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CORPORATE CRIMINAL LIABILITY UNDER COMPANIES ACT 2013 -A CRITICAL STUDY

AUTHORED BY - MOHNEET KAUR

A70601819031

AMITY UNIVERSITY MAHARASHTRA

MUMBAI, 2020

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MOHNEET KAUR

CERTIFICATE

This is to certify that this Dissertation entitled 'corporate criminal liability under Companies Act 2013 –A Critical Analysis -' submitted by Miss Mohneet Kaur is the record of bonfire research carried out by her under my supervision. This Dissertation has not been submitted elsewhere for the award of any other degree, diploma, scholarship, or fellowship or to any other University or Institution of higher learning.

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Miss Mohneet Kaur has worked under my supervision and to my knowledge, has fulfilled all the requirements for the submission of the Dissertation.

Date: 20/04/2020

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Place: Mumbai

Dr. Kushal Vibhute

PREFACE

The concept of corporate criminal liability was first recognized in English courts and developed in Anglo- American Traditions of common laws. In 1990s Indian judiciary has realized that corporation does criminal conspiracy and be the part of the criminal liability. To apply this doctrine it was important to prove the guilty mind of the corporation but this was a bit difficult to understand as the corporation is an unnatural person can does not have mind of its own, but under the criminal law mens rea is important ingredient to be proved. Hence it was decided that the mens rea of the members of an organization will be the men rea of the person by the help of the doctrine of vicarious liability of tort law.

The companies act has been changed and has tried to inculcate the various sections which proves the liability of the directors of the company. The doctrine of corporate criminal liability has been in question because of corporate sanctions. A corporation cannot be imprisoned for the criminal acts but the only punishment which is feasible of the corporate entity is fine, fore feature of property or compensation. That is the reason why various countries have issues in adopting this principle, but in Indian legislation it has been adopted as the mixture of the concept in England and America. This paper has broadly discussed various aspects of this doctrine in the statutes of India as well of other countries with the help of various doctrines, but has been focusing more under the sections of Companies Law 2013.

Date: 24/04/2020

Name of the Student

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Mohneet Kaur

ABRIVIATIONS

TABLE OF ABBREVIATION

Co.	Corporate
Ltd.	Limited
E.g.	Example
Etc.	Etcetera
Sec.	Section
Art.	Article
U.S.A	United States of America
C.A.	Chartered accountant
C.S.	Company secretary
SEBI	Securities Exchange Board of India
FEMA	Foreign Exchange Management Act
TCA	The Companies Act
IPC	Indian Penal Code
CRPC	Criminal Procedure
Evd	Evidence

Consti	Constitution
MNCs	Multi-National Corporations
CSR	Corporate Social Responsibility
%	Percentage
&	And
Imp	Important
Org	Organization
IEA	Indian Evidence Act
IP	Intellectual property
AoA	Article of Association
MoA	Memorandum of Association
CCL	Corporate criminal liability
SC	Supreme court
HC	High court
R&D	Research and development

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1.1 INTRODUCTION

“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**

Corporate criminal liability risks in India under the criminal law accommodate the degree to which an organization acts as a lawful individual or a different legal element. It is obligated to the demonstrations done by the workers of the organization. The corporate criminal liability in India is administered by the standards of the vicarious liability, which explicitly makes the organization subject for that specific offense.

For the most part, the inquiry which is posed as for corporate risk obligation of company if there should arise an occurrence of a wrongdoing is that a corporate being a counterfeit individual is fit for perpetrating a wrongdoing and whether an organization is criminally at risk for the said criminal act. Customarily, it was held that companies can't do a wrongdoing as the principle trial of crimes lies in the goal. Notwithstanding, the idea of corporate criminal obligation under the Companies Act has been perceived.

Criminal theory instructs that punishment is legitimized just when one has decided to disobey the law. The idea of corporate crime as committed by the body doesn't possess an agreeable place in corporate governance law.

The term Officer in a default is a wide term and can incorporate entire time chief, key administrative staff and such different executives without KMP who has been determined by the Board of Directors and each other executive who knows about the default which is being finished by temperance of accepting of load up procedures or by partaking in same without bringing up any criticism or where rebelliousness has occurred with his assent or conspiracy.

Corporate criminal obligation in India as an idea has picked up significance in going before years particularly in the circles of social standing, for example, customer security, natural law, word related wellbeing, and security standards. The idea of corporate risk is firmly worried about the corporate administration arrangement of an association as though a corporate follows great administration structure then the chance of wrongdoing refutes and the topic of corporate criminal obligation doesn't emerge.

An enterprise is considered as a different legal element unmistakable from its investors. Corporations, as we understand today, have not been same in the past. The multitude of roles the corporations play in the present day human life have been necessitated by the demands of society, as it kept on 'developing'.¹ It tends to be depicted to infer as a relationship of people for some regular item and it has no carefully any legitimate or specialized importance. It is comprehended that criminal risk is joined where there is infringement according to criminal law. The criminal obligation of any demonstration depends on the Latin adage *Actus non facit reum mens sit rea* which implies that to make an individual or any substance at risk it must be indicated that there is a demonstration or exclusion which is illegal by law and with *mens rea* which is lawfully comprehended as having guilty mind.²

The law treats companies distinct and separate from the individuals who represent it. Also, these companies have ended up being more hazardous lawbreakers than the people. Thus, typically, the inquiry emerges with respect to how the courts could rebuff these organizations which carry out violations. Customary law has different speculations which decide the risk of the companies and the best model would be the convention of vicarious obligation under the tort law which states that the organizations would be held subject for the torts submitted by its workers. India, being a nation which received the precedent-based law cures, had the option to address the inquiries concerning the tort obligation of the companies. Be that as it may, the worry regarding whether the partnerships can be charged for the wrongdoings submitted, made vulnerability in the brains of the adjudicators. The explanation can presumably be, not normal for the tort law, the nature of Indian criminal law which takes its source from a rule for example Indian Penal Code.³

1.1.1 Origin of the concept

The origin of this concept has been from the ancient law and became the part of discussion in 19th century. This doctrine of corporate criminal liability has a remarkable influence on economics laws history political views. This doctrine works very differently under the civil laws as in comparison with common law principles. This concept under both the laws have shown development under historical and socio economic of various nations. Evolution of the doctrine has shown its consistence with the principles of the company law and has dealt with the nature

¹ Christopher D. Stone *Where the Law Ends*, Harper and Row New York (1995), p. (xi) (emphasis in original).

² Kathleen F. Brickey Washington University School of Law Corporate Criminal Accountability: A Brief History and an Observation https://openscholarship.wustl.edu/law_lawreview/vol60/iss2/6 march 8 2020

³ Kumar Saurav and Krupa Savajiyani <http://www.legalserviceindia.com/legal/article-521-corporate-criminal-liability-white-collar-crime.html> 8 march 2020

of an organization.

Roman law has initially recognized the individual's right to initiate trade, follow religion and form charitable organization. These organizations have their own identity and had separate property from their owners and had rights and duties to be followed. These organizations were known to be the fictions of law, but the Roman law thinks these doctrines are lacking with independent will. The evolution of the corporate criminal liability in the medieval period was these entities have rights and duties and have separate existence from their owner. Roman institution of law used to consider these entities as fictitious and on the other hand these entities were considered as individuals in German law concept. Territories were exploited indiscriminately and to make these territorial elements liable for their actions or offences territorial units were created. The Germanic law relies on sanctions in its legal system for reasoning of collective duty. These sanctions were imposed on the basis of their effect and influence not on the basis of guilt of the offender. Yet this sanctioning was considered as a form of compensation rather than penalty because it stated that the aggregate that was the source of harm or damage should pay for its actions.

With the evolution of time from 12th century to 14th century the concept of corporate criminal liability developed. In the beginning the Romanic law supporters imposed criminal liability on institutions when the emperor and popes induced sanctions on villages and corporations. At that given time, the sanctions can be anything given from fine, to security, to spiritual sanction, etc. but they were under a condition of working together with the aggregates and held up to them.

Nearly around 14th century, the institution was recognized as a singular personality and were held criminally liable but they were exempted from acts like rape as any institution is not capable of committing such crime because of its fictional identity. With the gradual pace, people accepted that a corporation should be held liable for its acts on both grounds, criminal and civil. Villages, corporations, trade, etc were punished by penalty of fine for committing such crimes. When the French New Penal Code established new principles and sanctions of corporate criminal liability, it introduced that all juristic persons are to be held liable for the offence committed by their representative. Hence, other European countries were influenced by France's adoption of this idea. Soon, Belgium reformed the Belgium penal code and added the criminal liability for legal jurists. Countries like Netherlands adopted the concept of corporate criminal liability in 1976. According to the Dutch penal code, all persons, natural or juristic, are eligible to commit crime. In its initial days, England was reluctant to adopt corporate criminal liability because a

corporation was famous for its fictional identity empowered by the state and central governments, hence, they cannot be blameworthy if found guilty for commencing crime.

With the growth of importance of corporate bodies in 16th and 17th centuries, they stood out as an important aspect of socio-economic life. A corporation is a separate and independent element which can stake a claim over its rights and properties just like any individual. The English took an important step by imposing criminal liability on corporation for strict offences. They derived the concept of vicarious liability from tort law and imposed it on corporations as well as individuals.

The high court in 1944 decided that it is necessary to directly imposed corporate criminal liability on a company because certain employees were having malicious intentions which can be considered as that of the company. This appeal created a lot of ruckus because it was unorganized and unclear about how one could attribute to mens rea of a corporation. This confusion was cleared in 1972 and it is now stated as “identification theory”⁴ where the alter ego theory was imposed on these corporations.

In initial stages, the U.S. followed the league of the English but soon they were able to develop a more unique and effective system because of rapid increase in American economical and societal situations. Due to the influence of colonization as a corporate charter, they were able to establish a corporate form of government. The American system was more active than other countries because it adopted policies and held corporations liable directly. By the 20th century and influence from American system the concept of corporate liability was finally accepted globally.

Due to the course of action of the agents, there was wide range of criminal liability issued on the name of a corporation in the U.S. the case and its facts have told the importance of respondent superior of doctrine to relive corporate criminality. The justification of the activity committed by the agent can lead to the convection of corporation. The concept of corporate criminal liability is supported by “collective knowledge doctrine”. This is a procedural part where the important and necessary knowledge about the members of corporation are required.

The criminal liability of a corporation comes to act when there is violation of criminal law or its

⁴ Tesco Supermarkets Ltd v. Natrass (1972) A.C 153 <https://swarb.co.uk/tesco-supermarkets-ltd-v-natrass-hl-31-mar-1971/>

guidelines, in other words, a liability can be concerned when there is violation of law in any certain way. The basic idea of criminal liability is drawn from the latin saying “Actus non facit reum, nisi mens sit rea”. It refer that to prove the liability of a person , the unlawful act must be committed and also the person committing crime is bearer of guilty mind. This is a basic lay down guideline but it also draws out the responsibility an individual uphold for its own acts and outcomes.

Although the pre-requisite condition of criminal liability, actus reas and mens rea, are applicable to all criminal cases they may be exempted from the doctrine of strict liability which states about the reluctance of guilt mind. Hence, this means that one cannot held up the criminal liability of a corporation is there is absence of mens rea or actus reas. For example, the Bhopal Gas Tragedy⁵ Case resulted in widespread damage to human lives because of mere negligence by the corporation and its members

1.1.2 Gradual improvement of doctrine of corporate criminal liability-

- Imposition of concept of criminal liability of corporation under public nuisance-

The imposition of corporate criminal liability by the courts of England and United States was involved in the cases which were non-feasance of quasi-public companies that can be municipalities that cased public nuisances.

- Criminal liability of corporation not requiring criminal intent-

The sphere of corporate criminal liability grew from public nuisance to all other areas that do not require criminal intent because of its growing importance. This development was accompanied by the encouragement of court in expanding corporate criminal liability.

- Crime committed by corporation of intention-

The criminal liability of a corporation is supports by intentional crime. There was an urgent demand to create a law that will be applicable to all corporations. Thus, the demand of creation of strong corporate personality is acting like a vacuum for criminal law.

⁵ Legal Aspects of the Bhopal Gas Tragedy by Deepika Kumar legalservicesindia.com/article/373/Legal-Aspects-of-the-Bhopal-Gas-Tragedy.html 10 march 2020

- Corporate criminal liability and its expansion-

The gradual growth of corporate criminal liability from Western Europe to the United States has contributed in further advancement and influence of the matter to various parts of the globe. Since, the public prosecutors and their welfare workers were not privileged than that of the criminal aspect of law suit; it provides more importance to criminal liability over civil liability of corporations.

CHAPTERIZATION

CHAPTER 1

This chapter contains the presentational aspect of the research. The researcher has tried to evaluate the basis of the research by providing the overview of what this study contains and what questions are to be answered. The chapter also contains a futuristic appeal as to what are the nature and significance of study.

CHAPTER 2

In this chapter the researcher has tried to answer the question of what is a corporation and what is corporate liability? Also the researcher has tried to connect the main concept by briefly explaining corporate crime, types of liabilities and also the pre-requisites of corporate crimes in criminal liability of corporations.

CHAPTER 3

In this chapter the main concept of research is introduced as what is corporate criminal liability, also it explains the basic concept of corporate criminal liability by explaining in brief about its theoretical foundation, Jurisprudence and practice approach. The researcher has also tried to cover the various types of doctrines and theories of corporate criminal liability.

CHAPTER 4

This chapter covers the Indian perspective and development of corporate criminal liability in India. It has detailed information about the evolution, development and nature of corporate criminal liability in India. This chapter varies from the establishment of criminal liability in India to its futuristic scopes as well.

CHAPTER 5

In this chapter there are mentions of several sections and amendments from the past in the field of corporate criminality. The researcher has tried to confide all the important amendments from past till present which form the basics of corporate criminal liability. Also there is a brief comparative study about the Companies Act of 2013 and its certain provisions which make it the milestone act in civil filed.

CHAPTER 6

This chapter contains in depth study about the evolution and practice of corporate criminal liability in other countries of the world. It also compares about the system of criminal liability of other countries with that of India.

CHAPTER 7

This chapter contains information on punishment and sanctioning in corporate criminal liability. This chapter connects the punishment from past to presents and also me ton about the requirement of new forms of punishment in this field. This chapter has mentions of the constitutional limitations of corporate criminality in India.

CHAPTER 8

Conclusion and suggestions

In this chapter, the researcher has given a conclusion and through his observation throughout the research about corporate criminal liability in Companies Act 2013. Also the researcher has tried to give applicable suggestion for the best interest of judicial system of our country.

1.2 AIM AND OBJECTIVE

▪ **Aim**

The aim of this paper is to tell that Corporation is a separate legal entity, which is established through some process of registration and legislation. It is importance to impose some kind of accountability and control over these corporations.

The Criminal liability of the Corporation is decided on the basis of the extent to which it can be held responsible for the wrongs of its employees or agents. Imposition of punishment is only for the offence under criminal but deterrence is the principle applied for economic entities like corporations.

The Doctrine of Corporate Criminal Liability is one essential superior doctrine, imported into criminal law from tort law. According to this doctrine, a Corporation is liable and can be convicted for any of the unlawful acts of its agents, provided, agents act within the scope of their actual and apparent authority It defines the extent to which it can be made liable for its acts or omissions.

The expansion of corporate sector through globalization, information and technological development has led to the development of doctrine of Corporate Criminal Liability.

Corporate criminal liability under Companies Act, 2013 is perceived however the demonstration additionally perceives civil liabilities. Companies Act, 2013 which has supplanted the Companies Act, 1956 has expanded the corporate obligation of the directors.

The Act has additionally expanded the financial sanctions. The Companies Act, 2013 makes the directors criminally accused as well as the corporate officers liable under the idea of corporate criminal liability in India.

There are many other provision which tell us about the criminal liability of a corporation in under cats such as environment protection act and Indian penal code also includes a corporation in section 11 under the definition of person this shows that the legal system is trying to get into the nerves of corporation to find the culprit for prevailing fair justice to the citizens.

▪ **Objective**

The main objective of the researcher is to give explanation of the doctrine of corporate criminal liability under companies act 2013 the researcher have included various section of the act to examine and evaluate the criminal obligation of a corporation

In this paper researcher have tried to throw light on the various other sections of the statues in India which talks about the corporation's liability

Researcher have also tried to include various other doctrine which helps to understand better the doctrine of corporate criminal liability and other doctrines such as vicarious liability doctrine of blissfulness etc.

The centralized theme of the dissertation talks about the differentiation of liability of the corporation and liability of directors, manager and workers of a company. so that the legal system

could punish the original criminal mind behind the veil of the corporation.

The basic objective of making any law and doctrine is to prevent crime and maintain peace and harmony amongst the citizens. As we all know in today's senior where we have big corporation established in India is was very much essential to bringing such a doctrine to protect the investors from shams and losses so that the rights of the investors of the company can be protected easily The goal of the companies' law 2013 is to recognize the legitimate interest of their share holders and true and appropriate disclosers of the affairs of the company.

Before the corporate criminal liability came into force court only used to apply the criminal laws on the cases where there was a motive and malicious intention. Therefore corporate criminal liability is related to those offences which have been stated under the penal laws. The applicability of menas rea and criminal offences on a corporation are the greatest challenge yet it is a reliable approach required for corporation to be held accountable for their wrongdoings through the help of civil law in contemporary theories there is a legitimate approach towards the heinous acts committed by individual or a corporation.

1.3 RESEARCH PROBLEM

Corporate Crime is being expanding with the adjustment in the decade, the explanation for this colossal increment behind this is found in the quick creating nations and modern development in the creating nations. The quick development in industrialization and technology is the main cause for such offenses. In this research paper the researcher tries to find out the following perspectives relating to the principle of corporate criminal liability;

1. What are the outcomes of corporate criminal liability of a company in The Companies Act 2013?
2. Whether the corporation be punished under the penal laws in India despite of being an unnatural person?
3. What provisions is lead down under the environment laws for industrial disasters and environment damage due to corporate criminal liability? Can a corporation be held liable of such acts?
4. What reformative measures are required to be incorporated in the Companies Act 2013 to secure rights of investors and share holders in relation to corporate criminal liability?
5. What huge commitments could corporate criminality add to the previously existing administrative instrument of civil laws as approvals against the organizations?

6. Can a corporation be punished and get imprisonment as the sanction statement from the court in India? Would this doctrine be able to prove the means rea of a corporation for commencement of crime?
7. How is doctrine of lifting up of corporate veil is related to the doctrine of corporate criminal liability, will this principle help in determining the real culprit behind a corporations criminal wrongdoings?

1.4 NEED AND SCOPE OF RESEARCH

In this research paper the researcher tries to analyze the scope of the principle of corporate criminal liability which includes various parameters which are essential to understand this principle such as the definition of a corporation and its basic elements what are crime in which a corporation is liable what is the liability of the corporation in committing such crimes?

This paper also includes the various doctrine which tell us the dual model nature of the corporate criminal liability it also talks about the various prospective of the doctoring around the world it gives the concrete approach on the provisions regarding corporate criminal liability under The Companies Act 2013.

It have also tried to cover the approach of the criminal laws India and have tried to go to the ambit of can a corporation be given imprisonment in this paper researcher have tried to give enlightenment to the principle of raising up of corporate veil to determine whether the corporation liable or the worker or directors which are behind the veil of the corporation are to be held liable. Researcher has also tried to cover the other provision under the various statutes in India which give support for the doctrine of helping a corporation liable for them.

This examination concentrated on the rising patterns in various nations with regard to culpability and risk of the organizations. Required the investigation of the advancements those have occurred in various portions of the world.

Acknowledgment of various standards and their defenses, and furthermore the inadequacy which we are as yet looking in taking care of the corporate criminal obligation. In this way, this exploration is an endeavor to break down the Penal laws which exist in various nations about the criminal risk of a corporate and to consider what changes are should have been fused set up in each legitimate framework to manage the developing danger of the worldwide organizations in order to limit their activities and approaches which advance crimes through their arrangements,

techniques and activities.

1.5 RESEARCH METHODOLOGY

In this research paper the researcher has tried to collect the data from secondary and primary sources. The researcher has also tries to include all the relevant material from magazines books law generals commentaries made by different authors and jurists, websites and newspaper as well. The topics covered under this paper are analytical in nature as they have link and the principle of corporate criminality could be understood well.

This researcher has tried to determine and analyze the concept of corporate criminal liability throw various perspectives for better understanding.

There is applied and pure form of analytical research which also involves the origin and development of the corporate crime.

The work also includes various other theories which support this doctrine and does the comparison of the doctrine with other nations as well.

By making an analytical search the researcher have tried to figure out the various types of international system following the same principle and tried to figure out the amendments which could be done to make the regulation of criminal liability stronger and more effective and provide it more practical approach.

The Researcher has resorted to doctrinal research which is been carried out on a legal proposition by way of analyzing the existing statutory provisions and cases by applying the reasoning power. The sources of data are legal and higher and Appellate Court decisions.

The research also includes legal concepts and principles of all types – Cases, Statutes, and Rules. The research is based on interpreting and analyzing the text

1.6 SCOPE OF STUDY

- To research and differentiate between laws regarding corporate criminal liability.
- To identify the application and accession of criminal liability of multinational companies

under companies act

- To examine the international trade regarding joint multinational ventures relating to criminal liability.
- To discover the changing effects of corporate criminal liability due to economic reforms.
- To discover various crimes committed under the name of corporation under companies act.
- To examine the relation between quasi-judicial working of Indian legal system with that of multinational organizations.
- To justify whether the concept of singular personality is applicable in case natural person being guilty for committing offence.
- To evaluate the nature and punishment awarded imposed on organization or individual, if proven guilty under Companies Act 2013.

1.7 SIGNIFICANCE OF RESEARCH

Due to changing era and development of new business and trade policies, commonly known as liberalization, privatization and globalization, this has influenced the natural structure of corporate system drastically. These acts have resulted in multi-fold impact as well as induced certain amount of flexibility and rigidity. This makes it balancing.

As reflected in recent incidents that have taken place like Global Trust Bank scandals, there has been significant importance in the corporate criminal liability. The legislative system has become more alert towards these demands and to reduce the growing corporate crimes. Yet, these crimes have not reduced in number. This mentioned study has suggesting provision or norms that can help in reducing and also awarding punishment to criminals of corporate body as well as aid the jurists, judges, advocates and public in general.

1.8 HYPOTHESES

A corporate body cannot be held liable if it does not accountable and legitimate mens rea because it is an important aspect that contributes corporate crime. Due to changing conditions in economic and social aspects there is an urgent requirement of a systematic mechanism to deal with criminal liability of a corporation. According to companies act, the any organizational institution is free from criminal liability as they do not contribute to the term “natural person” and due to their fictional identity; they are unable to commit heinous crimes. These corporate crimes are

mentioned under legal provision in companies act and a corporation is only held liable for the actions of its members and employees rather than the body itself.

Any corporate body can commit crime which can be derived from any kind of motive like economic or moral, depending on certain circumstances. Following the years of growth and development there is still a question about how to hold a corporation liable if it is still considered as a fictional body, stated under as companies act? The area in which corporate crimes are subjected has increased from mere minor crime to that of some major as well. The derivation of criminal liability for corporations from actus Reus and mens rea has raised complex measures.

There lingers a requirement for defining actual corporate criminality and various other punishments which accompany them. Due to the growth of influence of these corporate institutions in human lives, there is a string need for criminal justice system of our country to come up with some strong and effective provision. It is challenging to the legal justice system to cope with the growing danger.

Due to new economic reforms and inclusion of wealthy MNCs there are difficulties to pose provisions in the field of corporate criminality. By the introduction of Companies Act, there are certain unique and specific norms which require development to come to term with corporate crimes or offences.

Since the impact of corporate criminal liability of a corporation is many-fold, inclusive of environment, business, human lives, market, etc., there is a direct challenge of danger in front of legal system to humanity and human lives are we serve to be the consumers and acceptors of services provided by these corporate bodies.

1.9 LITERATURE REVIEW

1.9.1 BOOKS REVIEW

Avtar Singh, company law (14th edition)

The researcher in this books discusses that any corporate body can sue another individual or corporation and similarly other cooperate body or individual can do it as well, the only term of condition is that they should represented by natural person. It is necessary that the natural person must file a complaint in the nape of the corporation to prove the liability of the corporation in case of committing offence.

Originally, for the conduction of business and making profit some individual carry out the processes of corporation. The consumers are the final benefited from the processing and internal working of a corporation but according to fiction of law, a corporate is its own personality and the owners are beneficiaries at the end. The owner, director, or manager of a corporation have the final authoritative control over the corporate property.

According to the author, even if the final benefit from functioning of corporation is in hands of consumers or its ownership members, other corporate bodies can file complaint on that organization and the other organization can file a complaint on that corporate body on its name. This proves a final check in cooperate law suit.

Amanda pinto Q.C. and Marin Evans courage criminal liability

According to the author of this particular book, there are ample of crimes which are committed by any corporate body. Any individual who supports, funds, supervises or even commits an offence is guilty of committing crime as second person and may be equally punished as the offender. In case the offender is a company, they are termed to be prosecuted under indirect infringements. This form of system ensures that a corporate body takes the liability of its offences as equally an individual takes the blame, if found guilty, for committing offence. The corporation cannot aid and fund the actions of its employees but it is made clear, that the offenders are familiar with facts but is unfamiliar with the offence itself. It is on both the cases, of company or individual, that the employees lack the responsibility.

The books states about the principle of contracts that tends to resolve the liability of employees of a corporation. But the author lacks in mentioning the punishment if the liability is proven and individual is considered guilty.

K.D. Gaur, Criminal Law: cases and materials

According to the author of this book, a corporation is a separate legal element included by law for conserving certain rights in perpetual continuation. Differently, a corporate body is a group of people, claimed by the common law processes and act as a singular unit, act as legal singular personality. However, the acts of a corporation acting as singular personality are different from that of an individual. A corporate body is different from its employees or owners and it can put power to its own rights. The author also states that there should be a difference between the natural and legal entity of a corporation to fix its criminal liability.

K.R.S Sampath, law of corporate governance

The main focus of author is based on vicarious liability under laws that concern the environment of a corporation. Underlined as environmental law, if a corporate body acts in unlawful manner it is to be held liable as this is termed as offence. The imposition of liability on a corporate body is important as it is important to punish them for committing heinous crime and only to held officers liable is not enough. By applying the principle of vicarious liability, the supervisor is held responsible for the actions of employees, during their term of employment and for the profit of the company. Such a process would be beneficial when it is difficult to hold any one individual liable or responsible for offence committed as under environmental law the offences committed cannot be charged only one person. This book discusses the expanded form of liability of directors and organization itself and also it discusses about the applicability of principle of vicarious liability on agents for their actions under the name of said corporation.

Celia Wells, corporation and criminal responsibility

This particular book argues about the foundation basis of corporate criminal liability. On one hand it is related to individual as mentioned that a corporation is a singular personality, while on the other hand it is differentiated between individual and group of individuals. A corporate body is completely different from individual because of its functions and processes. The shape of their culpability mirrors their actions. These arguments which state that corporate liability is related to individual liability is debated over time. The author of the book argues about different identities of individual as well as corporation and their liabilities are different from each other. The liabilities would be fixed on the authority and power given to people or employee on both individual side and as well as on company side.

1.9.2 JOURNALS

M.sivaraman, SEBI and corporate laws

The fact cannot be skipped that there were no distinction between punishments for corporation and natural individual for sever offences but they cannot be imprisoned because of their exception but due to involvement of legislative system and the court. It is preached that the courts have overreached in the Standard Chartered Bank case on configuring statutes, a discretion which is not a part of legislative processing. According to this article the author states that corporations should be punished in relation with the law which are exercised and criticize the interpretation of law, not acceptable by the legislature yet important prospect.

Gilbert Geis, American Journal of Criminal Law

Corporate criminal liability doctrine is result of development of growing exclusive information. As the growth of time and development in almost all field of human inclusion, there was the requirement of holistic development in field of corporation and as change in era has complemented the growth of crime in thud field as well. It was required that the corporate bodies should become more responsive and effective towards the needs of society.

Raton R Bharamgoudar, Cochin University Law Review

A corporation is a singular entity which is governed by group of individuals. It has its own legal personality which is distinct from its individual owners. It is possible to file case against the said corporation and also the corporation can file case against others, this is one of its discretionary powers, hold property and government securities, due to the negligence of legal system there is a gradual' growth of corporate crime in corporate criminal liability, although a corporation is termed as "person" under various circumstances. There has been slow progress in determining criminal liability of corporations under common law processes, according to Indian judicial system the guilty corporation as termed as criminals.

V.S. Khanna, Harvard Law Review

The legal system of the United States has issued several sanctions to impose criminal liability on a corporation such as probation, penalty of fine and ban of licensing. Not only this will impact on the economic aspect of a corporation but it will result in loss of its social reputation.

The US legal system punishes the wrong doers with respect to the severity of crime the crime and it also ensure that no innocent should be subjected to such prosecution.

Dr. K.R.Chandratre, Corporate Law Cases

According to Companies Act 1956 the offended individual are in default company itself. Thus, the officer in charge by default found guilty will be sentenced and prosecuted in the name of corporation. The act states that punishment in form of imprisonment or fine, in some cases imprisonment and in some cases fine is to be awarded. The punishment of fine is fixed and it is a meager amount which can be increased or decreased as will of legislature. The guilty officer can either be awarded the punishment of imprisonment or fine or both.

Angirasinghvi, International Journal of Criminal Justice sciences

When a corporate body commits crime it is imposed to face the consequences of its crimes in forms of punishment. But due to the slow pace development of Indian judicial system the corporate are imposed with the penalty of fine in these cases. Hence, there is an urgent requirement to add amendments and provision in our legal system for corporate crimes.

Abhishek Anand, Company Law Journal

A cooperation is held liable for its wrongdoing doing and criminal acts. If there is requirement of development in corporate criminal liability, it is required that the corporate bodies should take a hold of their actions. As a corporation, there are not only debates over its liability but also the subsidiaries that are related with it.

Dr. Satish Bhatia, Chartered Secretary

There is a potential growth in corporate business as it not only make money but provides good and services, employment, and also promotes growth in industrial sector adding it to provide a social base. This has a great impact on the socio-economic aspect of the society and sector as well. This corporate body comes with their advantages and disadvantages altogether. They degrade environment and also provide service to consumer at the same time.

N.K. Sharma, Chartered Secretary

According to the author, when's crime is committed by any natural person, they have malicious personal intent behind their action. Since, we are discussing about the criminalliability of a corporation it is practical impossible to figure out the intent of the corporate body.

The author discusses about mens rea, guilty mind, and also argues about how mens rea formulates about being main reason for the acts of a corporation.

1.9.3ARTICLE

Saurav Kumar, Corporate Criminal Liability, White Collar Crime

A corporate body is considered to be state legal entity and has its own identity and personality. When such a corporate body commits crime, it is generally treated as a criminal offence. Any corporation is said to commit crime under actus reusand mens rea, hence they are called white collar crime. The actions of a corporation accomplish with Sevres consequences which not only affect it economically but also socially.

The author manages to explain the development of corporate liability and evolution. Also there are several doctrines which accompany the main idea of criminal liability of a corporation. The concept of corporate criminal liability is based on two models namely the organizational model and the derivative model.

The concept has grown to be of great importance not only in major countries like the U.S. but also in countries like France and India. The concept of corporate criminal liability is closely related with the concept of environmental protection act and other commissions as well because a corporate body compiles of several other sectors as well.

A corporation can be prosecuted to various crimes committed by the corporation or by its members or employees in the name of corporation which are clearly mentioned by the legislative system and they are also punished on the basis of severity of the offence.

Bharat vasani and Amey Pathak, India: Corporate Criminal Liability

Any corporation under criminal liability is prosecuted while it encompasses two main players of this prosecution: actus reus (guilty act) and mens rea (guilty mind). The corporation is awarded with the punishment for committing offence either with imprisonment or with fine or with fine, which depends upon the officers or severity of crime.

A member or employee or the corporation are held liable for the actions committed under the name of corporation and if found guilty they are punished for their offences. According to several cases that are filed under the name of corporation, the director of the corporate body is held liable for the actions of its employees or those who work under him/her. The culpability of the actions of individual working of corporations is decided by the legislative system and the important fact is that no innocent employee should be punished.

According to the writer, there should be sufficient flexibility of interpretation of provisions by Supreme Court as to justify the actions of individual or corporation and also to avoid the unfair trial. There should enough accountability to prove the criminal liability of a corporation and prove its actions guilty if found, says the author.

Legistify, Corporate Criminal Liability

A corporation is a typical organizational body formed on the guidelines laid down by central and state government, and works for the sole purpose of making profit and providing services to the

consumers. Any corporate body stands with enough power to influence human life and industrial sector. These corporate bodies are often backed up by large organizations or MNCs.

Through the passage of time the corporation has grown from a mere fictional character into a fully fledged singled personality which can commit heinous crime for its malicious intent. A corporation is owned by different individual but it stands to claim its rights which are different from its managers, directors, etc.

According to the author, the corporate should be held liable for the actions of its agents, managers, directors, etc. because these actions have raised a strange issue of dignity of the victim. The offences committed by a corporation, which are committed under influence of mens rea (guilty mind), should be recognized by the legal system and should be punished.

The author states that the act of corporation has its own impact on different areas which cause a certain difficulty to human lives. All those who support and aid the corporation and its heinous acts are to be punished and held responsible for their acts.

Law teacher, Corporate Liability in Criminal Law

According to the author a corporation is a fictional institution claiming its identity and created by the central and state government respectively. It is a single institution governed by individual whose rights different from corporation. A corporate body requires individuals for its smooth functioning like owner, agent, manager, director, etc.

A crime is a wrong doing committed by an individual under any sort of influence. The conduction of wrong doing committed by individual stand for criminal offence and any guilty person is prosecuted for committing offence; the legal system of government defines various activities under the term crime and also suggests punishments for these crimes.

According to author, a corporation is termed as “person” and hence, just like a guilty individual, a corporation should be held criminally liable for its acts. These criminal activities harm the dignity of the victim and also influence the society in different ways. The corporate body is supported and opposed by different views throughout its development and with growing time and changing era, there is a more urgent need to add amendments and provisions in already existing doctrines for liability of a corporation.

ABSTRACT

A company is an institution with its own personality but lay down by the guidelines formed by state and central government. It is constituted by a force of natural individuals who are a part of it in the form of owner, director, manager, agent and employees.

A company is a different lawful structure which is various from its proprietors. The components of the organization inform us concerning its lawful character which is particular and has been distinguished by various laws. The restricted commitment include is an all around acknowledged component of a company. A partnership can be better clarified as a human structure which can be accepted as, the psyche and the operational center point which guides what should be finished. The chiefs, executives and specialists are the handling units of the corporate thus; the obligation of administrator executive operator is relative to the Liability of an enterprise.

A corporate wrongdoing is the showing of its faculty and need not to be endorsed or approved its position it is satisfactory if the authorities were rehearsing standard force in light of a legitimate concern for company accordingly to a liberal the wrongdoing of an enterprise. criminal equity to singular wrongdoing is speedy and powerful it is absent or gentle to corporate wrongdoing simultaneously incognizant cultural additionally will in general decrease the general furthest reaches of corporate wrongdoing in this way corporate wrongdoing has increased new significance which is required to be comprehended and risen to in the event that we are to control fight this creating kind of guiltiness.

Criminal Liability is associated only those exhibits where there is encroachment of Criminal Law for instance to state there can't be chance without a criminal law which blocks certain showings or avoidances.' Basically, by then, a corporate regular commitment framework that took after standard criminal hazard for individuals blamed for a comparable terrible conduct would allow the organization qua organization to purchase rejection from moral judgment. Obligation is regardless either well mannered or criminal and in the second spot either restorative or corrective. All criminal hazard is reformatory while the normal commitment is a portion of the time remedial and every so often helpful.

Corporate criminal risk can be characterized as any demonstration or exclusion, carried out by the worker, or the relationship of representatives, who have the normal goal, or make benefits for the partnership, which are illegal by law with vindictive aim. The danger of an organization is

gotten from the exercises of an individual who has been used or connected with the affiliation and presents an uncalled for demonstration. The statute treats companies unmistakable and separate from the individuals who speak to it. Also, these enterprises have ended up being more perilous crooks than the people. The criminal obligation of enterprise under organizations' demonstration 2013 has under gone different hypothetical methodologies coming about that a company must be blameworthy or at risk because of the activities or wrong doing done by the specialist's chief executive and so on under mens rea or their own noxious aim.

A liberal and raised psyche is perceived by nothing more undeniably than well known degree of intrigue, nor is that intrigue never-endingly charmingly or advantageously used, than in examining the laws and customs of outside nation. The regular view was that a venture couldn't be reprehensible of a bad behavior, since criminal accuse required objective and an organization not having a mind could shape no point, development, an association had no body that could be confined. Corporate criminal obligation was initially limited to wrongdoings of nonfeasance where the inability to fulfill an obligation required or doled out by law was neglected or not agreed to.

Corporate guiltiness is required to be comprehended in alternate points of view of criminological hypotheses than those which are pertinent to the common people. Legitimized by thoughts of individual good blame, criminal standards have been made a decision about inapplicable to anecdotal people who think and act through human beings. In the ongoing year the idea of exacting obligation has been raised a ton the same number of significant criminal wrongs have been incorporated under this guideline which augments its extension. This idea is of the cutting edge enactment approach yet not the piece of customary ethics.

CHAPTER-2: CRIME AND CORPORATION

2.1 Introduction

In this chapter researcher has tried give all the relatable concepts which are essential for understanding the principle of corporate criminal liability.

Firstly there is the definition of what are corporations all about what are the basic elements of a corporation, through this entire information researcher have tried to explain the nature of legal body to get the better knowledge on the grass root level. A corporation is a separate legal structure which is diverse from its owners. The elements of the corporation tells us about its legal character which is distinctive and has been identified by different laws. The limited obligation feature is a universally accepted feature of a corporation. The corporate form acts as a mediator between a firm and its creditors limiting the claims against assets owned by both shareholders. The board of the corporation is said to be the central structure where all the power of making decisions lies, which is further divided into four parts.

Further in this chapter the researcher have tries to explain what actually is a corporate crime and what are its types as to understand In what circumstances the a corporation should be punished what are the areas where a corporation could be convicted for its wrongdoings. There are four categories of crime under which a corporation could be convicted which are been also stated under this chapter to get the in depth knowledge about the corporate crime.

For better understanding of the principle of corporate criminal liability the researcher have tried to first clear the concept of liability, there two types of liabilities which are named as the civil liability and criminal liability. Under this the researcher have tried to explain the different prospective as to understand the principle of criminal liability of a corporation better.

At the end of this chapter there is a concept of mens rea which is an essential element of the criminal liability and a very much important aspect the principle of the corporate criminal liability. As this is grey area under which it is difficult for a person to decide the mens rea of the corporation.

Gone are the days when sole ownership and association were the most ideal type of the business where in the people used to contribute and acquire benefits out of the business for themselves. In spite of the fact that these type of organizations are still existed be that as it may, are not the most

well-known type of organizations today as now the flavor of the customers has changed, innovation has been propelled complex, and so forth which requires reserves, colossal assets and in view of association of barely any people in sole ownership are association. The need of enormous speculation, creation everywhere scale, and so on were most certainly not conceivable. So to satisfy these requirements organization type of business appeared, as likewise with the time request moved from conventional merchandise to the capital products innovative items which required colossal measure of work and capital gracefully of which were not the workable for a bunch of people. Different types of affiliation were referred to medieval law and as respects some of them the idea of joining was early perceived. From the start nonetheless, fuse appears to have been utilized distinctly regarding religious and open bodies, for example, section religious communities and precincts, which had corporate character presented upon them by a contract from the Crown or were esteemed by remedy to have gotten such award. In the business circle the central medieval affiliations were the organizations of dealers, associations which had hardly any similarities to current organizations yet compared generally to our exchange assurance relationship, with the stately and shared association of which it can see relics in the cutting edge Freemasons and Livery organizations. A large number of these societies at the appointed time got contract from the Crown, primarily on the grounds that that was the main successful strategy for acquiring for their individuals a syndication of a specific products or part of exchange. In enterprise as a helpful strategy for recognizing the rights and liabilities of the affiliation structure of those of its individuals was not really required since every part exchanged all alone account subject just to submission to the guideline of the society. It was not until second 50% of the seventeenth century that the separating between unincorporated associations and fused organizations was immovably built up. Many business entities were initially framed as association by understanding under seal, accommodating division of undertaking into shares which were transferable by the first bands together with more prominent or less opportunity as indicated by the terms of the association understanding. As of now there was not confine to the quantity of accomplices, yet in actuality they were commonly little in number and extra capital was raised by levitation or approaches the current individuals instead of by solicitations to the open.

2.2What is a corporation?

A corporation is an unnatural person where the share holders invest their capital and the investors earns the profits from such capital. The corporation also has the liability to protect such share holders from the financial liability which occurs from the corporation. The ideology behind the

investment was that the investors can share their assets in the company and make it bigger. A corporation acts as the shield or as a veil to its investors. The corporation is a legal person who enjoys all the legal rights and duties which an individual have in this country. It is treated as separate person from its workers owner's directors and share holders. An enterprise is a deliberation. A corporation is a structural unit which has its apex in form somebody who serves the deliberate requirements but is also the sole authoritative individual who establishes and accomplishes the goals of an association.

A corporation can be better explained as a human structure which can be assumed as, the mind and the operational hub which directs what needs to be done, the hands of an organization hold upon the instruments and works according to the direction given by the center. Some workers of the corporation cannot be called more than hands because of their work, they are insufficient to represent brains and will of an origination.

The managers, directors and agents are the processing units of the corporate hence; the liability of manager director agent is proportional to the Liability of a corporation which in turn makes both the manager, directors and the corporation equally accountable and responsible for their actions.

A corporation can be characterized under five headings which are as follows

- A) Legal character
- B) Limited obligation
- C) Transferable shares
- D) Board structure with central management
- E) Contribution of capital by share holders
- F) Perpetual succession
- G) Separate property
- H) Common seal
- D) Capacity to sue and be sued
- J) Contractual rights
- K) Voluntary association for profits
- L) Termination of existence

2.2.1 Legal character

A corporation has its own separate legal identity distinguished from that of its managers or owner in particular. This enables the corporation to incorporate with both internal and external entities as an absolute personality. A corporation can be labeled under as personal legal character because of its establishment as one and hence, it allows internal entities like managers, directors and agents to accomplish the sole goal of the corporation, though their actions can be compiled as one but their different actions makes them separate legal personalities.

The assets owned by the company or corporations and that owned by the manager or directors work as separatist and maintain a command and control relation in accordance with situation and requirement, these assets come under the authority of the firm, hence they cannot be conceived under the personal use of the director manager or owner. Therefore, the entities of a corporation and that of the individual come under their personal veil and cannot be compared under given circumstances.

In the lawful literature the term separate legal personality of an organization can be understood as advantageous heuristic equation of describing corporate structure which appreciate the advantage of three fundamental rule types which can be classified as-

1. Capable of suing and being sued in its own name
2. Entering into contract and owning its own property
3. Capable for delegating authority of agent

These three fundamental rules together form a convenient bundle which helps in accommodation of a corporation as a separate unity from that of its owner or manager in legal form. This separatist entity has also made a corporation legally liable for committing crime in any form under model of common law hence, deliberately establishing the corporation as a single/ separatist unit altogether. Transferable share can be possession which is principal quality of the business enterprise that perceives the organization from the association. Various other standard lawful component transferability which permits the firm to lead business with no interference,

2.2.2 Limited obligation

The evolution of limited liability in relation with corporate form has increased the estimation of contracts and finances of a corporation. The corporate form acts as a mediator between a firm and its creditors limiting the claims against assets owned by both shareholders. This feature of limited liability has universal applicability.

As a corporation has its own legal identity there is a strict requirement of entity shielding. Entity shielding benefits firm from the leaders of company creditor while constrained risk secures the advantages of the company creditor from the companies' leaders. This has increased the value both types of assets and is comparatively advantageous in monitoring and evaluating these assets but has reduced the cost of capital to the firm and its owner. This senior is called as assets partitioning.

A distinguishing feature of assets partitioning is that it allows firm to segregate different ventures of merchandising for the usage of gaining credits. By independently consolidating unmistakable endeavors or lines of business, the advantages related with each venture can helpfully be promised as security just to the leasers who manage cap venture. Those loan bosses are regularly very much situated to survey and monitor the estimation of those advantages, however may have little capacity to screen the parent association's different endeavors.

Asset portioning likewise allows adaptability in the allocation of risk and return between value holders and obligation holders greatly simplifying the administration of both business and individual bankruptcy by secluding estimation of the corporation from the individual financial affair of firm's owner facilitated by companies' offers which forms the third quality or characteristic of corporate form.

Finally asset partitioning and limited liability facilitate a progressively inconspicuous delegated management which forms the fourth characteristics of corporate form. As a result limited liability enrolls creditors as monitors of association's administrators, which share possession of corporation with investors. The forth mentioned characteristics of limited liability are compiling reasons for the creditors of a corporation who claim the possession of the corporation throw a contract such as third parties.

2.2.3 Transferable shares

Transferable share in ownership are fundamental trait of the business corporation that recognizes the company from the association and various other standard form legal element transferability allows the firm to conduct business without any interruption as the identity of owner changes throw partnerships corporative mutual this improves the liquidity of investor's interest and makes it easier for them to contract and maintain investment portfolios.

Fully transferable share do not necessarily mean uninhibitedly trader able offers, even if it is transferable they may not be trade able without limitation out in the open market but among current share holders free tradability increases the liquidity of share holding and the capacity of investor to diversify their investment. It likewise gives the firm maximal adaptability in increasing capital hence all jurisdiction provide free tradability for one class of corporation thus all jurisdiction provide system to confine transferability, sometimes this is done by separate statute while other simply accommodate restriction.

Transferability of share is firmly associated with legal personality and limited liability missing either of these rules the reliability of a firm as a whole could be changed perhaps fundamentally as the personality of share holder is changed.

Therefore the value of share would be hard for potential buyers to judge. More importantly, a seller of share could force negative or positive external forces on his adjacent investors on the basis of wealth.

Therefore it is not surprising that all the three characteristics-

- Legal personality
- Legal obligation
- Transferable share,

tends to go together highlighting the trended corporate structure, this in contrast to conventional general association which lacks these features.

2.2.4 Board structure with central management

Standard authoritative form of enterprise association differs in their allotment of control rights, including the power to bind the firm to contract. The passion to practice the power conceded to the firm by its contract the utilization of assets owned by its firm. The general organization form grant power to greater part to manage the firm in the common course of business for more fundamental decisions. Both part of this distribution are workable for enterprises with various evolving owners therefore corporate law commonly vest principle authority over corporate under takings in a board of directors (exclusively or primarily recognized by firm share holders).

Business organization are recognized by administrative structure in which all the fundamental decisions are appointed to a top managerial staff that has four fundamental features –

1. Separate operational managers of the corporation
2. Elected board
3. Distinctiveness of the board
4. Multiple members

❖ **Separate operational managers of the corporation**

Separation between board and operational managers serves as a useful check on the quality of decision making for the corporation, the nature of this separation is based on the board which can be either one or two tiers.

Regardless of this decentralization of power between director and officer all the corporate decisions do not require the approval of either of the power authority and can be made by firms hired officers. This formal distinction facilitates separation on two basis-

- Initiation and execution of business decision
- Monitoring and ratification of business decision

❖ **Elected board**

The leading body of a corporation is elected by shareholder. The obvious utility of this method is to assure that the board stays receptive to the interest of firm's owner, who bears the cost and advantages of the company's choices and whose interest unlike those of other corporate bodies are not strongly ensured by contract.

❖ **Distinctiveness of board**

In spite of the fact that the board is chosen by shareholders the board is distinct from them this separation conserves on the expenses of decision making by avoiding the need for an ultimate form. Consent from both the authorities may or may not be required regarding the fundamental decision to the firm. It additionally allows board to serve as instruments for ensuring the interest of minority shareholders

❖ **Multiple members**

The board usually has the multiple members this encourages mutual monitoring and checks quirky decision making however there is exception. Numerous partnerships permit business organizers to dispense with a collective board in favor of a single general director.

2.2.5 Perpetual succession

A company cannot die as it is an unnatural person as we all know. There are members who die but not the name of the company. A company cannot shut down, it can only be liquidated. Memorandum of association decides the term of the company. Perpetual succession means a company can enjoy its own property as long as it is being shut down by law. As written in memorandum of association the company can have a perpetual session or it can also be for a specific work or for a specific time. It can be better understood that the membership of the company is being changed according to the time without breaking continuity. This can happen as when one share holder may transfer his shares or after his death it may be passed on to legal representative of the person, or he claims to be the member under the section of companies act.

According to Professor L.C.B Gower says- members of the company can come and go but the company exists forever. During war all the members of a company were killed in the general meeting by a bomb attack but the company.

Hence perpetual session can be understood as the capacity of corporation to keep up its reality by maintaining the chain of succession by having new members who take the position of the old members of a corporation.

2.2.6 Separate property

A corporation has a right to enjoy its own property which is distinct from the owners property which means a company can have a property on its own name and can buy a property at its own name and can dispose the property when and where ever it wants. A corporation can be considered a real person in which all the property is vested. In the case of *R.F. Perumal v.HJohan Deavin*⁶ the Madras high court held that a property which is on the name of the company cannot be claimed by any member or owner of the company during its existence or after winding up of the company. *Mrs Bacha F. Guzdar v. The Commissioner of Income Tax*⁷

In this case it was said that the income generated by the agricultural way has tax exemption of 60 % the same income received by the share holder in the way of dividend cannot be said to have an agricultural income for evasion of tax as the company was a tea company it was said to be partly agricultural. The Supreme Court also observed that some of the people wrongly believe that the

⁶ R.F. Perumal v. H. Johan Deavin, AIR 1960 Mad 43.

⁷ 1 Mrs Bacha F. Guzdar v. The Commissioner of Income Tax, AIR 1955 SC 74.

owner of the company has all under his name but it is not in that way the owner of a corporation or its property is just a part it he only has some certain rights given by law for eg. Can attend the vote meeting of investors the court never see a shareholder with a company in the eyes of law a corporation is a separate legal personality.

2.2.7 Common seal

Common seal is called as the signature of a company. The corporations name is engraved its common seal. But it does not means a rubber stamp, when an organization is formed its becomes legal personality with perpetual succession, although it does not have any physical existence it works by its members and any contract done by its member in the scope of employment and for the corporation should be signed under the common deal of the company. A document of a corporation without its common seal is not admissible in court and is not considered as a authentic document. The person who holds the common seal of the company need to be very carefully about using it, as it should only be used for the company matters and should be under the legal rules as used in a wrongful manner or used under fraudulent conduct can cause legal actions.

2.2.8 Capacity to file case and could be sued

A corporation is a legal entity and according to law a company has a right to sued and to be sued by its own name, in which to sue means a company can file a case against any person or any institution in the court of law and all the proceeding will be done under its name, the company right to file a case arises when the harm is caused to the company itself but not the members working in the company. could be sued means any person or institution can file a case under any organization if the act is accountable under any legal liability, and when a company causes harm or damage to some other person then the legal allegation arises on company.

A corporation has right to sue its own members of the company as it is separate from its members the members can be sued if they committee such actions as follows-

- ✓ A right to claim damages from the defamatory action being published which causes loss of business.
- ✓ Any videos released which is related to the struggles to the management by any member but the material in it should be defamatory⁸.

⁸ TVS Employees Federation v. TVS and Sons Ltd, (1996) 87 Com Cases 3

- ✓ The corporation cannot be held accountable when the wrong is committed by the higher authority or officers.⁹

2.2.9 Contractual rights

Corporation being a different legal person from the people working for it can enter into the contract by its own name for business. Investors on the other hand have no right to enforce a contract which made by a corporation on its own name investors are not party in contract and cannot enjoy any benefits related to such contract, correspondingly a shareholder or investor has no liability to be sued on contract made by the company. There is always been a distinction between company and its members because a company is a separate body who confines to the rule of privity which says that the contractual obligation and rights are given to the person who are parties of the contract. Therefore it saturates the entire of law of contract.

An individual from organization can't sue in regard of torts submitted against the organization, nor would he be able to be sued for torts submitted by the company. Along these lines, the organization as lawful individual can make a move to authorize its legitimate rights or be sued for break of its lawful obligations. Its privileges and obligations are unmistakable from those of its constituent individuals.

2.2.10 Voluntary association for profits

An organization is deliberate relationship for benefits. It is framed for the achievement of some open objectives and at all benefit is picked up is partitioned among its investor or reestablished for the future development of the organization.

2.2.11 Termination of existence

A company being an unnatural person cannot die like a human being its life is carried according to the effects of law. The company can be understood dead when the liquidation process is complete. The existence of company is said to be terminated by winding up. However it can sustain from liquidation by amalgamation, re construction etc.

2.3 THEORIES OF LEGAL PERSONALITY

Following are the theories lead down by Professor Wolff who have observed that nature of a legal

⁹ Latil Surajmal Kanodia v. Office Tiger Data Base Systems India (P) Ltd, (2006) 129 Comp Cas, 192, Mad.

person is different than a natural person;-

1. Purpose theory
2. Theory of enterprise entity
3. Bracket theory
4. Hohfeld theory
5. Kelsens theory
6. Fiction theory
7. Concession theory
8. Realist theory

2.3.1 Purpose theory

This theory was invented by English jurist Barker from England. He says that in the term person belongs to only human beings there is no such term as juristic person as they should be treated different from other human beings an organization is just a property without any subject which are created for some or the other use of humans

This theory is criticized as it is illogical because it is just a assumption that human beings have duties towards subject less property that means corporation without having any correlative case.

2.3.2 Theory of corporate personality

This theory is dependent upon the truth of hidden enterprise, according to law, the assets exercises and duties of a company as a component of legal entity. In which approval by law is not given formally and presence is dictated by fundamental endeavors. This hypothesis clarifies the disposition of law towards the unincorporated affiliations too.

2.3.3 Bracket theory

Under this theory the individuals from a enterprise and the recipients of establishment are the main 'people', Juristic Person is nevertheless an image to help in effectuating the reason for gathering, it adds up to putting a bracket around the individuals so as to regard them as unit. This hypothesis additionally accepts that individual is kept to person as it is. This theory is propounded by the Ihering.

2.3.4 Hohfeld's Theory

Juristic individual is formation of discretionary standards of system. He centered that lone human creatures have claims, obligations, forces and liabilities. It is people who are at last dependable.

The subjective standards may limit their exercises. The corporate individual is only a procedural structure which is utilized to work in increasingly helpful manner in instance of mass jural relationship of enormous number of people. This hypothesis is unadulterated logical and dependent on a definitive real factors. Distinction between human beings judicial person is made by Hohfeld.

2.3.5 Kelsons theory

The law is worried about just people. Kelson has dismissed meaning of individual as an element which has cases and obligations. With respect to as company is concerned, he pointed that direct of individual is the topic of cases and obligations. An organization is unmistakable from one of its individuals when his lead is administered not just by cases and obligations, yet in addition by extraordinary arrangement of rules which directs his activities in connection to different individuals from the organization. This hypothesis is additionally diagnostic one. kelson has reject the concept of that juristic person and human being are different to each other.

2.3.6 Fiction theory

The juristic people are treated as in the event that they are regular people. This hypothesis surmises that lone people are appropriately called 'people'. The fiction hypothesis attests that some gathering of people and establishments are viewed as though they are people. Anyway hypothesis neglects to clarify why they are treated as people. This hypothesis is entirely adaptable. Salmond and savingy have made this conception.

Juristic character is concession given by the law of state. This hypothesis has been utilized for the political reason to reinforce the state and to smother self-governing bodies inside it. It is matter of circumspection for the state, this theory further yields that lawful character of a corporation can be denied by the state. This theory is same as fiction theory.

Juristic people appreciate a genuine presence as gathering. A gathering patterns to turn into a unit and to work as such. This hypothesis contradicts the concession hypothesis and treat gathering of people as individual with no concession from the state. This concept was Gierke and Maitland invented this theory.

2.4 CORPORATE CRIME

Corporate crime means violation submitted either by business entity or corporation or by people that might be identified with a corporation or other business organization. A corporate crime is the demonstration of its personnel and need not to be approved or ratified its authority it is adequate if the officials were practicing customary power in the interest of corporation thus to a generous the crime of a corporation is entwined with the demonstration of its authority such criminal acts are reflective of the character of manager or owner of corporation thus it would be reasonable to use a corporate crime impeach a corporate authority's validity if the official is associated with crime.

Corporate crimes are viewed as general assortments of white collar crime. corporate crimes are known concerning word related violation the differentiation between corporate crime and occupational crime is that one alludes to circumstances under which corporate manager carry out criminal activity while other is related to individual employees working against company it self Dealing with corporate crime raises the question of crime committed by a corporation in reality. In such a situation considerable damage caused by the activity of enterprises is considered more costmary crime committed by individual.

According to the criminological point of view the crime conducted in a corporation are al together different committed by individual various theories have developed by placing their sole focus on hierarchical structure rather than individual.

Another note worthy aspect of corporate violation is that while the reaction of the criminal justice to individual crime is prompt and forceful it is missing or mild to corporate crime at the same time unmindful societal also tends to reduce the general limit of corporate crime therefore corporate crime has gained new meaning which is required to be understood and tented to if we are to control battle this developing type of criminality. These actions of corporation have been put through existing applicable theory which analyzes this behavior as the new force of operation.

2.4.1 Common features of corporate crime

there is wide scope of a corporate crime which in any case contain certain highlights corporate crime by enlarge committed within mysterious structure of action and communication and casting frame work of common legal activity.

They are accordingly difficult to detect and portrayed by their low visibility. There are four features of corporate crime

- White collar crime and corporate crime
- Corporate crime and occupational crime
- State corporate crime
- Corporate crime and organized crime

2.4.1.1 White collar crime

Edwin Sutherland presented the term white collar crime. For most of the part Sutherland brought focus to the field of criminal acts committed by people in privilege of upper class of society in relation to conviction of criminal demonstration by people belonging to lower society science white collar crimes are expert and exclusive to the corporate crime they are internally connected. The corporate crime manages as whole and is involved in the high position in a corporation these are similar but white collar crime benefits individual rather than corporation.

To draw qualification between a corporate crime and white color crime it is said that white collar are socially harmful and accountable act committed by people or group of people who involve in decision making situation in corporation and are complied for their own benefit against the business and corporation . On the other hand they cause monitory physical or ecological harm committed by organization business against their workers, the overall population, the environment and others.

2.4.1.2 Corporate crime and occupational crime

Individuals or group of individual in regard with their jobs commit word related or occasional crime. Modals are theft tax avoidance extortion by representative for their own advantage corporate crimes are submitted by aggregate of watchful individual in interest of corporation.

As such people or group carry out occupational or firs class violation of their own motivation then again improvement rather the for a enhancement of organization as a whole corporate crime is fairly dedicated at hire level of partnership for example managerial level where as occupational crime include workers at all classes and levels.

In corporate crime organizations and people might be unlawful entertainers and could be subjected for their criminality occupational crime can be marked as crime against association all

things considered corporation become victim of crime when they endure a loss as a consequence of offence committed by any person including representatives and employees.

Hence we can conclude that white collar crime consist of two terms corporate crime and occupational crime.

2.4.1.3 State corporate crime

State corporate crime is an idea which refers to crime which are submitted in a relationship with policies of the state and practices of commercial corporation state corporate crime is recognized for corporate crime which refers to abnormality inside the setting of enterprise it is likewise unique from the political crime which is aimed at the state it is additionally not 'sate organized crime' which is crime carried out by government organization.

The foundational of law and business is given by legislature of each state in which the corporation desire to exchange and there is inevitable link between political and business interest. All state depend on business to provide monitory base with administrative policies without the support of either of these organization won't be profitable and will not be ready to offer economic support to the state.

In the above mentioned condition there would be trouble to implement local laws against pollution bell being safety imposing business etc this methodology of the state may give room to organized violation and different genuine offence

2.4.1.4 Corporate crime and organized crime

The organized crime, for the most part, include unlawful activates such as hijacking or cross bordered operation like trafficking while corporate crime involve clean employment like control of record miss appropriation of fund and assets tax avoidance etc.

The purpose of similarity can be necessity of some degree of financial social or political impact for successful activity both sort of crime are flourishing for cash it is viewed that corporation are better composed, weather and get advantage from corruption corporations are better at controlling politicians and press. These offences are done with planning and further more can have worldwide fact which poses trouble in recognition and prosecutions.

Goroupa underlined the difference between corporate crime and organized crime by saying that-

- Organized crime is illicit association with illegal status. Criminal market is there essential market and genius markets are secondary markets
- Corporate crime is submitted by legitimate entities with legal status, geniun market is essential and criminal is there secondary market

Corporate crime can be referred as the lead of a company or workers acting on behalf of an organization which is recommended or culpable in law in this manner corporate crimes are submitted for corporate addition or to carry harm to other individual or association such crimes are submitted in a quite situation these are also additionally viewed to be general assortment of white collar crime.

However the criminal conduct in corporate crime is different from conventional crime submitted by individual corporate crime are socially harm full or blameworthy which cause financial physical or natural damage or damage to overall population.

In the corporate authority there is guiltiness of the corporation and also obligation of responsible person managers etc which can be vicariously liable law in these recurrent needs to be more obviously characterized.

It is accepted that corporate criminal behavior is likewise a result of learning process from with working of corporation this conduct is also additionally attributed to major social and moral development in a interest to meet targets or objectives there could be adoption unlawful or illegal means. Lack of satisfactory control could promote advance criminal conduct.

Additionally there are factors like socio economic development financial advancement hierarchical structure etc which are complimented to corporate criminal behavior.

2.5 LIFTING UP OF CORPORATE VEIL

“False face must hide what the false heart doth know.” – William Shakespeare

The most central Principle of Company Law is corporate character. It is typical and essential rule that makes an organization an element that is totally different from its investors, advertisers, executives and so on. A corporation is a distinct legal entity which is different from its share holder members and employees, which generated the theory of corporate veil. This theory was

developed as to give efficient business and resources. The main encouragement to form a corporation or organization or a company is to limit the obligation which is provided to the investors. Due to this limited liability the share holder is only accountable for what he or she has given as share to a corporation

‘Lifting the corporate veil’ means the law seeks behind the sheet of the corporation to reveal the people or group of person besides an organization. The court lifts this veil from the corporation when corporations name have been used wrongfully for the commencement of fraudulent, improper action or where public interest is a priority, or where the only purpose was tax evasion. To have a clear view on this theory of corporate veil we need to first understand the corporate character of an entity. Before there was no criminal liability imposed on a corporation as it was said that a corporation cannot have mens rea for committing a crime but as after wards the court have all different approach as can be seen by under different judgment.

In the landmark case of *Salomon v Salomon and co, ltd*¹⁰ the principle that a corporation is as separate legal entity is was discovered. It was held that a company is separate legal person who is different and distinct from its workers shareholder directors etc. in this case Saloman was a leather merchant. Then apparently he started his new company which he incorporate himself Saloman &co.ltd and had six share of the company. He kept debentures worth 10 thousand pounds. The other share hiders were his wife and children. After his business liquidated he claimed the debentures as secured creditor. The liquidator said that Saloman cannot rank creditor the ground that both companies and Mr. Saloman were same, the company carried business on Salomans behalf.

The House of Lords held that the debt of a company is not the debt of Mr Saloman because they are not different in the eyes of law and the company is artificial person created by Mr Saloman it must be dealt with like some other free individual with its own privileges and liabilities proper to itself.

Tata Engineering Locomotive Co. Ltd v. State of Bihar &Ors¹¹

Partnership in law is proportional to a characteristic individual having its very own lawful substance, which is totally independent from its investors. The organization has its own name and

¹⁰ salomon v salomon and co, ltd [1897] AC 22

¹¹ Tata Engineering Locomotive Co. Ltd v. State of Bihar &Ors 1965 AIR 40 SCR(6) 885

seal, separate resources from its individuals. The obligation of its individuals reach out to just the offer capital contributed by them, correspondingly, the leaders of the individuals would likewise not have no authority over the benefits of the organization. Gower has summed up the position, and as indicated by him, the courts have just understood the resolutions as "airing out the corporate shell", when constrained to do as such by the away from of the rule. Along these lines, in India it very well may be seen that at present, that the courts are to some degree mindful and prudent in airing out the shroud.

2.5.1 History of doctrine of corporate veil

This theory was developed in the year 1897 in the judgment of Salomon case. Since then different approaches have been followed, in 1897 to 1966 it was the period of early experimentation these different approaches were tried keeping in the view the judgment of Salomon's case.

The Doctrine set down for Salomon's situation must be observed cautiously. It has regularly should cast a veil over the character of a constrained organization through which the courts can't see, yet that isn't accurate. The courts can, and regularly do, pull off the cover.

From year 1989 to present date the Doctrine of corporate veil lifting started to be disfavored by the courts, the case in which this doctrine was disapproved was *Woolfsan v. Strathclyde*¹² the main circumstance where a corporate veil could be lifted was, the place there are uncommon conditions showing that the organization is a 'simple veneer hiding the confirmed realities Lord Keith only in this situation the corporate veil can be lifted.

Hence the court of England took narrow view of theory. The court held in *Adams v cape industries plc*¹³. In only underwritten the situation a corporate veil can be pierced.

1. In the event that the court is deciphering a rule or archive and the resolution it is ambiguous. This would permit the court to regard a gathering as a solitary substance.
2. In the event those unique situations demonstrate, that it is a negligible exterior covering the verified realities, the court may lift the veil.
3. It is an utilization of the office standard. Parent organizations and auxiliaries are probably not going to have express office understandings and it is even hard to demonstrate a

¹² *Woolfsan v. Strathclyde Regional Council* [1978] 2 EGLR 19 (HL)

¹³ *Adams v cape industries plc* [1990] Ch 433

suggested office. Proof is required that, day to day control was being practiced by the parent organization over its auxiliaries.

2.5.2 Approaches by court to lift the corporate veil

The court has different approaches towards lifting a corporate veil as per different cases. These following views of court are to be kept in mind while following this doctrine while choosing various cases.

2.5.2.1 Piercing the veil-

This prospective is used by the law as to determine the shareholder of the corporations, what amount of shares are being with them, who are the controllers and the inter-relationship of a company and its controller. The veil is pulled down after gathering such information and company becomes the separate legal entity again.

2.5.2.2 Entering the veil

Under this category the court hold over the share holder personally reaching through veil. The motivation behind infiltrating the veil is to force obligation upon the investors for the organization's demonstrations, and to build up their immediate enthusiasm for the organization's advantages

For example - direct interest in tax of shareholder

- Insitutation of war.

R.V London County council¹⁴ in this case the cinematography license was refused to be given by a local authority held by company established in England, it was due to the majority of substantial shares were up holed by German nationals and out six directors three were German. The court upholds the decision of not giving the licenses as the control or influence might be extracted by the enemy country over the activities of the company this was exhibiting matter during the war time as film was relevant issue.

2.5.2.3 Extending the veil

A third method of lifting the corporate veil is by extension so that grasps a heap of organizations. When legal entity is working as a group for same purpose, they all can be recognized in the same

¹⁴ R.V London County council [1931] 2 KB 215

way in spite of being referred separately, by covering them under one veil of corporation.

In the case of DHN Food Distributors Ltd v London Borough of Tower Hamlets¹⁵ an organization asserted remuneration for unsettling influence attributable to the seizure of land but the land was of another company the investors of both the companies were similar of the other two.

Lord Denning said that this is particularly the situation when a parent organization claims all the portions of the auxiliaries .these auxiliaries are bound hand and foot to the parent organization and must do exactly what the parent organization says

The three organizations should, for present designs, be treated as one.

The three different approaches explained above are different to each other-

- First was the shareholding of the three organizations in question. It uncovered that the investors (and chiefs) of each of the three were indistinguishable.
- The second approach is actually piercing the veil for recognizing the interest of people in assets of an organization directly
- Third the augmentation of the veil to cover the whole gathering, considering it to be one thorough element. It was at long last held that the organizations as a gathering are qualified for pay for the estimation of the land as well as pay for unsettling influence.

2.5.3 Statutory provisions

-Section 45 reduction of membership

Under this section if the number of the members of a corporation is minimized below the statutory reduction and still 6 months business is carried out by company then it will directly effect to the limited liability of the shareholder they will lose it. This is how law pierces the veil of the corporation and makes the person liable who is behind the company.

-Section 62 and 63 Misrepresentation of prospectus

Every person even director's promoters and person who is authorized to issue the prospectus will be held liable in the case o misrepresentation of prospectus and can be charged criminally by fine up to 50,000 and imprisonment for 2yrs or both as the case may be.

¹⁵ . DHN Food Distributors Ltd v Tower Hamlets London Borough Council [1976] 1 WLR 852

-Failure to return application money sec 69 SEBI-

If a company does not get minimum subscription in 120 days after the date of prospectus being issued to them the entire application money needs to be refunded within next 10 days with the interest of 6% p.a if the company fails to receive the minimum subscription at the time of ending the entire application money will be returned in next 15 days

-Miss description of name sec 47

When a contract has been signed by a company by its officer, the person is personally liable if the name of company is not mentioned or not mentioned properly in the contract.

-Liability of ultra vires act

If any ultra vires act has been committed by director or any other officer of a corporation shall be held liable if the commencement is carried on.

2.5.4 Judicial interpretation

1. The way that the executive and individuals from his family had made a few corporate bodies didn't keep the court from regarding every one of them as one element having a place with and constrained by their chief and his family on the off chance that it was discovered that the corporate bodies were insignificant shrouds and that the gadget of joining was actually a ploy received for submitting lawless acts and additionally to dupe individuals.
2. In the event that an individual takes premises on lease and changes over it into sole ownership worry into a private constrained organization in which he has controlling interest, he can't be removed starting from the earliest stage he has given over the ownership of the property to any other person.
3. When the corporate veil is lifted, it is perfectly clear that the sets of the courts were resisted by the respondents. The organization was as a matter of fact advanced by the respondents alone. They just were its investors and chiefs. One of the respondents was the Chairman and the other was its Manager. The whole enthusiasm of the organization was vested in the respondents in this way in all actuality the request for the court was resisted by the respondent.
4. In the event of financial offenses the court is qualified for lift the corporate veil of corporate element and pay respect to the monetary real factors behind the legitimate exterior.

5. Lalita Jalan v. Bombay Gas Co. Ltd¹⁶ In the event that a previous representative is arraigned under area 630 of the Companies Act, in ordinary conditions it may not be appropriate to indict his better half and ward youngsters additionally as they will undoubtedly remain with him in similar premises. The position would be distinctive where the previous representative is himself not in control of the premises either by virtue of the way that he is dead or he is living somewhere else. In such cases every one of the individuals who have come possessing the premises with the express or suggested assent of the worker and have not abandoned the premises would retain the conveyance of the property to the organization and they are subject to be indicted under area 630. This would incorporate any other person who has been enlisted possessing the property by such people who kept on retaining the ownership of the premises as such individual is similarly answerable for retaining and non-conveyance of the property of the organization.
6. Organization being a fake individual can't decide its adversary or companion. Anyway during national crisis it might be important to see the people behind concerning whether they are adversaries or companions.
Officials are by and by subject in tort where they practice individual, instead of corporate, ability for coordinating an illegitimate demonstration for example expressly keeping in touch with the offended party instead of utilizing organization note paper – leading arrangements on an individual rather than a corporate balance.

It is extremely significant for the Indian legal executive to rethink the way of thinking encompassing the standard of lifting of the corporate veil and holding the organizations criminally obligated as per the light of the ongoing changes that has been achieved in the corporate laws of the nation particularly with respect to the progression that has been realized in the previous decade. It is basic that Indian courts additionally upgrade the norm and incorporate factors, for example, non-recognition of customs, net under capitalization, and intermixing of benefits as trigger focuses for lifting of the corporate veil. It is a high time that the Indian courts ascend to the event and fortify the dividers of laws in order to guarantee that the confidence of the corporate remote financial specialists in India stays flawless.

Tax assessment Laws have likewise made profound advances to break the corporate shell for productive organization of expense laws. With the end goal of Riches Tax and Estate Duty

¹⁶ Lalita Jalan v. Bombay Gas Co. Ltd Appeal (crl.) 574 of 2003

Legislation, new legal formulae have been authorized for portions of privately owned businesses which generously dismiss the different corporate element and continue on the premise that the responsibility for corporate substance and continue on the premise that the responsibility for corporate property has a place with the investors. Regarding pay – charge Law, executives of privately owned businesses have been made actually subject for the expense liabilities of such organizations. The essence of the company is analyzed so as to pay respect to the monetary real factors behind the lawful façade.

2.6 CONCLUSION

This chapter the researcher has tried to talk about the very basics key elements to understand the corporate criminal liability better. In conventional language, a wrongdoing is an unlawful demonstration deserving of a state or other authority. The term crime doesn't, in present day criminal law, have any basic and all around acknowledged definition.

Liability is the duty regarding a wrongdoing and for the punishment society claims for the wrongdoing. Another word for liability is responsibility.

The law on criminal obligation shifts relying upon the specific wrongdoing charged the ward where the individual is charged, and different variables explicit to the circumstance. Violations are existed in the general public since the presence of human progress. Crime free society is practically difficult to be accomplished. Along these lines, society needs to live with wrongdoing in any case; just thing is that it must be carefully controlled through law.

Conventional view is that it is just individual is the topic of criminal law since wrongdoing needs to be submitted with elements of mens rea and actus reus. Organization being legitimate individual doesn't have physical presence and sane brain as being human.

Henceforth organization can't be purchased under the inclusion of criminal law since it is unable of framing the mens rea. Bit by bit the organizations began associating with individuals and society from multiple points of view, assuming critical broadened job in the advancement of society and turned out to be amazing establishment in regard of political, social and legitimately. Similarly then again it has making hurt individuals and society more than what person is causing. Hence the hypothesis of corporate criminal risk was imagined and now organization is held obligated based on various theories.

CHAPTER -3: CORPORATE CRIMINAL LAIBILITY

3.1 INTRODUCTION

In this chapter there is a detail study about the doctrine of corporate criminal liability and its origin and development in world and in India

The concept of the corporate criminal liability is explained through three aspects particle aspect which says the fundamental standard of criminal obligation spins around the essential Latin Maxim *actus non facit reum, nisi mens sit reat*. It implies that 'to make one at risk, it must be indicated that demonstration or exclusion has been done which was illegal by law and has been finished with malicious intention.

Criminal Liability is connected just those demonstrations where there is infringement of Criminal Law for example to state there can't be risk without a criminal law which precludes certain demonstrations or exclusions.'

Missing the chance of criminal obligation, organizations would get away from moral conviction for bad behavior, and the retributive import of criminal risk to the network would be lost. For under a common risk system for the organization qua enterprise, there would be no ethical judgment proportional to a criminal conviction: whenever discovered commonly obligated, a company may be regarded careless, or maybe wild, yet no announcement, as a conviction, would bear witness to the best possible valuation of the people or products at issue. At long last, the money related risk forced would come to be seen, by both the partnership and the network, just as an expense of working together.

Basically, at that point, a corporate common obligation system that resembled standard criminal risk for people accused of a similar bad behavior would permit the partnership qua company to buy exclusion from moral judgment.

Such exception would influence the expressive criticalness of criminal obligation, as the vindication of the correct valuations of people and merchandise would shift not with the lead asserted - a differentiation that appropriately could influence the evaluative standard utilized - in any case, rather, with the personality of the guilty party.

Obligation is in any case either polite or criminal and in the second spot either medicinal or corrective. On account of criminal/reformatory obligation the reason for the law, immediate or ulterior, is or incorporates the discipline of a transgressor while on account of medicinal risk the

law has no such reason by any means; its sole plan being the requirement of the offended parties right, the possibility of discipline being entirely insignificant. The risk of a Some impossible to miss articulations in English law, for example, a tort established on an agreement, or a tort spilling out of an agreement, were maybe imagined to get freed to the protest of misjoinder. The main inquiries currently influenced by the contemplation of whether a case is established on an agreement or on a tort appear to be the measure of expenses to be permitted in an activity and the ward of nation courts, see, Campbell on Negligence, borrower to reimburse the cash acquired by him is therapeutic and that of the distributors of a criticism to the detained or to pay harms to the individual harmed by him is reformatory. All criminal risk is punitive while the common obligation is some of the time correctional and now and again therapeutic.

3.2 DEFINITION OF LIABILITY:

According to Sir John Salmond,

"Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong."

Every individual in society poses rights guaranteed by law. If there is a right there is a duty. Therefore when an individual is entitled with rights then in respect of his right another is accompanied with duty. If a person violates the right of another person, then he is entitled for punishment. Hence infringement of right of an individual is termed as liability.

In common parlance, mis-statement is the act of stating something that is false or not accurate. It could either be by commission or by omission or by both.

In civilized social order, most of the relations between individual and state are represented by rules made or recognized by the state i.e. law. Law sets out the rights and obligation of people.

In other words what needs to be done what needs not to be done and who responsibility is to get this done? A break of these rules is known as wrong. Any individual committing a wrong is supposed to be termed under as liable.

Thus liability is a state of individual who has committed a wrong. The term liability which occupied a position of pride in progression of legal concept has been utilized to express three views. It has been utilized to express the situation of person who has failed from accomplishing the goal of a corporation by contract with someone else.

The term has been utilized to express the condition of individual who has failed in execution of duty and is therefore called upon to make compensation to others

The expression liability has been utilized to express the state of a person who has not failed in performing to his duty however but has done an act which caused harm to another and he is required to compensate that harm.

Mis-statement of prospectus is a serious offence which attracts section 34 and/or section 35. Liabilities can be classified under two categories

3.2.1 Different kind/type of liability:-

Criminal liability for mis-statements in prospectus (Section 34 companies act)

- Mens rea (guilty mind is an essential condition)
- Criminal procedure code 1973 applicable
- Offence is regarded committed against the state

Criminal liability is punished under the criminal proceedings, as under criminal liability the wrong doer is rewarded with the punishment. A guilty person with wrong deeds is liable under criminal proceedings Criminal liability is based on the Maxim "*actus non facit reum nisi mens sit rea*" it means the offender is guilty only when it is done with the guilty mind.

Civil liability for mis-statements in prospectus (Section 35 companies act)

- Loss or damage is an essential condition
- Criminal procedure code 1908 applicable
- Offence against the counter party

Civil liability gives rise to the civil proceedings. In civil proceeding there is protection of the rights of the plaintiff against the defendant in precise form, enforcement of the certain rights of the plaintiff against the defendant. Examples of civil proceedings are an action for recovery of the Debt, Restoration of property, the specific performance of a contract, recovery of damages, the issuing of an injunction against the threatened injury etc.

It is thus evident that risk arises from a wrong or the break of a duty in law. Liability is in any case either civil or criminal and in second either remedial or penal.

In the case of criminal penal; liability the reason of law direct or ultimate is or includes discipline of a wrong doer while in case of remedial liability the law has no such reasons by any means. The sole intent guiding such principle being the enforcement of the rights of the parties, the idea of punishment being entirely immaterial. All criminal liability is penal while civil liability may be penal and remedial altogether.

3.2.2 Distinctive feature of civil and criminal liability

Civil liability is the requirement of the plaintiff against the offended party in civil parties.

Criminal liability is the obligation to be punished in criminal procedures.

A civil liability gives emergence to civil procedures that objective is enforcement of certain right asserted by plaintiff against offended party.

This is so in instances of assault, attack, defamation, malicious injury to property in such cases, the criminal procedures are not elective but concurrent those are autonomous of the proceedings the wrong doer may be detained as a punishment or might be required to compensate to the injured party the result of both the proceedings, civil or criminal is generally unique.

On the account of civil proceedings the remedies in the form of harm a judgment for the payment of obligation, an order specific execution, delivery of ownership or a property, etc

The change of criminal liability is in the form of discipline which may be considered as imprisonment, fine or death.

In certain cases the remedy for both civil and criminal liability might be same through payment of cash. In certain cases detainment may be awarded in both the liabilities.

Civil liability is estimated by the magnitude of the wrong done but while estimating criminal liability we think about consideration of goal, motive, and character of the guilty party (offender) and the magnitude of the offence.

3.3 ESSENTIALS FOR COMMITTING CRIME

A person cannot be punished under any act or statute under which a penalty is given or fixed for

a criminal wrongdoing or misconduct. 'Et actus non facit reum nisi mens sit rea'¹⁷ is a doctrine of common law which tells us that guilty mind is an important ingredient for committing a criminal wrongdoing. When a person is accused with a criminal act that act should be an unlawful event or state of act has been committed by lawfulness accountable disposition of mentality.

There are two main features in criminal law to prove a person guilty which are as follows-

3.3.1 Actus reus

These two words has individual means which says actus means a 'deed', a physical consequence of human act word 'reus' signifies 'prohibited by law' it can be said that it is the action of human being is wrong in the eyes of law an act can be said the action of human being in which the will is included voluntary action of a person can be said as act.

3.3.2 Mens rea

Mens rea is a specialized term, for the most part interpreted as meaning some accountable state of mind, regardless of whether comprised by goal or information or something else, the nonattendance of which on a specific event negatives the conflict of violations. It implies there must be a brain to blame to comprise a wrongdoing. In the normal speech, goals implies reason or want to realize an examined outcome or premonition that specific results will follow from the direct of the individual.

3.4 MENS REA IN CORPORATE LIABILITY

Today when the parts of the demonstrations done by an organization are separated to comprehend what the corporation is doing, much of the time its mens rea is obviously included and the standards of guiltiness can be effortlessly connected with these demonstrations. Issues like; Intent: explicit or general, the conditional evidences, the admissions of laborers and so forth might be plainly present to show the demonstrations or exclusions done by the corporation in advancement of its activities,¹⁸ the fundamental dispute being the way that the world is partitioned over the ramifications of these demonstrations. There are number of approaches received by various nations everywhere throughout the world to disentangle and translate the demonstrations of a corporation and locate the aim behind it. ¹⁹The common law and custom-based law nations,

¹⁷ . Kenny's, Outline of Criminal Law, J.W. Cecil Turner, (Ed.), (19th Ed.), (Bombay:Cambridge University Press, 1966), p.13. In this famous phrase there is a clear distinction between a man's 'deed' (actus) and his mental process (mens) at the time when he was engaged in the activity which resulted in the deed.

¹⁸ Corporate crime and corporate criminal liability by Sadhana Singh last visited 20/3/2020 https://www.unafei.or.jp/publications/pdf/RS_No76/No76_10PA_Singh.pdf

¹⁹ United States v. Bank of New England, 821 F.2d at 856)

all have various intends to deal with the criminal goal of a body corporate. In any case, the hidden standard here is that the criminal plan and the wrongdoing of the company for no situation are disregarded. In the event that we view the customary law nations, at that point we have cases where legal advisers like Baron Thurlow, the Lord Chancellor of England and an extraordinary attorney and legislator simultaneously, have communicated the nearness of blame with respect to the corporate body. He towards the late eighteenth century took up this issue and set out that, "Did you ever anticipate that an organization should have a still, small voice, when it has no spirit to be doomed, and nobody to be kicked and, by God, it should have both."²⁰ There are different feelings too like the critical stand taken up with respect to the onus of blame with respect to the company by passes judgment on like Chief Justice Holt who in expressed that "An enterprise can't, yet the specific individuals from it are." Blackstone's Commentaries additionally got a similar form as delineated by Justice Holt to the equivalent effect. The disjunction among individual and corporate criminal risk turned into the need of great importance.²¹

The doctrine of alter ego was established in India to deal with the issues of mens rea of the company the personification of the concept of legal personality of a corporation came from alter ego doctrine. It can be said that person's alter ego is a company hence a corporation can be held liable for the actions of individual working in it. A company's mens rea can be the malicious intention of a person in the case of villapa textiles the supreme court said that due to mens was absent in organization it was recall difficult to prove a company criminally liable as it is essential to prove the guilty mind for a corporate crime.

But in current senior it is said that alter ego of a corporation that is the person who has mens rea working under corporation can be held liable for the criminal harm committed by the organizations because of which a legal personality or an unnatural person is liable of such criminal offence where the element of mens rea is given importance.

3.5 WHAT IS CORPORATE CRIMINAL LIABILITY?

When any criminal act is done by a natural person to a corporate entity the liability imposed upon that person can be called as corporate criminal liability. To regulate the act of corporation the

²⁰ Micheal E. Tigar, _ It Does the Crime but Not the Time: Corporate Criminal Liability in Federal Law', American Journal of Criminal law, Vol 17:211, 1990 referring Anonymous (No. 935), 88 Eng. Rep. 1518 (1701)

²¹ "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 MICH. L. Rev. 386 at n.1 (1981). Quoted in Micheal E. Tigar, _ It Does the Crime but Not the Time: Corporate Criminal Liability in Federal Law', American Journal of Criminal law, Vol 17:211, 1990

liability is imposed on it. The doctrine of corporate criminal liability is based upon the theory of vicarious liability in which the boss is liable for the acts of his worker.

Corporation can be held liable for the acts done by its workers in the following cases :-

1. If the worker commits the act,
2. Act committed by the worker in scope of employment,
3. Act done for the benefit of the corporation.

Corporate criminal liability can be defined as any act or omission, committed by the employee, or the association of employees, who have the common intention, or make benefits for the corporation, which are forbidden by law with malicious intention or guilty mind where the benefits are for the corporation or individual or any individual out of the association of individuals.

When such act is committed by a corporation it affects their business as well as the individual who are criminally liable, financially and by criminal punishments as well.

3.6 CONCEPT OF CORPORATE CRIMINAL LIABILITY

The development of corporate criminal liability has been progressively noticeable in the common law nations where as the civil law jurisdictions have been increasingly reluctant towards the presence of corporate criminal liability.

Until the concept of corporate criminal liability was established, Courts in India did not punish corporations as they felt that essential ingredient i.e. Mens rea is absent in corporation it being a fictitious legal entity having no physical existence so also could not be brought physically for the proceedings. However due to such concept many legal difficulties started arising which was noticed by the Law Commission in its 41st report of Law Commission of India where amendment was suggested in section 62 of the IPC but the bill which was made was lapsed but the view of Courts in terms with this concept changed in a landmark case of Standard Chartered Bank and Ors. v. Directorate of Enforcement, the bank was prosecuted for violation of provisions of the Foreign Exchange Regulation Act, 1973 where the Supreme Court did not go by the strict penal provisions and held that a corporation can be held liable regardless of the mandatory punishment as under the statute.²²

²².m ondaq.com/india/CorporateCommercial-Law/826930/Corporate-Criminal-Liability-DirectorToo Criminal Page | 67

It has been proposed if there should be an occurrence of discipline to be forced on organization it has been recommended that fine ought to be forced instead of detainment.

3.6.1 Theoretical foundation of corporate criminal liability

Since the 20th century the corporate criminal liability of a corporation has been affected by common law principles developing in that arena which are reliable on ongoing situations. These principles have both theoretical and practical roots to themselves.

Corporate criminal liability under companies act 2013 have setup certain ideas and principles adopted by our nation. The broadly acknowledged common law bases of corporate responsibility where the courts and legislations of our nation have used numerous theories on the bases of development. These theories and models are discussed under as:-

3.6.1.1 Derivative model

In India the liability of a corporation can be labeled as derived liability. The risk of a company is gotten from the activities of a person who has been utilized or associated with the association and submits an unjust demonstration. The liability of an organization is derived liability in terms of Corporate Criminal liability wherein the liability is put on the organization because the individuals who commit the crime are in connection with the organization.

The subsidiary model of the corporate criminal obligation is additionally partitioned into two classes - Vicarious Liability and Identification Doctrine.

- **Vicarious Liability** - The teaching of vicarious obligation depends on the two legitimate Latin sayings the main proverb imply that he who acts through another will be regarded to have followed up on his own, and second, respondent unrivaled which means let the ace answer. Vicarious risk is the idea which is commonly pertinent in the instances of common obligation yet the Courts have said that in light of the fact that an enterprise is a fake individual and a different legitimate element consequently it is important to get the pertinence of vicarious risk the instance of corporate criminal risk.

- **Identification Doctrine-** This regulation is an English law teaching which attempts to distinguish certain key people of a partnership who acts for its sake, and whose lead and perspective can be ascribed to that of the enterprise. With regards to the obligation of these key people who follow up for an organization, the people who are related to the companies must be acting inside the extent of their work or authority. The lead must happen inside an allotted territory of activity despite the fact that points of interest might be unapproved. The extent of Identification Doctrine is smaller than that of the vicarious liability. In *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd*,²³ Viscount Haldane fashioned a model of primary corporate criminal liability for offences that require mens rea that would later be known as the identification theory.

3.6.1.2 Organizational model

This model of corporate criminal risk in India centers around the model of the association while characterizing the corporate obligation of an association in criminal cases. A wrongdoing is said to be perpetrated when there is a nearness of men's rea (purpose to carry out a wrongdoing) and actus reus (criminal act or exclusion) yet the difficult which emerges while holding a corporate criminally obligated is that how a fake individual can have a psychological plan to perpetrate a wrongdoing. The way of life of the corporate may help for commission of an offense requiring mental state by-firstly, providing the earth or important consolation that it was accepted by the guilty party working in the enterprise that it was flawlessly okay to carry out that offense, or company has mentally upheld the commission of offense; furthermore, it is very conceivable that the organization made a situation which prompted commission of wrongdoing. Both ways it was the corporation and its working culture that let the offence committed.

3.6.2 Jurisprudence of corporate criminal liability

The jurisprudence treats corporations distinct and separate from the members who represent it. And these corporations have turned out to be more dangerous criminals than the individuals. So, normally, the question arises as to how the courts could punish these corporations which commit crimes. Common law has various theories which determine the liability of the corporations and the best example would be the doctrine of vicarious liability under the tort law which asserts that the corporations would be held liable for the torts committed by its employees.

²³ *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd* [1915] AC 705.

In Velliappa Textiles' case²⁴, by a majority decision it was held that The organization can't be prosecuted for offenses which require burden of a compulsory term of imprisonment combined with fine. It was additionally held that where punishment provided is imprisonment and fine, the court can't force just a fine. The majority was of the view that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the Statute and that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean for the development which excludes a citizen from punishment than the one which forces the punishment.

'In State of Maharashtra v. Syndicate Transport²⁵ it was held that the company cannot be prosecuted for offences which necessarily entail consequences of a corporal punishment or imprisonment and prosecuting a company for such offences would only result in the court stultifying itself by embarking on a trial in which the verdict of guilty is returned and no effective order by way of sentence can be made. A similar view was taken by Calcutta High Court in Kusum Products Limited v. S.K. Sinha, ITO²⁶, Central Circle-X, Calcutta where it was clearly stated that a company being a juristic person cannot possibly be sent to prison and it is not open to court to impose a sentence of fine or allow to award any punishment if the court finds the company guilty, and if the court does it, it would be altering the very scheme of the Act and usurping the legislative function.'²⁷

The legal difficulty arising out of the above situation was noticed by the Law Commission and in its 41st Report, the Law Commission suggested amendment to Section 62 of the Indian Penal Code by adding the following lines:

In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.

This recommendation got no response from the Parliament and again in its 47th Report, the Law Commission in paragraph 8(3)²⁸ made the following recommendation:

In many of the Acts relating to economic offences, imprisonment is mandatory. Where the

²⁴ 2003 132 TAXMAN 165 SC

²⁵ IR 1964 Bom 195, (1964) 66 BOMLR 197, 1964 CriLJ 276

²⁶ 1980 126 ITR 804 Cal

²⁷ Dharm Veer Singh, "*Corporate Criminal Liability: A Jurisprudential and Comparative Approach*", available at http://www.legalserviceindia.com/articles/cor_dr.htm, last visited on 30/03/2013.

²⁸. lawcommissionofindia.nic.in/1-50/Report47.pdf

convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws. We, therefore, recommend that the following provision should be inserted in the Penal Code as, say, Section 62:

1. In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.
2. In every case in which the offence is punishable with imprisonment and any other punishment not being fine and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.
3. In this section, corporation means an incorporated company or other body corporate, and includes a firm and other association of individuals.²⁹

In the case of *Standard Bank and ors. etc. v. Directorate of Enforcement and ors. etc.*³⁰ apex court stated that company is liable to be prosecuted in terms of both imprisonment and fine. There is no dispute that the company is liable to be prosecuted and punished for criminal offence reasoned by the fact that they involve personal malicious intent. Although the crimes are committed by agents, managers, directors, etc. a corporation may be subjected to indictment.

On the off chance that a corporate body is seen as blameworthy of the offense submitted, the court, however bound to force the sentence recommended under law, has the discretion to force the sentence of imprisonment or fine as on account of an organization or corporate body the sentence of imprisonment can't be forced on it and as the law never urges to do anything which is unthinkable, the court needs to follow the other option and force the sentence of fine. This discretion could be practiced uniquely in regard of juristic people and not in regard of common people. There is no sweeping resistance for any organization from any arraignment for genuine offenses simply on the grounds that the indictment would at last involve a sentence of required imprisonment. The corporate bodies, for example, a firm or organization embrace arrangement of exercises that influence the life, freedom and property of the residents. Large scale financial irregularities are done by various corporations. The corporation currently involves such a huge bit of the modern, business and sociological parts that agreeability of the enterprise to a criminal

²⁹ . Criminal Liability of Corporate Bodies-by Vikas Garg <http://www.legalserviceindia.com> visted20/2/2019

³⁰ . *Standard Chartered Bank v. Directorate Of Enforcement* JT 2005 (5) SC 267

law is basic to have a serene society with stable.

3.6.3 Practical approach of corporate criminal liability

Corporate criminal liability has been criticized in India back and again. The criminal liability of corporation under companies' act 2013 has under gone various theoretical approaches resulting that a corporation can only be guilty or liable due to the actions or wrong doing done by the agent's manager director etc under means rea or their personal malicious intent. Henceforth, the corporate criminal liability of a corporation has reluctantly undergone the criticism is based on two ideas:-

- Firstly, it has been criticized on the ground that providing punishments and other penal sanctions against the corporate is of no value as it is not the corporate who commit the crime it is the individuals in the company law who commits the crime.
- The second objection raised by the critics of the corporate criminal liability is that the cost of corporate criminal fines and sanctions is borne by shareholders and consumers, and this too seems baseless.

Criminal liability of the corporation can be found in the section 45, 63, 68, 70(5), 203 of companies' act 2013 where only the officials of the company are held liable. The various sections of IPC the direct compulsory imprisonment does not take a corporate in account because such sanctions don't work against the corporation.

Following are the major statutes which devoid necessary legal aspects in respective field. On the other side law has also developed to an extent which regard to certain other statutes and their respective penal provisions where a fine has been imposed on corporate body when they are found guilty for example

▪ Section 141 of negotiable instrument act 1862

The persons who are sought to be criminally liable fewer than 141 should be, at the time the offence was committed, in charge of and responsible to the Company for the conduct of the business of the Company. Every person connected with the Company shall not fall within the ambit of the provision. The liability arises from being in charge of and responsible for the conduct of the business of the Company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a Company. Section 141 (2) of the Act envisages direct involvement of any Director, Manager, Secretary or other Officer of the

Company in the commission of the offence. It is because a person who is in charge of and responsible for the conduct of the business of the Company would naturally know why a cheque in question was issued and why it got dishonored. The liability arises, as the three-Judge Bench opined, on account of conduct, act or omission on the part of an Officer and not merely on account of holding office or position in a Company and, therefore, in order to bring case within Section 141 of the Act, the complaint must disclose the necessary fact which makes a person liable.³¹

▪ **Section 7 essential commodities act**

In cases of contravention by companies, every person who, at the time of contravention, was in charge and was responsible to the concerned company for the conduct of the business of the company as well as the company, are deemed to be guilty of the contravention and are liable to be proceeded against and punished accordingly. If the person concerned proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Moreover, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Every offence punishable under this Act is cognizable.³²

▪ **Section 276-B of income tax act**

A company can be prosecuted and punished for an offence committed under Section 276B (besides other offences under the Act) the sentence of imprisonment which has got to be imposed there under cannot be imposed, it being a juristic person. This apparent anomalous situation can be resolved, needless to say, only by a proper interpretation of the section. Before we proceed to consider the principles governing the interpretation of statutes we may profitably look to the 47th report of the Law Commission of India dated February 28, 1972. While dealing with social and economic offences committed by Corporations (including companies, firms and association of individuals) it observed that though a company has no physical body and traditional

³¹In the judgment of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr <https://www.legallyindia.com/views/entry/vicarious-liability-of-director-of-a-company-in-an-offence-under-section-138-of-negotiable-instruments-act-1881>

³²The Essential Commodities Acts, 1995.pdf <http://14.139.60.114:8080/jspui/bitstream/123456789/687/9/The%20Essential%20Commodities%20Acts%2C%201995.pdf>

punishments might thus prove ineffective, the real penalty could be inflicted upon its respectability, that is, by way of a stigma. Therefore, it was appropriate that the company itself be punished so that in the public mind the offence would be linked with the name of the Corporation and not merely with the name of the director or manager who might be a non-entity. Punishment of fine in substitution of imprisonment could solve the problem in this behalf. The Commission recommended, apart from introduction of a provision in Section 62 of the Indian Penal Code, appropriate amendments in the Central Excise Act, 1944, Wealth Tax Act, 1957 and Income tax Act, 1961 on the lines of Section 93 of the Gold Control Act, 1968. The provisions contained in Section 278B of the Act appear to be based on the recommendations of the Law Commission.

3.7 LIABILITY OF CORPORATION

The law on this perspective has advanced after some time. Presently, a company can be indicted for offenses including mens rea by applying the principle of attribution. Accordingly, the company can be considered answerable for offenses committed by the members of the organization charge of its issues.

The Apex Court in this case *Sunil Bharti Mittal v. Central Bureau of Investigation*³³ no uncertain terms held that an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company. However, to make an individual liable, there must be sufficient evidence of his active role coupled with criminal intent and or a provision must be specifically incorporated into the statutory regime that attracts the doctrine of vicarious liability. It may thus be noted that when the company is the offender, vicarious liability of the directors cannot be imputed automatically, in the absence of any statutory provision to this effect.³⁴ Earlier in many situations when the concept of holding a corporation liable was not introduced there was not any corporation held liable for any criminal act as the it is an artificial legal person, so it could not be imprisoned, and corporation not being natural person there was absence of mens rea.

Courts today have devised a number of methods and ideologies to impute the employee's actions and knowledge to the parent corporation to stamp out illegalities from the economic sphere of life.

³³ (2009) 1 SCC 516 <https://indiankanoon.org/doc/159121041/>

³⁴ Celia Wells, "Corporations: Culture, Risk and Criminal Liability". [1993] *Crim. L. Rev.* 555, 559.

3.7.1 Vicarious criminal liability under companies act 2013

The doctrine of vicarious criminal liability of the members of the company i.e. the directors and the main member of the company have been taken a massive turn when it has been included as the provision under the Companies Act 2013. This act has embraced all the provision regarding the criminal liability of a corporation, this act like other acts have embraced various economic crime which companies Act likewise condemns different sorts of exercises throughout the financial existence of the organization, prior among them being fake exercises submitted by the organization (through its representatives). For all offenses submitted by the organization, the Companies Act forces uncommon vicarious obligation on officials (of the organization) who are 'in default'.

Officers in default were specifies under the companies act in section 2(60). The specification the depictions of the work force considered in the forerunner enactment (Companies Act, 1956) as people mindful to the organization for the lead of the business of the organization. There are four categories of person which come under the ambit of in default officer

The first category is called as (KMP) Key Managerial Person which includes Chief Executive Officers (CEO), Chief Financial Officers (CFO) and Company Secretaries (CS)³⁵

The second category has those people who while reporting to KMP, were liable for managing, documenting or appropriating records and records, and effectively take an interest in, purposely license or on the other hand intentionally neglect to find a way to forestall any default.

The third class is remarkably wide in its adequacy. It covers any individual who is liable for 'keeping up accounts and records'. It positively appears as though the consistence officials of banks would be secured. For example the laws which talks about the third type can be understood well under the provision 5 (f) of pervious law Companies Act 1956 which made officials of the organization at risk under comparative conditions gave two conditions were satisfied. The Board should have given the official the applicable obligation, for instance, the duty of documenting certain records for administrative purposes, further, the official being referred to more likely than not agreed to taking on such a duty. By all accounts, the ancestor enactment looks marginally less burdensome as it incorporates the assent prerequisite. Be that as it may, by and by such an assent would most likely be acquired from the officials being referred to. In one sense the antecedent

³⁵ Section 2(51), Companies Act 2013

administrative arrangements were increasingly grave as they didn't require, at any rate apparently, a specific mental state or governmental policy regarding minorities in society by the mind full official. Then again, the present adaptation requires the dependable chief to approve, effectively take an interest, intentionally allow or purposely fall flat as for his obligations.

The fourth type are the directors who the contraventions which were constituted as an offence by the company because of the participation the board procedures that prompted such contradictions or they were in receipt of such board procedures, regardless of whether the case they were absent during these board procedures. Since entire time executives are as of now secured under the primary classification, this class, by all accounts, may be understood as applying to free chiefs. The potential obligation required here gives off an impression of being disproportional to the obligations and elements of autonomous chiefs. The potential obligation required here has all the earmarks of being disproportional to the obligations and elements of autonomous executives. In any case, the companies Act mitigates the potential risk of autonomous executives by giving that two conditions need to consolidate for an autonomous executive to be held subject for offenses committed by his company. To begin with, he should know about the offense infer able through board procedures. Second, (note this is an extra prerequisite) the offense probably been submitted with his assent or due to his absence of diligence. Given that the overseeing executive and entire time chiefs are secured under the principal class and autonomous executives have an alternate risk system in view of an express arrangement in the companies Act, who precisely is the fourth class proposed to cover? Some direction on this issue can be found in section 149(6) of the Companies Act, which characterizes an autonomous executive. An autonomous chief is any executive other than the overseeing chief, entire time executive or a chosen one chief of the company. It follows from this definition that a chosen one chief isn't an free chief. Thus candidate executives are the sort of chiefs that are at risk to be remembered for the fourth classification.

Fifth category contains person who don't regulate the company on the general basis but are associated with the issues of transferring share Section 2(60) states that as to any offenses related with the issue or move of the portions of the company, the officials in default would be regarded to be the offer exchange specialists, enlistment centers and the vendor investors to the issue or move of the shares. A criminal indictment may bring about noteworthy and corrective budgetary harms for the officials of a company

The predecessor legislation confined the capacity of organizations to repay their officials against

the injurious money related results of a criminal indictment. Section 201 of the Companies Act 1956 voided any endeavor by a company (either in its articles or through a different concurrence with the concerned official) to repay its officials for any lawful risk emerging out of criminal procedures. Anyway there was a restricted special case accommodated by a similar section under which a company could repayment an official for the lawful costs acquired by him in guarding criminal procedures gave he was effective with all due respect. There is no arrangement equivalent to section 201 in the present Companies Act offering ascend to the hypothesis that executives and officials under the current corporate system can profit repayment for any monetary obligation emerging out of criminal procedures.

3.8 DOCTRINE OF COLLECTIVE BLINDNESS

The corporation can be held liable even when the single individual of corporation is not in fault. The Courts considered the entirety information on all the members of the corporation to arrive at this conclusion. Under the doctrine of Collective Blindness, courts have held that organizations will be held liable regardless of whether single individual was not to blame and considered aggregate information on all workers so as to make an enterprise at risk.

3.9 DOCTRINE OF WILLFUL BLINDNESS

Willful blindness is a term used in law to describe a situation in which a person seeks to avoid civil or criminal liability for a wrongful act by intentionally keeping himself or herself unaware of facts that would render him or her liable or implicated. Criminal liability of a corporation can be termed when it turns the blind eyes on the criminal act. If a corporate agent becomes suspicious of some ongoing illegal acts but to avoid culpability, he takes no action to mitigate the damage or investigate further or bring the offender to book, the corporation becomes liable.

3.10 CONSPIRACY

Conspiracy can be termed as when two people or more plans an unlawful act with two or more people taking affirmative actions. Corporations can be made liable for a criminal conspiracy amongst its employees or involving one employee and others not on the payroll of the corporation. Corporation can be made criminally responsible for the past criminal acts and infringement of another company with which it has combined or has consolidated. Organizations, after a merger, will likewise need to safeguard themselves against charges of conspiracy against the predecessor corporation. So also, it isn't constantly vital that partnerships will avoid arraignment if dissolution happens before recording of charges. Contingent upon the traditional

law, even dead companies are compelled to defend themselves against criminal trial.

3.11 MISS FELONY

A corporation may also be held liable for misprision of felony, which is the offence of concealing and failing to report a felony. This consists of four elements:

- That the principal committed a felony
- That the defendant knew about said felony
- That the defendant failed to notify the concerned authorities at the earliest, and
- That the defendant took proactive steps for the concealment of the felonious act.³⁶

When a Corporate gets accused of a criminal offence, the individual to be prosecuted for the same remains a matter of consideration. Merely failing to notify the authorities is not enough to qualify as misprision of felony and neither is merely having the intent to conceal the felony if such intention is not carried out.

3.12 REQUIRMENT OF CORPORATE CRIMINAL LIABILITY IN INDIA

Corporate criminal liability can be establish in India by the following requirements-

3.12.1 When act is done under the scope of employment-

The act must be done while performing his official duties which he has been authorized by the company to do. The employee who has committed the criminal act or is accused to have been committed a criminal act it is necessary that such action has to be committed in the scope of his employment. It is said that an act when performed under the scope of employment the company becomes the principal of the person committing the act and thus by virtue of agent-principal relationship the corporate criminal liability can be invoked.

3.12.2 Benefit to corporation

The criminal act committed by the employer must be done for the benefit of the corporation to establish the corporate criminal liability. It is not required that a corporation must have a direct benefit with the criminal act of the employee neither there should be complete benefit of the corporation. It is just that the illegal or unlawful act of the employee is not contrary to the organization.

³⁶. Corporate Prosecutions, The Crown Prosecution Service, available at http://www.cps.gov.uk/legal/a_to_c/corporate_prosecutions/, last visited on 30/03/2013.

3.13 CONCLUSION

Missing the chance of criminal obligation, organizations would get away from moral conviction for bad behavior, and the retributive import of criminal risk to the network would be lost. For under a common risk system for the organization qua enterprise, there would be no ethical judgment proportional to a criminal conviction: whenever discovered commonly obligated, a company may be regarded careless, or maybe wild, yet no announcement, as a conviction, would bear witness to the best possible valuation of the people or products at issue. At long last, the money related risk forced would come to be seen, by both the partnership and the network, just as an expense of working together.

Basically, at that point, a corporate common obligation system that resembled standard criminal risk for people accused of a similar bad behavior would permit the partnership qua company to buy exclusion from moral judgment. Such exception would influence the expressive criticalness of criminal obligation, as the vindication of the correct valuations of people and merchandise would shift not with the lead asserted - a differentiation that appropriately could influence the evaluative standard utilized - in any case, rather, with the personality of the guilty party.

Violations are existed in the general public since the presence of progress. Wrongdoing free society is practically difficult to be accomplished. Accordingly, society needs to live with wrongdoing in any case, just thing is that it must be carefully directed through law. Conventional view is that it is just person is the topic of criminal law since wrongdoing needs to be submitted with elements of mens rea and actus reus.

Organization being lawful individual doesn't have physical presence and reasonable psyche as being human. Consequently organization can't be purchased under the inclusion of criminal law since it is unfit of framing the mens rea. Step by step the organizations began collaborating with individuals and society from numerous points of view, assuming huge enhanced job in the advancement of society and turned out to be ground-breaking foundation in regard of political, social and legitimately.

Similarly then again it has making hurt individuals and society more than what person is causing. In this manner the hypothesis of corporate criminal obligation was created and now organization is held at risk based on various speculations. Hypothesis of vicarious risk of corporate is designed in America, where as precedent-based law has followed the hypothesis of ID. India has kept hypothesis of precedent-based law.

The hypothesis of conglomeration has been applied in US. Diverse hypothesis has its own benefits and negative marks yet vicarious hypothesis has more extensive application and is by all accounts reformative, obstacle and viable. Another issue of corporate criminal obligation is what kind of discipline is fitting for organizations. A large portion of the nations found that lone fine is fitting discipline aside from US. Indian legal executive like different nations, at first wouldn't have any significant bearing criminal law to organization yet slowly changed its point of view and held that organization is additionally at risk for criminal liability oppressed discipline of fine. Indian Law Commission saw the insufficiency in the IPC to force discipline on organization. In this way it proposed the officials to change the IPC such that any place IPC arrangement conveys just detainment as discipline, there "or fine" ought to be included. This empowers the courts to force the discipline on organizations. The catastrophe is that Parliamentarian yet to follow up on such significant recommendation and the insufficiencies in the human discipline steady to exist.

CHAPTER-4: INDIAN PROSPECTIVE OF CORPORATE CRIMINAL LIABILITY

4.1 INTRODUCTION

A liberal and raised mind is recognized by nothing more unquestionably than famous level of interest, nor is that interest perpetually pleasantly or conveniently utilized, than in analyzing the laws and customs of outside country. Huge scope partnership are the characterizing power on the globe, they are all over the place, in pretty much every part of our lives. Corresponding to this unpretentious and some of the time not all that inconspicuous predominance, partnerships have become hazardous lawbreakers too.

When in doubt just human creatures can submit offense the special case is that corporate bodies additionally can be for corporate wrongdoing, violations nonappearance of unlawful lead and men's rea .A corporate body is a lawful individual, with, sacred rights simply like characteristic people. It is a different individual particular from its individuals. Presently the inquiry is whether an enterprise as a counterfeit individual is able to do carrying out a wrongdoing and is criminally obligated by the law or not.

The conventional view was that an enterprise couldn't be blameworthy of a wrongdoing, since criminal blame required goal and a company not having a psyche could shape no aim, expansion, a partnership had no body that could be detained.

Courts are particularly prone to force criminal obligation on a company when the criminal demonstration is mentioned, approved, or performed by the top managerial staff, an official or individual having duty regarding planning organization arrangement or high overseer having administrative over the topic of the offense and acting inside the extent of his work.

An organization having different key rights appreciates a similar subject to their limitations and constraints. Likewise the sacred privileges of an organization are additionally subject to the express or/and inferred limitations contained in that. Subsequently, a organization appreciates different rights subject to their limitations and constraints. It must be noticed that the partnerships esteemed to be 'state' inside the importance of Article 12 of the Constitution and going about as organization of the administration, would be liable to the same confinements in the field of Constitutional law as the administration itself, however in the eyes of law they would be unmistakable and free lawful substances. A liberal and raised psyche is recognized by nothing more positively than a prominent level of interest, nor is that interest always pleasingly or conveniently utilized, than in looking at the laws and customs of remote country. Huge scope organization are the characterizing power on the globe, they are all over, in pretty much every part of our lives.

Corresponding to this unobtrusive and at times not all that inconspicuous strength, organizations have become risky hoodlums also. When in doubt just human creatures can submit offense the exemption is that corporate bodies additionally can be for corporate wrongdoing, violations leaside nonappearance of unlawful direct and men's rea.

A corporate body is a legitimate individual, with, established rights simply like normal people. It is a different individual unmistakable from its individuals. Presently the inquiry is whether an enterprise as a counterfeit individual is prepared to do carrying out a wrongdoing and is criminally subject by the law or not.

The customary view was that an enterprise couldn't be liable of a wrongdoing, since criminal blame required goal and a partnership not having a brain could frame no plan, expansion, company had no body that could be detained.

Courts are particularly liable to force criminal risk on an organization when the criminal demonstration is mentioned, approved, or performed by the governing body, an official or

individual having obligation regarding defining organization strategy or high manager having administrative over the topic of the offense and acting inside the extent of his business.

4.2 HISTORY

The concept of corporate criminal liability developed in Anglo- American tradition of common law from small and obscure beginnings in a process of accretion that lacked any conscious or overall direction. The courts in America, even at the federal levels have largely adopted the applicability of principle of vicarious liability while attributing criminal liability to corporations for the offences including those involving intent. The American courts also follow the principle of respondent superior, which means that the commandant of the corporation is liable for the wrongful acts of any of its agents or employees when that act had been committed during the course of employment by that worker with the intention of making profit for the company.³⁷

Corporate criminal liability was originally restricted to crimes of nonfeasance where the failure to satisfy a duty required or assigned by law was overlooked or not complied with.

In 1846 in *The Queen v Great North Of England Railway Co*, Lord Denman³⁸ provided that, the corporations could be criminally liable for misfeasance in a case where the corporation had failed to build a bridge over a highway in accordance with statutory requirements. The courts started recognizing the distinction between nonfeasance and misfeasance as false and extremely hollow since the illegal act or omission could often be characterized as both nonfeasance and misfeasance as both involved the overstepping of law. Corporations are legal entities and under this shield they tend to gain in a twin folded manner many benefits which are given to natural persons. One they get the rights and duties similar to the natural person and secondly, they get to safe themselves because of the corporate veils and getaway with any crime that they might do and never get caught or punished like a natural person can be.

4.2.1 Evolution of corporate criminal liability in India

A corporation is a separate legal entity, registered and legalized by common law processes. By changing situations these corporation have grown into dangerous criminal and commit heinous crimes. Often times these crimes are not proven thus corporation is found not guilty of offence

³⁷ Beale Sara Sun, "Is Corporate Criminal Liability Unique?", *American Criminal Law Review* 44, 2007, pp. 1503-1504

³⁸ *The Queen v. Great North Of England Railway Co* [1846] EngR 803, at pp. 325-327. https://shodhganga.inflibnet.ac.in/bitstream/10603/200004/8/08_chapter%202.pdf

committed by its agent's managers, etc. According to the IPC proceedings of our country, the accused is required to be presented before law if found guilty but due to a corporation cannot be produced before judge these corporation are not held liable for their act.

Over the times even the Indian judiciary has also pointed out that a corporation can also be a part of a criminal conspiracy and can be held liable criminally. This for the first time was said in the by the Supreme Court in the case of Iridium India Telecom Limited vs. Motorola Incorporated & Ors. In this way, it very well may be said that corporate criminal risk has been perceived as one of the corporate obligation in India under the Companies Act just as under criminal laws.³⁹

According to section 11 of IPC a company can be personified in the form of a person and hence is equally liable for committing a malicious crime. A corporation cannot be punished for acts like rape because the only punishment for that crime is imprisonment. Mostly, the punishment imposed on corporations is both imprisonment and fine. In the landmark case of Assistant Commissioner vs. Velliappa Textiles Ltd⁴⁰, the Supreme Court held that, in case Corporation cannot be imprisoned, they can also be not prosecuted for the offence that is punished with imprisonment under IPC. The other opposing this statement held that, while deciding a case, the judge should, first, identify whether the accused is guilty or not and second, should award him with the punishment that is prescribed for the offence he committed. And he further stated that, Corporations have become lethargic, thinking that, being a juristic person they cannot be punished easily and sent to jail, therefore, they commit so many crimes during the course of the employment.⁴¹ U. P. Pollution Control Board vs. Modi Distillery⁴² case the industry discharged its waste into nearby drainage system. This act is in breach of the Water (Prevention and Control of Pollution) Act 1974 the court held that the authority of the corporation can be held liable for the act even if the company cannot be prosecuted. The IPC has other more provisions to charge corporations for joint liability, criminal conspiracy, aiding and abetting illegal activities etc. in the case of Aneeta vs. M/s Godfather Travels & Tours. In this case, the Supreme Court stated that, incase company is viewed as criminal, the prosecution against the employees or employer of the company is not maintained. Vicarious liability exists only when there is any prosecution against the firm. For the applicability of the doctrine of Corporate Criminal Liability, the criminal act of the employer or employee must be committed with the intention of benefitting the corporation in

³⁹ Corporate Criminal Liability in India Written by: Antim amlan last vited 10/10/19 <https://www.myadvo.in/blog/corporate-criminal-liability-in-india/>

⁴⁰ (2003) 11 SCC 405

⁴¹ CORPORATE CRIMINAL LIABILITY IN INDIA [http://www.acadpubl.eu/hub/ Special Issue Volume 120 No. 5](http://www.acadpubl.eu/hub/Special%20Issue%20Volume%20120%20No.%205) 2018, 87-98

⁴² (1944) 1 All E.R. 691

some manner and be committed with the intention of increasing their own personal gain; this conduct ultimately ends up benefitting the corporation.

If a corporate entity or juristic person is found to have breached the law, the Courts, though bound to impose the sentence prescribed under law, now have the discretion to impose the sentence of fine as a corporate entity cannot be subjected to imprisonment. However, if a natural person is found to have committed a crime, the sentence of imprisonment is still applicable. There is no blanket immunity for corporations just because prosecution would ultimately lead to the sentence of mandatory imprisonment.

In the case of Assistant Commissioner v. Velliappa Textiles Ltd, it was held that the corporations cannot be imprisoned as they cannot be punished and prosecuted under IPC which directs imprisonment. The concept of corporate criminal liability has been established under the Companies Act. The liability of Directors under the Companies Act 2013 has been increased which has replaced the Companies Act 1956. Under the Companies Act 2013 it holds not only the Directors liable but also include the officer in default wherein it includes in broad framework a whole-time director, key managerial personnel and such other officers in absence of KMP who have been specified by the Board of directors and every other director who has information related to it or has participated to be part of that act without raising the objection under the concept of corporate criminal liability in India.⁴³

4.3 NATURE OF CORPORATE CRIMINAL LIABILITY

With industrialization and globalization, corporation acquired the capacity to influence societies for better or worse. Yet, corporations are not traditional objects of criminal law. Justified by notions of personal moral guilt, criminal norms have been judged inapplicable to fictional persons who think and act through human beings.

Corporate criminality is required to be understood in different perspectives of criminological theories than those which are applicable to the natural persons. This is because of the different causes and different environment for and in which corporate crimes are committed. The new Companies Act in India has introduced certain provisions to put check on corporate misdeeds and also imposed upon them corporate social responsibility

⁴³ Corporate Prosecutions, The Crown Prosecution Service, available at http://www.cps.gov.uk/legal/a_to_c/corporate_prosecutions/, last visited on 30/03/2013.

4.3.1 Industrial disaster

The Industrial Disasters are a risk to individuals and life emotionally supportive network that emerge from the supply demand chain of merchandise and enterprises. Huge numbers of this incidence leave long term health impacts and serious pollution of the environmental factors. For example- Bhopal gas tragedy Bombay Docks Explosion, 1944 and many more the workers in hazardous industries do suffer death and injuries at workplaces and may also develop long term effects of occupational diseases. Corporate executives are responsible for the vast majority of deaths because they have violated occupational health and safety standards or have chosen not to create adequate standards. Therefore the corporations may be liable for neglect for adopting safety measures to workers.

4.3.2 Financial scams

Financial scams are majorly done in corporate sector. The category of financial scam defines various offences in it which are Corruption, Tax Evasion Hoarding, Black Marketing. There have been Share Market Scams, Hawala Transactions, Ponzi Schemes, Fake Currency and Cheque Forgery etc. Corporation also involves the use of Fictitious Government Securities, Siphoning of Investors Money and Fraud off Shore Investment.

4.3.3 Pollution and green crimes

There are many different green crimes but they are all committed for the sake of profit and they all harm the environment.⁴⁴ toxic waste dumped by the nuclear weapons industry, asthma and other respiratory illnesses caused by air pollution, and the environmental and human damage caused by the chemical are the evidentiary examples of corporate violence against the environment.

In recent years, some multinational corporations have moved production plants to countries that do not have many laws regulating pollution, and the environmental damage has been significant.⁴⁵ Corporate also get involved in various regulating offences. Other regulatory offences depending upon the activities undertaken by the corporate there are other categories of regulatory offences committed by them. These offences may be committed during the usual operation of their working or by non-compliance. In addition the Companies Act has provisions to ensure the

⁴⁴ Julian Hermida, Corporate Crime, a report, available at, <http://www.julianhermida.com/contcorporate.htm>.

⁴⁵ The-Crankshaft Publishing's Report on Corporate Violence, available at <http://what-when-how.com/interpersonal-violence/corporate-violence/>.

compliance with regulatory from work.⁴⁶

4.4 ESTABLISHING CORPORATE CRIMINAL LIABILITY IN INDIA

The development of the conception corporate criminal liability in India can be named a long preparing exertion from the legal executive to fix duties on unnatural people.

as we know there are two important elements for committing a criminal offence that is mental element and the physical element, these two have been derived from the famous doctrine which have been applied in the court universally the doctrine of '*Et actus non facit reum nisi mens sit rea*' which means there must be intention and action both for constituting a crime. If the person needs to be proved guilty then it is important to prove the guilty mind behind the wrong. The doctrine is the principle of natural law and common regulations which is the cardinal principle of criminal statute. Hence the two elements of constituting a criminal act can be named as mens rea which is mental element and actus rea which is physical element.

Mens rea is culpable state of mind, regardless of whether established by expectation or information or something else, the nonattendance of which on specific events negatives the conflict of wrongdoing.

Mens rea implied the deliberate doing of wrong act yet its importance has changed significantly with the advancement of different thoughts and standards like unsound mind, need, intimidation, mistake, accident, carelessness and so forth. In this manner, basic which means of mens rea is deliberate or crazy doing of an unethically act.

The word 'actus reus' might be characterized as 'such aftereffect of human action prohibited in the eyes of law.

The doctrine of strict liability is one exception under criminal jurisprudence to the rule stated above. As under this doctrine the person can be held accountable for wrongful act even with absences of mens rea. Without the guilty mind the concept of strict liability can be implied by the legislation.

⁴⁶ Rohit Jaiswal, Criminal Liability of Corporate Bodies- A report submitted by Singhania and Partners, LLP, 2012, published by International Law Office, available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=ba60c9f2-ed97-4fcc-b04e-be05f8c8e37f>

In the recent year the concept of strict liability have been emerged a lot as many major criminal wrongs have been included under this principle which widens its scope. This concept is of the modern legislation approach but not the part of traditional morals. Offences which comes under the ambit of strict liability can be termed as quasi criminal offences which means offences which deals with public interest but are to criminal acts but penalty are there as a sanction.

Offences which are pity and which are not immoral can be counted under strict liability it argued that these acts are conventional wrongs which are wrongful under positive law theory This empowered legitimate hypothesis that mens rea isn't material component of these offenses henceforth that exacting obligation is along these lines legitimized.

Another legitimization for severe risk it builds care and proficiency, even by the individuals who are as of now cautious and effective. Individuals thinking about exacting obligation, they will take prudent gauges past what they would some way or another utilize. Severe obligation is the gadfly which animates the more noteworthy exertion; this redounds to the open great.

The goal is unassailable, the authorizations are not very brutal in numerous wrongs, and there is no genuine event for concern despite the fact that the honest people are every so often sentenced, subsequently reactions of exacting risk from the view purpose of the essential standards of reformatory law is only academic.

It is unexpected that when the base of support of severe risk is the daintiness of obligation, the equivalent is being utilized to legitimize overwhelming disciplines, which are thus expected to aid the execution and authorization of the law while simultaneously encouraging organization productivity. This occurs if there is rise, or an occurrence of mass demolitions through contamination, net carelessness of the organization bringing about wide spread harms.

4.4.1 Use of criminal liability of a corporate body

Most of the scholars in united state of corporate and criminal law have been arguing from past fifty years that corporate criminal liability should be removed. According to the view of law and economic scholars the doctrine of corporate criminal liability ought to be rejected and is not efficient, there should be civil liability for actions against corporation and criminal liability against the workers and agent of the organization. As it is justifies that the corporation is the artificial person which has no life apart from the people working under it because of which these

entities blame the innocent third parties like share holders employs and others for the wrong committed by people working under scope of their employment in these corporations. What this record misses is the truth that organizations are most certainly not fictions. Or maybe, they are colossally incredible and genuine, actors whose direct frequently causes critical mischief both to people and to society all in all. The ability of a company is both limitless and remarkable in mankind's history. There are two aspects of the corporation can be seen in day today life it not only effects the life of the people as a blessing but sometimes it is proved to dangerous as well. For example the uphar criminal tragedy and many other crimes including white collar crime and organized crime which need urgent analyses. There were serious rapacaccusions of the white collar crime in year 1940 remarked by Professor Sutherland because socio economic crime was on the peak. The 1990 – 2000 was the decade of the high profile controversies corruption was on its heights which included the 2G telecom license scam, Hussein Ali tax evasion scam the Delhi common wealth game corruption in which the cores of rupees were stolen by high profile people.

By all this crime it was proves that white collar crime is more dangerous and harmful for people then blue collar crimes.

There were two reasons, in spite of such a large number of crimes committed by a company; the law was reluctant to force criminal risk upon companies for quite a while.

- That companies can't have the mens rea or the blameworthy psyche to submit an offense
- That company can't be detained.

In 16th and 17th century there were general beliefs that corporation could be held liable for criminal misconducts there are four following problems to held a company criminally liable

- Acknowledgement of the artificial personality i.e. corporation was done. In 18th century the legal scholar and thinkers started having fanatical spotlight on hypotheses of corporate character; a progressively practical methodology was most certainly not created until the twentieth century.
- The jurists didn't accept enterprise could forces the ethical fault value important to carry out wrongdoings of intention.
- Court cannot held a corporation liable for the cat which it cannot posses according to the doctrine of uulta virus.
- The court needs the criminal to be physically present while trial as it is literal trail

procedure for a criminal court.

4.4.2 Legal Inadequacy

These are the significant rules in their individual field that are without essential lawful angles. On the other hand law has additionally evolved to a degree with respect to certain different rules what's more, their separate correctional arrangements wherein fine has been forced on the enterprise when they are seen as liable

This created law doesn't discover a spot in the Indian rules as they despite everything make just the authorities liable for the demonstration criminally obligated and not the corporate itself. Occurrences of this are, SS.45.63.68.70(s), 203 and so forth of the Indian company Act 1956 where just authorities of the organization are held at risk and not simply the organization.

It is additionally reflected through the Takeover code the different segments of the IPC that direct necessary detainment doesn't take a corporate into account since such a segment can't neutralize company. A portion of the models are, Section 141 of the Negotiable Instruments Act 1881, Section 7 of the Essential Commodities Act 1955 and Section 276-B of the Income Tax Act 1961.

4.4.3 Judicial decisions in support of corporate criminal liability in India

Kusum products Ltd v. S.K. Sinha⁴⁷

The court held that in the year 1984 It is not possible for court to sentence a unnatural or legal person for imprisonment, even though a corporation is held guilty for its misconduct, If the courts act the other way around it will cause imbalance in the natural legislative structure.

Post chartered bank case

As it is a pre requisite condition for all corporation to uphold mens rea it is of general consciences that corporation cannot be imprisoned henceforth this condition is overly debated by Indian court by the decision of standard chartered bank case law

K. Khosla v. S. Venkatesan,⁴⁸

In this case the two companies were held liable under the chargers of fraud in IPC the magistrate issued two pre requisites for prosecuting of the corporate body for the punishment under section

⁴⁷ (1984)149 ITR 250(Cal).

⁴⁸ (1992) Cr.L.J. 1448

420 of Indian Penal Code. The first being that of mens rea followed by the punishment of imprisonment with its applicability, since, a corporation is only an institution it does not follow both the pre requisites and thus it becomes difficult to charge them for their miss conduct.

State of Maharashtra v. Mayer Hans George⁴⁹ and Nathulal v. State of M.P⁵⁰

The Supreme Court gave its jurisdiction that Indian courts have made significant propositions but excludes the offences committed under mens rea, treating it with equal importance as it is required for imprisonment or fine for committed crime. The dilemma of whether to imprison or fine a corporation for their mis conduct under mens rea is still surfaced on our judicial system.

MV Javali v. Mahajan Borewell & Co and Ors⁵¹

The ruling of Supreme Court stated that where the punishment of imprisonment and fine are applicable should be awarded with it and in cases where it is not possible, namely an association; it is only reliable to impose fine on them.

From the above mentioned cases we can conclude that companies cannot be held criminally liable for their crimes. But the question which remained unanswered is what if a corporation is guilty for crime which requires punishment of more than that of fine?

Standard chartered Bank and Org v, Directorate of Enforcement and others

The mentioned case has proven to be a milestone in Indian courts as it has changed the prospectus and point of view o judicial system towards criminal liability of a corporation. In this case, the company violated the sections of foreign exchange regulations act. In the given condition, the court stated that if the corporation is found guilty of committing such crime then it will be awarded with the punishment of imprisonment and fine. The legislative body of our judicial system has always intended to hold the corporations legally liable for their crimes. As stated under IPC section 11, the company, or association, or body of persons of a corporation or not are projected as “person”. Henceforth, the punishment of fine and imprisonment are important since imprisonment cannot be applied and awarded. The jurists view it to be important and a major step in the process towards the criminal liability of corporations.

⁴⁹ A.I.R. 1965 S.C. 722

⁵⁰ A.I.R. 1966 S.C. 43

⁵¹ OAIR 1997 SC 3964

The important query in the minds of judicial officials is that can a corporation be imprisoned for commencing crime? It is a proven fact that a corporation is an imaginary element and hence it is impossible to prosecute it for committing crime. But the main rights and power of a corporation reside in hands of directors and shareholders and hence, they can be imprisoned on the basis of their actions and crimes in the name of company. Various acts and amendments have stated about the possible chance of imprisonment of a corporation but no precise legislation is made in that direction in reality. The governing character of a corporation defeats various intentions. The main purpose of imprisonment as a punishment is to avoid the consequences of these crimes in future.

POST- STANDARD CHARTERED

Iridium India Telecom Ltd. v. Motorola Incorporated and Ors⁵²

The final judgment of Apex Court stated that a corporation is guilty in the similar way as an individual under common legal procedure which includes mens rea. The companies which are guilty will be sentenced in respect to crimes committed by its members or company itself.

A corporation is criminally liable when the wrongdoing, committed by its employees or group of employee who are in control of its functions, is related to business of corporation as a single unit. The Supreme Court stated that in such crucial situations, it would be necessary to determine the power of people or group of people who are its governing head and lead its actions.

Since the following decisions, the court has adopted the doctrine of attribution and imputation which clearly states and rejects the idea of a corporation not being held criminal liable for their wrongdoing. According to the court all corporations will be held to be prosecuted by the law, even if they are committed under mens rea or not.

CBI v. M/s Blue-Sky Tie-up Ltd and Ors⁵³

The apex court of our country legalized the prosecution of corporation for its wrongdoing and also compensated by fine as a punishment. This decision was forwarded and applied after Calcutta high court rejected various criminal applications against the wrongdoings of corporations.

The case was filed against respondents for attempting criminal activities which are mentioned

⁵² S.L.P. (C) No. 6818 of 2004

⁵³ ,Crl. Appeal No(s). 950 of 2004

under sections of IPC section 13 [2] read with 13[1][c] and [d] of the Prevention of corruption act, 1988. Against the said charges the respondent filed case against appellant under section 482 of CRPC for rejecting the above mentioned charges and crime filed against their activities.

The Calcutta HC rejected the request of first respondent by underlining that a corporation cannot be held criminally liable and hence it is unable to be presented before law while the Supreme Court passed the ruling stating punishment should be imposed on corporation in the form of fine.

LAW COMMISSION 41ST

The law commission of India stated that it is practically impossible to imprison a corporate body and the only reliable source of punishment is fine for committing of heinous crime. If the penal law does not sentence punishment of fine on the corporation then its prosecution is not possible in front of law. In order to commence this issue the commission recommends addition in section 62 of IPC UNDER as “If the crime is committed by company or corporate body or group of individual, the offence committed is awarded only by imprisonment, is held guilty and sentenced with compensation of fine.”

LAW COMMISSION 47TH

The commission recommended another addition through its 47th report stating imprisonment is important if the committed offence is business or economic related mentioned under provisional Acts. If the offender is a corporate body then the provisions becomes futile and then are subjected to be punished by imposing fine as penalty. This situation may rise under both the conditions of IPC and economic laws. Hence, addition of following provisions can be considered:-

- 1) In cases where subjected crime is awarded with punishment of fine or imprisonment or only imprisonment, and the crime is committed by a corporation or association, then the reliable source of punishment is imposition of fine.
- 2) In cases when only reliable source of punishment is imprisonment, the offender being a corporation or association, then it shall be prosecuted before law and sentenced to the penalty of payment of fine by the courts.
- 3) The law commission recommends the legislative body to focus on the gaps which makes it unappealing for corporate body to be held appropriate for punishments such as imprisonment and fine. Here, the word “corporation” stands for association or group of employees which commit crime under the name of a corporation. This recommendation highlights the fact that to make a corporation criminally liable for its proposed actions,

the subjective punishment of fine is reliable source and acceptable. But the bill, based on these recommendations, did not pass the stage of law making and was lapsed.

4.5 CONCLUSION

It is apparent that normal people carry out wrongdoing in light of the fact that truly and intellectually they can submit, while an organization can't however it is an individual under law. Corporate Criminal Liability has developed over years. Its starting point is from the old however turned into a hotly debated issue after the standard of Globalization, Privatization and Progression was embraced on the planet advertised.

The initial phase in the English improvement of corporate criminal obligation was made in the 1840's the point at which the courts forced obligation on partnerships for exacting risk offenses. It was endorsed that corporate additionally has mens rea and carry out violations through actus. At first, it was reasoned that criminal risk could be credited to the partnership dependent on the advantage it got because of the criminal demonstrations of its operators. Corporate wrongdoing additionally incorporates misrepresentation and other criminal operations, which influences general laws. Numerous fakes submitted by corporate in India and abroad started the council to investigate the law and roll out appropriate improvements. The laws were corrected as what's more, when required to oblige the corporate criminal risk.

Law commissions have additionally assumed a significant job in acquiring changes the law embeddings corporate criminal risk. As of late in India, Companies Act, 2013 has been sanctioned however it has not intricately secured a wide range of violations submitted by the organization and to fix its risk separately. It isn't that there was no enactment however they didn't cover the discipline to be forced on the corporate. Numerous cases have preceded different courts in India just as in different nations.

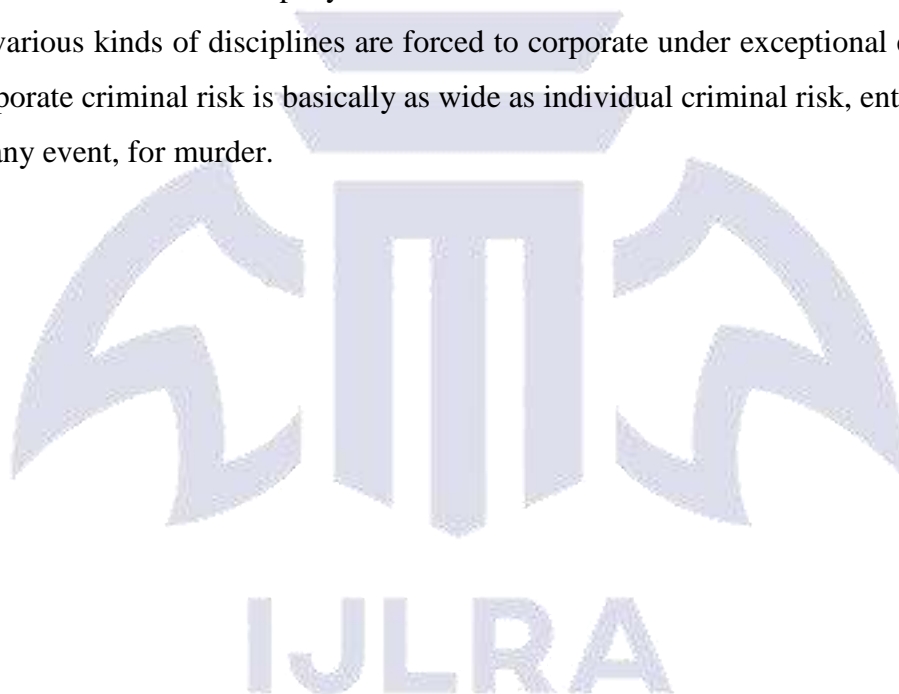
At first the legal executive was hesitant to hold organization criminally subject on the ground that it was juristic individual, along these lines it was unequipped for framing the mens rea and it is difficult to rebuff the organization. Be that as it may, the legal executive bit by bit changed its mentality towards the organization criminal obligation.

The points of reference have contributed for the advancement of this standard. Once more, legal advisers have additionally given various hypotheses which add to the criminal risk of the

organizations. This sort of wrongdoing is submitted everywhere throughout the world and each State has drafted its own law regarding the matter.

The English and French models necessitates that people following up on benefit of the partnership hold a high position or play a key capacity inside the partnership's choice structure. Indian legitimate framework received the "change prior" hypothesis which is known as Distinguishing proof hypothesis now. All the violations expressed in Indian Penal Code are applied to corporate moreover.

Distinctive sort of disciplines like capital punishments, life detainment, straightforward or rigors detainment can't be forced on company as a result of its lawful trademark character. What's more, henceforth various kinds of disciplines are forced to corporate under exceptional enactment. At present, corporate criminal risk is basically as wide as individual criminal risk, enterprises being indicted in any event, for murder.



CHAPTER-5 CORPORATE CRIMINAL LIABILITY IN COMPANIES LAW AND OTHER STATUTES

5.1 INTRODUCTION

Companies act in India is the species to the genius of companies' act of England as the Indian histories says East India accompany was the first company which was established by the Britishers. So the English company law has the greater significance to establish the companies act in India the first ever company law which was established in England was joint stock companies' act 1844. Office of registrar was also created for this act. Under this act the company special act of the parliament. But under this act the limited liability of the member was not defines so the government of England passed another act which was limited liability act which stated the limited liability of the registered companies' members.

In the year 1856 the new era of company law started under which the company was made by the article of association and memorandum.

The first act which was named as the companies act was companies act 1862. From this act we got many modern concepts the initial part of the for the formation of the limited liability will be

- Article of association
- And memorandum of association

The provision related to the winding up of the company was firstly come under this act. This act was also known as the '*Magna Carta of the of co operative enterprises*'⁵⁴ as it has given the basic structure to the company laws.

The director's liability act 1890 was introduced to describe the liability of the directors of the company. Then in the year 1900 the government imposed the compulsory auditing provision under companies act to keep a watch.

The further in the year 1908 there was the formation idea of private company before this idea every company was said to be a public company.

⁵⁴ Origin and Evolution of the Modern Company Law Written by: Rahul Kumar Singh
<http://www.legalserviceindia.com/articles/eocindia.htm>

In year 1948 there was the formation of new companies act which introduced key features which were the idea of the inter aila under the exempt private company, another concept was the accountability of the organization under general public because of which people started to recognize the excel sheet which used to show the gains and losses of an organization. Further the power was given to the share holder to remove a director in general meeting of the company and the power was given to investigate the company's affairs to the board of trade and the protection to the minorities was also extended by the legislation.

To get reduce the confusion and make the structure stronger for the organizations there were various measures taken by the government relating to previous act 1948 -1981*the Companies Consolidation (Consequential Provisions) Act, 1985*.was finally came which abolished all the existing statues which were there, as the department of trade publishes the various methods of consolidation and its advantages for its working.

At the same time in 1985 two new consolidation acts were made they were the business name act 1985 and the company security insider dealing act 1985, which consolidate certain provision of Companies' act 1980 and 1981.

At the end after compiling all the recommendation and past law final amendment was done in 2006 in U.K the companies act 2006 came into force in the stages. It incorporated the section relating

- Outlines upgraded obligations of executives,
- More straightforward system for privately owned businesses,
- Expanded utilization of e-correspondence,
- Upgraded auditor's liabilities.

These sections were helpful for modern era of company law and covered all the loopholes of the previous acts.

5.2 EVOLUTION OF COMPANIES ACT IN INDIA

The concept of company's law in India has been derived from the laws of English companies act. As we can say the base is the English law and the structure is Indian companies law. In 1850 the first act which was related with the provision of company came into force. After joint stalks companies' act 1844 was passed by English government in U.K. the act of 1850 accommodate

the features such as registration of a corporation and transferability of shares. Then the act was amended in 1857 and included the right of registration of a corporation in which the limited liability was not give importance and after 5 years in year 1860 this right of limited liability was handover to the insurance and the banking companies as exactly prevailing in England. All the previsios acts were abolished and companies act 1856 come into picture by providing provisions relating to limited liability and winding of association and corporations. The new act was framed in 1822 which was as equal to the act which was epitomizing the corrections which were made in the Company Law in England. Finally the consolidating act was passed in 1913, then in 1936 significant revision were made under this consolidated act. The amendment act 1951 came into ordinance Indian Government proclaimed the Indian Companies (Amendment) statute under which the Central Government and the Court expected broad forces to mediate legitimately in the issues of the organization and to make important move in the enthusiasm of the organization.

5.3 COMPANIES ACT 1956

The act was first enacted on 1st day of April 1956. This law was instituted so as to merge and correct the previous laws. This act was the longest piece of legislation that was passed by the Indian government which was a recommendation by the Bhabha committee a committee of company in March 1953. This act was contacting 15 schedule and 658 sections. Revisions have been made in the Act as required.

- Under this act government tried to revel about the following matters in there prospectus
- Company should give its detail information about its monitory issues in its record
- Provision for government investigation in the organizational affairs
- Control over the managerial power of the company
- Duties must be properly performed and implemented by company management.
- Safeguard of minority investor was the highlight of act of 1956.

Under companies act 1956 there are various sections which impose criminal liability on corporation as well as on the directors of the corporation. These sections impose liability on directors and officers of the company as well.

i. Section 63 issuing a prospectus containing untrue statements

This segments peruses concerning any false proclamation in the outline, each individual who approved the issue of the plan might be culpable with detainment for a term which may reach out to two years, or with fine which may stretch out up to Rs.50, 000/or both.

- ii. Section 68- Knowingly making a false, deceptive or misleading statement and thereby inducing person to invest money.

It is a culpable offence to deceitfully initiate the outsider to put cash in Companies. This segment can be summoned when speculation is achieved by intentionally putting forth any expression which is false or misdirecting or disguising of material certainties. Risk would likewise be brought about even one is endeavoring to do as such It pulls in the detainment up to five years or fine up to Rupees One lakh.

- iii. Section 73 Failure to repay excess application money

Where the authorization of a stock trade has been conceded and in this way, the designation finished is legitimate, the outline being overbought in segment of cash got must be sent back to the candidates forthwith. This over-bought in cash ought to be sent back to the candidates inside the edge of eight days.

Any default in reimbursement of use cash and premium is culpable with fine up to Rupees Fifty Thousand yet in the event that reimbursement isn't made inside a half year from the expiry of the eighth day, likewise with detainment for a term up to one year. Covering the name of a leaser or distorting the nature or measure of the obligation or claim of any lender

Section 105

If any officer of the company

- (a) Knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) Knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) Abets or is privy to any such concealment or misrepresentation as aforesaid;

He shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.⁵⁵

It furnishes for discipline with detainment reaching out to one year or with fine or both, if any officer of the organization purposely covers the name of any leaser or distorts the nature or measure of case or obligation or abets such disguise or deception.

⁵⁵ https://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

Sec. 117-C LIABILITY OF COMPANY TO CREATE SECURITY AND DEBENTURE REDEMPTION RESERVE

(5) if default is made in complying with the order of the Company Law Board under sub-section (4) of sec. 117-C (directing the company to redeem the debentures forth with by the payment of principal and interest due thereon), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.

v) Section 202(1) Undercharged insolvent acting as a director On the off chance that a man who is an undercharged bankrupt is excluded from being named to any administrative office. On the off chance that any such individual releases the elements of a Director or partakes in the administration of any organization, he is culpable with fine up to Rupees fifty thousand and detainment up to two years

vi)Section 207 Default in Distributing Dividends: With a specific end goal to guarantee incite installment of Dividend to investors. Segment 207 forces a punishment if a profit has been announced and isn't paid inside thirty days from the date of the revelation. The punishment is brought about by each chief, gave on the off chance that he was a gathering to the default.

The discipline for this is straightforward detainment up to seven days and fine. Vii) Section 210(5) Failures to lay balance sheet, profit and loss accounts sheets at the annual general meeting. At each Annual General Meeting, it's the obligation of Board of Directors to lay before the gathering the archives like asset report, benefit and misfortune account and so forth coming up short of which they are qualified for detainment up to a half year or/and fine up to Rupees ten thousand. viii) Section 217(5) Failures to attach balance sheet of the board of directors. It says that a report made by the Board of Directors is to be appended compulsorily with the Balance sheet. In inability to which, the discipline is detainment up to a half year or/and fine up to Rupees Twenty Thousand. International Journal of Pure and Applied Mathematics Special Issue 1044 ix) Section 221(4) Failure to supply information to auditors under this it's the obligation of Director to uncover to the organization the particulars of any issue relating to them which is required to be reflected in accounts. The punishment for this is detainment up to a half year or/and fine up to Rupees fifty thousands

Sec. 272- imposes criminal liability on directors under certain circumstances.

According to this section, ‘if after the expiry of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 270, he shall be punishable with fine which may extend to five hundred rupees for every day between such expiry and the last day on which he acted as a director’.

If any person who holds office, or acts, as a director of more than fifteen companies shall be punishable with fine which may extend to fifty thousand rupees in respect of each of those companies after the first twenty.

Section 299(4) Failures to disclose interest On the off chance that the executive makes an agreement with the organization without unveiling his enthusiasm for the agreement, he should bear the fine which may stretch out to Rupees 50,000

Sec 374 provides that if default is made in complying with the provisions of section 372 or section 373, every officer of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees.

Sec. 420-C provides that any officer of a company who, knowingly, contravenes, or authorizes or permits the contravention of, the provisions of section 417, 418 or 419, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees.

The Companies Act also provides for criminal liability on officers and contributories of a company for falsification of books. According to the section ‘if with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up.

(a) Destroys, mutilates, alters, falsifies or secrets, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities ; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register book of account or document belonging to the company ; he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Sec 541 imposes criminal liability on officers of a company where proper accounts not kept. According to the section ‘where a company is being wound up, if it is shown that proper books

of accounts were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

Sec 630 provides that if any officer or employee of a company

- a. Wrongfully obtains possession of any property of a company; or
- b. Having any such property in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorized by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

5.4 COMPANIES ACT 2013

Companies act 2013 which was introduced to increase the liability of directors of the corporation has turned out to be a more reliable and accountable act after companies act of 1956 the act of 2013 not only recognizes civil liability but also increased the monetary penalties and imprisonment the companies act of 2013 not only makes the director of a corporation criminally liable but also include officer in default.

Salient features of company of companies act 2013

- Under companies act 2013 the concept of 'One Person Company' was added which widens the scope of companies' definition.
- It even included public electrical, insurance and banking companies.
- The membership of private company was raised up to two hundred people.
- Further Act has recommended the quantum of venture for various sorts of organizations.
- Act has improved the fine sum impressively to the degree of cores under various segments which will be forced on the liable official and company
- The idea of corporate social responsibility was introduced to setup companies' responsibility towards society.
- Two separate tribunals were introduced for speedy trial namely national company law tribunal and national company law appellate tribunal.
- Central government was empowered with a speedy justice system to be constituted by

special court for offences committed by any company and its officers.

Sections related to corporate criminal liability under companies act 2013

Section 34 – Issue of Prospectus with untrue or misleading statements

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447: Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

According to this section, every person who authorizes the issue of such prospectus which contains untrue or misleading statements in the form of inclusion or omission thereby inducing another person to buy shares on that faith will be subject to imprisonment which may extend from minimum 6 (six) months to 10 (ten) years.

Section 53 – Issue of shares by a company at a discount

This section prohibits any company to issue shares at a discount. Non-compliance of this section results in a fine for the company which can range from one to five lakh rupees. The officer-in-default is held criminally liable and is punishable with imprisonment a period up to 6 (six) months or fine of one to five lakh rupees or both.

Section 68 – Buying back of shares by a company

This section contains provisions and guidelines to be followed by the company while buying back its own shares or other securities. According to Section 68 (11), in case of default by the company in complying with the provisions of aforesaid section or guidelines laid down by SEBI, criminal liability of the officer in default of such company shall be imprisonment up to 3 (three) years or fine of not less than one lakh rupees or both.

Section 71 – Issue of debentures by the company

This section deals with issuing of debentures by the company for financing with an option to convert such debentures into shares, wholly or partly, at the time of redemption. Accordingly, the company must appoint a debenture trustee for protection of rights of debenture holders. In case,

when the debenture holder feels that the company would not be able to discharge the principal amount as and when required, the debenture holder may file a petition before Tribunal which may, after hearing the interested parties, pass the order restricting the company from incurring any further liability in the interest of debenture holders.

Moreover, when the company fails in redeeming the debentures at the time of maturity, the debenture holders or debenture trustees can file the petition before the Tribunal which may by order ask the company to make payment of principal amount and the interest due without any delay.

Non-compliance of such an order of Tribunal shall make the officer in default liable for imprisonment for a period which may extend up to 3 (three) years or fine of 2 (two) lakhs to 5 (five) lakhs or both.

Section 92 – Filing of annual return by the company before RoC

This section mandates the preparation of annual return by the company in the prescribed format end of every financial year. The annual return must contain such information as has been prescribed under Section 92(1). This return needs to be filed before the Registrar of Companies (RoC) within 60 (sixty) days from the date of AGM or time prescribed under Section 403. Failure to file the annual return may lead to a fine for the company in tune of fifty thousand rupees and criminal liability for the officer-in-default in form of imprisonment for a period extending up to six months or fine between fifty thousand to five lakh rupees or both.

Section 118 – Preservation of minutes of meetings by the company

According to this section, every company has to ensure that the minutes of proceedings of every general meeting, Board meeting and resolutions passed by postal ballot is prepared and signed in the manner as has been prescribed under the section and must be preserved for at least 30 days of the conclusion of such meetings. These minutes must contain all relevant information related to the meeting and decisions made in the course of such meetings. Further, sub-clause 12 of the section contains the provision for punishment in case a person-in-charge is found guilty of tampering with the minutes. He shall be liable for imprisonment for a period extending up to two years or a fine which may be in between twenty-five thousand rupees to one lakh rupees or both.

Section 128 – Maintenance of proper books of account by the company

This section makes it mandatory for a company to maintain proper books of account including the financial statement for every year and may keep these in an electronic mode in the prescribed form. Further, this information may be provided to investigating agencies as and when required and may be kept for a reasonable period of time.

This section further states that if the managing director or Chief Financial officer or the officer in default fails to comply with such provisions, he shall be criminally liable for imprisonment for a term of one year or a fine, not less than fifty thousand rupees and extending up to five lakh rupees or both.

Section 129 – Financial statement should be in the prescribed form

It deals with the provision that mandates a company to provide the financial statements in the prescribed form for respective class and which give a true and fair picture of the actual financial position of the company and complies with the approved accounting standards. Moreover, a company also needs to attach financial statements of its subsidiaries or associate companies, if any. According to Section 129(7), in case of the company's failure to comply with the requirements of this section, the managing director or Chief financial officer or officer-in-default shall be punishable with imprisonment for one year or fine of at least fifty thousand rupees which may go up to five lakh rupees, or both.

Section 134 – Approval of financial statement by officials of the company

According to this, it is mandatory for every company that the financial statement, which may include the consolidated ones, must be approved by the Board of Directors through getting it signed by Chairman of such company authorized by Board or by two directors out of which one may be managing director and CEO, CFO and company secretary of such company. In case of non-compliance with the provisions laid down under this section, the officer-in-default shall be punished with imprisonment extending up to three years or fine in the range of twenty-five thousand rupees to five lakh rupees or both.

Section 167 – Vacation of office of the director of the company

This section is related to conditions or events which lead to the vacation of office of director. There are various events specified in this section which leads to the vacation of office such as disqualification under specific sections of the Act or by a court of law or Tribunal, acting in

contravention of Section 184 while entering a contract or disclosing his interest in such contract, etc.

However, Section 167(2)(a) provides that if a person continues to hold the office of a director in the company even after having knowledge of vacation of office under him, such person is criminally punishable with imprisonment for term extending up to one year or a fine which may be in between one lakh rupees to five lakh rupees, or with both.

Section 185 – No advancement of loan to a director by the company

This section provides that no company shall advance an amount as loan represented by a book debt to a director or any such person for whom director gives a guarantee or any security against such loan, except as provided otherwise in the Act. According to Section 185(2), if any such act is committed in contravention to the above provision, such director or another person shall be criminally liable for imprisonment which may be extended up to six months or fine which may amount to minimum five lakh rupees and may extend up to twenty-five lakh rupees, or both.

Section 188 – Cases of related party transaction

This section states that no company shall enter into a contract or transaction with a related party commonly known as ‘related party transaction’ without the approval of Board of Directors through a resolution passed in the Board meeting. These transactions may include sale or purchase, or supply of goods, an appointment of an agent or a related person to the office of profit in a company, etc. As per sub clause 5 of this section, non-compliance of above provisions in case of listed companies may result into criminal liability of the director for imprisonment for a term extending up to one year or fine between twenty-five thousand rupees to five lakh rupees or with both.

Section 229 – Penalty for False statement and destruction of documents

This section provides for a penalty for furnishing false statement, mutilation or destruction of documents by any person bound to cooperate during an investigation. If the statement made by him turn out to be false he shall be liable for punishment under the provisions of Section 447.

Section 447 – Penalty for fraud

This section is related to commission of fraud by any person of the company or wrongful loss to shareholders or wrongful gain to himself, such person shall be liable for imprisonment for period

of at least six months which may extend to ten years or fine which shall be equal to amount of fraud and not any less but which may also extend to three times of the amount involved.

Section 448 – Penalty for providing false statement or omission of fact

This section provides for punishment for false statements. It states that if any report, financial statement, return, prospectus, filing or another document under any provision of this Act made by any person is false or omitted any material fact despite having knowledge of the same, then such person will be liable under provisions of Section 447.

Section 449 – Penalty for providing false evidence to authorities

This section deals with punishment for providing false evidence. According to this, if any person intentionally provides false evidence in the course of the examination upon oath or in the form of deposition, affidavit or winding up process of the company. Then, in that case, such person would be liable for imprisonment of at least three years which may extend to ten years or fine which may go up to ten lakh rupees.

These are the various sections under which a director of a company can be held criminally liable for any contravention of the provisions specified under the Companies Act, 2013.

5.5 CORPORATE CRIMINAL LIABILITY IN CRIMINAL LAW

In the case of Assistant Commissioner v. Velliappa Textiles Ltd.⁵⁶ the Supreme Court by a majority of 2:1 held that since corporations could not be imprisoned they could not be prosecuted for an offence where IPC mandates an imprisonment. The dissenting judge observed that just because a corporation cannot be imprisoned can never be a reason for an observation that the corporation can not at all be prosecuted in that case. The judge further added that the court had two functions to perform. The first one is to determine whether the accused is guilty of having committed the crime and this conclusion has to be made on the basis of the evidence produced before the court. And the second function is to award a sentence for the offence for which the accused is found guilty. He explained

“Courts would be shirking their responsibility of imparting justice by holding that prosecution of a company is unsustainable merely on the ground that being a juristic person it cannot be sent to jail to undergo the sentence. Companies are growing in size and have huge resources and finances at their command. In the course of their business activity they may sometimes commit breach of

⁵⁶ 2003) 11 SCC 405 <https://indiankanoon.org/doc/133575895/>

the law of the land or endanger others' lives. More than 4,000 people lost life and thousands others suffered permanent impairment in Bhopal on account of gross criminal act of a multinational corporation. It will be wholly wrong to allow a company to go scot-free without even being prosecuted in the event of commission of a crime only on the ground that it cannot be made to suffer part of the mandatory punishment.”⁵⁷

Analyzing these functions along with concerns, the judge observed that the corporations could be punished with a sentence of fine if the court finds them guilty.

In the case of *Standard Chartered Bank v. Directorate of Enforcement*⁵⁸ the court decided that in cases of offences which mandate both imprisonment and fine, the corporations should be punished with a fine. The Supreme Court overruled the *Velliappa* case and held that there is no blanket immunity for any corporation from the prosecution of offences just because the prosecution demands a mandatory imprisonment.

Section 66 in the Food Safety and Standards Act, 2006

66. Offences by companies.-

(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit: Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the

⁵⁷ Evolution of Corporate Criminal Liability In India <http://www.legalservicesindia.com/article/2537/Evolution-of-Corporate-Criminal-Liability-In-India.html> 9/12/2019

⁵⁸ (2005) 4 SCC 530: AIR 2005 SC 2622. <https://indiankanoon.org/doc/1915525/>

consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.-For the purpose of this section,-

- a. "Company" means anybody corporate and includes a firm or other association of individuals; and
- b. "Director" in relation to a firm, means a partner in the firm.

Every person who at the time of offence was committed was in charge of a particular establishment and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Also if it is proved that the offence has been committed in connivance of or is attributable to any neglect on the part of any director manager or other officers shall also be guilty of that offence and liable to be proceeded and punished accordingly.

Section 40 of the Air (Prevention and Control of Pollution) Act

Executive Director & Managing Director respectively of the company and admittedly would be in-charge of the company and responsible to the company for conduct of its business and can be proceeded against criminal liability.⁵⁹

Section 16 of the Environmental Protection Act, 1986

Explains the principle of vicarious liability of the in charge person such as directors, Managers and secretary etc for if the offence is committed by any company. The Supreme Court thus directed that the charges be re-framed under section 304A of the IPC. Section 304A deals with causing death by negligence and prescribes a maximum punishment of two years along with a fine. Consequently, the criminal liability of the accused lay outlined by section 304A of the IPC and they were tried accordingly. Civil liability, on the other hand, was adjudged by the Courts and allocated to the victims by way of monetary compensation.

Soon after the Bhopal Gas tragedy, the Government proposed and passed a series of laws regulating the environment, prescribing safeguards and specifying penalties. These laws, among other things, filled the legislative lacunae that existed at the time of the incident. Given the current

⁵⁹ S.K. Das And Ors. vs Chhatishgarh Environment 2007 CriLJ 4345, 2007 (4) MPHT 4
CG<https://indiankanoon.org/doc/303777/>

provisions, a Bhopal like incident will be tried in the National Green Tribunal (once operational) and most likely, under the provisions of the The Environment (Protection) Act, 1986. The criminal liability provisions of the Act prescribe a maximum penalty of five years along with a fine of one lakh rupees. Further, if an offence is committed by a company, every person directly in charge and responsible will be deemed guilty, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such an offence.⁶⁰

Section 305 of the Code of Criminal Procedure

1. In this section, Corporation means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).
2. Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.
3. Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.
4. Where a representative of a corporation does not appear, any such requirement as is referred to in subsection (3) shall not apply.
5. Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

60 . Legislative vacuum and the Bhopal Gas tragedy [Rohit](https://www.prsindia.org/theprsblog/legislative-vacuum-and-bhopal-gas-tragedy) - June 10, 2010
<https://www.prsindia.org/theprsblog/legislative-vacuum-and-bhopal-gas-tragedy>

6. If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

A corporate body does not have a physical presence or mind of its own. It, therefore, where it is an accused, has to be given a fair opportunity during an enquiry or trial. A corporate body functions through living individuals and, therefore, it requires its representation through such living persons before the Court. For such presence, a representative needs to be appointed for the said purpose and that requirement is fulfilled through Section 305 of the Code of Criminal Procedure by a person duly appointed fulfilling the requirement of Section 305 Cr.P.C., the corporate body is duly represented before the Court for the purpose of enquiry or trial. These requirements are provided for in Section 305 Clauses (ii) to (v) of the [Cr.P.C.](#) Clause (vi) of Section 305 Cr.P.C. gives power to the Court to determine whether a person appearing as a representative of the corporate body, is or is not such representative. A presumption, therefore, arises under Section 305 Code of Criminal Procedure that if the appointment of a person who has been duly appointed as a representative of the Corporation is disputed, the same is required to be proved to the contrary and this power to decide in case of a dispute with regard to the appointment of a representative of a corporate body is with the Court. The Court, thus, can decide this aspect of the dispute.⁶¹

5.6 CONCLUSION

The Companies Act, 1956 impose criminal liability on companies as well as on the directors and other officers of the company. The majority of the sections impose liability on the company as well as officers/directors of the company. However, certain section imposes criminal liability exclusively on officers/directors of the company.

The approach to corporate criminal liability has changed from there being no concept of liability for crimes committed by corporate to liability based on identification of some persons as the alter ego of the company. Companies Act, 2013 which has replaced the Companies Act, 1956 has increased the corporate liability of the directors. The Act has also increased the monetary

⁶¹ M/S Mount Everest Mineral Water vs Food Inspector on 27 August, 2009 CrI.Misc.No.M-17043 of 2008 <https://indiankanoon.org/doc/148618912/>

penalties and imprisonment.

Not only corporate criminal liability under Companies Act, 2013 is recognized but the act also recognizes civil liabilities. The Companies Act, 2013 not only makes the director criminally liable but also includes officers in default under the concept of corporate criminal liability in India.

Organization is exceptionally perfect instrument to begin business with progressively number of people absent a lot of issue and trouble among themselves. Company picked up energy over the universe and become especially famous idea.

Each country has established organization law including India. The best points of interest of bringing business through organization are autonomous presence, restricted obligation, boundless enrollment if there should arise an occurrence of open company, perpetual progression, gaining property in its own name and friends has the ability to sue others and be sued by others.

Recently ordered Companies Act 2013 has given the chance of framing the organization with single membership. Further, the Act has improved the most extreme participation of privately owned business from fifty to two hundred.

Act has wide application since it covers in any event, Banking Companies, Insurance Companies, and Electric Companies. New Act has given chance to advertisers to set up organization for future undertaking which has not conveyed noteworthy exchanges to stay with, for example, torpid organization. The New Companies Act 2013 has established Special Court which has been given restrictive ward to attempt the offenses submitted by organizations under the new Act. Act has recommended the compulsory least discipline in certain offense which is qualified to be noted on the grounds that it attempts to be progressively obstruction. New Act has endorsed the improved discipline on the off chance that organization submits the offense second time. Indeed, even the New Act has given the synopsis procedures to offense culpable under three years which empowers the court to give fast equity.

Further the Act has enabled the Central Government to keep up the reformatory of master to be called as the Mediation and placation which would help in settling the suit of organization in progressively genial way in a brief period. That would surely make sound condition in organization. Further, the Act has upgraded the quantum of fine extensively which must be forced

on organization in the event of its illegitimate act.

It has included new part of social obligation. New Act urges the organization to go through some segment of its earned benefit to the reason for society. This is welcome advance right way. Further it has approved the Central Government to Constitute the National Company Law Tribunal and "National Company Law Appellate Tribunal." All these things guarantee that case in organization matters and offense submitted by organization would be arranged off rapidly.



CHAPTER-6 COMPARISSION OF CCL WITH OTHER NATIONS

6.1 INTRODUCTION

Remarkable growth has been witness in international trade and business in the era of globalization i.e. late 20th and starting of 21 century. Economic structure has strengthened up due to exposure of various powerful national and multi-national companies. Welfare functions of a state have been extended it is not confined to functioning of police anymore. Every state is welcoming the multination companies to boost up there economic growth. In the history of mankind Corporation have never been so much huge and exceptional. Coke-cola, Pepsi Microsoft have now been situated in several counties. Corporate power can be measured by the wealth of top 500 fortune companies. African and Latin American countries economy is equivalent to the annual revenue from the top ten companies of US which is 2.1 trillion dollars.

Presently Interaction of Multi-National Companies and national organizations with individuals has become an integral part of their day-today life. Other than governments and administrative office, the enterprises are more what more, progressively viable specialists of activity are in our general public. However, organizations, all things considered see today, have not been the equivalent previously. The large number of jobs the enterprises play in present days human life have been required by the requests of the general public, as it continued creating. The corporation's structure and functions has the direct impact of developmental society.

To make prominent collaboration between the nations a corporation needs to develop the reliance in financial social and environment corporate elements. Present day organizations employ practically have phenomenal force, however they use that power in such a style that frequently makes genuine mischief both individual and society as entirety.

Multination companies are getting their investment from more number of individuals, national companies semi government and government findings the seventh most valuable company of us Enron used deceptive accounting device which has schemed more than 100 billion dollars of the share holders money. These type of frauds have been done by many of the companies as well including global crossing Adelphia communications WorldCom etc were also included in false financial shams.

Ramlinga raju chairperson of sathyam computers have dupes millions of share holder's monitory funds by practicing fraud accounting system including other top officials of his company.

The German engineering giant's simens have paid the government of Asia Africa Europe and Middle East about \$1.4 billons bribe for such shams. 500 millions were paid by Ran Baxy of India because of shipping adulterated drugs' to USA as fine.

As a result of their size, multifaceted nature, what's more, control of immense recourses, partnerships can take part in wrongdoing that predominates what could be practiced by people. In the Universe, various countries have distinctive lawful frameworks. Besides in the cutting edge legitimate framework, complex arrangements manage the structure of enterprises characterizing the nature and job of administering bodies.

Contingent on the size and nature of the enterprise, its structure might be confused, multi-layered, brought together or decentralized. The unpredictability of the corporate structure and various arrangements of various countries examine the issue to be concentrated nearly.

The doctrine of societis delinquere non potest which means a corporate cannot be liable for criminal offence. Other states who signifies the concept of corporate criminal liability does its implementation on recognizing such crimes it was contended that unique ways to deal with corporate criminal risk across states would represent an issue in the light of worldwide economy and exchange. In this manner investigation of corporate criminal risk is deficient without relative examination.

6.2 PHLOSHOPIES IN VARIOUS NATION REGUDING CORPORATE CRMINAL LIABILITY

Strict rules for employees have been made to increase the value of corporate criminal liability. The potential for corporate criminal obligation for the unlawful lead of representatives is on rise. Premier among reasons proffered for this upward winding is the want to discourage corporate wrongdoing and design progressively mindful corporate conduct, i.e., expanded observing, by attributing representatives' illicit demonstrations to the enterprise. The response to this corporate criminal marvel has been the formation of juridical systems that could discourage and give punishment to bad corporate behavior.

Corporate misconduct has been listed in various laws like civil law administrative law and criminal laws. But to prove a corporation criminally liable is still a tough task. The concept of corporate criminal liability has been applied to various models and doctrines by jurists and philosophers. In American if there is conduct of any corporate crime done by any employee, or within the scope of the employment there are various criminal sanctions are given such as fine corporate prohibition order of negative publicity etc.

In England and French models the individual who holds the higher position is responsible or answerable as the decision structure of the corporation. Indian models which says heritage of civil laws follows the English models of corporate criminal liability as it says the official person who holds up the higher position in the company is responsible for the wrongdoing while at the same time getting the benefits from the corporation.

In Germany and Italy they still follow the old maxim *maxim societas delinquere non potest* which talks about the principle of organization's absence of ability to act, absence of culpability, and inappropriate criminal punishment Proponents of German way of thinking start from the premises that organizations are imaginary substances, which have no presence aside from the different people who follow up in the interest of the invented element.

The principle of *societas delinquere non protest* was sustained by malblanic and savigny in 19th century. The primary contention was that an organization is a legitimate fiction which without a body and soul was not equipped for shaping the criminal *mens rea* or to act in *propria individual*. Additionally, corporate criminal obligation would damage the standard of individual criminal discipline. German authors Bekkar and Briz contended that a company is affiliated characters which has been invented for a specific motive and have less legal dimensions. Hence the corporation cannot be held liable for criminal act *“they feel that there is social need to punish entities that have “no soul to be damned and nobody to be kicked”*⁶² to prove the criminal liability of a corporation guilty for its offences the innocent third person are often punished rather than the actual accused employee.

On the other way round who supports the corporate criminal liability say that corporation organ and but not imaginary. Criticizing the fiction theory jurists like Gierke and Zitelman have said that corporation is the combination of different bodies and souls and works of its own. The

⁶² The Concise Oxford Dictionary of Quotations, (2nd Ed.), 259, (Oxford University Press 1981).

organization's self control is the aftereffect of their individuals' will they have the autonomous legitimate presence separated from the individuals from the companies. As it the feature of a corporation that it acquires the property of its own and can sell it as it wants⁶³, it can sign its contracts with other parties, it can sue and can be sued by others,⁶⁴ and a tort can be committed by a corporation as well⁶⁵

In united states the constitution has given certain rights to company as well, the power of the company have become really limitless and extraordinary in the human history. That enterprise is a fiction which can't be punished is likewise fiction and twisting of genuine realities. In fact the corporations are a genuine and a vital part of society.

6.3 DIFFERENT COUNTRIES APPROCHES TOWARDS CORPORATE CRIMINAL LIABILITY

The main obstacles arises In front of judiciary, makers of law and our society when a corporations mens rea needs to be proved for making a corporation criminally liable as important element of criminal law. Corporate criminal obligation had been solely accomplished by the turn of events and expansion of custom-based law standards in Canada, England and United States.

In the middle 19th centre strict liability offences were began to be imposed and after that mens rea came in picture while three different concepts started prevailing in countries which are as

- In Canada and England – identificatory theory of guilty mind
- In United States - vicarious liability
- In India – mixture of identification and vicarious theory
- In Australia – holistic or corporate culture

6.3.1 ENGLAND

Corporate criminal commitment had been exclusively cultivated by the new development and extension of law based on custom in 16th and 17th century. It became necessary to control the corporate misconduct. In 1840s for the first time the court imposed corporate crime obligation on strict liability offence. The most effective method of constraining organizations was by presenting the idea of corporate criminal obligation in the English law was said by Lord Bowen After taking

⁶³ provisions of sale of property, mortgage, lease, and exchange of property under Transfer of Property Act, 1882.

⁶⁴ Section 11 of the Indian Contract Act 1872

⁶⁵ National Telephone Co v. Constable of St Peter Port, (1900) A.C. 317.

the theory of vicarious liability from the law of tort it was applied in the criminal manner for corporation as in cases natural persons can be liable vicariously. The foundation of alter ego theory was led down in the case of H.L.Bolton Co,Ltd. V.T.J.Graham & son Ltd⁶⁶ lord Denning said that the organization is at risk even where the leading body of executive might not have known about the particular demonstrations making up the wrongdoing and thus the "coordinating brain" of the on-screen character whose demonstrations and goal ascribed to the organization An organization may from various perspectives be compared to a human body. It has a Cerebrum and operational hub which controls what it does. It likewise had hands which hold the devices and act as per bearings from the focus. A portion of the individuals in the organization are more hirelings and operators who are simply hands to accomplish the work and can't be said to speak to the psyche or will. Others are executives and troughs who speak to the coordinating psyche and will of the organization, and control what it does. The perspective of these administrators is the condition of mind of the organization and is treated by the law in that capacity.

Tesco super market ltd v. Natrass⁶⁷

House of lords have followed the above case judgments and followed that company was held liable under the provisions of trade description act it was observed in the facts that Miss Rogers duty was to stock up shelves of supermarket with goods, also needs to include laundry detergent advertised being on sale but she was unable to find those sale packs hence she kept the normal packs, and fails to tell her manager Mr Clement who reported in his daily list- 'all special offers are ok'. A customer compiled to authority when he was unable to purchase that stuff. Court said that as Mr. clement was mere a subordinate manager of the store but not director or managing director, the doctrine of alter ego was applied by court to held corporation criminally responsible under identification theory.

The Chamber of Lords contrasted the corporation with a human body, extraordinary people speaking to various organs and elements of the juristic individual (for example the chief and administrators speak to the mind, insight and resolve of the company). The self control of the enterprises' administrators spoke to the determination of the company. "Brain" confines the criminal risk of enterprise. It is officials who make approach and executes the strategy are known as the mind of organization. The corporate criminal risk is limited to the demonstrations of officials who are holding high position like chief, managing director or administrators and who

⁶⁶ H.L.Bolton (Engerring) Co,Ltd. v. T.J.Graham & Sons Ltd, (1957) 1 Q.B. 159.

⁶⁷ [1972] AC 153 (HL)

execute the equivalent are known as the mind of organization

6.3.2 UNITED STATES

In very beginning the English rules were followed in America but afterwards due to corporations play a very vital role in American society and economy the law developed rapidly American courts were much quick in held a corporation criminally liable then English courts. it started from imposing criminal liability on company which were involved in public welfare offence where mean rea was not playing important role, but in 20th century American society wildly excepted the concept of criminal obligation on company including mens rea.

In the case of New York central & Hudson River R.R vs US⁶⁸ the court held that an agent can be held liable for the act done by corporation as authority is conferred to them

According to Mr Justice Day

“We see no valid objection in law, and every reason in public policy, why the corporation which profits by the transaction, and can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agent to whom it has entrusted authority to act in the subject-matter of making and fixing rates of transportation, whose knowledge and purposes may well be attributed to the corporation for the agent act.”

While the law should regard to rights of all, and to those of corporation no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interstate commerce is almost entirely in their hands, and to give them immunity from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject-matter and correcting the abused aimed at.”⁶⁹

There were two conditions led down to satisfy concept of corporate criminal liability which was founded by the principle of vicarious liability

1. Firstly any illegal act was being committed at the scope of employment by the employee
2. Secondly the employee take part in any act which provides benefit to the corporation

⁶⁸ 212 U.S. 481 (1909), (sustaining the constitutionality of the Elkins Act which provides that the acts and omissions of an officer acting within the scope of his employment were considered to be those of the corporation).

⁶⁹ Id 212 U.S. 481 (1909) at 485.

The court has interpreted the term within the scope of employment in very wider sense if the employee acts as actual or apparent body or determining the propose of corporate criminal liability an act in scope of work, these two above stated elements can be applicable if the act of the employee contravenes companies rules and policy or instructions as well.

A portion of the courts have been eager to go much further, broadening obligation to circumstances when a representative acted past the extent of either real or evident authority and such activities went unchecked by officials or executives, giving the appearance of authority approval.

Such a costly understanding of a component intended to restrict corporate obligation for the unlawful demonstration of workers has provoked at least one observer to mark restriction as "practically futile."

The government additionally should show that the representatives' unlawful lead promoted the enterprise's business.

Anyway courts have held that the enterprise need not really advantage to fulfill this necessity. Or maybe, the representative must have just planned to profit the enterprise, albeit, criminal obligation may connect to the partnership even where a worker's illicit direct is roused fundamentally by it self-advantage, when the worker plans, "at any rate to a limited extent," to give an advantage on the corporation.

At the present, corporate criminal risk is for all intents and purposes as expansive as individual lawbreaker risk, enterprises being indicted in any event, for homicide.

6.3.3 INDIA

India law is very much influenced by English law, the law related to corporate criminal liability is similar as to the law in England in past events it was noticed that the company has been used as veil to escape from criminal obligation, in present date law has made it very clear that the company cannot escape from its corporate obligation.

In the case of standard chartered bank v directorate of enforcement⁷⁰ the bech of Supreme Court by the majority of 3:2 held that the corporation criminally liable for the misconduct "It can't be said

⁷⁰ Standard Chartered Bank v. Directorate of Enforcement, AIR 2005 SC 2622.

that, there is veil for any organization from any prosecution for genuine offenses only in light of the fact that the prosecution would at last involve a sentence of compulsory imprisonment. The corporate bodies, for example, a firm or organization under takes arrangement of exercises that influence the life, freedom and property of the residents. Enormous scope monetary abnormalities are finished by different enterprises. The corporate vehicle presently possesses such enormous segment of the modern, business, and sociological parts that agreeability of the partnership to a criminal law is fundamental to have a serene society with stable economy. This was the view of Justice K.G .Balakrishnan⁷¹

The court was quiet on which hypothesis the criminal obligation of organization is tried.

However in the case *iridium India telecom ltd vs Motorola inc* the court held that

In England and America there no doubt left by the court to hold the corporation criminally liable for criminal intention England courts completely denied the fact that a company cannot have guilty mind this was done with the support of doctrine of attribution and imputation. It was said that people or group of people that guide business of a company will be considered as the alter ego of the company and will be held liable for criminal action.

In nutshell the American hypothesis of vicarious risk has wide extension attributing demonstration of each specialist or hireling of organization submitting inside the extent of work for corporate criminal risk. Britain, Canada, and Indian lawful framework embraced the ID hypothesis which degree is constrained, where demonstrations of just higher official who is responsible for running organization would be credited to the corporate for criminal risk

COMPANIES ON WHICH CRIMINAL LIABILITY IS IMPOSED

Corporate criminal liability is applicable to different forms of entities which forms the fast stage to determine its relevance. The different legal systems do not present any unanimated view on this aspect. The corporation has the capacity to express the moral judgment similar to individuals. There is a unique presence of corporation in the sense of identifiable person in the community because it has its own spirits different from its workers and directors working and controlling corporations. The character of a corporation as its structure, monitoring system, policies, are dynamic and law provides them a special recognition of a legal person.

According to the supreme court of United States the corporations have their own ability to

⁷¹ Supra 7

represent their perspective and decisions, and there is no arbitrary rule of state to compel their interests. Besides, corporations are depicted as inactive legal subjects where it can harm the offender who opposes its activities. It is difficult to acknowledge the fact that a corporation can be harmed by others but also it can harm others simultaneously.

When the criminal liability of corporations was subjected, it was a matter of debate to for making all corporations liable or not. The supporters of the concept argued about arising discrimination between corporations if exceptions were made, furthermore, there are exceptions in several cases referring to people who are subjected to criminal offences. For example, if an employee uses its powerful connections which disregard him/her of criminal offence, this would not provide profit to the organization with the exception. To make matters more systematic, associations with no legal aura or involved in mergers or business should be held liable when they stand as an individual personality unit.

Majorly, the private associations are subjective to face criminal liability. The legislative system of France has argued about freedom of association of corporations that have profit-orientated goals and are held liable for their processing. The non-business character of the organization is legitimizing for committing offence under the case of exemption, therefore, this may be vital to criminal liability. According to article 121[2] of French Penal Code both the commercial and non-commercial or non-business organization are criminally liable for committing offence. In India, this concept has been utilized on both individual and corporation under their aim of committing offence. Henceforth, associations, groups, organizations, are criminally liable because they may use present resources to accomplish their malicious intent or could use information for some other illegal intent.

According to the federal law, organization or other similar elements are termed under as “person”. The Federal Sentencing Guideline of the U.S. states the organization that is subjected to this regulation. “Organization” stands for “person other than individual”. The term includes corporation, partnership, associations, unions, etc. in India, the corporation and its members do not enjoy the privilege as they are considered as a single unit. In spite, the legislative system of India includes the corporation under the term “person”. Hence, they can be accused under criminal liability for the acts of officers, agents or corporation itself.

In most of the countries the companies which are committing crime going through the process of

dissolution transformation mergers. Under the French penal before ending the liquidation process of company fine are executed under art 133-1.

When two companies merger which each other in America, both are equally responsible for crimes committed by either of them during or after the merger.⁷²

The court have said that when the company is liquidating it is still has his existence to pay debts and clear its dues and debts and duties so it can be held liable for criminal acts ⁷³

In India until all the process of liquidation is not over it still has its existence⁷⁴

Criminal offense committed by organization authorities during the time of liquidation, the organization is held liable for that. if there should be an occurrence of merger and procurement the new substance acquire the all the obligation of the liquidated organizations.

6.5 COMPANY ASCRIBED VIOLATION

For determining the liability of the company there are prescribed three ways which are as follows

1. The first system general liability or plenary liability the juristic individual's obligation is like that of people, enterprises being for all intents and purposes fit for carrying out any wrongdoing.
2. Second system requires possibility of criminal liability of corporation for each crime mentioned by legislator.
3. Third system consists of collective entities list of crime which it can be held liable.

First system is followed by countries like Australia England Canada and Netherlands. As stated in Indian penal code section 11 includes corporation in the definition of person which includes all offences under ipc the first system is follow by English system and so is followed by Indian system. Some limits are based on principle of *lex non cogit impossibilla* on the general liability. Crimes which have imprisonment as a punishment cannot be applicable on the legal personalities. Corporation cannot be held liable for the crimes which are in expressway excluded by the legislation of the same nature by apply the restriction of same principle. Therefore a company cannot be punished for crimes like rape and bigamy etc.

⁷² U.S.v.Alamo Bank of Texas, 886 f.2d. 828, 830 (5th Cir.1989).

⁷³ Merlorsore Distillers Inc v. U.S., 359 U.S. 271, 273 (1959).

⁷⁴ Section 309 of the Companies Act 2013 states that “In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as possible required for the beneficial winding up of its business, provided that the corporate state and corporate powers of the company shall continue until is dissolved.”

Manslaughters can be done by negligence of officers of the company that's is why it can be held liable such crime according to the English and Indian courts of justice⁷⁵

The second system have been was established in France. French penal code under article 121-2 mentions that a corporation can be held liable only when there is rules and regulation are being expressly made over it. But in India it cannot be seen under the criminal system. But apart from the crime obligation of a company under the penal codification of law a company could only be punished where there is specific mention about such crimes which hold it liable.⁷⁶

There if can be identified that in India the blend of both the first and the second system is observed which is flexible in nature. The French framework has its method of reasoning in the study of criminology; partnerships are endorsed for explicit violations dependent on the recurrence of the enterprise's contribution in such violations. Notwithstanding, this framework isn't exhaustive. French Legislators inadvertently omitted labor and economic crimes that cannot be committed by corporations, by trying to exclude the crimes as instigators or accomplice's legislation also neglected the fact that even the crimes that cannot be committed by corporations as authors can probably be committed by corporations.

The third model is a image of laws in America. The American sentencing lists includes the list of crime which can be done by an artificial person, the criminal liability of a company virtually spread over all wrongdoings which a individual can posses. Hence a company can be held liable for all the crime which may be forgery manslaughter etc. even in the case *People v O,Neil*⁷⁷, a company was hold been found liable the court did not agree that is possible for a company to held criminally accountable for offence of murder.

The American model has the upside of staying away from disarray and long look in different resolutions. Accordingly, the American framework meets the prerequisites of lucidity, consistency, effectiveness, and consistency with general standards of criminal law. Except if it is sure that there is no other conceivable wrongdoing that an enterprise could be held at risk for, the rundown of wrongdoings ought not be thorough. In this regard, The English and Indian lawful framework are genuine models since they don't confine the rundown of wrongdoings for which enterprises can be held criminally at risk yet they accommodate risk like that of people. The

⁷⁵ Section 304A of IPC states that whoever causes the death of any person by doing any rash or negligent act not amounting culpable homicide shall be punished.

⁷⁶ *Kalpantha rai v state*

⁷⁷ *People v. O'Neil*, 194 Ill,App.3d 79 (1990)

French framework, in endeavor honestly and unsurprising, ended up being less productive because of the measure of time important to do the inquiries in different rules and to the exclusions of a few violations. Also, so also to the English framework, the French framework excludes the likelihood that a few wrongdoings that couldn't be submitted by companies as standards could presumably be submitted by partnerships as assistants or instigators.

6.6 CCL CAUDED BY NATURAL PERSON

Now daily, in some lawful framework, there is a propensity of growing the classes of people who can cause corporate criminal obligation. The organs spoke to the spirit of the partnership, their activities were the enterprise's activities, and thus, the wrongdoings submitted by the organs were those of the corporations. In spite of the fact that the partnerships are the subject of the law, the activities or in activities of a person is important to draw in the enterprise's criminal risk. At first, the people who could draw in the enterprise's risk were constrained to the corporate organs. Presently the issue is the means by which wide the pool of people who can draw the corporate criminal risk ought to be, by what acts, and with what mental state.

6.6.1 England

Important the concept from civil law of tort the doctrine of identification or alter ego theory was developed in England. Under this human hypothesis, an adequately high positioning corporate member acts non operator of the partnership, however as the company itself. It is the question of law that weather an officer can be called as the brain or human body it becomes really tough to think weather the person could act individually

This theory have been criticized because it only world for the corporation where senior managers are answerable and can be questioned about their decision. Now days corporation have became really vast concept as it includes many people for making any decision it is more complex, only manager are engaged for the criminal risk. Corporation saves its self's from the obligation by telling themselves that few decisions are made by control officers.

The distinguishing proof of the individual is additionally essential and this makes a genuine bar to arraignment of a profoundly intricate partnership described by dispersion of obligation. In this manner violations that depend on blemished association are excluded. Another detriment is that it is difficult to cumulate the demonstrations or mens rea of various controlling officials.

Nature of the crime is very important condition to understand corporate criminal liability in

English law the enterprises are at risk under the respondent superior theory for strict liability crime and wrongdoings for which the law explicitly or certainly accommodates indirect liability, this doctrine applies to the crime including mens rea. This class incorporates the individuals from the governing body, overseeing chiefs, different people answerable for the general administration of the company, also, delegates mindful with the executive's capacities who can act independently. The characteristic people who can make the companies criminally subject are the individuals who can recognize themselves with enterprises. Commission of crime must be under the scope of employment. The courts chose to take some preventive estimates that enterprises can be sentenced for convicted for negligently despite the fact that no individual inside the organization had this particular duty. The English law has begun to change gradually on the grounds that because strict limitations of the identifications theory, company can be held at risk for hardly any offenses of not many individuals' demonstrations of corporation.

6.6.2 America

Respondents super model have been adopted from civil law by America. The theory of respondent superior follows the principle of vicarious liability in which the two elements of crime actus reus and mens rea of the person who works for the company are automatically impacts on the enterprise. The corporation is held liable for the act done by workers in the scope of employment or on behalf of the company in America a company can be held liable for the act of the worker besides the acts of managers or directors. The US jurists agree with federal law and acknowledge the crime of all the workers of a company. But the employee should be acting in the scope of work acts are related to perform the duty generally authority performs well. Apparent authorities act are also significant to workers representative must act with purpose to profit the organization, yet the partnership doesn't need to really get a profit by the worker's act. If the representative proposed to profit just him or an outsider, the partnership isn't obligated with the exception of exacting risk offenses. In the event that the worker planned to profit both themselves furthermore, the enterprise, the partnership is held criminally obligated.

American legal system adopted model penal code which has three systems-

First system talks about corporation committed original and two crimes which are manslaughter conducted by manager or director who acts on behalf of corporation

Secondly corporation can be held liable for price fixing share fraud or wrongdoings for which there is a clear authoritative goal to force risk on partnerships, submitted by any worker acting inside the extent of his work on the enterprise' sake.

Third, finally the corporations are liable for violations or regulatory wrong in which strict liability is imposed offences committed within the scope of work by the employee, due diligence not available as offence.

6.6.3 India

The three mode system is adopted by India of criminal liability of corporation

First,

Corporation is held liable under the concept of alter ego for normal crimes like fraud which is call as direct crime obligation. The Supreme Court supported that the facts demonstrate that there are a few violations which, in their inclination, can't be submitted by organizations. In any case, there is a huge class of offenses, of which discounting under the government resolutions is one, wherein the wrongdoing comprises in intentionally doing the things restricted by rule. In that class of violations we see no rhyme or reason why enterprises may not be considered liable for and accused of the information and reasons for their operators acting inside their position gave upon them. On the off chance that it were not really, numerous offenses may go unpunished.

The criminal obligation of an enterprise would emerge when an offense is submitted corresponding to the matter of the enterprises by an individual or assemblage of people in charge of its undertakings. In such conditions, it is important to find out the degree and control of the people or assemblage of people is extraordinary that a enterprise might be said to think and act through the individual or the assemblage of people An organization is for all intents and purposes in a similar situation as any individual and might be sentenced for precedent-based law just as legal offenses including those requiring mens rea

In the case of Maharashtra vs. syndicate transport company the questioned arise in front of the court that can corporation be prosecuted under section 420 but given in section 11 person which includes corporation as well made company liable for punishment under this section corroborate body or in pursuance of the aims or objects of the corporate body. However, the corporation cannot be liable for offences which can be committed only by human being such as bigamy, rape murder etc. In India, the corporation is held liable for only those acts of employee who have control over the corporation and who could act independently. As far as a traditional crime is concerned the corporate criminal liability is restricted to acts of few officers and not to the acts of every employee of the corporation. Further the employee must have been acting for the benefit corporation even though it is not necessary that corporation might have benefited actually.

The second system

Strict nature offences are also applicable on corporation. There is no issue a company can be prosecuted for laws which are strict and absolute in nature. Where the sculpture has made the severe offense the organization gets subject for the equivalent in light of the fact that the Act doesn't require the nearness and confirmation of mens rea. The vicarious liability is applied and the organization is obligated for demonstrations of its hirelings who have submitted offenses throughout their work.

In the case *Sarjoo Prasad v. State of Uttar Pradesh*⁷⁸ Section 7 of the Prevention of Food Adulteration Act, 1954, any person whether employer or employee contravening the provisions is liable to punishment under section 16, and it is not necessary for the prosecution to know that the article was adulterated and establish that the person concerned had any guilty knowledge or intention.

Third system

The legislation should expressly make rule that a company is liable for the action for its workmen will be held accountable. Members of parliament in India have made many laws which are socio economic in nature and a corporation is criminally liable under that laws. For example-

- section 10 of essential commodities act 1955
- Section 17 of prevention of food adulteration act 1954
- Section 42 of foreign exchange management act 1999
- Section 27 SEBI Act 1992 etc

Section 140(1) of the custom act 1962 makes company criminally accountable for action of its workers, it says that at the time of the offence was committed the person who was in charge of that work who has responsibility of that work will also be held liable along with the company however he can rescue himself from the criminal liability by proving he has taken all necessary measures before the commencement of crime. The area clarifies 'organization' signifies a body corporate and incorporates a firm or other relationship of people and 'executive' according to a firm, implies an accomplice in the firm. Where such offense has been perpetrated by organization and it is demonstrated that the offense has been carried out with assent or persuade, or carelessness of any chief, troughs, secretary, or other official of the organization will be esteemed to be blameworthy of offences. These arrangements augment the extent of criminal risk not

⁷⁸ *Sarjoo Prasad v. State of Uttar Pradesh*, AIR 1961 SC 631. Followed in *State of Orissa v. K.Rajeshwar Rao*, AIR 1992 SC 240.

exclusively to the individual who really perpetrated the offense and friends however to those people who are accountable for the organization at the hour of carrying out offenses. In this way it very well may be said that enactment planned to be increasingly serious obstacle on the individuals who is in charge of the organization issues at the hour of submitting offense. To impose liability on some other people the association it is important for the prosecution to prove that such person was working and is accountable to organization.

Two models of corporate criminal liability

1. Restrictive direct liability model- followed in France England and India,
2. Wider vicarious liability model- followed by United States.

Wider model is more effective in dealing with corporate crime in comparison with French, English and Indian models which needs a development of such corporate crime structure. The resistance of both the above mentioned models is to compliment the accomplishment of equity and accountability for similar corporate offence, hence making the models aggregates of legislative systems. The division and specialty of corporate committee create an ideal way of avoiding liability under first model, namely restrictive model. This model underlines the actions of innocent with that of guilty person altogether termed as crime. Often the offending actions of high ranking officials and other manager, proves to be a higher obstacle in refraining from corporate offense because mostly lower level employee take part in decision making to avoid liability.

The English and Indian framework of legislative systems represents another drawback, that is, identification of accused that is guilty of committing offence, this process sometimes impossible in recognizing the individual who has committed offence. The system is not fair and efficient to meet certain requirements given that they have the benefit of being clean, steady and predictable with specific standards of criminal law. Since corporate bodies cannot be presented for sentencing before law, hence this proves the inefficient system of the English, French and India least deflecting. Respectively, the American model of vicarious liability promotes a more fair and efficient method of deflection in corporate criminal liability. Due to the adoption of aggregate theory and a greater power to employees to change the fate of liability of corporation has proven to be greatest advantages to corporate bodies, hence, this model covers various gaps of the system. This system is more effective in avoiding and preventing corporate crimes. Simultaneously, the greater chance of convicting corporate bodies for acts of employees has increased the quantity of

claims of lawsuits against the corporation; this causes greater expenses for courts and corporations and unemployment or loss of job and dignity for innocent employees and shareholder.

6.7 PUNISHMENT IN DIFFERENT NATION

It is always been contention about what punishments are appropriate for a corporations criminal work is subject to doctrinal debate, and it has been the reason for rejection of corporate criminal liability. Character of corporate responsibility was the first issue raised under this debate. The critics contend that by authorizing the corporate substance, every one of its individuals are endorsed paying little mind to regardless of whether they had any support in the criminal offense. Therefore, authorizing a company to pay a criminal fine would have the roundabout impact of decreasing the salary of the partners, or the company would be compelled to diminish the number of guiltless workers who might lose their pay. The majority the doctrine sustains that corporate criminal liability does not conflict with the individual character of criminal liability. The only person suffering the direct effects of a criminal sanction is the corporation. Moreover, the indirect effect of corporate criminal liability suffered by the corporation's members is similar to the indirect effects that family members of an individual's criminal offenders suffer. Enterprises can't be genuinely held in detainment facilities (one of the most successful assents known) is not really disputable. The criminal fine punishment has been effectively applied to partnerships in most of nations and has obstruction impact when its quantum was appropriately individualized. The criminal fines are the most regular authorizations for corporate criminal obligation.

6.7.1 England

According to English law the perfect punishment for a company could be compensation but due to corporations being wealthier the punishment of fine seems insufficient. When the damage caused by a corporation is more severe than withdrawal, of licenses or confiscation of corporate property are accepted as alternative source of punishment. Authors often debate that English law should distinguish on both the nature of sanction and theory of attribution of criminal liability of association, as to increase the effectiveness and creativity of English sanction system.

6.7.2 America

The U.S has established an innovative sanctioning system under their sentencing guideline. Their main aim under this system is to avoid, investigate and report criminal offence but conduction of deflection, awarding punishment and measures to maintain internal mechanism of organizations.

According to their federal law, the main sanctions include fine, remedial order and community services. Under state law, they may dissolve or restrict a corporation in engaging in certain type of activities. The U.S. system forces on factual form of processing those punishments should be just a fit; they should be equitable and fair.

Many organizations contemplate on having strong internal mechanism system to avoid and detect crime apart from paying high penalties. This new model is termed a “carrot-stick model”. The stick here refers to fine which is highly set for corporations and carrot refers to reduction of fine if any corporate body accepts and effective observation and ethical programming internal system. The American federal law system ensures the security of comeback. The probation sanction allows an invasive, intrusive and extraordinary reaction. Courts may want corporations to submit effective observation and ethical program while imposing sanction of probation. The U.S. law system stated that every organization is required to submit annual reports to courts or appointed probation officer regarding their process of implementing probation of sanction, whether the body organization is following the mentioned norms, compiled book of records must be submitted to the court or the officer. It is clearly stated that the sanction of probation is imposed when there is pervious instances of offences filed in the name of the corporation.

6.7.3 India

The legal system of India primarily focuses on fine as a source of probation for corporate criminal liability. Due to radical legislative system of country in the field of corporate criminal liability, there are no different punishments other than fine. The Indian Penal Code suggest different punishment like sentencing a guilty individual with death penalty, life imprisonment, simple imprisonment or complex life imprisonment etc. but these punishment are not applicable when the guilty personality is that of a corporation. Hence, there are no other reliable sources of punishment other than fine. The IPC suggests reasonable amount as fine and it does not exhibit the perception of deflection.

The Indian parliament expert suggests that the amount of fine should be raised and also different legislations should be introduced in this area of corporate criminal liability in India. The Securities and Exchange Board of India Act 1992 [SEBI] imposes the fine of about twenty five cores or amount three times the total profit created by the corporation and also formed certain new norms for the penalty of fine imposed on corporation. Similar to SEBI, the Foreign Exchange Management Act 2000 [FEMA] has stated that if there are instances of negation of the Act where

the amount is quantifiable the punishment may rise up to thrice the original amount.

SEBI has suggested various punishments which may include prevention to issue prospectus, debentures or any other government securities. The board has an arbitrary power to confiscate and attach the bank accounts of the corporation. The FEMA 1999 mentioned the provision which stated the confiscation of land, money, and government security owned by the corporation. According to the Companies act of 1956, the companies can be held liable for their act by punishing them in the form of winding or pack up of company for frauds and misconduct or wrong deeds towards company members or employees.

The applicability of these sanctions varies from country to country. As above mentioned, France has various sanctions while America follows its very own creative and yet effective system which offers fair and effective detection of corporate crime or offence, while on the other hand the English and India system lacks these effective sanctions for the system of corporate criminal liability.

In India the deflection in corporate crime under corporate criminal liability is less because the IPC suggested that the only reliable source of punishment is fine but the quantity of fine is not defined. Naturally, the quantity of amount would be general however, due to provisions in acts like that of SEBI and FEMA the quantity of amount of fine has substantially increased from previous years.

The amount of fine imposed on individually is different from that imposed on the corporate body. However, this any turn out to be in favor of innocent workers or share holders. The American system of sanctioning criminal liability of corporation is different and unique with that of the systems followed in countries like India or France. This system of vicarious liability is a full package of fulfilling the legit gaps in systems and also punishes the wrongdoers by providing faith to the innocent.

6.8 CONCLUSION

A few nations were some despite everything are declining to acknowledge the idea of corporate criminal risk because of doctrinal, political, and verifiable reasons. Out of those in the past declining to acknowledge this idea, some began to change their perspectives gradually. The real factors of our occasions have been changing so much that officials have understood that doctrinal

issues are less significant than the counteraction and proper discipline of enormous scope white-shading wrongdoings, tax evasion, unlawful arms deals, condition hurt, item obligation, and numerous others.

A portion of the nations that have recently presented the corporate criminal obligation in their lawful framework accommodate prohibitive frameworks of drawing in risk and rebuffing crimes of enterprises. That may be a direct result of they are anxious of quick and extraordinary changes in brief time frame or perhaps the real factors of their so urban areas are definitely not adequately compelling: the recorded, social, conservative, and political realities vary from nation to nation, and these distinctions have solid effects on the lawful framework.

In spite of the fact that the framework created in United States is by and by considered the generally progressed in the word, the American model has a couple of disadvantages that could likely be disposing of by utilizing from different models. The American framework's most significant weakness are the critical overflow consequences for honest representative furthermore, investors, the conceivable over-hindering impact, and significant expense of executing corporate criminal obligation.

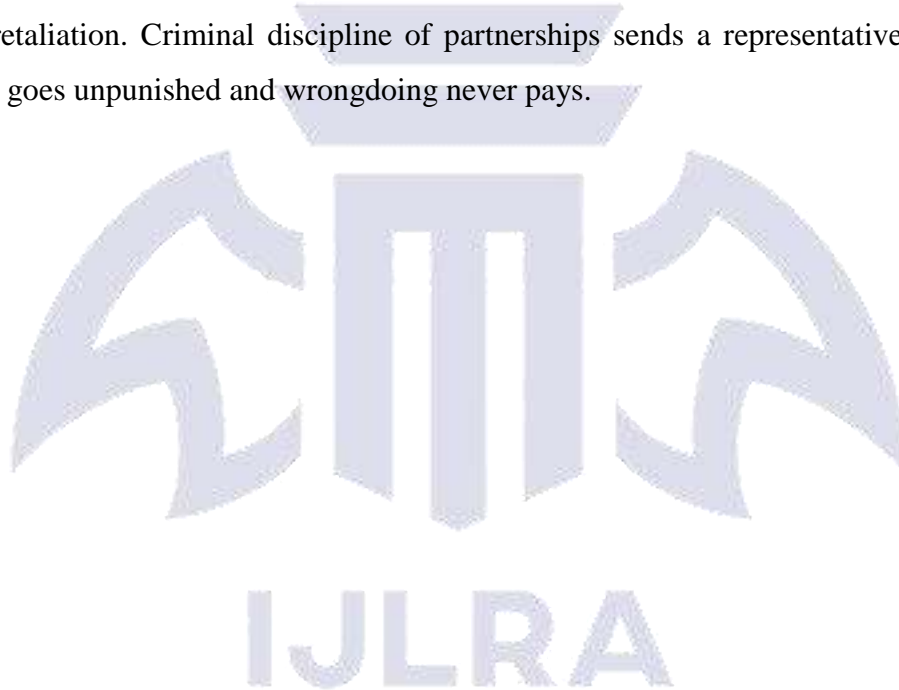
In any case, its favorable position exceeds its weaknesses. The American model is by all accounts better mirrored the genuine improvements of corporate structure and along these lines, it is more qualified to rebuff corporate wrongdoing. The retributive and rehabilitative impacts or criminal discipline are totally reflected by the American model. Besides, this framework is clear, unsurprising, predictable with standards of present day criminal law and reasonable.

The French, English and Indian frameworks likewise clear, unsurprising, and predictable with standards of criminal law. Additionally, they try not to have critical symptoms on blameless people or investors and are not over-discouraging. Anyway these frameworks are less hindering. The arraignment of partnership is troublesome because of the critical limitations of these models. In this way, retributive objective of the criminal law can't be successfully accomplished. All things considered, these frameworks would presumably have the impact of drawing in potential corporate crooks looking to evade risk.

Organizations are free juristic people that can cause hurt. Consequently, enterprises should bear the obligation of their activities. In spite of the fact that companies have been at first imagined as

a strategy for staying away from individual obligation, and despite the fact that its individuals will feel the reactions of endorsing partnerships, individuals don't lose more than what they were eager to hazard from the earliest starting point (at consolidation).

The corporate criminal risk models so far demonstrate that the best way to viably rebuff and fight corporate wrongdoing is to criminally rebuff enterprises. An indictment of people just is crooked not exclusively to them, however to society everywhere in light of the fact that feelings of people will once in a while influence the manner in which enterprises will direct their business later on. Additionally, polite and authoritative obligation of partnerships is not adequate. Casualties don't generally have the finical assets to seek after a common activity. Criminal law rebuffs evenhandedly; its basic retributive, obstruction, and rehabilitative attributes fulfill the open interest of retaliation. Criminal discipline of partnerships sends a representative message: no wrongdoing goes unpunished and wrongdoing never pays.



CHAPTER-7: SENTENCING AND PUNISHMENT

OF CCL

7.1 INTRODUCTION

Organizations are perceived by law as a counterfeit individual. Its reality is through enrollment and its degree is expressed, as under Memorandum of Association and Articles of Association. Its individuals are common people however they are not the proprietors of the organization. It is apparent that regular people carry out wrongdoing in light of the fact that genuinely and intellectually they can submit, while an organization can't however it is an individual under law. Corporate Criminal Liability has developed over years. Its cause is from the old yet turned into an interesting issue after the guideline of Globalization, Privatization and Advancement was received on the planet showcase.

The initial phase in the English advancement of corporate criminal obligation was made in the 1840's the point at which the courts forced risk on organizations for exacting obligation offenses. It was affirmed that corporate additionally has mens rea and carry out wrongdoings through actus. At first, it was presumed that criminal risk could be ascribed to the company dependent on the advantage it got because of the criminal demonstrations of its specialists.

Corporate wrongdoing additionally incorporates extortion and other criminal operations, which influences general laws. Numerous cheats submitted by corporate in India and abroad started the lawmaking body to investigate the law and roll out appropriate improvements. The laws were revised as what's more, when required to oblige the corporate criminal obligation.

Law commissions have additionally assumed a vital job in acquiring changes the law embeddings corporate criminal obligation. As of late in India, Companies Act, 2013 has been established however it has not extravagantly secured a wide range of violations submitted by the organization and to fix its obligation separately. It isn't that there was no enactment however they didn't cover the discipline to be forced on the corporate. Numerous cases have preceded different courts in India just as in different nations.

At first the legal executive was hesitant to hold organization criminally at risk on the ground that it was juristic individual, accordingly it was unequipped for framing the mens rea and it is difficult to rebuff the organization. Be that as it may, the legal executive step by step changed its demeanor

towards the organization criminal obligation. The points of reference have contributed for the improvement of this rule. Once more, law specialists have additionally given various speculations which add to the criminal risk of the organizations. This sort of wrongdoing is submitted everywhere throughout the world and each State has drafted its own law regarding the matter.

The English and French models necessitates that people following up on benefit of the company hold a high position or play a key capacity inside the enterprise's choice structure. Indian lawful framework received the "change prior" hypothesis which is known as distinguishing proof hypothesis now. All the violations expressed in Indian Penal Code are applied to corporate too.

Distinctive sort of disciplines like capital punishments, life detainment, straightforward or rigors detainment can't be forced on enterprise in view of its lawful trademark character. Also, thus various kinds of disciplines are forced to corporate under extraordinary enactment. At present, corporate criminal obligation is for all intents and purpose as expansive as individual criminal obligation, organizations being arraigned in any event, for homicide.

Extraordinary examination group has been named to research into corporate criminal obligation. The following perspective which has developed as of late Corporate Social Duty has increased developing acknowledgment as another and rising type of administration in business. The current CSR idea originates from worry over the condition.

After foundation of WTO and subsequent to going into the General Agreement for Exchange and Tariff, business on the planet has due significance. Industrialization has helped the exchange and business over the universe. There is a need to control crimes of the organization for which separate enactment is to be authorized taking all things together the nations. Also, this is the topic which is canvassed in this theory.

THEORY OF CORPORATE ORGAN

The basic object of this theory was to make corporations responsible, in fact to impose the criminal liability on person. The idea of this doctrine is to embody the legal body. It recognizes activities and thought of specific people inside the company known as corporate organs who act inside the extent of their power and in the interest of the corporation, as the conduct of the legitimate body itself. According to the doctoring of alter ego or the theory of corporate organs, individuals can be used as reference towards a legal body. In this since corporation is held liable

for its wrongdoing in a similar scene like an individual found guilty for its offences. Hence the character of the corporation acts as legal personality.

It's the first important to prove a corporation criminally liable before it's complicated. If mens rea is the important part for committing an offence then it should be committed by the company on the off chance that it explicitly, implicitly or impliedly approved or allowed the commission of the offense. O the first place Corporation can be held liable under vicarious liability if the board of directors of the company have intentionally or by knowledge have committed crime.

Secondly the company can be liable by an evidence which prove that agent or manager of the company have knowingly or with intention have committed the wrongful conduct or have expressly or impliedly have given authority or permission to the other member of the corporation. But in this case a corporation cannot be held liable because of the case here is of due diligence to secure the conduct.

In the third scenario the partnership's deficiency might be set up by confirmation that a corporate culture existed inside the body corporate that empowered, endured or prompted resistance with the applicable arrangement

The fourth case may be the organization's deficiency might be built up by demonstrating that it neglected to make and keep up a corporate culture that necessary consistence with the significant arrangement.

7.3 CORPORATE PUNISHMENT

The Indian penal code talks about the punishment that can be given to the convicted for example there is imprisonment for life, death penalty, simple or rigorous imprisonment forfeiture of property and fine according to section 53 of IPC. Under section 420 there is only imprisonment is given as punishment. Thus the problem of interpretation arises because according to the law a criminal liability of a corporation is to be imprisoned but it is practically not possible. Hence the above mentioned statement proves about the guilty mind of a corporation but no such provision against its working has been made.

According to B.N Srikrishna J. to impose corporate criminal liability we need to make authoritative improvements for example many sections of penal statues are required to include imposition of fine in place of imprisonment as a sanction.

The court gave its opinion that when the charges obliged against a organization of rupees one lakh or less it can be punished by imposing a fine or imprisonment. But in case of offences which are more than rupees on lakh or more court cannot impose any sort of punishment and therefore company cannot be presented before law for sentencing.

Law commission noticed the legal difficulty occurring from the above statement, the law commission under 41st report recommended the amendment in 62nd section of ipc by attaching the understated lines.

Fine is the only punishment which can be imposed when a company or association of people or any other corporate body when proved guilty, including the offence in which only imprisonment or imprisonment with fine are sated as sanction.

According to ipc the definition of person includes company in it , the parliament of our country have tried to understand this issue and have recommend amendments in ipc in the section where the only punishment is imprisonment in the case of a corporation the fine needs to be included in that as the alternative. However the bill was lapsed and didn't pass such important change is necessary in the criminal justice system.

But it has been seen in many cases for example in the case of charter bank they did not apply the literal interpretation of the rules but followed the strict interpretation and sentenced fine to the corporation. The court was aware about the surfacing delimma upon its judicial body, so it acted on the presented gaps of its jurisdiction which included appropriate interpretation of resultant charge on an offence.

Correspondingly, all the new suggestive and guided provisions were made keeping in mind their legislative approach and the function of legislation over its applicability. it was clear to the legislative body that if any corporation is held liable for its actions and found guilty for committing a crime then it must be presented before law. Soon the corporations were being sentenced for committing crimes from small level to as big as economic frauds. It was quite impossible for scholars and experts to hold an association liable for its actions but at same time there was requirement of reforms by the parliament. Hence, the courts applied the doctrine of impossibility of performances in cases like theses and it became a source to act in certain situation.

Furthermore, the court decided to sentence the corporation on two basis; imprisonment and fine. But since a corporate body cannot be imprisoned, fine was the most reliable and suitable option to impose punishment on any corporate body. This view was supported by that of jurists. But since this approach cannot be applied in case of an individual who is held liable or committing crime, this makes it possible for the legislative body to form a statute for carrying out resolving this problem. But still there is a cover of immunity which covers up for corporation committing serious crimes but it should be kept in mind that a sentence of imprisonment is of major requirement at last.

The doctrine of separation of powers was prepared for interpretation of law not for its formation and it relies on the role played by courts during sentencing. This doctrine has made it contemplating for courts to impose the punishment of fine on corporations. It is advised that the legislative body amends the penal structuring which was earlier done by the courts to interpret law to come up different punishments and to further maintain the distribution of power.

7.4 FESABLE FINE

Fine is the easiest and advantageous punishment which is awarded in every case. Other punishments namely imprisonment, solitude etc are disadvantageous and mostly their applicability is at question. Imposing fine requires certain aspects like the aspects of crime committed, how much damage has occurred, in which sense the crime was committed, etc.

The punishment of penalty of fine can be generally interpreted in four different ways. They are:-

- 1) It is only reliable punishment for certain crime
- 2) It is alternative way of punishment with limited fine
- 3) It is a form of additional punishment in certain cases
- 4) It is subjective to impose fine but through a certain limitation

Fines can be effective for minor crimes but they are not effective for major crime. The applicability of fine as punishment is questions in certain cases because of its shortcomings like the discrimination for poor which easier for richer. But it has proven its efficacy in certain instances. It is certain that imposing fine is a major drawback as wealthy associations can easily get away with it. The judicial body of our country is required to bring reforms in the forms of punishment for corporate crimes because of the drawbacks of certain punishment more that acceptable.

7.5 NEW REFORMS

In today's aspect all the penal law provisions of various acts have fine as the punishment for a corporation. So are the decisions given by the court. For embracing such provisions law commission in 41st report recommends of fine as the penalty for the penal offences of a association or corporation. The maxim *lex non cogit ad impossibilla* is responsible for this restriction. Which means law doesn't think about something which is impossible. This maxim itself is the proof that law is not strong in non holistic view point in respect of holding a corporation criminally liable. The court is very efficient in giving punishment to corporation as fine but the concept of criminal liability of a legal personality requires evolution. Now the legislation needs to make new reforms in respect of developing new forms of punishment and indulge them in the penal code of India.

7.6 CONSTITUTION RIGHTS OF CORPORATION

Under constitution or citizenship act 1955 a corporation cannot claim the right of a person although it is said to be a legal person, hence it has nationality but cannot claim citizenship rights. This can be proclaimed as certain rights are meant for the citizen of the nation.

Supreme Court in the case of *State Trading Corporation of India v. CTO*,⁷⁹ held that under the Indian constitution citizenship status cannot be claimed by the corporation. Hence fundamental rights are for the citizens but are not for the corporation. But the fundamental right which is given to the person can be claimed by a corporation (art 14 right to equality). Constitution provides various constitutional rights for the protection of person which includes a corporate entity a company, besides all fundamental rights given to citizens.

For example a corporation have right to acquire its own property which is a constitutional right. All person have right to hold and enjoy property under the art 300A of constitution Hence authoritative law saves a company from depriving its property. The violation against this law can be challenged in court of justice. In the case of *Maneka Gandhi vs Union*⁸⁰ of India the court have given the interpretation of word law, a law denying an organization of its property must be reasonable, sensible and justified. A subjective and preposterous law is defenseless against assault under article 14 of the Constitution and is subject to be struck down.

⁷⁹ AIR 1963 SC 1811

⁸⁰ AIR 1978 SC 597

Bhavnagar University vs Palitana Sugar Mills (p) limited⁸¹

The Supreme Court said that owner of the property can enjoy and use his property the way he like with reasonable restriction which are stated by the legislation. The restriction imposed or the manure to use the property will not be presumed but followed as laid down in the statue.

Dharma Datt vs Union of India ⁸²

In this case the Supreme Court said that not only citizens but person including legal or juristic person have right to get protection under art 300A. This same petition can be enforced under article 32 as it a right given by Constitution but not a fundamental right.

Under the Indian constitution a corporation has given a right to free trade, commerce and intercourse throughout the territory of India under the art 301 in subject to the provision of article 302 to 305 of constitution

So long an organization is carrying on its business as per the law, its business exercises can't be meddled with. A privilege without limitations or/and confinements can't be imagined. In this way, by its very nature a privilege is non-outright in nature and is subject to different all around characterized parameters. In an acculturated society one can't imagine a circumstance where rights are presented without impediments. This is so in light of the fact that law needs to perform different social capacities additionally which is coordinated towards the government assistance of people at large. In this manner, conferment of rights without restrictions may make mess inside the legitimate framework and may disturb the ordinary working of the general public.

There are equal limitations and restriction to the subjects who enjoys right that may be constitutional or fundamental, there are restriction implied and /or to subject related in a company therein. In article 12 of Indian constitution a corporation is stated as state and acts as an agency for government but will possess the same limitations as government itself although they are distinct independent legal entity in the eyes of law.

7.7 JUDICIAL RESPONCE

The response of Indian judiciary towards corporate criminal liability was really slow in comparison with other countries like United Kingdom and United States. Industrial growth in India was really slow till 1980s. Indian industrial policy was liberalized under Narashimh roa

⁸¹ AIR 2003 SC 511

⁸² MANU/SC/0970/2003.

government under the finance minister Shri Manmohan Singh. During 1990s. at this time numerous national and international companies invested in India and set up their businesses. The increased outlook of the company establishment in India changed the life style of citizen considerably.

Indian company were giving equal competition to the foreign companies in terms of setting their global reputation. But the organizations started to show up the other side of a corporate body which can do anything to achieve these goals. Some entrepreneurs started to take advantage of loophole in law which says a company is separate and cannot be prosecuted for a criminal offence effectively.

7.7.1 Classification of the corporation's criminal liability-

Classification of criminal obligation of a corporation can be done in the following way-

- Firstly it can be classified as companies criminal obligation upon vicarious principles under the concept of strict liability of tort law.
- The obligation of criminal liability provided under various other statutes like, Companies Act SEBI etc.
- The concept of criminal liability of a corporation under the general law of Indian Penal Code

7.7.1.1 Corporate criminal liability under strict liability based on vicarious principle-

According to common law the existence of the element of guilty mind is important and that can be said well with the maxim of *actus non facit reum nisi mens rea*⁸³. However the legislation has created the concept of strict liability where the ingredient of *mens rea* is not important.

Strict liability is an action in which the person is responsible for guilty mind or negligence irrespective of his existence. Strict liability can be implemented with lack of *mens rea*. Expansion of strict liability has been in such a wide sense that now it is impossible to read this concept in the generalized manner, and many major crimes have been added in this conception. This concept can be said to be the product of the modern legislation. Under strict liability the act committed by the person is considered, hence the action done under the course of employment by a servant or agent is considered to be the offence of the corporation. Corporation can be held liable for socio economic

⁸³ . Director of Public Prosecution v. Majewski, [1976] 2 All ER 142.

crimes universally which is cannot be argued accordingly.

7.7.1.2 Criminal obligation of company under specific legislation

Social-economic crimes of certain types can be committed by corporations according to the legislation. Hence it is very much important to make provisions which cures corporate criminal liability in this respect. The main objective of the legislation body of our nation is to proved protection to the citizens from such harm committed by the corporations, the offenses owing to the organization by such enactments are much the same as the business conveyed by the partnerships. Under this, concept of criminal obligation not just applied to concerned blameworthy official yet additionally organization and even it could be reached out to the individual in control of the organization at the hour of commission of demonstration of wrongdoing. Nature of the action secured by these enactments is probably going to have huge repercussions on the general public except if those exercises are unchecked. Without a doubt, these sorts of enactments are suited over the lawful arrangement of universe.

7.7.1.3 Criminal liability in IPC.

According to section 2 of the Indian penal code which talks about intra- territorial activity which means commencement of offence with in the territory of India which says that every person is liable of getting punishment under the penal laws each demonstration or exclusion in opposition to the arrangements of the Code, which he will be blameworthy inside the domain of India. The segment affirms the guideline of criminal obligation dependent on the territory and spots of the offense submitted.

The section makes “every person” irrespective of his nationality or allegiance, or his rank, status, caste, color or creed, liable to punishment under the Penal Code for an offence committed within India.⁸⁴

In this code the term every person have wider connotation it inculcate citizens as well as non citizens include the corporations. The word ‘person’ under section 11 of Indian penal code says that it is not only for human beings but also for any company association or anybody of person incorporated or not.

When section 2 is read with section 11 of this code makes it clear that legal persons like

⁸⁴ Gaur.K.D., ‘The Indian Penal Code’, (4th Ed.), (New Delhi: Universal Law Publishing Co. Pvt .Ltd, 2008), p.35.

associations and corporations partnership firms are the part of this law and can be prosecuted under every offence in IPC.

Statute of juristic character recommends that corporate character can't be likened with character of common individual in regard of all offenses referenced in the law of violations. Indeed, even famous creators of criminal law content like K.D.Gaur and Ratanlal furthermore, Dhirajlal embrace this view.⁸⁵

Indeed, even there is no unanimity among the legal executive in regard of corporate criminal obligation on the ground that not at all like characteristic individual, organization is unequipped for shaping the mens rea and it is difficult to punish organization. In any case, quite a bit of water has flown in the general public after such idea in the late twentieth and start of 21st century. Along these lines, analyst has embraced the basic investigation of pattern of legal reaction in regard of corporate criminal risk.

7.8 SPECIAL AUTHORITY OF TRIAL

Special investigation is required for this complex action of crime committed by organizations. The initially investigation of corporate crime is done by police which only consist the general knowledge about such offences, which consist of corporate structure corporate operations bank accounts and its activity. It has more complexities in Multi National Companies as it works globally. The general police do not know about these exercises. Subsequently the examination of corporate wrongdoing ought to be researched by uncommon authority comprising of Chartered Accountants, Bank Specialists, Income Tax Officers, prepared cops and specialists in digital wrongdoing.

According to section 211 of Companies Act 2013 –

Foundation of Serious Fraud Examination Office, the people who are selected in this office ought to have exceptional information on banking, corporate undertakings, tax assessment, criminological review, capital market, data innovation and law. This is welcome advance since

⁸⁵ Gaur K.D. in his book writes that person under IPC does not a non-judicial person such as a corporation or a company, because a company cannot be indicted and charged for offences such as murder, dacoity, robbery adultery bigamy and rape etc., as these can only be committed by a human being. See, Gaur, K.D. The Indian Penal Code, (4th Ed.), (New Delhi: Universal Law Publishing Co. Pvt .Ltd, 2008),p.35. Further, Ratanlal and Dhirajlal also says that a company cannot be indictable for offences which can be committed by a human individual alone, like treason, murder, perjury etc., or for offences which are compulsory punishable with imprisonment or corporeal punishment. See,Ratanlal & Dhirajlal, The Indian Penal Code, (33rd Ed.),(Nagpur: LexisNexis Butterworths Wadhwa ,2010), p.3

specialists who have exceptional information about these issues may explore corporate wrongdoing in additional important way which will help in guaranteeing more conviction of guilty parties of corporate wrongdoing.

- Different method of corporate crime

Corporation is considered as a person so any crime committed by corporation is to be trialed under criminal procedure code 1973. It is important that the trial must be conducted when both the parties are present. But due to the fictional nature of a corporation, it is impossible to ask for their presence in practicality. Therefore, this contradicts the trial as both the parties are not present. As per the courts, when the accused is physically absent in trial for its offence, the trial conducted is concluded unfair. However, there is no undermining of the fact that a company will be let off from its share of trial. The section 305 of criminal procedure code 1973 gives the solution to this issue. According to this section, a company must be presented during the trial through its representatives. It is an alternative method which demands that any member of company must stand on its behalf throughout the trial. This alternate method gives way to the theory of alter ego which compiles that the identity of member of corporation merges with that of the corporation itself. Naturally, the offences under which the higher officer is charged are considering the offences of corporation. Hence, the merger of these personalities makes them accountable for action on both the sides. Hence, this representation does not account under unfair trial. Since the criminal procedure code of 1973 states the provision of arrest, this is not applicable on any organization as they cannot be arrested also, there cannot be any sources to record the confessions of the accused. But since, there is a merger of both the personalities of representative and the corporation, the statement of representative can be concluded as final statement of corporation. Hence, during the trial, the fate of the corporation depends upon its representative.

7.9 CONCLUSION

Corporate bodies procure all the focal points spilling out of the demonstrations of the executives and they act to the hindrance of people in general for the sake of the corporate bodies.

From the above investigation, unmistakably 'corporate criminal obligation' isn't an outsider term. This classification of obligation existed since days of yore. In any case, the assembly kept its mouth shut when the topic of forcing discipline emerged with deference of corporate obligation. With the advancement of different hypotheses, the most crucial issue concerning corporate criminal risk settled i.e., the issue of mens rea. Idea of vicarious and severe risk is a significant

part of corporate criminal obligation.

The criminal law statute identifying with inconvenience of criminal obligation on partnerships is chosen the point that the organizations can carry out violations and thus be made criminally at risk. In any case, the resolutions in India are not in pace with these turns of events and the above examination shows that they don't make enterprises criminally at risk and regardless of whether they do as such, the rules and legal understandings force no different disciplines aside from fines. Aside from fines, disciplines, for example, ending up of the organization, transitory conclusion of the company, substantial pay to the people in question, by stepping on the shortcoming of the enterprise i.e., its altruism, and so forth. Such methods for discipline would deterrent affect the corporate and the sole point of discipline under criminal statute would be accomplished.

At first the legal executive was hesitant to hold organization criminally at risk on the ground that it was juristic individual, in this manner it was unequipped for framing the mens rea what's more, it is difficult to rebuff the organization. Nonetheless, the legal executive continuously changed its mentality towards the organization criminal obligation. Indian legal executive saw the changes taken places in other legitimate framework in regard of corporate criminal obligation especially in USA and UK. At first the legal executive didn't confront a lot of obstacle in regard of corporate criminal risk under exacting obligation since it doesn't require the nearness of the mens rea. Later on legal executive attempted to hold the organization at risk for those criminal offenses which don't require the mens rea fixings.

Further, it held that organization could be made subject in any event, for that offense which requires the elements of mens rea. In any case, it clarified that organization proved unable be arraigned for those offenses which can be submitted by just common people. Indian legal executive is much the same as precedent-based law lawful framework in this way it embraced the precedent-based law hypothesis of "modify prior" or "distinguishing proof hypothesis." But hypothesis of change back isn't liberated from the disarray. Proportion of concluded cases doesn't utter a word where the blameworthy official carried out the wrongdoing for the benefit of the organization for the advantage himself as opposed to organization. Another significant inquiry is as yet unanswered is that whether the aim to profit organization is sufficient despite the fact that organization isn't really profited, then again whether organization could even now be prosecuted for criminal offense in any event, when the official planned to profit him as opposed to profit organization? The hypothesis of change prior makes more issues when research organization of

the organization comprises of multi part body. In the event that there is unanimity among the top managerial staff, at that point it would not be issue to make organization criminally at risk. In any case, where the top managerial staff was partitioned over the choice, the issue is which executives mind would speak to the organization are hard to decide it. Another striking inquiry is regardless of whether character of executive is converged with the character of auxiliary organization or then again will it converged with the character of holding organization. Indian legal executive has held that executive of auxiliary organization is named by the holding organization; thus, character of executives of auxiliary organization would be converged with the holding organization. This would make further issue in light of the fact that on a similar rationale even it can to the degree of making investor at risk since it is investors who names the chiefs. in the vast majority of the organizations even the portion of the holding organization is held by the parent foundation of whole gathering of enterprises like TATA Sons Ltd. Another hazy area about corporate criminal risk is about which Offense

Organization could be arraigned. The legal executive is firm that specific offense could be submitted by just characteristic individual not organization like homicide, assault, plural marriage, infidelity, burglary and dacoity and so on. It is extremely hard to outline comprehensively for which offense organization could be made at risk. Be that as it may, it very well may be resolved based on nature of business conveyed by the organization and the idea of act submitted by the hiring of the organization. Be that as it may, today taking a gander at the assortment of business led by the organization, especially in the marriage commitment business, the organization could be held obligated as abettor or backstabber for the offenses like plural marriage or infidelity. Indeed, even the organization could be made at risk for the sex offenses too. In the light of the extreme rivalry in getting the tenders, there is probability of organization submitting the robbery of the records of the opponent organization.

So far Indian legal executive has practiced the alternative of forcing fine on organization as discipline yet never pondered the other choice of disciplines like ending up of the organization, wiping out of permit of organization for specific business, disqualification of organization for specific advantages, relinquishment of illicitly earned benefit by the organization, probation of organization, and the distribution of organization name in the news paper or Tele Vision. A few pundits contends that impressive fine on organization in certainty doesn't sums discipline of organization yet sums discipline of investor, lenders, debenture holder of the organization on the grounds that the offer costs of the organization goes down in the market the development the organizations is punished

In any case, this happens even if there should arise an occurrence of common individual likewise supposing that the bread worker of the family goes behind the bar, normally the ward of that individual additionally endures. In any case, if there should be an occurrence of organization it isn't question of a couple of individuals enduring yet whole investors who are in lakh numbers, debenture holders who are additionally in lakh numbers, loan bosses are likewise in huge numbers and even the country likewise endures. Nonetheless, this is unavoidable if the law is to rein the organization for its crime in the bigger enthusiasm of the general public in any case unchecked crime of organization would cause more prominent mischief than advantage got from not rebuffing organization.

Another territory where legal executive isn't made a lot of advance is whether the organization is being charged individual, would it be able to guarantee the privilege of denounced from the point of view of reasonable preliminary under the Article 14, 20, and 21 of the Indian Constitution. The inquiry is about whether organization could raise issue that its preliminary technique is oppressive in light of the fact that it isn't permitted to take guard gave in the IPC which are accessible to regular people. Further such method isn't reasonable and simply under Article 21 of the constitution. Another significant issue is whether organization as blamed can guarantee the appropriate for quiet is qualified to be discussed yet so for the corporate criminal statute has not gained any ground toward that path

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CHAPTER 8

CONCLUSION AND SUGGESTIONS

Due to the growing world and connectivity among the different countries, there has been growth in trade and business. The developing of corporate bodies has increased their potentials of committing crimes in different spheres of corporation have created ruckus all over the globe. There is urgent requirement of a strong legislative system to curb these criminal activities. The influential system of the US has unique system of legislation through which it is manageable for them to cure the effects of these heinous crimes committed by the corporations.

There is gradual growth of corporate criminal liability in India and due to introduction of Companies Act in 2013 it has marked the beginning of legislative actions towards these crimes. By this act, India adopted the theory of identification and vicarious liability was adopted in the US.

The vicarious theory acts from the side of criminal justification, as a corporation is held criminally liable for the acts of its employees under their mentioned term of employment. This implies that every company goes under the supervision of criminal justice system. This enables the system to assure about the activities of company and that there are no criminal offences conducted by individual, employee or agents on behalf of corporation or in name of corporation. A company has to be alert for the actions of its employees.

As in India, the theory of identification has less applicability because it acts upon officers who form the main members of organizations. This implies that the head of the corporation has monopoly over his discretionary power which is awarded by the criminal justice system. Hence, the acts of employees are not subjected to criminal law. This theory tends to support the company because the acts of employee under his/her term of employment are not subject matters of corporate criminal liability. The company complies on actions of superiors than that of servants. This theory does not cover the gaps created by the working of company and the norms of legal system of our country; instead it provides somewhat opportunities for them to commit crimes. But, the legal system and judiciary of our country working on these loopholes are under constant practice of providing better suggestions for the growing corporate crimes in India.

According to Supreme Court, offences which demand mens rea are punishable to corporations but it did not specifically mention about the offences for prosecution. The main aspect of this

crime rises a certain question that are all crimes mentioned under IPC are punishable or not?

Since, the corporation influences human lives by functioning, there are no sever matters that have risen due to the socio-economic problems, because they are likely to be committed by both natural persona and Jurassic persons.

According to the Supreme Court, a corporation cannot be prosecuted or punished for crimes like rape, murder, etc., but it certainly is liable for crimes like fraud, theft, etc. But since the development pace has increased the magnitude of committing crimes has also increased, thus now the area as well as the severity of crime are two source which decide the probability of punishment on it.

Since, the IPC does not mention clearly about the provision of punishment the Indian judiciary is unable to control the situation in-hand. Outwardly, the judiciary relied on punishment of fine even if the crime was serious and major, but now there is requirement of introduction of new punishments. Since the introduction of Companies Act now, the IPC suggests that now the provision of punishment of imprisonment or fine or both can be considered.

Since judiciary has limited discretionary power it only imposes the punishment of fine. They may face the problem of amount of fine when the offence is committed through a corporation, there are several other regal regions where there are questions remained unanswered. Courts also suggested that the amount should be decided through the severity of crime and also by introducing who committed crime; corporation or individual.

According to the courts the company should pay higher amount of penalty of fine rather than individual because of their weather status and in many different countries they also give punishments like community service adjacent to finis g the corporation. This leads other countries above India because according to scholars and experts, in 21st century, there is the requirement of new forms of punishment.

Hence, came into view the reformative theory of punishments which punishes the corporations on the basis of their crimes and for certain duration base on the severity of crime. It also classifies the association on certain basis for better judgment:-

1. Capital
2. Existence and experience

3. Status
4. Capacity
5. Employment, etc.

In the following years, the judiciary is more concerned about the offences which are concluded as crime for activities of corporations but it has not mentioned about defenses. Under IPC there are defenses covered for the accused, there is uncertainty about whether are they beneficial or not and are they reliable or not.

Soon, the parliament of India introduced the Companies Act of 2013 in august where they have give special discretion to courts to establish special courts for matters under corporate liability. This was done to ensure about speedy justice and also to make sure that equal importance to such matters was given. The act also empowers these special courts to mention the activities termed as crime and also sentence punishment to guilty found corporations.

This was a milestone step taken by Indian government because:-

1. Special courts will have supervision of experts of judicial system and it will constitute of experience by following years.
2. The act has mentioned and cleared the question about amount of fine charged on corporations for a particular offence
3. Discretionary power to special courts is provided, which gives the Companies Act a certain level of rigidity and importance.

There is a requirement of justifiable differentiation between cooperate bodies and imposing fine in them. If, like stated earlier, special court practice discretionary power of sentencing fine then, it should be made a compulsion in courts to justify their acts. If these considerations are rejected or are avoided then it will become a tough process judiciary to provide justice to innocents and punish the offenders.

Since the act was introduced, it has provided certain amount of flexibility and rigidity to courts in interpreting the provisions of the act like the amount of fine can be extended from rupees five lakhs, but it should be reasonable to exceed the penalty. Also it is in the hands of courts to give punishment of imprisonment or fine or both according to severity of offence.

According to the Supreme Court, the applicability of theories and doctrines have fast forwarded the process of development of corporate liability in our country. The companies act has indeed managed to make the processes of the special court important and reasonable to provide speedy justice and also it has proven to be more accountable and legitimate to those who are proven innocent.

The legal system of our country hold the liability of those is offenders but provide relaxation to those who are innocent. There are several cases where the provision s were interpreted only to make out better judgment for the case and to prove the liability of the institution.

Hence, on the basis of above mentioned conclusion and observation there are suggestion given by researcher:-

Offences: - as per the Indian judiciary any corporation is unable to commit crime like rape, murder, etc. But they are capable of committing crimes like that of theft, fraud, etc., since there is advancement in the era and development there is also advancement crimes committed by corporations and the severity of these crimes id growing. The crimes committed by corporation are committed to ease their personal malicious intent committed either individual or corporations hence, one cannot blame for the absence of mens rea but these crimes are growing because of growing greed of corporate bodies. The US system of unique and effective sentencing has recognized this need to stop and slow down this frowning greed of corporation and it has expanded its branches to different region of corporation crime. Hence, experts suggest that Indian government should also expand their region and ideas in corporate crime because it may or may not be possible for all the corporations to be reasonable. For e.g. the new form of crime identified was Manslaughter. That is gross negligence or recklessness causes death of human beings. It is certainly a new dimension of crime and this area requires more attention as this poses a direct threat to human live Stan any other offence. It is certain that a company is held liable for different crimes one of which is theft. It is impossible to compose one's mind to conclude that a corporate body can act as a thief but instance shave proved that it is not impossible. Corporation tends to use resources or financial resource soft their employees or those who form their consumer force for personal need, this is occluded as a form of theft.

Hence, corporations should be prosecuted and punished for crimes like manslaughter, theft, damage of property, etc.

Punishments: - there is a requirement in our legal system to find appropriate and reasonable punishments for crimes with change in time. Earlier, the punishment of fine served right for corporate crimes because there was no chance stop imprison corporate bodies but now, there are wide range of possibilities to punish corporations for heinous crimes. The US legal system came up with different form of punishment for corporations for crimes based on its severity, as to spread equity and seriousness among criminals about what they get themselves into. Hence, punishment like community services, confiscation of land, suspension of license, etc., were introduced. It does not faze that the crime committed is related to economy, social or personal intent but if the crime affects the human life and also the balance of nature and society than it becomes important for the legal system and jurists to come up with serious punishment for those who try and disturb the natural flow of lives. These punishments are also meant to provide guidance and pro toe goodwill among corporations. As the changing e demanded new reforms in almost every sector, it becomes important for the judiciary to come up with reforming punishment theory as well.

Henceforth, it is suggested new punishment shod be added to the provision of punishment for corporate crime like community services, suspension of license, etc., based on severity of crime.

Separate legislations: - this reform is based on making separate legislations for criminal liability of corporations. The US system has established a strong guideline which leads their corporate sector. The US system gives higher importance to corporate crimes and their punishments like it give stop criminal crime and their punishment. In India this process is undertaken by IPC and it has several different provisions for both types of crimes civil or criminal. There was a need to operate the provision of corporate crime with that of criminal crime because even if a corporation is concluded as a person it cannot undergo the same process as it goes with an individual. Since, it is required for corporations to have mens rea and acts reus to play as important factors of crime hence, this has raised the complexity of system and it is required for the legal system to come up with new and separate legislations to continue deal with matters of corporate liability.

Hence, separate legislations for corporate bodies ensure the enactments and provisions made in that particular field.

Publicity of crime: - this is a new approach to the system where the judiciary comes in contact with media and together they help in spreading awareness among the masses. For any corporation, the support of public is most important aspect for its survival, but when a corporation commits

crime, it should be made compulsory to spread awareness among masses about such crime with the help of media, where the name of corporation, the crime committed, the punishment awarded, and the name of director or manager of corporation. This will aware as well as make the corporation guilty of its offence.

Hence, this joint activity of judiciary and media should co e to play and punish the guilty, also spread awareness among masses.

Lenient nature: - as there are various crimes committed by corporations and various punishment awarded to them, there is also the need to reward those corporation who have secured themselves from this trap of violence. Since the passage of law, many corporation have indulged themselves in making a more transparent and accountable atmosphere with the legal system as well as their consumers as to ensure that they may not commit any crime under any situation. Several institutions do a background check on their employees, maintain registers of conduction of business, and other activities so as to ensure that there is smooth conduct of business. When corporate bodies themselves take steps to avoid any sort of crimes, keeping theory malicious intent aside, they produce a new league of positive measures which help the judicial system of developing comprise like India in making right choices.

Hence, the law should reward the corporation with no history of crimes by providing leniency in certain provisions.

Separate court:-with the introduction of Companies act there was a certain demeaned that separate courts should be introduced to address corporate cases and their sentencing. This was done to ensure that the cases can be judged with ease and this will reduce the burden on criminal courts. Separate court ensures that the cases are given equal importance and speedy justice is provided. This also ensures that civil cases are not jinxed up with criminal cases and that equal attention and importance is given to co-operate cases is given. The growing demand for separate courts has been detected by legislative body because according to them there is lack of experienced experts in case of corporate liability in our country but even in that condition the reforms introduced through companies act 2013 empower and provide IPC with enough discretion to introduce separate courts of or given matters. The introduction of separate courts help in prosecution of company in case the company is found guilty.

Therefore, there should be introduction of separate courts to ensure exclusive legislation of corporate crime and their sentencing.

Investigation organizations: - since the growth of corporate crimes and changing time, there are complex matter that require utmost importance and attention. With the introduction of new crime and their impact on human lives it has become important that the legal system should introduce separate investigation organizations or staff that may help government in providing sufficient witness and evidence against the offender. The requirement of investigation team is necessary to ensure that no innocent is given sentence and justice is given to all. The investigation team also ensures that the provisions established by law are enacted in all areas of corporate body or not. The investigating body of the US consists of experts of various fields who work in facilitating in investigation of corporate crime. These associations not only deeply investigation on matter but also consider all the area which may be included in crime, and who may be affected by the actions of corporate body.

Hence, it is suggested that a separate investigation organization should be established to ensure proper investigation on corporate crime.

Special court: - with the introduction of Companies Act 2013, there was the requirement of establishment of special courts in country. These special courts will be able to practice their separate discretion and pass the judgment. These special court work on revising the crime and passing sentence so as to provide justice but they rely on the corporate crime as mentioned under IPC of our country.

Hence, it is suggested that there should be proportionate number of social courts established in our country.

Deflection in fine: - since ancient time to recent time and sometimes even now; the corporations are awarded with the penalty of fine for offences. It is upon the legislative system to award penalty of fine adjacent to any other punishment or not. But since, there was a new requirement of a more accurate system of fine as there were questions on amount of fine, it is necessary that deflection of fine according to corporate crime should be taken under consideration. It means that fine should be decided on the basis of profit made by corporation and the employment force it undertakes. According to the US sentencing system, the strength of an organization relies on its

working force. It means that a company can be classified on the basis of employees or workers under its supervision. They can be arranged in a systematic order of 200, or 500,1000 or even 100000. Thus the amount of penalty should rely on the basis of work force undertaken by supervisor. This also ensures that there is a fair amount per person and maintains the dignity of right of equality of Indian constitution.

Hence, the work force of company should be considered as a classified basis on awarding penalty of fine on any corporation.

Vicarious liability:-the US is the current best example in the world in current time that has a steady system for maintain corporate criminal liability. They have established an effective and unique system of identifying and processing corporate criminal liability by applying the theory of vicarious liability. The theory has enhanced the working of the internal mechanism of a corporation which not only ushers a corporations but also helps them avoid certain corporate crimes. This theory does not contemplate on supporting individual or corporate body, but it does contemplate on the fact of providing absolute justice to the innocent. The theory of vicarious liability is of best interest when one tries to provide justice and deflection of nature of avoiding corporate crime. This theory has helped enforcing the liability of working force rather than that of officials and that has a major impact on their legal system's working in such matter.

Hence, it is suggested that Indian legal should consider applying theory of vicarious liability.

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