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# **A DETAILED STUDY OF EVOLUTION OF CORPORATE CRIMINAL LIABILITY**

AUTHORED BY - KASHISH VAISHNAVI & MANSI

## ***Abstract:***

*A sophisticated method of committing crimes has been made possible in today's world with the advancements in science and technology, which has rendered the world limitless and out of bounds hence enabling the corporate transactions and dealings to become globalized with the use of communication networks. To characterize the development and evolution of the idea of corporate criminal liability in India is basically a protracted effort by the judiciary to impose obligations on non-fictitious people. This research paper aims to analyse in depth the seminal legal decisions that helped to shape and further evolve the idea of corporate criminal liability. Furthermore, the paper will also highlight the pertinent legal frameworks and legislations governing the corporate related crimes and fraudulent activities with the help of relevant case laws to critically analyse the notion.*

## **CHAPTER - I**

### ***1.1) Introduction:***

Globalisation, liberalism, and privatisation have rendered corporations crucial to society, resulting in massive corporate growth. Companies are treated differently by law than their representatives. Corporations and businesses have become more dangerous and violent criminals than individuals. Thus, how can courts punish criminal corporations? One of the finest examples of how common law theories determine corporate liability is vicarious liability under tort law, which makes corporations accountable for employee torts. Common law India may answer corporate tort liability concerns. However, corporate criminal liability persisted. Corporations are legally distinct from persons. In addition to being a legal entity, a firm has social and public duties and is used by the law to meet social and economic needs. Companies should be criminally responsible for corporate crimes. Corporate criminal liability covers a company's actions and omissions. Some major rulings clarified corporation criminal liability.

A minor common law notion that masters were criminally accountable if their servants produced a public nuisance led to corporate criminal liability. That approach was expanded to include complete corporation criminal liability by judicial interpretation of common law and statute legislation, not legislative action. Countries with civil law and no judicial interpretation have never considered corporate crime. Whatever its merits, corporate criminal liability will undoubtedly expand.

Corporate criminal liability is complicated and varied, drawing attention from law, business, and ethics. Modern society values companies, so it's necessary to consider how they may be held accountable. Corporate criminal liability lets businesses be punished like individuals. This concept has changed over ages due to social, economic, and legal changes. Corporate criminal liability's complex history, importance, and ethical issues are examined in this research. This article investigates how this legal concept has changed and how it affects corporate liability, accountability, and justice today.

### **1.2) *Research Objective:***

In this research paper, it has essentially tried to provide a detailed study of the evolution of Corporate Criminal Liability hence establishing the same with a critical analysis of relevant case laws for the same. The main objective of the paper shall be to derive :

- The requirement and significance of the concept of corporate criminal liability.
- The extent to which a company or corporation shall be liable for the repercussions of the acts done by them.
- Detailed analysis of the evolution of corporate criminal liability and its application and impacts on the present world.
- Interpretation of the legal framework on the said concept with inclusion of various case laws and their analysis establishing the variance.

### **1.3) *Research Methodology:***

The organized method of gathering data from multiple and various sources, interpreting it, evaluating it, and further drawing a conclusion is known as research methodology. This paper includes the usage of doctrinal method which entails diving deeply into the legal sources for gaining insight from various case laws, contemporary and relevant statutes, precedents, and research papers. The doctrinal method comes to its conclusion by observation, inquiry,

interpretation, surveys, etc. The topic of "A Detailed Study of Corporate Criminal Liability" was the subject of secondary research and analysis. An examination of case laws, statutes, and research papers was done. The following legal tools and websites have been utilized for research.

1. **"SCC (Supreme Court Cases)":** This website enabled to explore specific case laws that were relevant to the study themes and had a significant impact on how the secondary research was developed.

2. **Jstor:** This website was important in the creation of the research report. The benefits of it were most significant for the Literature Review of this paper.

#### **1.4) Hypothesis:**

1. The historical development of corporate criminal liability showcases a convergence between the legal traditions of common law and civil law, so contradicting the conventional understanding of their difference in this particular domain.
2. The prevalence and significance of corporate liability has seen a notable rise in recent decades, mostly attributed to the escalating intricacy of corporate structures and the global expansion of commercial operations.
3. The negative perception around corporate criminal liability significantly influences the standing and economic sustainability of corporations, hence impacting their long-term viability and shareholder value.

#### **1.5) Literature Review:**

- **Corporate Criminal Liability** - By Frederic P. Lee<sup>1</sup>

The issue of corporate criminal liability has been a topic of ongoing academic investigation and legal discussion, with a diverse range of literature examining its objectives and ramifications. This framework involves the imposition of criminal liability on corporations for the conduct of their employees, a concept that has its origins in legal precedent and continues to be upheld in contemporary legal systems. The current body of literature exhibits a division of opinions, with proponents highlighting the practical advantages of strong enforcement, gathering of information, and deterrent, while detractors raise concerns over the complex procedural aspects and potential negative consequences on social perception. The paper authored by Mr. Khanna offers a contemporary analysis of the underlying rationale behind the imposition of criminal liability on businesses. It puts up a proposition for a potential shift in the prevailing paradigm by calling for

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<sup>1</sup> Frederic P. Lee, *Corporate Criminal Liability*, 28 Columbia Law Review 1 (1928).

a modified version of corporate civil liability.

- ***The Comparative History and Theory of Corporate Criminal Liability*** – By Markus D. Dubber<sup>2</sup>

The article investigates the historical and theoretical aspects of corporate liability in both German and Anglo-American contexts. The prevailing discourse often portrays the evolution and contention of these two legal systems during the 19th century. This essay critically analyses a complex comparison study in order to question established conventional beliefs. The author demonstrates that the concept of corporate criminal liability was extensively acknowledged and embraced across both common law and civil law systems during the Middle Ages. The essay presents evidence that demonstrates the existence of criminal liability for firms in England prior to 1800 and in Germany after to 1800, thereby challenging the prevailing notion. The ongoing examination of historical trajectories and legal theories pertaining to corporate liability contributes to the academic discussion around this significant area of corporate law and regulation.

- ***13 Improving the Effectiveness of Corporate Criminal Liability: Old Challenges in a Transnational World*** – By Jonathan Clough<sup>3</sup>

The book authored by Jonathan Clough offers a thorough analysis of the dynamic terrain of corporate criminal liability within the framework of an ever-expanding globalised society. Clough's publication provides a comprehensive examination of the various obstacles and intricacies encountered by legal frameworks in their endeavour to establish corporate responsibility for their conduct. Clough's analysis delves into the historical and contemporary dimensions of corporate criminal liability. The objective of this study is to elucidate the challenges and limitations associated with this particular legal paradigm. In order to address the issue of corporate criminal liability, Clough suggests using various enhancements. The book places significant attention on transnational concerns related to the regulation of multinational firms, highlighting the imperative for international collaboration. Clough's contributions are of immense value to scholars, professionals, and policymakers with an interest in the fields of corporate law, corporate governance, and the assessment of corporate criminal liability within the

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<sup>2</sup> Markus D. Dubber, *The comparative history and theory of corporate criminal liability*, 16 *New Criminal Law Review* 203–240 (2013).

<sup>3</sup> Jonathan Clough, *13 Improving the Effectiveness of Corporate Criminal Liability: Old Challenges in a Transnational World* XXXX (ANU Press 2017)

contemporary global context.

- ***Corporate Criminal Liability: What Purpose Does It Serve? – By V. S. Khanna<sup>4</sup>***

The issue of corporate criminal liability has been a subject of ongoing debate within the legal and academic communities. In the present study, Mr. Khanna proposes the implementation of legal accountability for instances of employee misconduct within corporate entities. The present paper examines the discourse around corporate accountability by conducting a comprehensive analysis of the historical and legal aspects of corporate criminal liability. Lastly, the research assesses Mr. Khanna's revised corporate social responsibility (CSR) plan. The Evolution of Corporate Criminal Liability In accordance with common law principles, firms are held accountable for instances of employee or shareholder misconduct. For a considerable period of time, businesses have been held liable for the criminal actions committed by their agents through the legal concept of vicarious responsibility. The emergence of corporate criminal liability can be attributed to the intersection of philosophy, legal concepts, and norms. The current state of the law Contemporary legal frameworks regulate economic behaviour by use of corporate criminal liability. Companies may face allegations of engaging in environmental and financial misconduct. The reconsideration of this worldview is necessitated by a multitude of causes. The current discourse revolves around the proposition of holding companies accountable for illegal actions, and Mr. Khanna's article effectively elucidates the rationale for this perspective.

- ***Rethinking Corporate Criminal Liability- by [Gregory L. Diskant<sup>5</sup>](#)***

The reconsideration of corporate liability has emerged as a critical topic in current legal and ethical dialogues. Conventional conceptions of corporate liability frequently provide legal protection to organisations, even though they may have been engaged in activities that could cause harm. Academic scholars call for a fundamental change in perspective, emphasising the need for a comprehensive and nuanced comprehension of corporate responsibility. This reassessment necessitates a concentration on the individual responsibility within organisations, highlighting the significance of executives and decision-makers in influencing corporate conduct. Moreover, there is a growing emphasis on evolving legal frameworks and ethical considerations that highlight the significance of corporate social responsibility. These frameworks encourage a

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<sup>4</sup> V. Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109, no.7 The Harvard Law Review Association 58, XXXX (1996).

<sup>5</sup> Gregory L. Diskant, *Rethinking Corporate Criminal Liability*, 34, no.2 American Bar Association 5, XXXX (2008).

more comprehensive perspective on accountability, extending beyond mere financial penalties to incorporate the broader societal and environmental repercussions. Therefore, it is imperative to reassess corporate liability in order to promote ethical and sustainable business practises in the contemporary day.

- *A Pragmatic Critique of Corporate Criminal Theory: Lessons from the Extremity* -by [James G. Stewart](#)<sup>6</sup>

The literature surrounding corporate criminal liability engages in heated debates centered on three key inquiries. Firstly, it questions the rationale behind applying a criminal justice framework designed for individuals to corporate entities. Secondly, it evaluates the utility of corporate criminal liability compared to civil remedies. Lastly, it probes whether it offers additional value beyond holding corporate officers individually responsible. This article critiques these debates using international criminal justice cases, highlighting their inadequacies in addressing issues like resource pillaging and complicity in arms supply. It underscores analytical deficiencies rooted in a narrow jurisdictional focus, ethnocentrism, and insufficient consideration of the global impact of corporate crime, advocating for a more pragmatic and inclusive approach.

- *The Potentially Perverse Effects of Corporate Criminal Liability* – by [Jennifer Arlen](#)<sup>7</sup>

The notion of corporate criminal liability has generated significant discourse within the realm of legal academia, particularly with regards to its potential negative ramifications. The article examines the aforementioned debates, revealing a multitude of concerns. Critics contend that the imposition of criminal liability on corporations could potentially foster a counterproductive array of behaviours, including the accidental promotion of the concealing of corporate misconduct and the encouragement of scapegoating practises targeting subordinate personnel. The existing body of literature delves deeper into the effectiveness of corporate criminal sanctions in creating deterrence and raises questions about their true ability to hold firms accountable or if they just function as symbolic gestures. Furthermore, this study delves at alternative methodologies, such as heightened regulatory measures and individual executive responsibility, in the pursuit of more efficient and equitable procedures to tackle corporate wrongdoing.

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<sup>6</sup> Stewart, James G. "A Pragmatic Critique of Corporate Criminal Theory: Lessons from the Extremity." *New Criminal Law Review: An International and Interdisciplinary Journal*, vol. 16, no. 2, 2013, pp. 261–99.

<sup>7</sup> Arlen, Jennifer. "The Potentially Perverse Effects of Corporate Criminal Liability." *The Journal of Legal Studies*, vol. 23, no. 2, 1994, pp. 833–67.

## CHAPTER – 2

### 2.1) Analysis:

The progression of corporate criminal liability is an ever-changing and dynamic phenomenon that has experienced substantial transformations throughout its historical development. The analysis of this evolution necessitates the examination of pivotal historical advancements, current obstacles, and prospective future trajectories. This paper enhances our understanding of corporate criminal liability's historical and contemporary aspects and helps policymakers, legal practitioners, and scholars navigate corporate accountability in a changing global landscape.

The historical evolution of corporate criminal liability demonstrates a longstanding acknowledgement of the necessity to impose accountability on corporations for their conduct. Corporate criminal liability has undergone a transformative journey, originating from its mediaeval legal origins and subsequently evolving within the frameworks of both common law and civil law traditions. This evolution has been shaped by shifts in legal doctrines and society norms, reflecting the dynamic nature of this concept. The presented historical viewpoint poses a challenge to the prevailing narrative that commonly distinguishes between states based on common law and civil law systems. It brings attention to the historical recognition of corporate entities' criminal liability, which was shared across different legal traditions.

Thus, the concept of corporate criminal liability can be inferred from the two sections of the Indian Penal Code including section 11 which basically gives the definition of the term 'person' and section 2 which makes every person liable to punishment for any violation of the IPC. There are a few theories that exist in order to help detect a corporate criminal liability including the vicarious liability theory and identification theory. *Qui facit per alium facit per se*, which implies that he who acts through another acts himself, and Respondent Superior which implies to let the master answer, form the cornerstone of the doctrine of vicarious liability. There are two stages that must be taken to implement this theory which includes what constitutes the actus reus of the acts performed by the employee and that due to the employer-employee connection, the Company must be held liable for the decided actus reus. On the other hand, the identification theory implies that a company basically functions like the brain, nerves, and hands of a human body and that the Company's managers and directors represent the organization's guiding principles and exert control over other employees' behaviour. The Company's hands are represented by its employees. They are merely the Company's subordinates and agents; they have no authority over it and

therefore, the managers' mental condition mirrors that of the company. Initially, the Indian judiciary held the view that a company could not be held criminally liable due to its status as a legal entity, which inherently lacks the cognitive ability to engage in criminal behaviour, sometimes referred to as "mens rea."

The case of *Sunil Banerjee vs. Krishna Chandra Nath*<sup>8</sup> established that the bank in question did not possess the requisite mens rea, or culpable mental state, sufficient to be charged with the offence of cheating. The bank, in its abstract configuration and organisational framework, possesses an inherent immunity from legal repercussions for engaging in fraudulent practises owing to its non-physical nature. In the case of **State of Maharashtra v. Syndicate Transport**<sup>9</sup> which pertains to a legal dispute within the jurisdiction of Maharashtra, the Court rendered a verdict stating that a firm cannot be held liable for prosecution in cases involving offences that entail penalties of corporal punishment or imprisonment, such as perjury, bigamy, or rape. This phenomenon arises from the inherent nature of corporations, which renders them immune to incarceration, given their legal status as entities established by statutory provisions. With the exception of specific situations, it is generally considered acceptable to assign legal liability to a corporation for the illicit actions or omissions carried out by its directors, authorised agents, or employees, regardless of their intention, as long as they have acted or claimed to act within the boundaries of their authority granted by the corporate entity or in pursuit of its goals.

The English case of *Tesco Supermarkets Ltd. vs. Nattras*<sup>10</sup> which is a landmark judgement where the company discounted washing powder on store posters. When low-priced items sold out, shops replaced them with standard items. Management failed to remove advertisements, so a client paid more. Tesco was charged with misleading advertising under the 1968 Trade Descriptions Act for misrepresenting washing powder prices. The corporation said it took all essential safeguards and should not be accountable for the manager's actions. An independent store manager could not hold the Corporation accountable for the acts, the Court ruled. A company runs through live persons because it lacks cognitive and physical skills, the Court said. Only when a person has responsibility for the Company or a specified area of its activity can their actions and mental state be linked. Although criminal breaches typically occur at lower organisational levels, this strategy is limited because it applies primarily to upper management.

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<sup>8</sup> Sunil Banerjee vs. Krishna Chandra Nath AIR 1949 Cal 689.

<sup>9</sup> State of Maharashtra v. Syndicate Transport AIR 1964 Bom 195

<sup>10</sup> Tesco Supermarkets Ltd. vs. Nattras 1971 UKHL 1

Consequently, the assigning of liabilities to larger corporations becomes unattainable.

In order to establish the Company's liability for crimes, it must be demonstrated that the individual in question acted on behalf of the Company rather than in a personal capacity. In the case of *Kalpanath Rai versus the State*<sup>11</sup> a notable judicial decision was rendered by the court. This case was situated within the scope of the Terrorist and Disruptive Activities (Prevention) Act of 1987. The appellant, together with a representative from the company M/s. East West Travel and Trade-Links Ltd, faced allegations of providing shelter to individuals engaged in acts of terrorism. The Court in this case made the decision that the Company, as a recognised legal entity, does not possess the mental state of mens rea. Therefore, the court examined the matter within the context of the Terrorist and Disruptive Activities (Prevention) Act, which did not include any such provisions for inflicting liability on the Company for any act done by its officer but thereafter, the Court submitted that, in accordance with the laws such as the Essential Commodities Act and the Prevention of Food Adulteration Act that even corporations can be held equally liable for the conduct of persons holding the managerial positions in the company. Therefore, the development of corporate criminal liability in the court system is evident through these cases.

Furthermore, in the case of *The Assistant Commissioner versus Velliappa Textiles Ltd. and Ors.*<sup>12</sup> the corporation in question was subjected to prosecution for contraventions specified in Sections 276C, 277, and 278 of the Income Tax Act. Both imprisonment and a fine are prescribed as penalties for each of these sections. The judgement of the Court has established that a corporation is not susceptible to prosecution for infringements delineated in Sections 276C, 277, and 278 in conjunction with Section 278. This phenomenon arises from the requirement in each of these provisions for the imposition of a compulsory prison term alongside a monetary penalty, so eliminating any choice for the Court to exclusively impose a fine. The Court reiterated that the judiciary bears the duty of determining and construing the law, as opposed to participating in legislative endeavours. The resolution of the issue may solely be attained via the intervention of the legislative entity.

In the case of *Standard Chartered Bank and Others versus Directorate of Enforcement and Others*<sup>13</sup> the Court was confronted with the issue of whether it is legally permissible to hold a company or corporate entity accountable for actions that carry a mandatory prison sentence. The

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<sup>11</sup> Kalpanath Rai versus the State [1997 (8) SCC 732]

<sup>12</sup> The Assistant Commissioner versus Velliappa Textiles Ltd. and Ors. [(2003) 11 SCC 405]

<sup>13</sup> Standard Chartered Bank and Others versus Directorate of Enforcement and Others (AIR 2005 SC 2622)

Court determined that there exists a firmly established principle that a corporation can be held criminally accountable and subsequently prosecuted for offences. This is in contrast to the viewpoint that argues that since a corporation cannot be subjected to imprisonment, it should therefore be exempt from prosecution for more serious offences. Such an exemption would result in a complete miscarriage of justice and undermine the legislative intent. Hence, in such cases, the judiciary possesses the authority to exercise discretion by opting to levy fines exclusively, while disregarding the imposition of jail. These behaviours directly affect life, liberty, and property rights. Companies must be held accountable under criminal law to promote peace and a stable economy.

In the case of *Iridium India Telecom Ltd. vs. Motorola Inc and Ors.*<sup>14</sup>, the court ruled that firms and corporate houses can have mens rea and cannot claim immunity from criminal prosecution on the basis of its absence in all rule-of-law states. The Court also found that a group that guided company business having criminal intent, body corporate would be imputed.

If looked into the various amendments regarding Corporate Criminal Liability in the Indian scenario, it can be noted that the 41st Report of the Law Commission, issued in 1969, proposed a modification to section 62 of the Indian Penal Code which suggested amendment of the following provision by adding a few lines stating that in cases where the offence is solely punishable by imprisonment or imprisonment along with a fine, and the offender is a company, other body corporate, or an association of individuals, the court shall have the authority to impose a fine as the sole form of punishment. The Parliament however did not provide any response to this recommendation but later on in 1972 according to the 47th Report of the Law Commission, it was noted that numerous statutes related to economic violations mandate the imposition of imprisonment as an obligatory penalty. In situations when the convicted party is a business, this provision becomes impractical, and it is preferable to establish that in such instances, the court has the authority to levy a monetary penalty. This challenge may manifest itself inside the framework of the penal code as well, although it is anticipated to occur with more frequency in relation to economic legislation. Consequently, it is now suggested that the subsequent stipulation be incorporated within the penal law, specifically designated as Section 62 Which includes the term "corporation" that refers to an entity that has been legally formed as a company or other type of corporate body. This definition include not only firms, but also any other associations

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<sup>14</sup> Iridium India Telecom Ltd. vs. Motorola Inc and Ors. . 2005ALL MR (Cri) 1828 (S.C.)

comprised of persons.

In addition, another legislation pertaining to Corporate Criminal Liability is the Essential Commodities Act of 1955. Section 10 of this act specifically addresses violations committed by corporations. The court possesses the jurisdiction to divulge the identity and whereabouts of the convicted corporation, the type of offence committed, the conviction itself, and any additional relevant particulars. This disclosure may occur through various channels, including newspaper publication or other methods as directed by the court, with the corresponding expenses being assumed by the company. The legislative framework known as the Prevention of Food Adulteration Act of 1954 has many measures pertaining to the control and management of food adulteration. Section 17 of the aforementioned Act specifically applies to the transgressions committed by corporate entities. In the event that the firm is determined to have engaged in the act, it will be deemed culpable and be subjected to legal processes and associated fines. Additionally, it should be noted that a corporation with various establishments or branches has the option to designate distinct individuals under this particular sub-section. The person nominated for each establishment, branch, or unit is considered responsible for that establishment, branch, or unit. The case of *R.Banerjee vs. H.D. Dubey*<sup>15</sup> established that if a company commits an Act offence, the person nominated under sub-section (2) as responsible for its business conduct will be punished.

This study accepts that corporate criminal liability may discourage and punish, but its effectiveness is questioned. This evaluation emphasises balancing responsibility, company innovation, and growth. Global corporate criminal liability is key to its growth. Global corporations need global standards and processes to handle misbehaviour claims in several jurisdictions. Accountability requires international cooperation because the global economy is interconnected. The paper suggests an integrated approach to corporate criminal liability, focusing ethical corporate cultures and robust compliance procedures to eliminate wrongdoing and encourage accountability. This strategy covers punishment, prevention, compliance, and restorative justice. Prevention is better than punishment, it suggests that culture, ethics, and compliance will shape corporate liability.

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<sup>15</sup> *R.Banerjee vs. H.D. Dubey AIR 1992 SC 1168*

## CHAPTER-3

### **3.1) Conclusion:**

Finally, corporate criminal liability shows how law, ethics, and business intersect. This study investigated corporate criminal liability's past, present, and future. The investigation showed many major concerns, including corporate criminal liability's longevity and the necessity to adjust to changing business activity. History says common and civil law established corporate criminal liability in the Middle Ages. While companies fix their faults, criminal responsibility rises. A study evaluated corporate wrongdoing and legislative procedures to ensure corporate responsibility. This method's deterrence, unjust firm fines, and unintended harm to non-participants have been questioned. Commercial phenomena Corporate criminal liability demands worldwide cooperation due to globalisation. International trade improves jurisdiction, enforcement, and regulation.

Globalisation makes corporate criminal liability global. Business ethics and compliance are part of the comprehensive strategy. Businesses must support law and ethics. Prevention is often better than punishment, and this proactive approach supports that. Transnational concerns require international cooperation and government, regulatory, and commercial coordination. International policies and institutions are needed to hold firms accountable. Finally, evolving corporate criminal liability contrasts responsibility with economic innovation. The globalised economy and evolving corporate landscape will shape the old notion. Legal, legislative, and corporate institutions balance accountability with creativity.

Assess and improve company misbehaviour prevention. Explore alternative responsibility frameworks, focus prevention and compliance, and improve global cooperation. Corporate criminal liability should penalise misbehaviour and foster accountability, connecting business and society. Corporate criminal liability improves ethics, fairness, and accountability.