

# Corporate Criminal Liability

Monisha P<sup>1</sup>, Aboorva S<sup>2</sup>

3<sup>rd</sup> Year B.A. LL.B.(Hons.), Sastra Deemed University

## Abstract:

The idea that criminal activity is exclusive to humans is false. In addition to being a distinct legal entity, a company can be an artificial person in criminal activity. At first, in the 16th and 17th centuries, it was thought that a company was incapable of committing any crimes. The idea that a company is a distinct legal entity has been met with some difficulties; yet a company lacks a soul and body of its own. They are therefore incapable of committing any offenses or crimes for which they could be held accountable. However, the idea of corporate criminal liability has evolved progressively because of several rulings, such as Standard Charter Bank V. Directorate of Enforcement. Any act's criminal culpability stems from the Latin maxim *Actus non facit reum mens sit rea*, which states that in order to hold someone or anything accountable, it must be proven that they committed an act or omission that is prohibited by law and that they have *mens rea*, which is defined as having a guilty mentality for legal purposes. It is included in the list of white-collar crimes. The article discusses the significant transformation of corporate criminal liability from its undeveloped state to a well-established legal doctrine. This article further explores the ideas and theories that underpin the idea that companies are criminally responsible for crimes, looking at ideas like the identification doctrine, corporate *mens rea*, and vicarious liability. The importance of imposing criminal sanctions for the corporate crime committed by the company in the form of fine and imprisonment is further discussed.

**Keywords:** Corporate, legal, company, liability, crime, case, offences

## Introduction:

**“Corporate crime is the conduct of a corporation or of its employees acting on behalf of the corporation, which is prescribed and punished by law” - J. Braithwaite**

Corporate crime is any act of misconduct by a company that results from its employer or workers acting on their behalf. Companies have an enormous effect on the lives of the citizens of the nation as well as on the establishment and management of business in the nation. The various roles that company play in modern human life are a result of the demands placed on society as it continues to "develop." The structure and operations of the corporation have been directly impacted by the evolution of society at different times. Due to this, there has been a growing need for the law to acknowledge the shift and adapt to its uses.

The character and structure of the business sector have evolved during the past few decades. Globalization and the privatization of all forms of commercial entities occurred over the last two decades of the 20th century, and this further cleared the road for "Global Village," which significantly altered the way businesses are organized. These days, a corporation is an artificial entity that the law regards as existing

independently of the individuals that comprise it and with its own legal personality.<sup>1</sup> Because a company is made up of and is managed by persons who function as its agents, it can, for example, possess and sell property, file a lawsuit or be sued, or commit a crime. A corporation exists independently of the shareholders who make up the company, and the latter are not accountable for any wrongdoing on the part of the former.

Since natural humans manage the corporations, there is a possibility that their acts will be illegal in nature and cause significant financial and human losses to society. Therefore, it is essential to first grasp the meaning and genesis of the term "corporation" to have a better understanding of the notion of corporate criminal culpability. "Challenges or nags at our sense of reality" is what corporate malfeasance does. Because of this quality, corporate crime is a complex problem. Current prosecutors and courts are facing an increasing number of issues related to the rise of corporate criminal liability.

Courts are particularly likely to hold a corporation criminally liable if the criminal act was requested, approved, or carried out by the board of directors, an officer, another person in charge of creating company policy, or a high-ranking administrator who acted in the course of his employment and had supervisory authority over the offence.

### **White collar crime:**

The origin of corporate crime was traced to the concept of "white collar" crime. Professor Sutherland presented the concept of 'white-collar' crime in his address to the American Sociological Society in 1949. Sutherland defined white-collar crime as a crime committed by a person of respectability and high social status during his occupation'. A little while later, he appears to have refined the description, designating "a person of the upper socio-economic class who violates the criminal law in the course of his occupational or professional activities" as a white-collar criminal.<sup>2</sup> We generally think that "crime" is the most blameworthy and antisocial sort of conduct in which citizens engage. But it is more complex, especially when we look at certain kinds of "white-collar" behavior. Which also includes the most desperate crime "corporate crime". Lay persons are comfortable making fine-grained distinctions regarding the law of white-collar crime. It is often said that those who commit white collar crimes are subject to less severe punishments than those who commit street offenses. Usually, the inference tends to be that these differences are unfair in some way. However, it should become evident after some thought that it would only be unfair to penalize a white-collar crime less severely than an equivalent street crime if the former was equally or more deserving of blame.<sup>3</sup> The problem is assessing the relative blameworthiness of white-collar crime.

The geohistorical setting has witnessed the establishment of an individualistic enterprise culture that supports deregulation, free markets, and free market ideas. Social inequality and a high-risk culture with political and legal support have resulted from this. According to Slapper and Tombs, the "structural necessities of contemporary capitalism" demand that profit be prioritized over all other considerations, which forces businesses to make immoral decisions and determines the degree to which such crimes are viewed as acceptable. Though many readers may find this convincing, this viewpoint overestimates criminality given the relative stability of economic markets, the profitability of morally and ethically sound

<sup>1</sup> Salomon v. Salomon (1897) AC 22

<sup>2</sup> Ahmad Siddique, Criminology (problems and perspectives), Pg no. 373, (1977)

<sup>3</sup> Stuart P. Green, and Matthew B. Kugler, PUBLIC PERCEPTIONS OF WHITE-COLLAR CRIME CULPABILITY: BRIBERY, PERJURY, AND FRAUD, *Law and Contemporary Problems*, Vol. 75, No. 2, Adjudicating the Guilty Mind (2012), pp. 33-59 (27 pages)

corporate practices, and the significant advancements in laws and regulations that have been made to combat business crime. In addition, the identification of severe infractions may pose a risk to profitability, even though these risks may extend past the short time horizons for employees to receive performance bonuses. However, fraud is also observed in several non-business contexts where one may anticipate that organizational cultures would differ. <sup>4</sup>

### **Evolution of corporate criminal liability:**

The concept of corporate criminal liability has its roots in the countries like USA, England and Canada where the industrial revolution had its peak than the rest of the world. These common-law countries gave minimal importance to corporate criminality. Blackstone said that “a corporation cannot commit treason or felony or other crime in its corporate capacity; though its individuals' members may, in their distinct individuals' capacities”.<sup>5</sup> In earlier days, the people had a notion that corporations in their corporate capacity were incapable of committing crimes and thought that only individuals have the capacity to do so and liable for the same. The reason behind it was the absence of Mens rea in an artificial person. This concept was changed when the concept of corporations as a juristic person came up for consideration. In the case *New York central and Hudson River railroads co v. united states*, it was held that the corporations can be charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. The court also called Blackstone's rule an “old and exploded doctrine”.<sup>6</sup> Jurisprudence on corporate criminal liability has developed a lot over the years. In the case *queen v. great north of England railway co* <sup>7</sup>, lord Denman rules that corporations could be held criminally liable for misfeasance. Thereafter, the crime committed by the individual during their course of employment is considered as a corporate crime. The origin of the concept of corporate liability of corporate bodies is identified by the judiciary's relentless struggle to overcome the crisis of assigning the criminal blame to the fictional entities.<sup>8</sup> The development of the concept of corporate criminal liability was relatively slower in India. This concept for the first time was said in the case of *iridium India telecom limited v. Motorola incorporated & Ors*. In this case, it is said that corporate criminal liability has been recognized as one of the corporate liabilities in India under the companies act as well as under criminal laws. The corporate criminal liability can be recognized under the following sections of the companies act, 2013 -

- Section 53 – prohibition on an issue of shares on discount
- Section 118(2) - minutes of proceedings of general meeting, meeting of board of directors and other meeting and resolutions passed by postal ballot.
- Section 128(6)- books of account, etc., to be kept by company
- Section 129(7)- financial statement
- Section 134 – financial statement, board’s report, etc.
- Section 188(5)- related party transactions
  - Section 57 – punishment for personification of shareholder

<sup>4</sup> Levi, M. And Lord, N. (2017) ‘White-Collar and Corporate Crime’ in A. Liebling, S. Maruna and L. McAra (eds) The Oxford Handbook of Criminology, 6th Ed., Oxford: OUP

<sup>5</sup> Arthur W. Machen, Jr. Proceedings of the Academy of Political Science in the City of New York, Vol. 1, No. 4, The Reform of the Criminal Law and Procedure (Jul., 1911), pp. 590-599 (10 pages)

<sup>6</sup> 212 US 481 (1909).

<sup>7</sup> Eng. Rep. 1294 (Q. B. 1846).

<sup>8</sup> M. Arshiyah Thansum, M. Kannappan, “A Critical Study on Corporate Criminal Liability with Reference to Indian Case Laws” 119 *International Journal of Pure And Applied Mathematics* (2018).

- Section 58(6) - refusal of registration and appeal against refusal
- Section 182(4)- prohibitions and restrictions regarding political contributions
- Section 184(4) - disclosure of interest by director
- Section 187(4) - company's investment to be held in their own name
- Section 447 – punishment for fraud

The status of the corporate criminal liability was changed to case to case in India. In *A.K.Khosla and others v. T S Venkatesan and others*<sup>9</sup>, the Calcutta high court emphasized the current position of corporate criminal liability in India. On the view of the courts, the company is a legal person, and it cannot be prosecuted for offences that involve mens rea or those that involve compulsory imprisonment. In the case *zee telefilms limited v. M/S Sahara India commercial*<sup>10</sup>, it was held that a company was incapable of committing an offense of which mens rea was an essential ingredient. The Bombay high court in the case *motorola incorporated v. union of india* held that “although a person who is a victim of deception can be company, the perpetrator of deception cannot be a corporate body like a company or association. It can only be a natural person who is capable of having mens rea to commit the offences. A new challenge was brought in the case of the *assistant commissioner v. M/S. Velliappa textiles Ltd.*<sup>11</sup> The apex court in this case spotlighted the importance of legislative changes concerning corporate criminal liability. It was held that a fine cannot be imposed in lieu of mandatory imprisonment in the absence of provisions stating the same. Then in the case *standard chartered bank v. directorate of enforcement*, the difficulty arising in the velliappa case was resolved and the latter was overruled. In the majority decision of 3:2, it was held that in offenses involving mandatory imprisonment and fine, the courts have the discretion to impose the sentence of fine as corporations cannot be imprisoned.

### **Doctrines entrenched in corporate criminal liability:**

#### **Doctrine of vicarious liability:**

The doctrine of vicarious liability allowed an employee's acts and intent to be imputed to the corporation for purposes of tort liability. This doctrine is based on two maxims which are “qui facit per alium facit per se” means an individual who acts through another shall deemed to have acted on his own and “respondent superior” means a corporation can be held liable for the act of its employees. This doctrine is applicable in criminals as well wherein corporations may be held liable, and punishment can define and seizure of property. A corporation cannot commit crimes murder, perjury, rape, etc. But it has been recognized that a company can commit activities which have a criminal intent. In the case *Sunil Bharti Mittal v. Central bureau of investigation*<sup>12</sup>, it was inter- alia held that any vicarious liability provision, individual directors can be made accused only if there is sufficient material to prove their active role coupled with criminal intent.

#### **Doctrine of identification:**

Criminal liability encompasses of two elements which are actus reus (guilty act) and mens rea (guilty mind). The company being the artificial person cannot have the requisite mens rea, so the question arises whether a company will be prosecuted for an offence for which the mandatory sentence is imprisonment.

---

<sup>9</sup> (1992) 1 CALLT 77 HC.

<sup>10</sup> (2001) 1 CALLT 262 HC

<sup>11</sup> 2004 Cri LJ 121.

<sup>12</sup> (2015) 4 SCC 609

To make it clear the English courts evolved the “identification doctrine”, these who controlled or managed the affairs of the corporation were regarded as the corporation. Whenever they are acting in the capacity of controlling officers, the corporation is identified with their acts as well as state of mind.<sup>13</sup> In the case *Lennard's carrying Co. Ltd v. Asiatic petroleum Co. Ltd.*<sup>14</sup>, it was held that, in order to prove that a corporation had actual fault or privity, the privity of the company's manager was the privity of the company itself and added that the person ‘who is really the directing mind and will of the corporation, the very ego and Centre of the personality of the corporation’.

### **Doctrine of collective blindness:**

In cases involving corporate entities, multiple employers may share some of the accuse of a crime that an employee committed on the company’s behalf. Courts have held corporations accountable even in situations where no individual's person was at fault. To reach this determination, the courts considered the collective knowledge of all the employees. This is known as the “collective blindness doctrine”. This is performed to keep companies from dividing up their tasks and responsibilities to the point where it would be easy for them to escape responsibility by claiming ignorance in the event of a criminal investigation. In the case *united states v. bank of new England*,<sup>15</sup> the court of appeals confirmed that a collective knowledge is appropriate because corporations would divide duties and avoid liabilities.

### **Doctrine of willful blindness:**

This doctrine basically says that any criminal activity that is occurring under the corporate company's authorization that the corporate company is aware of and chooses to acknowledge without taking any action against, it is an example of willful blindness on the part of corporate company. It always assumes that the only probable causes for engaging in such a non-disclosure activity are to hide the crime or to not take it seriously. This can be linked to corporate entities that engage in activities such as insider trading and environmental destruction. It is crucial to remember that these businesses typically are unaware of the harm they are doing because of the way they operate, which has an impact on local populations in different ways, including environmental and socioeconomic degradation. For example, if employees of a company open a branch office in an area where endangered animal species flourish, but doing so would boost the company's economy while also seriously harming the area’s natural resources, which would reveal it, then in such a case, it is crucial to note that the company has a malicious mind to conceal a crime or not take against it, which further amounts to malicious ignorance of the crime. For a company to fall under the scope of such a liability: an act falling under the category of “crime” must be carried out by one or more of the company’s agents, which is occurred by the prior knowledge of the company.

### **Doctrine of alter ego:**

Alter ego is a legal doctrine where a corporation and an individual or corporate shareholder are one and the same. When it comes to a corporation’s limited liability, the court uses this rule to disregard a group of stockholders, officials and director’s corporate status. The court can pierce the corporate veil and hold individual shareholders personally accountable for the debts of the corporation if alter ego is found. The alter ego theory was previously inapplicable to limited liability organizations and other commercial

---

<sup>13</sup> Glanville Willams, textbook of criminal law 971 (2<sup>nd</sup> ed. 1983)

<sup>14</sup> [1915] A.C 705, H.L.(E.)

<sup>15</sup> 821 F.2d at 854

structures. The alter ego doctrine is now, nevertheless, also applicable to limited liability companies. In the case of international aircraft trading co. V manufactures trust co.<sup>16</sup>, it was said that "a corporation will be referred to as the individual's alter ego when it has been dominated by an individual or another corporation and its separate entity has been so ignored that it primarily transacts the dominator's business instead of its own." The corporation and the business owner are just two sides of the same coin because they are both alter egos.

### **Doctrine of attribution:**

The traditional was that a business cannot be guilty of a crime because it lacks the intent, or mens rea, necessary for criminal culpability. But now a days, the court establishes that a firm cannot be held criminally liable unless it can be demonstrated that there was a physical act (actus reus) and that the conduct was intended to be committed (mens rea). According to this doctrine, the "directing mind and will" of the corporations is associated with the mens rea, or purpose, of doing the offense, in the case that an act or omission results in a criminal law violation. Even though this doctrine was created in the United Kingdom, and it is still widely used in india, the case of iridium Indian telecom limited v. Motorola inc.,<sup>17</sup> has finally settled the question of whether companies can be held accountable for crimes in which mens rea is one of the necessary elements.

### **Corporate criminal liability – the essential:**

The impact of corporations' operations on society is enormous in the modern world. During daily operations, companies not only have a positive impact on people's lives but also frequently have devastating results, which falls under the category of offenses. The criminal law doctrine presents no barrier of any kind to imposing criminal sanctions on a company because these entities can act independently and create an atmosphere that fosters criminal activity. Still, the Indian statutes do not take this idea into consideration. Certain legislation in India, such as the Indian Penal Code, discuss the types of penalties that can be meted out to convicted parties. Section 53 lists these penalties as death, life in prison, rigorous and simple imprisonment, confiscation of property, and fines. Certain clauses solely mention imprisonment as a penalty, such as in the event of a violation of Section 420. Because criminal statutes must be properly read and do not allow for corporate imprisonment, the issue of how to apply those provisions to the firms emerges.

When a company is found guilty of a crime, it should be sentenced to a reasonable and effective length of time that will serve as a deterrent and keep the company from committing similar crimes in the future. The punishment guidelines outlined in Indian laws are specific to each criminal. Corporations have also been sentenced to using the same framework. As a result, the court's options for punishment are limited to two: imprisonment and a fine. Since a firm cannot be subjected to physical punishment, like imprisonment, fines are still the only practical solution. In this sense, the Indian courts have had difficulties in finding a firm guilty of crimes for which both a fine and an imprisonment are required penalties. A corporation cannot be found guilty of an offense for which both a fine and imprisonment are appropriate, according to several court rulings. This is because the legislature could not have imagined that an organization would be imprisoned upon being found guilty of the offense.

---

<sup>16</sup> 297 N.Y. 285 (N.Y. 1948)

<sup>17</sup> (2011) 1 SCC 74

In the case state of Maharashtra v. Jugman tar Lal <sup>18</sup>, where the court stated that where it has been made mandatory to impose both punishments, the court is bound to award the sentence of imprisonment. The courts have denied themselves the power to impose a sentence of fine alone in these cases as ‘this would amount to usurpation of legislative function. On the other hand, some courts have held that where the sentence is one of both imprisonment and fine, it does not mean that the company is granted exemption from liability, as it can be sentenced to a punishment of the fine only. In the case of Oswal Vanaspathi and Allied Industries v. State of U.P <sup>19</sup>, the court held that a sentence of fine alone can be awarded to a company under section 16 of the prevention of food adulteration act, 1954.

The law commission in its 41<sup>st</sup> report, suggested amendment to section 62 of the Indian penal code by adding these 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, the court may choose to punish the offender with a fine alone”

The court determined that although the company cannot be sentenced to imprisonment, the court may impose a fine that may be enforced against the firm in cases where imprisonment and a fine are the specified penalties. Insofar as the legal person is concerned, this discretion should be interpreted into the section. It goes without saying that the court cannot act in the same manner as a natural person. In that case, the court would not be imposing the punishment in line with the law. The court may always impose a fine on a company and disregard an imprisonment term because it cannot be carried out in relation to a company. We don't see any issues with interpreting the statute in this way because that seems to be the legislature's intention. We do not believe that a firm is immune from prosecution for major offenses in general only because the prosecution would ultimately result in a mandatory prison sentence.

### **Conclusion:**

The legal responsibility that a corporation may bear for criminal acts carried out by its agents or employees while conducting business is known as corporate criminal liability. This idea is important since it deals with an organization's responsibility for illegal activity. White-collar crime, which is defined as financially driven, non-violent crimes usually carried out by people or organizations in positions of trust and power, has grown to be a major problem in contemporary society. Due to its complexity and effects on people, organizations, and economies, legal responsibility and enforcement must take a nuanced approach. The development of corporate criminal liability reflects the increasing awareness of the need to hold companies responsible for illegal acts carried out within their borders. Historical legal systems have found it difficult to balance a corporation's legal status with the activities of its members. Modern legal systems, however, have changed to meet this problem, recognizing that companies can be held criminally liable for the acts of their agents as collective organizations.

Doctrines that influence corporate criminal culpability include Respondeat superior and the identification doctrine. While the identification doctrine ascribes criminal intent to a corporation based on the activities of high-ranking executives, Respondeat superior holds a company responsible for the acts of its workers during their course of employment. These theories provide a framework for justice that takes organizational culture and human behavior into account, making them essential legal instruments for assessing the guilt of businesses. The significance of corporate criminal liability is emphasized by its

---

<sup>18</sup> A.I.R. 1966 S.C. 940.

<sup>19</sup> (1993) 1 Comp. L.J. 172

potential to promote a culture of responsibility, ethics, and compliance among business entities. Corporate criminal culpability serves as a deterrent by indicating to corporations that engaging in unlawful activities would result in significant penalties. This is done by imposing legal repercussions for misconduct. Additionally, it protects investors, consumers, and the general public from any damages brought on by corporate wrongdoing. The conclusion is that an effective legal framework should strike a balance, holding corporations accountable for criminal actions while safeguarding the rights of individuals associated with the company. Ongoing discussions and legal developments will likely shape the future landscape of corporate criminal liability.

### References:

1. [https://www.jstor.org/stable/23216757?searchText=white+collar+crime+and+corporate+crimes&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dwhite%2Bcollar%2Bcrime%2Band%2Bcorporate%2Bcrimes&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3Af4c13ee80ecc5f36627656a88ad77599](https://www.jstor.org/stable/23216757?searchText=white+collar+crime+and+corporate+crimes&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dwhite%2Bcollar%2Bcrime%2Band%2Bcorporate%2Bcrimes&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3Af4c13ee80ecc5f36627656a88ad77599)
2. <https://www.jstor.org/stable/1172068?seq=1>
3. [https://www.legalserviceindia.com/legal/article-521-corporate-criminal-liability-white-collar-crime.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-521-corporate-criminal-liability-white-collar-crime.html#google_vignette)
4. <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>
5. <https://indiankanoon.org/doc/998961/#:~:text=It%20was%20held%20that%20in,respect%20of%20such%20an%20offence>
6. <https://indiankanoon.org/doc/512651/>
7. <https://indiankanoon.org/doc/1886158/>
8. <https://indiankanoon.org/doc/159121041/>
9. <https://www.mondaq.com/india/crime/882614/corporate-criminal-liability#:~:text=Doctrine%20of%20Vicarious%20liability%3A&text=This%20doctrine%20is%20based%20on,the%20case%20of%20Ranger%20vs.>
10. <https://www.uniset.ca/other/cs2/1915AC705.html>
11. <https://law.justia.com/cases/federal/district-courts/FSupp/640/36/1452052/>
12. <https://www.legalservicesindia.com/article/2151/Doctrine-of-Alter-Ego-and-Attribution.html>
13. <https://www.lakshmisri.com/insights/articles/doctrine-of-attribution-in-corporate-criminal-liability/>
14. <https://indiankanoon.org/doc/18288042/>
15. <https://deliverypdf.ssrn.com/delivery.php?ID=886002089031000124085005123093112073000064069010066071005098071108004028123024065112038036026000062033037026109110065083072079116075088062023082069086065116120124064007006039096097023086074088111005112025022073091025076029016027118114027089109007101118&EXT=pdf&INDEX=TRUE>
16. <https://indiankanoon.org/doc/746473/>
17. <https://indiankanoon.org/doc/1782171/>