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CORPORATE NEGLIGENCE- A COMPREHENSIVE OVERVIEW AND ITS PRESENT LANDSCAPE

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“Corporations are morally not responsible, or we can say they easily evade the consequences for their negligent conduct.”

Abstract

Corporate negligence has become a focal point of legal and regulatory attention, especially as businesses grow in scale, complexity, and societal influence. This paper offers a thorough examination of the concept, exploring its development, scope, and significance in contemporary corporate governance and the law of torts. It investigates how negligent actions or inactions by corporate entities whether due to insufficient internal controls, failure to conduct proper due diligence, or lapses in managerial oversight can result in serious legal, financial, and reputational consequences. It further analyses the current legal landscape, international trends, judicial trends, and emerging challenges in an evolving environment relying on globalization, and increased stakeholder demands. By integrating doctrinal principles with recent case studies and policy frameworks, the paper seeks to enhance understanding of corporate responsibility, accountability, and the necessary mechanisms to prevent and respond to negligent corporate acts.

Keywords- Corporate Negligence, Negligence, law of torts, Due Diligence & Corporate responsibility

I. INTRODUCTION

A group of individuals working together is not considered as a company or organisation. However, it's important to understand that ignorance of the law is no excuse. On this basis, you can't claim a defence. A brief overview of companies as well as corporations. A company under the Companies Act, 2013, is defined as a body corporate with a separate legal entity, having a common seal, perpetual succession, and the capacity to sue and be sued.

When we look at the present legal and regulatory framework, it is clearly seen that the government and regulatory bodies fail to hold corporations accountable for their actions of

negligence. There is a lack of enforcement due to which the unethical conduct of corporations goes unnoticed. It results in harming stakeholders such as employees, consumers, as well as the environment. Corporate negligence in India is a very vague topic, which has not been established in a codified regulation. Unlike, Pennsylvania being the first state, and other states of U.S. has recognised Doctrine of corporate negligence for health care organisations/corporations liable for their negligent act.

To understand the concept of "corporate negligence," let's start by looking at a real-life incident. Company "A" is involved in the agricultural industry. It used to produce farm goods such as edible fruits and plants. Due to careless seed planting, poisonous plants grew alongside other plants. The company did not conduct an inspection. The packaging department and the manufacturer both failed to detect it. The unfortunate individual who picked up those veggies from the grocery store down the street suffered poisoning. Therefore, the corporation was found guilty of carelessness in overseeing the crops and ensuring their safety for consumption since they presented a risk to consumer's lives. Obviously, the company's irresponsibility compromised the security and safety of its consumers, which is a serious and unpardonable act. They were jointly and severally liable for this mishap resulting in Corporate Negligence. It is an act of careless conduct on the part of the corporation.

Now, we can conclude a few important takeaways on the "corporate negligence" from this incident.

- There is a standard of conduct established by a corporation towards another person. This can include stakeholders, employees, consumers, or any other individual who may be impacted.
- It is the duty of the corporation to carry out the established practise with due diligence.
- Corporations fail to pursue that duty, resulting in injury or damages.

Negligence in the Law of Torts, Tort is defined as a breach of a legal duty to take care, resulting in damages. It occurs when a reasonable/ prudent man fails to follow a standard code of conduct due to his/ her carelessness.

There are three essentials of Negligence under the law of torts:

1. Duty of care
2. Breach of that duty
3. Damages

In cases of negligence, the plaintiff has to establish that a legal duty owed to the plaintiff was abridged by the defendant. Breach of duty can be measured by the act or the lack of due care of a reasonably prudent man in that particular situation, which was not observed by the defendant. It should result in damages to the plaintiff, which should not be too remote from the consequences. Nuisance can be committed by an individual or a corporation or any company established under the Companies Act, 2013.

Corporate negligence is a term used to identify negligence committed by any company that owes a duty to care for its employees, shareholders, or consumers, when it fails, it is liable for damages fixed according to law. A company under the Companies Act, 2013 is defined as a body corporate with a separate legal entity, having a common seal, perpetual succession, and the capacity to sue and be sued. In this article, we will learn about corporate negligence, its essentials, the liabilities of corporate bodies and remedies for such negligence.

II. REGULATION OF CORPORATE NEGLIGENCE IN INDIA

Corporate negligence usually takes place when companies fail to exercise reasonable care in the practice of corporate policy and cause harm to an individual or a group of people, resulting in legal breach. The corporation will be liable to pay damages to the legally injured person or group of people which can be punitive or financial in nature. The consideration will depend upon each case. A company as a whole or an employee from the company, such as any director, can be held liable for Corporate Negligence depending upon the circumstances. Thus, it can be said that when a company fails to adhere to its policies and is unable to follow the code of conduct, resulting in legal harm, leads to corporate negligence. Examples of corporate negligence are when hospitals act negligently towards a patient by providing faulty medicine that causes injury to them, when an industry keeps defective machines, which leads to an accident of any employee, etc.

To hold a company liable under the tort of negligence, there should be a breach of legal duty by the company causing some damages. There should be an act or omission resulting in death or grievous hurt. The test of reasonable foreseeability will define the proximity between the act or omission of negligence, which will show the damage caused by such negligent act. One of the landmark cases in the history of India that represents the consequences of Corporate Negligence leading to devastating situations is Union Carbide Corporation vs Union of India, also known as the Bhopal Gas Leak 1984.

Corporate Negligence in Law of Torts

Corporate Negligence in the law of torts can be initiated by any shareholders or consumers, or the general public against the corporation. If the civil wrong results in any injury or damage by any employee causing undue harm by failing to uphold duty of care towards that person, it will result in a tort of negligence. Corporations will be held vicariously liable for the negligent act of any member of the company. The corporation will also be liable for legal damages.

Corporate Negligence in Criminal Laws

When negligence is of serious nature, causing the death of a person, or many persons by any organisation or body corporate, it becomes criminal in nature. Corporate Negligence occurs when a death not amounting to culpable homicide, occurs due to a negligent or rash act of any corporation. In Criminal Laws of India, Section 106 of the BNS Act 2023 talks about negligence. It has replaced Section 304 A of IPC by introducing severe punishments. Section 106 of BNS Act makes the offence punishable up to five years of imprisonment and a fine. Section 106 has emphasised medical negligence committed by registered medical practitioners. The Bhopal Gas Leak Case, the AMRI fire incident and the Bolam Case will fall under the Corporate Negligence cases. These are cases of gross negligence where the liability was criminal in nature and punishment was not adequate. These cases show that our laws need to be amended to provide strict punishment for corporations failing to maintain standards that results in deaths of people. It's easy for them to escape by pointing out that it was a negligent act.

III. TORTIOUS LIABILITY OF A CORPORATE BODY

There are three forms of Negligence in Torts: -

1. Non- feausance- not doing an act required to do.
2. Mis- feausance- doing an act wrongly.
3. Mal- feausance- doing an unlawful act.

Depending on the severity of the cause of action, it will be further classified into two parts. There is corporate negligence in the law of torts, and there is corporate negligence in the law of crimes. Under the law of torts, shareholders, consumers, or the general public can initiate a lawsuit against a corporation for corporate negligence. If the civil wrong results in any injury or damage by any employee causing undue harm by failing to uphold duty of care towards that person, it will result in a tort of negligence. Corporations will be held vicariously liable for the negligent act of any member of the company. The corporation will also be liable for legal

damages.

The case of Glasgow Corporation v. Taylor (1922) depicts corporate negligence in law of crimes. A seven-year-old child died by eating berries that were grown in the botanic garden in Glasgow. The court held Glasgow Corporation liable for the death of the child. When a serious act of negligence by an organisation or body corporate results in the death of a person or multiple individuals, it is considered criminal in nature. Corporate negligence occurs when a death not amounting to culpable homicide occurs due to a negligent or rash act of any corporation. It has been mentioned in Section 106 of the Bhartiya Nyaya Sahita, 2023, which has been replaced by Section 304A of the Indian Penal Code, 1860.

While deciding the case of corporate negligence, we come across so many other concepts. It is important to understand these in light of corporate negligence. Incorporation of these principles will make it easy to decide the cases of tort of negligence.

- Vicarious Liability- When a person is liable for the act of another person, this is vicarious liability.
- Strict Liability- Any individual, entity or corporation liable for the act of carelessness without having to prove for their negligent act or omission.
- Absolute Liability- It originates from the concept of strict liability, which imposes liability on any corporation involved in the production of harmful materials or whose operations could potentially harm the environment.
- Respondeat superior- Employers/ masters/ principal are vicariously liable for the acts of their employees/ servant/ agents.
- Res ipsa loquitur- Things speaks for itself.
- Justice, equity and good conscience.

Corporate bodies also have a corporate veil that allows them to escape their liability. Most of the fraud cases by the company owners, which have resulted in huge losses to the general public, left them high and dry, seeking justice. And the person liable fled to a different nation, enjoying their extravagant lifestyles.

To hold a company liable under the tort of negligence, there should be a breach of legal duty by the company that causes some damages. The considerations will depend from case to case. A company as a whole or an employee from the company, such as any director, manager, etc., can be held liable for corporate negligence depending upon the circumstances. The examples

of corporate negligence include instances where hospitals provide faulty medicine to patients, causing injury, or when an industry maintains defective machines, resulting in employee accidents. The test of reasonable foreseeability will define the proximity between the act or omission of negligence, which will show the damage caused by such negligent act. One of the landmark cases in the history of India that represents the consequences of corporate negligence leading to devastating situations is Union Carbide Corporation vs. Union of India, also known as the Bhopal Gas Leak case.

The Bhopal gas leak case, the AMRI fire incident, and the Bolam case will fall under the corporate negligence cases. These are cases of gross negligence where the liability was criminal in nature and punishment was not adequate. These cases show that our laws need to be amended to provide strict punishment for corporations failing to maintain standards that result in people's deaths. It's easy for them to escape by pointing out that it was a negligent act.

To tackle the issue of corporate negligence, two important doctrines were introduced: one is the lifting of the corporate veil, and the other is corporate social responsibility. Corporate social responsibility has been helpful to some extent, but it fails when a corporate body wants to make big money, and this results in causing more harm than good to the general population.

Can state be sued for their negligent act? When government companies fail to perform their duties, resulting in an accident or hazard, what legal options are available?

For answers, we can refer to the case, Municipal Corporation of Delhi v. Subhagwanti & Ors., which clears the position on whether government bodies can be held liable for their tortious acts or not. Corporate negligence as a tort is applicable against a government organisation, as it has been established in the case of Municipal Corporation of Delhi v. Subhagwanti & Ors. The case held MCD liable for the deaths of three people resulting from the collapse of the Tower Clock in Chandni Chowk. The Supreme Court held that the management was liable for maintaining the tower clock, which they failed to do. It was their duty. The Supreme Court also upheld the principle of Res Ipsa Loquitur in this case.

Corporate Tortious Liability has evolved by incorporating two main principles one is the lifting of corporate veil and the Corporate Social Responsibility. An Example of tortious liability of a corporation is when it fails to maintain safety measures of the company, which results in an accident-causing harm to the people working at the premises.

- The Corporate body shall be liable for its wrongdoings, ensuring justice by means of compensation or penal damages.
- Directors or any employee shall be held liable for their tortious negligent activities, such as injustice towards any person, fraud, etc., by lifting the corporate veil.
- Corporate bodies shall prevent such tortious activities for the future safety of people.
- Corporate actions resulting in even a minor inconvenience shall compensate individually for the loss suffered.
- Corporations are also liable for not performing their Corporate Social Responsibility which they owe towards the population of that area.

IV. CASES OF CORPORATE NEGLIGENCE

There are few instances of corporate negligence that will help to deep dive and analyse the situations, substantial impacts, and lessons learnt from such cases to shape the industry in a better way.

- **Human Rights Violation**

Companies provide basic utilities by socially and economically contributing to society, at the same time, it causes a negative impact on people's lives. Incidents of forced labour in foreign countries also result in human rights violations. Despite domestic as well as international rules and regulations to preserve and protect human rights, there are incidents of human rights violation by the corporations. Some of the cases, such as the Bhopal gas tragedy, Perumatty Grama Panchayat v. State of Kerala, and Orissa Mining Corporation v. MoEF, highlight the violation of fundamental rights as well as human rights.

- **Causing Manslaughter/ Homicide**

Any criminal negligent act of a corporation that leads to the death of an individual or mass murder causes manslaughter or criminal homicide. When fatal accidents take place due to lack of proper care by the management, it also comes under causing homicide. One such incident of corporate manslaughter took place in the year 2017 in London, when a fire broke out in Grenfell Tower, causing death of 72 people, and many were injured. It happened due to the failure of the corporation's duty to care. India does not have a specific law for corporate homicide but other nations like the U.K. and Australia comprise separate legislation for such offences.

- **Negligence by Hospitals- Doctrine of Corporate Negligence**

In India, negligence by hospitals falls under the category of professional negligence. When

any medical practitioner, nurse, hospital, etc., fails to provide standard care to the patient, causing death or severe complications, it results in Medical Negligence. Thus, it is very important to tell the patients all the side effects of the treatment, take signatures on the informed consent form, as well as perform due diligence before proceeding with treatment or surgery. Failing this, it will fall under tortious liability. There are many judgments where the court has held that a doctor has to perform their duty to a reasonable degree of care and skill. Tortious liability in medical negligence arises when the injury is a direct result of the conduct of the doctor. Hospitals are vicariously liable in medical negligence cases. Maxims, such as “*respondeat superior*” and “*qui facit per alium facit per se*” are applicable in cases of Medical Negligence.

- Doctrine of Corporate Negligence

Hospitals were previously exempt from tort liability under benevolent immunity. Before this doctrine came into existence, the doctors as well as hospitals used to escape the liability alleging malpractice. The doctrine of Corporate Negligence is a legal doctrine which is not applicable in India. This doctrine was introduced by the case, Thomson v. Nason to look into the well-being of patients. It is now followed and expanded to other states of the U.S. Under this doctrine, hospitals are sued if they fail to implement safety protocols for patients.

- Environmental Negligence

Risk associated with the degradation of the environment due to corporate activities leads to Environmental Negligence. This includes improper risk assessment, failure in disclosure of climate risk involved in the establishment of any industrial corporations, and not following the principle of sustainable development. There are many acts and legislation in action, such as the Environment Protection Act 1986, polluter pays principles, precautionary principles, etc., to combat environmental degradation caused by industrial activities. Section 135 of the Companies Act 2013 (Corporate Social Responsibility) was introduced as an initiative to reduce environmental stress. India seeks to attain a carbon-neutral economy by pushing various regulations to overcome environmental issues. To reduce environmental negligence by industrial corporations, it is essential to amend all the legislation and incorporate strict criminal sanctions which will shift such incidents from tortious liability to a criminal offence.

A civil suit, a criminal case, as well as a case with a consumer forum can be filed in instances of Corporate Negligence in India. These are some incidents by which the plaintiff may suffer harm caused by any act or omission of any corporation:

- Negligence by the corporation (when the corporation fails to maintain the standard of care causing damages)
- Defamation
- Product liability (e.g., defects in medicine, faulty automobile parts that cause accidents)
- Not maintaining safe working conditions
- Not following the safety protocol
- Trespass
- Environmental issues

Limitation periods for corporate negligence will differ according to the consequences. A six-year limitation period from the date of the cause of action is provided in the law of torts, and three years for personal injury caused by tortious acts under the Consumer Protection Act, 2019, and for defamation cases.

There are multiple remedies under corporate negligence. In general, damages will be awarded for corporate negligence. It is the duty of the plaintiff to prove that the defendant has caused an injury, and it should be foreseeable in nature. But in some exceptional cases it should be the defendant to establish that he/she was not negligent. With the advent of the principles of strict liability and absolute liability, industries and corporations dealing with hazardous substances cannot escape the liability of negligence. Thus, the defences such as inevitable accident, due care, and remoteness of damages will not apply to major accidents. These defences will be applicable for minor torts.

V. LANDMARK JUDGEMENTS

A few landmark cases that have shaped current legislation. This will help determine whether the respective cases served proportional justice or not. "One learns from their past mistakes," as they say.

One of the first and major corporate negligence case, the *Union Carbide Corporation vs. Union of India*, resulted in approximately 3000 deaths and 30,000 to 40,000 severe injuries. This incident took place on the night of 2nd December 1984 due to a leak from a defective tank that released 40 tonnes of poisonous gas, methyl isocyanate. It affected poor slum people as they were located near the industry. In the year 1987, UCC paid 470 dollars as a settlement to the victims. To date, this compensation is not considered sufficient for the loss of people.

This case established the principle of absolute liability in India, introducing legislation such as the Bhopal Gas Leak Disaster Act 1985, the Environment Protection Act 1986, and numerous others. The Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 was enacted by the government to provide remedies and to compensate the victims, as most of the population affected were poor; they would not have been able to seek justice. Corporate negligence and a lack of proper caution resulted in a massive catastrophe that led to the loss of lives and the degradation of the environment.

The *Bolam v. Friern Hospital Management Committee* case is considered a landmark judgement that defines what standard of care is owed by doctors. In this case, it was alleged that the hospitals and doctors were negligent in providing the plaintiff with proper details, which included risks associated with the treatment. As a result, the plaintiff sustained physical injuries. The court held that the hospital and doctors are not liable as they were diligent and took standard care in providing the treatment. After this, the Bolam test as a parameter to determine whether a case qualifies as medical negligence or not. But since then, laws have been significantly developing, and many people criticise Bolam's test, saying it might have caused injustice to the patient.

AMRI Hospitals Ltd. v. the State of West Bengal and others, In this case, 92 people died from a fire incident, causing asphyxia in a hospital because of the negligence of hospital authorities. Despite being aware of the problematic situation, the hospital authorities disregarded the safety guidelines. Multiple fire incidents occurred in the same hospital that year, but the authorities ignored them. 15 men and the managing director were charged with S.304, S.308, and S.36 of I.P.C., but later the high court held the director of the hospital not liable for culpable homicide; instead, he was charged with death by negligence.

Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association, In the year 1997, a fire broke out in Uphaar Cinema, killing 59 people and leaving many injured in the stampede. The incident took place due to a fire in the transformers and a lack of safety standards followed by the owner of the cinema hall. The court held the Delhi Vidyut Board, MCD, and the licensing authority negligent. There were illegal extensions, no emergency gates, extra seats, and a lack of floor lighting in the cinema hall, and despite multiple complaints regarding the issues in the transformer, no action was taken, resulting in such a massive fire outbreak. In this case, there was a delay in justice; later, the court held that defendants were liable for

imprisonment and a fine. The court held the owner of the cinema hall and DVB strictly and vicariously liable for their gross negligence.

VI. CONCLUSION

In India, for the act of Corporate Negligence even if that has resulted in loss of lives, there is a lack of strict provisions. There is no defined legislation for Corporate Negligence. Presently, cases are being dealt with under common laws, the law of torts, the Indian Penal code 1860, the Bharatiya Nyaya Sanhita 2023 and the Consumer Protection Act 2019. Unlike other nations, In India, it's easy for top managerial bodies to escape from penal liability of negligent acts that results in multiple deaths and severe damages caused by the corporation's negligence. The U.K. has implemented Corporate Manslaughter and Corporate Homicide Act 2007. Australia, too, has passed legislation, the Crimes (Industrial Manslaughter) Bill 2002. Although these acts also need to implement some changes, whereas India needs stringent legislation to tackle cases of Corporate Negligence and Corporate Criminal liability causing homicides.

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