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A critical analysis of corporate criminal liability in India

Jiyauddin, Sunita Banerjee
Assistant Professor, Department of Law, Vel Tech Rangarajan Dr Sagunthala R&D Institute of Science and Technology, Tamil Nadu, India

Abstract
In India, where the corporate sector has grown rapidly and there are a growing number of incidents of corporate wrongdoing, corporate criminal liability has become a major issue of concern. This study provides a thorough examination of corporate criminal liability in India. Corporate crimes are becoming a more significant concern for the criminal justice system in the twenty-first century. Certain vested interests in charge of corporate affairs abuse the organisation to commit crimes in order to increase profits. Although a corporate body has legal personality to govern its operations, it lacks a physical body and a mind of its own, which makes it difficult to declare a corporate entity criminal and impose criminal culpability. Corporate crime has a negative impact on infrastructure development, health, safety, and the environment. The dominance of national and international businesses in economic transactions and their responsibility is one of the most serious worldwide challenges due to the process of globalisation and the increase of interconnectedness in economic, social, and environmental activities by corporate organisations. Due to the corporate vehicle's current widespread use in the industrial, economic, and social spheres, it is imperative that corporations be subject to criminal law, just like natural persons. The debate over corporate criminal culpability serves as an example of how corporate responsibility is being interpreted in a more functional and relative way. Criminal law is one area where the complexities of corporate personality are particularly problematic.

Keywords: Corporate criminal liability, legal personality, impact, responsibility and globalisation

Introduction

Businesses now play a crucial role in our society. They have a big effect on the natural environment, the community, and industry. The growth of the corporate sector as a result of information technology, globalisation, and advancements in information have given rise to the idea of corporate criminal liability. This concept states that a business may be held accountable and found guilty for any illegal actions taken by its agents as long as such agents remain within the bounds of their appearance and real power. The apparent authority is that which the agents believe a reasonable person would assume they had, but the actual authority is that which the corporation itself grants to its agents. The company is legally accountable for the actions of its workers if any logical kinship can be demonstrated between the agent's illegal activity and the corporate. India's economy, which is among the world's largest and fastest-growing, has experienced significant expansion and changes to the economic environment in recent decades. This development has brought with it opportunities as well as worries, notably with relation to corporate misconduct. Corporate entities are liable for a wide range of crimes, including fraud, environmental offences, breaking rules pertaining to product safety, and more. As such, it is crucial to consider corporate criminal liability within the context of Indian law. In this day of heightened scrutiny, it is imperative that businesses, attorneys, and lawmakers comprehend the intricate relationships that exist between commercial organisations and the law. This review of corporate criminal liability under Indian law will clarify the legal framework that holds firms accountable for their actions, ensuring that justice is served and public trust in the corporate sector is maintained.
Significant judicial and legislative interpretations of corporate criminal liability have occurred in the Indian legal system in recent years. The Indian legal system has recognised the need to ensure that businesses are held accountable for their actions, especially when such actions result in criminal misconduct. This acknowledgement is predicated on the understanding that businesses are artificial beings that function through their agents and that the economy, society, and environment may all be significantly impacted by the actions of these businesses.
The primary legislation governing CCL in India is the Companies Act, 2013, which lays down the legal framework for the creation, administration, and dissolution of enterprises. Furthermore, this Act has measures that hold companies responsible for a variety of offences, such as fraud, creating false claims, and disregarding financial reporting guidelines. These provisions are necessary to ensure that companies act in a way that serves the interests of both their shareholders and the general public, as well as to hold them responsible for their actions.

Review Literature

Ratna R Bharamgoudar according to the author of this article, a corporation is a collection of people who are acknowledged by the law as a single legal organisation. It is separate and apart from each of the people that make up the whole. Due to its inherent legal personality, it has the power to retain property, conduct transactions, file lawsuits and be sued, among other things. The author is also interested in how the criminal justice system views commercial enterprises. A lack of development in the jurisprudence around corporate liability for crime is the consequence of the legal system's strong opposition to the idea that businesses are criminal entities. While companies may be considered individuals under specific legal circumstances, it is difficult for them to commit crimes. Finally, the author notes that the law has been hesitant to recognise corporate organisations' criminal culpability. Although the Indian judiciary has acknowledged corporations as criminals, the author of this article correctly noted that Indian laws are cautious to label corporate organisations as such.

Praveen Dalal in this article, the author described how a curtain is formed between a business and its members when it is incorporated, all interactions are with the corporation, and all individuals behind the company are ignored, regardless of how significant they may be. Normally the notion of corporate personality of a corporation is honoured in most circumstances. The author further clarified that the company's distinct personality is a legislative privilege that can only be exploited for lawful and proper commercial objectives. Lastly, the author stated that if the legal company is used fraudulently, dishonestly, or improperly, the concerned individual will not be permitted to hide behind the corporate persona.

Kumar A Pandey in this article, the author suggests that the Indian parliament be aware of the disagreements associated with corporate criminal liability; however, even recent legislation concerning economic offences lacks particular provisions to facilitate the imposition of penal liability on corporations and requires immediate attention. There is little question that the notion of corporate criminal culpability is well established in India, but even with the Supreme Court's decision in the Standard Chartered Bank case, the argument between legislative and judicial functions appears to be far from done. As a result, it is advised that appropriate adjustments to the code of criminal process be made in this respect. The author proposes altering the criminal rules to prevent judicial meddling in legislative matters. It is not feasible to simply change the penalty provision for corporation culpability. As a result, enacting separate comprehensive corporation criminal legislation is a better approach.

Objectives

1. To investigate and discover legislation governing corporate criminal responsibility.
2. To determine the many types of crimes that may be associated to a company.

Research Methodology

This is theological study based on secondary data. The Constitution, legislation, and decisions issued by tribunals and courts, including Appellate Courts, are widely cited. Even other nations' legislation and court precedents are relied on. The judiciary's interpretation of legislation is also relied on in appropriate locations. Secondary sources include books by various authors and papers published in national and international periodicals. Websites and the internet are the foundation of e-resources, which are also employed as secondary resources in this task. For study purposes, the researcher has used a variety of secondary data sources.

Definition of Corporate Criminal Liability

Corporate crime refers to crimes perpetrated by a corporation or an individual associated with one. A corporate crime is an act committed by a company's employees and does not require authorization or approval from its executives. It is sufficient if the officials used their ordinary powers on behalf of the corporation. Thus, to a large extent, the corporation's criminality is linked to the actions of its officials. Such unlawful behaviours reflect the character of the individuals who run the company. Corporate criminal liability is becoming increasingly prevalent. The phrase corporate crime refers to business operations that involve some characteristics of criminal law. Corporate crime is sometimes used to describe types of regularity offences. Corporate crime also encompasses fraud and other unlawful behaviours that violate general laws.

In recent years, multinational corporations such as Enrone Lemon Brothers, Mayrlin Lyncy, American AIG, India's Global Trust Bank, Satyam Company, and some of the Indian banks involved in the IPO have prompted us to reconsider making corporate criminal liability more deterrent, effective, and broadening its application. In today's environment, corporate actions have a great influence on society. In their day-to-day actions, not only do they touch the lives of people favourably, but many times in a devastating manner, which falls under the category of crimes. Thousands of scandals, particularly white collar and organised crime, might fall into the categories that demand prompt attention. Despite several tragedies, the law remained slow to impose criminal accountability on businesses for a long period. The Indian judiciary only faced the matter a few decades ago. A firm cannot be held accountable for acts such as bigamy, perjury, and rape, which can only be committed by a human being, or for offences punished by jail or physical punishment. Barring these restrictions, a corporate organisation should be held accountable for the unlawful acts or omissions of its directors, authorised agents, or subordinates, whether or not they entail mens rea.

It is now widely accepted that corporations may be held accountable for illegal activity. Specific legislation, rules, regulations, and alerts outlined corporate criminal culpability in unambiguous terms. However, even in Western nations, standards fluctuate, with each legal system employing a distinct concept of corporate criminal culpability. India has also sought to incorporate corporate criminal culpability.

Corporate Criminal Liability in India

The nullu poena sine lege states that no individual shall be punished except in accordance with a statute that establishes a penalty for criminal action. The origin of nulla poena sine lege may be traced in Magna Carta's 39th clause, which later produced the notion of "Due Process". Et actus non facit reum nisi mens sit rea, which indicates that both the purpose and the act must be present to create a crime. This principle, which has been recognised by courts for centuries, recognises that crime has two elements: physical and mental. Actus non facit reum nisi mens sit rea is a natural and common law concept that serves as the foundation of criminal law. There is no crime without a guilty mind. To hold a person criminally liable for an act, it must be proven that he committed the act with a guilty mind. Thus, every crime has two components: a physical element and a mental one, known as "actus reus" and "mens rea". The word 'actus' refers to a 'deed', a tangible effect of human behaviour. The term 'reus' denotes 'forbidden by law'. The term 'actus reus' can be defined as such outcome of human activity as the law attempts to avert. Mens rea is a technical word that typically refers to some blameworthy mental condition, whether caused by purpose, knowledge, or otherwise, the lack of which on any given occasion negates the charge of crime. Mens rea originally defined the purposeful performing of an unlawful act, but its meaning has evolved significantly with the emergence of many notions and principles like as insanity, necessity, coercion, mistake, accident, carelessness, and so on. Thus, the core meaning of mens rea is the deliberate or reckless performance of a morally wrong act. Although the broad rule outlined above applies to all criminal proceedings, the criminal law one exception to the above-mentioned principle is the doctrine of strict responsibility, which allows one to be held accountable even if they are not guilty. The legislature may, however, construct an offence of strict or absolute responsibility if mens rea is not required. Strict liability involves legal culpability even in the absence of mens rea. Strict liability has grown so rapidly in recent years and in so many different forms that it is hard to generalise about it. Quite separate from the several serious crimes that have been committed inside this domain. Strict responsibility is a result of current legislative policy, not traditional morality. In other words, the issue is one of malum prohibitum rather than malum in se. Malum in se signifies that it is commonly acknowledged that they are ethical errors. Malum prohibita are often termed quasi-criminal offences, offences that are seen as not criminal in any actual sense, but conduct which in the public good are forbidden by punishment. It has long been contended that strict liability violations are examples of minor infractions and hence not immoral. They are essentially convention wrongs that are banned by positive law. This promoted the legal view that mens rea is not a significant feature of criminal acts, hence strict responsibility is warranted.

Theories About Corporate Criminal Liability

- **The Theory of Vicarious Liability: An Identification Principle:** This is the core theory of the CCL. It is the first suggested framework for holding corporations accountable for their illegal actions. This is the liability in which a person is held accountable for the actions of another. In the case of a company, it acts through its directors, employers, employees, and other authorities, therefore it is held accountable for their actions. It is based on the owner-servant relationship, in which the master is accountable for the servant's actions (corporate criminal responsibility). Similarly, in this case, the corporation is the owner and is held culpable for the actions of those who work for and with it.

- **Identification theory:** This idea states that the criminal mentality in the firm must first be recognised. If any criminal mind or any authority is discovered to be directing the illegal conduct of the corporation, it is regarded a criminal act of the company and it is directly held accountable. According to this idea, the company is directly responsible for its crimes or offences, as mentioned.

- **Aggregation theory:** This theory considers workers' mental states and actions to determine if the corporation is liable or who has greater responsibility. According to Celia Wells, the aggregation of employee knowledge implies that corporate guilt is not dependent on one individual employee meeting the applicable culpability requirement.

Judicial Response to Corporate Criminal Liability in India

In the case of *Standard Chartered Bank and Org* v. *Directorate of Enforcement and Others* (2005) 4 Comp LJ 464 (SC), the legal system did not go through the literal and exact interpretation rule necessary to be done for the penal legislation and went on to deliver complete justice by issuing a fine on the business. The court considered the interpretation rule that all penal statutes must be strictly interpreted in the sense that they must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. Simultaneously, it analysed the legislative intent and ruled that all punitive provisions, like all other acts, must be fairly read according to the legislative meaning contained in the enactment. It was argued that in this case, the legislative intent to punish corporate organisations for the offences they committed was plain and unequivocal, and that the Act never meant to exclude them from prosecution.

In *Aneeta Hada* v. *Godfather Travels & Tours (P) Ltd.* AIR 2012 SC 2795 this case, the Supreme Court observed that we have cited to the aforementioned authorities to stress that a corporation can be held criminally liable, and that if a group of people who lead the company's activity have criminal intent, that purpose would be ascribed to the body corporate. The law explicitly states that if a person, including a corporation, commits an infraction, certain types of individuals in authority, as well as the company, are regarded accountable under Section 138. Thus, legislative intent is quite clear. As is clear, the clause holds officials and enterprises accountable by deeming fictitious. A fantastic fiction carries its own importance.

In *Iridium India Telecom Ltd*. v. *Motorola Inc*. AIR 2011 SC 20 this case, the Supreme Court ruled that corporate criminality might be imposed even for crimes for which mens rea is required. The court ruled that the criminal purpose of the company's "alter ego," the person or group guiding the company's activities, would be imputed to the corporation under the applicable attribution and imputation rule.

Conclusion

Crime has been in society from the beginning of civilization. It is nearly hard to create a crime-free society. As a result, society must accept crime as a reality, but it must be rigorously governed by legislation. The traditional idea is that criminal law only applies to humans since crime requires the elements of mens rea and actus reus. A company, as a legal entity, lacks the physical existence and reasoning thinking of a human being. As a result, a business cannot be purchased under criminal law since it lacks the capacity to develop mens rea. Companies gradually began to engage with individuals and society in a variety of ways, playing an essential but diverse role in the evolution of society at large and becoming strong institutions in terms of politics, social justice, and law. On the other hand, it has caused more destruction to individuals and society than humans do. As a result, the notion of corporate criminal culpability emerged, and companies are today found accountable under a variety of justifications. The doctrine of vicarious responsibility of corporations was developed in

America, whereas common law maintained the principle of identity. India implements the standard legal theory. The concept of aggregation has been utilised in the US. Different theories have advantages and disadvantages, but vicariously theory has a broader application and appears to be constructive, deterrent, and successful. Another issue with corporate criminal responsibility is determining the proper punishment for firms. Except for the United States, the majority of countries have determined that a fine is sufficient punishment. The Indian judiciary, like those of other nations, first refused to apply criminal law to corporations, but eventually altered its mind and ruled that corporations are equally accountable for criminal labiality, punishable by fines. The Indian Law Commission noted the weakness of the IPC in imposing penalty on a firm. As a result, it urged that lawmakers alter the IPC so that wherever an IPC section exclusively punishes with imprisonment, the term "or fine" be inserted. This allows the courts to impose penalties on firms. The problem is that Parliamentarians have yet to act on such crucial suggestions, and shortcomings in punishment by force continue to exist.

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