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"CORPORATE CRIMINAL LIABILITY IN INDIA: LEGAL FRAMEWORK AND CHALLENGES IN EFFECTIVE PROSECUTION"

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ABSTRACT

A corporate entity is considered as a legal or juristic person in the eye of law. Further corporate entity is liable for all its actions and any office bearers are not personally liable for anything and everything done in the name of a company. This concept is known as the corporate personality. The problem arises when a company as an artificial person is misused by its administrators behind it for committing criminal acts in the name of company to gain a wrongful gain which might attract criminal action if done by a natural person. But being a artificial person without a mind, body and soul, here arises a challenge in punishing the real culprit, which often poses a challenge on criminal justice administration. These corporate criminal activities affect human rights, environment, development and safety of individuals. Further these offences are majorly economic offences including bribery, tax evasion, money laundering, benami transactions prohibited by law, violating foreign exchange regulations and other economic offences. In the modern era due to the globalising world which paved way for development of corporate entities as corporate giants and rise of corporate criminal actions which poses challenge over criminal justice administration. At the same time corporate entities and its development paves way for development of living standard of people, reducing poverty and employment etc. Hence we have to balance the legitimate corporate actions which need to be protected from criminal liability whereas the criminal offences committed by corporate entities with an ill or dishonest intention of its administrators needs to be punished and regulated for protection of society. Hence in this paper this researcher will analyse the existing laws relating to corporate criminal offences and its adequacy, further suggest necessary changes for effective enforcement of corporate criminal liability.

Keywords: corporate criminal liability, corporate crimes, penal actions against corporates.

Introduction:

Across the world social justice is considered to be the primary concern. Crime and criminal offences particularly social offences create serious threat for the state and society at a large. Particularly concerning economic offences committed by the corporate entities and fixing liability on the culprit. In our contemporary society corporate crime poses serious challenges in for the social wellbeing. Traditionally crimes are said to be committed only by a natural person for which there are multiple theories which describe the punishment and its nature which includes preventive theory, reformatory theory, rehabilitation theory etc. for social ordering in the society and to control the crime rates.

Because of the belief that, only a criminal mind combined with a criminal intention can commit crime that too can only be committed by the natural person who is having a body and mind which is totally transformed now to corporate crimes. The traditional notion and definition of criminal law and its punishment needs to be refined to fit for the changing society. Public at large have no awareness or knowledge about the corporate crimes which is harmful for the wellbeing of the society. Even today people are largely reacting to traditional crimes committed by a natural person and consider that as a crime against society and real crimes, but in other side corporate entities are committing crimes that needs to be addressed and sensitized among people. In the eye of common people the corporate entity or a company is carrying out business activities including manufacturing, processing, construction activities and producing goods which are considered to be legitimate activities.

But when a situation arises as the corporate entity is violating rules which are against the society at large at that time also it will be dealt only with civil or administrative law and only in exceptional cases it is dealt with criminal law and considered as criminal activities. Using this as a shield culprits hide behind the corporate entity projecting as a legitimate activity committing crimes which are disadvantageous for the society. The criterion for determination of criminal activity or offences is that the impact of the act over the society on that stand, the corporate crimes are serious crimes which affects or impacts the society at large hence it needs to be dealt with accordingly for protecting the well-being of the society and societal peaceful existence. In this research this researcher tends to analyse the nature of corporate criminal offences, applicable laws that punishable such criminal activities, loop holes on law that encourages the corporate criminals to indulge in such activities just for the purpose of profit which poses a serious challenge over wellbeing of the society at large.

Scope of the Research

This research looks into how corporate criminal liability is understood and applied, mainly within the Indian legal system and its effectiveness. It aims to explore what amounts to a corporate crime, what laws are currently in place to deal with such offences, and how courts have interpreted and enforced those laws. The study also focuses on identifying the loopholes that allow corporate offenders to escape criminal responsibility and continue harmful practices for profit. By examining these issues, the research seeks to highlight the need for stronger legal mechanisms to ensure corporate accountability and protect the larger interests of society.

Literature review:

Jennifer Arlen, in her influential paper *“The Potentially Perverse Effects of Corporate Criminal Liability,”*¹ presents a critical analysis of how corporate criminal liability may unintentionally discourage firms from adopting robust internal monitoring systems. She argues that such liability could reduce the incentive for corporations to self-report wrongdoing, ultimately undermining regulatory goals.

Brent Fisse and John Braithwaite, in their seminal work *“Corporations, Crime and Accountability,”*² advocate for a shift from purely punitive measures to more reformatory strategies. They emphasize the importance of regulatory interventions that encourage compliance and cultural change within corporations, rather than relying solely on criminal prosecution.

Vikramaditya S. Khanna, in his article *“Corporate Criminal Liability: What Purpose Does It Serve?”*³ evaluates the rationale behind imposing criminal liability on corporations. He examines its deterrent effect and suggests that while criminal sanctions may promote compliance, alternative mechanisms like civil penalties or regulatory enforcement could often be more effective.

Research Methodology

¹ Jennifer Arlen, “The Potentially Perverse Effects of Corporate Criminal Liability” (1994) 23 *Journal of Legal Studies* 833.

² Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability* (Cambridge University Press, 1993).

³ Vikramaditya S. Khanna, “Corporate Criminal Liability: What Purpose Does It Serve?” (1996) 109 *Harvard Law Review* 1477.

This study follows the **doctrinal method of research**, which involves a detailed analysis of existing laws, judicial decisions, and scholarly writings related to corporate criminal liability. Relying on secondary sources like statutes, case law, and academic literature, the research aims to understand how the concept has developed over time, how it is currently applied in India.

Meaning of corporate criminal liability

A company is always seen as a distinct legal entity independent from its shareholders and other office bearers' inspite of their existence a company will always exist because of the concept of corporate personality of a company which makes the company stand independent. Now a criminal act committed by a company is to be seen as an offence committed by company and not by an individual person, here comes the role of law⁴. Generally criminal acts are punished by the principle of "*Actus non facit reum nisi mens sit rea*", which means that to constitute a criminal offence a guild mind along with commission of a particular act which is forbidden by law as punishable.

A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself. The importance of incorporation is that it makes the company itself liable in certain circumstances, as well as the human beings- **Glanville Williams**⁵

Now the question of criminal mind that is Mens rea arises for the commission of offences by companies. The earlier Indian penal code as well as Bharatiya Nyaya Sanhita specifically states that person includes company and it will be held liable for its actions and further the act does not specifically mention about the particular person who is incharge of the company shall be held liable for the offence by complying with the principles of corporate personality. Unlike IPC and BNS, NI act and various other acts hold the incharge of company personally liable for the criminal acts committed by company, which will be discussed in detail.

Law relating to corporate criminal liability:

As far as laws relating to fixing the liability upon the company for the criminal offences committed by it is concerned, those laws includes Bharatiya Nyaya Sanhita,2023, Negotiable instruments act, 1881, Companies act, 2023, Information technology act, 2000.

⁴ *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530.

⁵ *Glanville Williams, Criminal Law: The General Part (2nd edn, Stevens & Sons, 1961) 803*

1. Section 2(13) of BNS and section 11 of IPC – Definition of "Person"⁶

“The word ‘person’ includes any Company or Association or body of persons, whether incorporated or not.”

This is the **key enabling provision** that brings **companies within the scope and ambit of IPC and BNS**. It means that a **company can be treated as a "person"** under the IPC and can be **prosecuted** for offences, wherever applicable if company commits an offence. Now there arises a question that, if the offence committed by company has compulsory imprisonment along with fine, how can that be enforced. This question was discussed in various cases that will be discussed in subsequent topics.

2. Companies Act, 2013

“Company” means a company incorporated under this Act or under any previous company law⁷.

So, for purposes of law wherever applicable it can be inferred that, the term **"company"** includes:

- ✦ Private and public companies,
- ✦ Government companies,
- ✦ Foreign companies operating in India,
- ✦ One-person companies, etc.

The concept of Corporate Criminal Liability has been recognised under the Companies Act 2013 under-

- ✦ Section 53-Prohibition of shares at a discount.
- ✦ Section 118(12)-Minutes of proceedings of General Meeting, Meeting of Board of Directors and other meetings and resolutions passed by Postal Ballot.
- ✦ Section 128(6)-Books of Account, etc, to be kept by Company.
- ✦ Section 129(7)- Financial Statement.
- ✦ Section 134- Financial Statement, Boards report, etc.
- ✦ Section 188(5)- Related Party transactions.
- ✦ Section 57-Punishment for personation of Shareholder.
- ✦ Section 58(6)- Refusal for registration and appeal against refusal.
- ✦ Section 182(4)- Prohibitions and restrictions regarding Political Contributions.
- ✦ Section 184(4)- Disclosure of Interest by Director.
- ✦ Section 187(4)- Investments of the Company to be held in own name.

⁶ *The Bharatiya Nyaya Sanhita, 2023, s 2(13). The Indian Penal Code, 1860, s 11.*

⁷ *The Companies Act, 2013, s 2(20).*

- ✦ Section 447- Punishment for fraud.

3. Negotiable Instruments Act, 1881 – Section 141

- ✦ **Section 141** deals with offences by companies under **Section 138** (dishonour of cheque) which constitutes a punishment and also fine⁸.
- ✦ When a company commits the offence, the **company** and **every person in charge and responsible** for its business at that time are **deemed guilty**. Unlike penal code, this statute specifically fixes liability over person incharge.
- ✦ Creates **vicarious liability** of directors, managers, and officers in criminal nature.
- ✦ "**Company**" includes firms and associations; "**Director**" includes partners.

This act has taken an appreciable step towards fixing the liability of person incharge of company at the time of commission of such offence. This act is more particular when coming to the aspect of liability and punishment.

4. Information Technology act, 2000 – Section 85⁹

If a company commits an offence under the IT Act, the company itself is liable. Also liable are persons in charge and responsible for the company's business at the time of the offence. The term "company" includes body corporate, firm, or association of individuals.

- ✦ Directors, managers, secretaries, or officers can be held liable if offence happened with their consent, connivance, or due to their own negligence.
- ✦ These individuals can avoid liability if they prove the offence was committed without their knowledge or they exercised due diligence.

As far as penal laws in India are concerned that may range from Indian penal code now Bharatiya Nyaya sanhita, IT act, NI act and various other minor acts in which BNS in its definition to person includes a company as a person and fixing liability on company and not an individual person who is incharge at the time of commission of offence by company. Unlike BNS the other laws like IT act, NI act and all have comprehensively fixed liability on not only company but also the person who is incharge at the time of commission of offence by company. Now there are ambiguities relating to fixing of liability, extent of liability upon company and its officer which has been dealt with in various case laws.

Corporate criminal liability – Models:

The corporate criminal liability defines that how a company can be held liable for the criminal act committed by it. The key models can be broadly classified into Organisational model and

⁸ *The Negotiable Instruments Act, 1881, s 141 and s. 138.*

⁹ *Information Technology act, 2000, S.85*

derivative model.

i) Organisational Model:

The organisational model takes the working of organisation into consideration to find out the Mens rea that is the mental element which is mandatory for criminal offences along with the actus reus that is the physical act. Now a company being an artificial person cannot directly have a mental element Mens rea. For finding out these elements derivative model and organisational model were come into play. Unlike derivative model, organisational model takes into consideration the working nature of a company¹⁰. This model says that, if an employee of a company is set free or encouraged to do an act, which is an offence but it is the normal organisational structure or environment of a company which encourages doing such acts, then the company can be held liable for such criminal activities as per the organisational model of company.

A corporation's internal culture can play a significant role in enabling offenses that require a guilty mind (Mens rea). This can happen in two main ways. First, the corporate atmosphere may normalize or subtly endorse unlawful behaviour, leading individuals to believe such actions are acceptable or even supported by the organization. Second, the operational structure and day-to-day practices of the company may directly foster conditions that facilitate the commission of the crime. In both scenarios, it is the corporate environment and its underlying values that contribute to the perpetration of the offense.

ii) Derivative model

This model focuses on liability of the company which has arisen because of the person connected with the company has incurred liability while discharging the duties of company. In other words, specific individual who is an employee of company or any office bearer is entrusted to act on behalf of a company and further on such act which amounts to criminal liability is considered to be committed by company by itself. The liability is derived by the company from its employee's as the work entrusted to an employee in the course of employment is done by him and for such activities company is liable.

¹⁰ Celia Wells, "Corporate Criminal Liability: An Introduction to the Model Penal Code" (2001) 2 Criminal Law Forum 271.

Doctrines relevant to Corporate Criminal Liability:

As the law in many places leaves loop holes and has left certain elements undefined regarding the liability of company. In this situation several doctrines has been established by courts to fix the liability of the company. To understand the concept let us look into the doctrines related to corporate criminal liability,

a) Identification doctrine

The concept of doctrine of identification is rooted in English law to fix the liability of person or director or any person who is incharge of that particular company at the time of commission of offence¹¹. The concept of corporate personality creates an individual character for a company which is independent from its directors.

A company is treated as a separate person under the law. This means it is different from the people who started it, run it, or own it. This rule was first clearly explained in the famous case *Salomon v. Salomon*¹². In that case, the court said that the company has its own identity, separate from its owners or directors. However, sometimes people misuse this rule to escape from legal responsibility when something wrong is done in the name of the company. In such cases, courts may ignore the company's separate identity and directly hold the people behind the company responsible. This is called "lifting the corporate veil." A company can file a case or be sued in its own name. But in criminal matters, there is a problem. A company cannot go to jail or be given a death sentence because it is not a human being. Usually, the only punishment it can get is a fine, which is sometimes too small to act as a proper punishment. So the question arises: how can a company be punished for serious crimes. To solve this, courts use something called the Identification Doctrine. Since a company cannot think or act on its own, the law treats the actions and thoughts of its top officers like directors or managers as the actions of the company itself. These people are seen as the "mind" of the company. So, if a top officer does something illegal while working for the company, then the company can be held responsible. This way, even though the company is not a real person, it can still be blamed and punished for crimes committed by its key people.

b) Doctrine of Vicarious liability

Vicarious liability is a legal concept where one person or entity is held responsible for

¹¹ See *Tesco Supermarkets Ltd v. Nattrass*, (1972) AC 153 (HL); followed in *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.

¹² *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL).

the wrongful acts of another person, not because they committed the act themselves, but because of their legal relationship with the wrongdoer. This concept is mostly applied in the relationship between employers and employees. If an employee does something wrong while performing their job duties, the employer can be held liable for it. This is based on the idea that the employer has control over the employee and benefits from their work, so they should also bear the responsibility when something goes wrong. In the corporate context, this means that a company can be held liable for the wrongful acts committed by its directors, managers, or employees, if those acts were done in the course of their employment and for the benefit of the company. Even if the company itself did not intend to do anything wrong, it can still be held vicariously liable for the acts of its people.

In civil law, this principle is widely accepted. For example, if a company's delivery driver causes an accident while delivering goods, the company can be held responsible for the driver's negligence. In criminal law, the idea of vicarious liability is more restricted, because crimes usually require *Mens rea* (a guilty mind), and it may not be fair to punish someone who did not personally intend to commit a crime. However, statutory offences under special laws often allow for vicarious liability. In such cases, it is enough that the person being held liable had control over the person who committed the act and failed to prevent it. In the case of *State of Maharashtra v. Syndicate Transport Co. (P) Ltd*¹³ the court recognized that a company can be held vicariously liable for the acts of its employees if such acts are done within the scope of employment and in furtherance of the company's business. In the case of *K. Mohan and Company v. State of Tamil Nadu*, (2001) 104 Comp Cas 519 (SC) the Supreme Court held that in certain statutory offences, especially those involving economic crimes, directors and persons in charge of the company can be held vicariously liable if the law specifically provides for it.

c) Doctrine of collective blindness

The doctrine of collective blindness, also known as collective knowledge or intent, is an important concept in Indian corporate law. It applies in situations where a company's top leadership like the board of directors or senior executives either knowingly ignores or chooses not to act upon illegal activities or violations of regulations happening within the company. This principle is used to assign legal responsibility to the company by

¹³ *State of Maharashtra v. Syndicate Transport Co. (P) Ltd.*, AIR 1964 Bom 195

combining the knowledge or deliberate inaction of individuals in key positions. In court cases, this doctrine helps establish that the corporation can be held liable for crimes or regulatory breaches, especially when there is clear evidence of systemic negligence or intentional disregard by those tasked with oversight. It highlights the need for strong ethical standards and effective corporate governance to prevent such failures.

d) Doctrine of wilful blindness,

The doctrine of wilful blindness also referred to as deliberate ignorance or conscious avoidance, is a legal principle that attributes liability to individuals or organizations that intentionally choose to remain unaware of wrongful or illegal conduct occurring around them. In the context of Indian corporate law, this doctrine becomes crucial when senior management or key decision-makers deliberately avoid investigating suspicious activities within the company. Instead of taking necessary action, they ignore warning signs to escape accountability. The law treats this intentional disregard as if the person or entity had actual knowledge of the misconduct. By doing so, it allows legal responsibility to be imposed despite the absence of direct proof of knowledge. This principle plays a vital role in promoting responsible corporate behavior, stressing the need for proactive due diligence and ethical vigilance in all levels of corporate governance.

Deadlocks of Corporate Criminal Liability:

As we have analysed various laws that punishes the company for its criminal liability and also penal code in India including Indian penal code and Bharatiya Nyaya Sanhita, 2023 recognises company as a person dragging it into the aspect of criminal law and prescribing punishments. But there are certain deadlocks or in other words there are challenges in punishing a company for its criminal activity they are,

A) Imprisonment

As per our analysis into various laws and doctrines it is clear that, company is recognised as a juristic or a legal person. Further company being an artificial person has a corporate personality. This corporate personality of a company gives individuality for a company and its perpetual existence and further defines the company as an independent entity separates every other people from corporate personality. However, there are provisions which provide mandatory imprisonment for a person including company, such as Section

447 of Companies Act, 2013 Act, Section 420 of The IPC, 276B of The Income Tax Act etc.

In many cases various courts are in a situation to consider for imprisonment of a company. When a provision suggests for a mandatory imprisonment and a company is found guilty of that offense court is in a situation to impose punishment as per the provision. The court has only option to impose a punishment of fine and not otherwise. The Supreme Court has to face similar difficulty in case of *M.V. Javali vs. Mahajan Borewell & Co. and Others*¹⁴, The Company was found guilty under Section 276B read with 278B of The Income Tax Act, which gives mandatory punishment of at least 3 months, but the Court found itself in a fix about how to imprison a company. J. Mukhrjee said that,

“Even though in view of the above provisions of Section 278B, a company can be prosecuted and punished for an offence committed under Section 276B the sentence of imprisonment which has got to be imposed there under cannot be imposed, it being a juristic person and we are of the opinion that the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only punishment.”

Therefore, the current situation is that a person is juristic person then punishment relating to imprisonment would not apply to it instead he will be liable for fine. The court can do one thing though, if it cannot imprison a corporate body but it can charge greater amount of fine in such cases in comparison to what it charges to the person who are capable of being imprisoned for the same offence.

B) Relevance of Mens rea

The idea of *Mens rea* in corporate criminal liability is quite complicated because a company is not a human but just a legal body. In normal criminal law, proving someone's guilty mind is important, but doing that for a company is tough. Sometimes, the law makes the company answerable for what their workers do, which is called vicarious liability. In other cases, guilt is assumed without needing to prove intent – this is strict liability. Things like how the company is run, whether they tried to follow the rules, and their internal policies matter a lot in deciding if they're guilty or not. Also, it depends on how the

¹⁴ *M.V. Javali v. Mahajan Borewell & Co. and Others*, (1997) 8 SCC 72

authorities choose to take action. So, finding the right balance is important to make sure companies are punished when needed, but also keeping in mind that they're not like real people.

Another problem faced by the Judges was how to try a company for the offences where Mens rea was an essential. How can a juristic person have a mental element to commit a crime? The trend was such that the company was only tried for cases where Mens rea was not an essential and it was accepted that it cannot be tried for offences where Mens rea is required. In the case of *Motorola Inc. vs. Union of India*¹⁵, the Bombay High Court ruled that a company could not be prosecuted for the offence of cheating under Section 420 of the Indian Penal Code. The reasoning behind this was that cheating requires *Mens rea*, or a guilty mind, and since a corporation is just a legal entity and not a natural person, it was believed that it couldn't form such intent. Based on this logic, the court quashed the proceedings against Motorola, holding that without the ability to form *Mens rea*, the company could not be held criminally responsible.

However, this understanding gradually changed with time. One of the most significant shifts came from the famous words of Lord Denning, who argued that a corporation, although artificial, could be compared to a human being in many ways. He explained that just like a person has a brain and hands to think and act, a company has people like its directors and senior managers who act as its mind and body. The staff who perform day-to-day tasks are simply following orders and don't represent the company's will. But those at the top, like the board members and key decision-makers, are seen as the company's "directing mind and will." This means that their intentions, decisions, and mental state can be treated as that of the company itself. Following this view, Indian courts began to adopt the alter ego doctrine. According to this doctrine, a company is no longer viewed as completely separate from the individuals managing it. Instead, it is seen as a reflection or alter ego of the key people in charge. So if a senior official of the company commits a crime while acting within the scope of their authority, the law can treat their *Mens rea* as the company's own. This means the company can be prosecuted just like an individual.

The Supreme Court of India supported this interpretation in the landmark case *The Assistant Commissioner, Assessment-II, Bangalore & Ors. vs. M/s. Velliappa Textiles Ltd. & Anr*¹⁶. The Court acknowledged that earlier, it was believed that corporations could not be punished for crimes requiring a guilty mind. But the present legal thinking has evolved.

¹⁵ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.

¹⁶ *Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405.

The Court clarified that the guilty mind of someone who runs the company like a top executive can be extended to the corporation itself. This makes it possible to hold companies accountable even for offences that involve intent. In simple terms, the law now accepts that a corporation can be held responsible for criminal offences involving intention, if the person in charge had that intention while acting on behalf of the company. This approach ensures that companies cannot hide behind their artificial status to escape liability. It helps courts and law enforcement agencies to take stronger action against corporate misconduct, especially in cases involving fraud, cheating, or other white-collar crimes.

Suggestion and conclusion:

To sum up, holding companies criminally liable under the Companies Act, Bharatiya Nyaya sanhita and other criminal act plays a crucial role in making sure they act responsibly and follow ethical business practices, further discourages the companies from indulging in criminal activities. When companies are made answerable for the wrongdoings of their directors, officers, or staff, it sends a clear message about the importance of following the law and having strong internal checks in place. It also shows that businesses can't just turn a blind eye to misconduct within their system. Regulatory bodies also play a key part by making sure that rules are enforced properly, which helps build a culture of honesty and fairness in the corporate world which involves the rights of many people. In the long run, when companies take their legal and ethical duties seriously, it not only helps them avoid legal trouble and criminal acts but also builds trust and goodwill with the public. This kind of responsible behaviour makes businesses more sustainable and benefits not just the companies themselves, but society as a whole.

The 47th law commission report has recommended various solutions to deal with such problem:

1. Judges should have the discretion to apply penalties according to their judgment for each specific case.
2. Para 8(3) of the 47th law commission report recommended that, *“in every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is the corporation, it shall be competent to the court to sentence such offender to fine only.”*

3. In cases where an offense is punishable by imprisonment along with other penalties besides a fine and the offender is a corporation, the court has the authority to impose a fine as the penalty.

Regrettably, lawmakers have disregarded the suggestions made by the law commission and have not included this provision, leaving the issue unresolved. Consequently, it remains challenging for the court to penalize offenders effectively. Thus, while Corporate Crimes are prevalent, the strategies for addressing them are still underdeveloped. Necessary amendments have to be carried out, in order to fit today's contemporary world to address new challenges in corporate governance and criminal liability of corporates. Further this researcher is of the view that, if a criminal activity is committed by a company it shall not be investigated by regular officials. Instead a special mechanism or an investigation agency has to be established in order to investigate the crimes committed by companies. The prime motto of that agency is to find out the real person who is responsible for the commission of such crimes, who is the perpetrator. Because in reality a company not having a body or mind on its own, it cannot commit a criminal activity. People behind the company hide behind it, and shielding themselves from criminal liabilities. So by finding out the real culprit and fixing criminal liability on them is necessary. If they have a criminal intention *Mens rea* and *Actus Reus*, such person shall be personally liable and shall be imprisoned. If there is not specific person have any intention behind the criminal offences, in such cases only fine can be imposed. Necessary amendments and changes have to be brought in law as well as among the investigating and adjudicating authorities.

References

- Jennifer Arlen, "The Potentially Perverse Effects of Corporate Criminal Liability" (1994) 23 *Journal of Legal Studies* 833.
- Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability* (Cambridge University Press, 1993).
- Vikramaditya S. Khanna, "Corporate Criminal Liability: What Purpose Does It Serve?" (1996) 109 *Harvard Law Review* 1477.
- *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530.
- Glanville Williams, *Criminal Law: The General Part* (2nd edn, Stevens & Sons, 1961) 803.
- *The Bharatiya Nyaya Sanhita*, 2023, s 2(13), *The Indian Penal Code*, 1860, s 11.
- *The Companies Act*, 2013, s 2(20).

- *The Negotiable Instruments Act, 1881*, ss 138, 141.
- *The Information Technology Act, 2000*, s 85.
- Celia Wells, “Corporate Criminal Liability: An Introduction to the Model Penal Code” (2001) 2 *Criminal Law Forum* 271.
- *Tesco Supermarkets Ltd v. Nattrass*, (1972) AC 153 (HL); followed in *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.
- *Salomon v. A. Salomon & Co. Ltd.*, [1897] AC 22 (HL).
- *State of Maharashtra v. Syndicate Transport Co. (P) Ltd.*, AIR 1964 Bom 195.
- *M.V. Javali v. Mahajan Borewell & Co. and Others*, (1997) 8 SCC 72.
- *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.
- *Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405.

