place in Western Europe at the same time as those that took place in the United States. It's possible that the public normal implementers did not have the same level of authority as the lawbreaker authorities, which might be the reason why criminal risk was emphasized above normal duty.

India's Court Response to Business Criminal Liability

The court's perspective on the subject changed from pessimism to optimism during the years throughout the case of *Kusum Products Ltd. v. S.K. Sinha*, which occurred in early 1984. The shift happened because the court's view on the subject developed over time. The court's unequivocal statement of this fact might be seen as irrefutable evidence. It is possible to implement punitive laws without fully following the literal and harsh meaning of the legislation, according to the court's ruling in *Standard Chartered Bank and Organization v. Directorate of Enforcement and others*. The court came at this decision, among others. The reason this happened is because the court was within its rights to ignore the established protocols. As a consequence, the court did the right thing by fining the company. In reaching its conclusion, the court emphasized the need of strictly enforcing all criminal laws in line with applicable standards. Since this is the case, they must determine if the criminally charged word is consistent with the commonly used phrases in question and, secondarily, they must define the words taking into consideration any assumptions that may be made. Unfortunately, not everyone who is interested will be able to access the material. Someone said that the joke's flaw should have been there from the start since it's so clear.

Strategies For Corporate Criminal Liability Using the Derivative Model

Corporation as a fictional identity

Businesses are best seen as aggregates of persons, according to the nominalist perspective. When this is factored in, the firm's subsidiaries and affiliates are just as liable as the company itself. Holding the company liable separate from its members is completely superfluous and insignificant under this view of corporate identity. One may argue that here is the very spot where the concept of corporate responsibility was first mooted. Company law, according to Smith and Hogan, "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 means that a business can't do anything or form any kind of purpose. In this specific respect, they find common ground. To provide a basic outline of the concept that a company might be seen as an independent legal entity, this is the perspective that is stated. Also, as a director is its own separate legal creature from the company, the directors are effectively responsible for carrying out all of the duties that a corporation would otherwise have to shoulder. This would show that businesses are not responsible for illegal activities, but individuals are, if this were to be implemented. Based on this method, two separate models have been developed.

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.

Changing Face of Corporate Criminal Liability in India

Corporations, in addition to the benefits and duties that are enjoyed by shareholders, are also subject to their own regulations and responsibilities. There are certain businesses that really have premises and activities in countries that are not their own. In the business sector, a firm that operates in many countries is referred to as a multi-national corporation. The existence of these large corporations is essential to the functioning of everyday life. Throughout the course of human history, this has been so strong that it has been compared to whole nations. It is of the utmost importance to either take responsibility for these entities or exercise control over them. In the process of transferring concepts from tort law to criminal law, the concept of corporate criminal liability is among the most profound and influential notions that have been accomplished. In the event that an agent commits a crime while operating within the boundaries of his or her apparent or actual authority, the company may be held accountable for the crime and found guilty of the offense. On the basis of this fundamental notion, this idea is founded. For a very long time, the term "criminal liability" has been understood to refer to the monetary and social repercussions that a person or organization is subjected to as a result of their participation in unlawful behavior. In the event that this obligation is not fulfilled, the penalties may include monetary fines, time spent in prison, or even the death sentence. In many cases, the status of a company as a separate legal body is used as a cover for engaging in criminal activities. Over the course of many years, the judicial system has had a difficult time comprehending the complexities that are involved in holding a company responsible for the crimes that it has done. With the help of this article, I want to fill up a huge knowledge gap on a comprehensive understanding of corporate criminal liability.

The Corporate Criminal Liability Dealers

Imprisonment

In accordance with the Indian Penal Code, 1860 (which is often referred to as "the Code"), the term "person" may refer to "any Company, Association, or group of persons, whether incorporated or not." It has previously been mentioned in Section 2 that the penalties that are

outlined in this Code apply to each and every individual without any exceptions. Considering that there is no exception for businesses, Section 2 of the Code is applicable to all individuals, including businesses, at the same time. There is a possibility that reading these two parts will result in a better understanding of the criminal culpability of corporations. Due to the intrinsic lack of humanity that exists inside businesses, the only choice available to them when it comes to the imposition of criminal punishment is to levy fines rather than prison time. When the courts attempt to punish businesses in accordance with regulations that mandate obligatory jail, they are met by a wall of bricks.

Criminal Liability Of India And International

The Nuremberg war crimes trials shed light on the development of the concept that businesses may violate international law, beginning with the assumption of "no criminal liability" and culminating in the present stance. In the case of United States v. Krupp, often known as the War Crimes Trials, an example of a judicial procedure may be seen. He was a witness in the trial of Heinrich von Krupp that took place at Nuremberg. After the errors that were made by the firm's management, it became plainly evident that the corporation would be held accountable for those blunders. Despite the fact that the court did not formally name the Krupp firm as a criminal organization, the tribunal came to the conclusion that the corporation exhibits criminal intent owing to the fact that it intends to utilize forced labor. The issue would have remained the same even if the court had refrained from classifying the Krupp enterprise as a criminal organization. The United States government asserted that the corporations in issue were criminal instrumentalities in the case known as United States v. Krauch, which included the prosecution of Farben as well as other companies. In its decision against Farben, the court noted corporate duties and regarded the business to be a channel through which criminal acts may be carried out. One further point that is important is that the Nuremberg Tribunal did acknowledge the possibility of criminal culpability being held by a corporate body, which in this instance was the state security agency, also known as the SD.

In The Usa, Company Criminal Liability:

For a very long time, the American judicial system has been at the forefront of innovations involving the criminal responsibility of "Legal Persons." The term "attaching criminal liability" refers to the processes that are used in order to hold the juristic person or commercial entity accountable for the actions of its directors and executives. Every single person who is responsible to the board, including the directors, any official who is tasked with overseeing the

actions of the firm, and every single employee (regardless of their status), is included in this group. Even entry-level workers in the United States have the potential to be charged with criminal offenses if their supervisors are found to have committed misconduct. These offenses are capable of being committed by any individual who is employed by or associated with the firm. When seen in this light, companies are considered to be entities.

HYPOTHESES OF THE STUDY

1. Keeping in mind the Companies Act, it is necessary to determine corporate offences, research corporate criminal culpability, and execute legal penalties.
2. Given India's legal and economic structure, corporate criminal liability requires a systematic approach and well-defined methodology.

CONCLUSION

As one of the numerous legal documents in India that detail the many penalties that may be handed down to persons who have been found guilty of committing crimes, the Indian Penal Code is one of such laws. The punishments that are specified in Section 53 include the potential of a person's death, the chance of life imprisonment, the possibility of hard and simple imprisonment, the possibility of fines, and the possibility of property seizure. Other kinds of punishment include the confiscation of property and the imposition of penalties. There are other passages, such as Section 420, that only make a fleeting reference to the practice of incarceration as a form of justice. These provisions are included in this Act. In the process of attempting to apply such standards to enterprises, a challenge presents itself. The reason for this is that in order to prevent companies from going to prison, there has to be a strict interpretation of the rules that govern illegal activity. In recent times, the Indian justice system has recently come to grips with the concept that a firm could exhibit characteristics of a guilty mindset. This is consistent with the perspective that was discussed before as well as the increasing incidence of illegal activity inside corporations. As part of the standard operating process for establishing criminal guilt, it is customary to need this state of mind in addition to mens rea. There is a legal concept known as mens rea, which implies that the firm was participating in activities that were illegal.

BIBLIOGRAPHY

- [1] Ashwini Kumar :, “The perspective of corporate Criminal Liability”
- [2] Baxi, U., Dhanda, A. : Valiant Victims and Lethal litigation: The Bhopal

- Case, Bombay:N.M.Tripathi and Co., 1990, p. 20.
- [3] Braithwaite, John. : Corporate Crime in the Pharmaceutical Industry. London: Routledge & Kegan Paul Books. (1984)
- [4] Braithwaite, J. : ‘Corporate crime and republican criminological praxis, F. Pearce and (1995)
- [5] Hanna, D., “Corporate Criminal Liability,” CLQ,Vol.31, No.3, 1988-89,pp.452-80
- [6] Khanna, V.S., :“Corporate Criminal Liability.” Harvard Law Review. Vol. 109, No. 7, 1996, pp.1482 -1485
- [7] 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).
- [8] 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.
- [9] Anca Luila Pop, "Criminal Liability of CorporationsComparative Jurisprudencell, 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
- [10] Balakrishnan. K; —Corporate Criminal Liability - Evolution of the conceptl (1998) Böse Martin, Corporate Criminal Liability in Germany, Ius Gentium-Comparative Perspective on Law and Justice, Volume 9, Springer, 2011, 227
- [11] Brickey, Kathleen. Corporate Criminal Liability, 2d ed. New York, N.Y.: Clark Boardman Callaghan, 1991. Wells, Corporations and Criminal Responsibility 96 (Claredon Press, 1993)
- [12] Coffee John C., Corporate Criminal Liability: An Introduction and Comparative Study, Criminal Responsibility of Legal and Collective Entities, 1999, 9-14

