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RESEARCH ARTICLE

LAWS RELATING TO CORPORATE CRIMINAL LIABILITY

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ABSTRACT

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. The evolution of the concept of corporate criminal liability in India can be classified as a long processing effort from the judiciary to fix responsibilities on non-fictitious persons. Initially, the corporations were considered incapable of committing crimes, but with globalisation and liberalisation came a shift in the societal wherein corporations were seen as being involved in committing (almost all) white collar crimes. Criminal liability encompasses two elements: actus reus (guilty act) and mens rea (guilty mind). There is no dispute that a company is liable to be prosecuted for criminal offences. However, the company being an artificial person cannot have the requisite mens rea, hence the question whether a company could be prosecuted for an offence for which the mandatory sentence is imprisonment. Corporate criminal liability explains vicarious liability and the identification principle as well; it is an important item on the agenda of legislators and legal practitioners to inculcate. In general terms, it refers to the imposition of criminal liability on a company or its employees for an illegal act. The Indian law on corporate criminal liability is not confined to the general criminal law under the Indian Penal Code (IPC), 1860, but is scattered across several statutes, including The Companies Act 2013, Money Laundering Act 2002, and The Prevention of Corruption Act 1988. The Negotiable Instruments Act, 1881, and The Information Technology (IT) Act, 2000. Due to the rapid pace of globalization of business and evolution of transnational corporations, it has become very essential to determine the concept of corporate criminal liability and the present paper discusses the laws relating to corporate criminal liability and to what extent they are regulating the wrongs done by corporations.

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INTRODUCTION

The last two decades have created a new socio-political-economic reality, characterized by a thriving common market, changes in the political regimes of country, intensive privatization processes that shifted many areas of activity to the non-governmental sector, and the creation of mega multinational-corporations that are the result of acquisitions, mergers and takeovers. In a process that peaked in the second half of this century, legal bodies have actually assumed control of all forms of commerce and industry, to the extent that no economic endeavour is deemed possible without their involvement. On the other hand corporate mens rea is not dependent on one individual in the company but instead derives corporate culpability by looking at for instance corporate culture and policies.

There is no one definition of corporate crimes. The origin of the concept of criminal 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. The communication technologies and advancement in information have made the world borderless and corporate activities have become global through these network systems, thus making commission of corporate crime easier, more sophisticated and at the same time more complicated. This has become particularly relevant in a legal system which is solely based on the moral accountability of individuals.

Corporation: The Corporation is a body that is granted a charter and can be recognised as a separate legal entity which has its own privileges, rights and liabilities distinct from its members.

With the onset of the new trends and trade regime, national laws are being empowered to change the corporations to get the first right over natural and community resources and also the right to hire and fire at will. Under the existing legal rule in courts of law and in most states, the corporate bodies can be held criminally liable for any act committed by an employee as long as that act is committed only within the scope of employment and with some intent to benefit the employer. This principle of corporate criminal liability is based on the doctrine of respondent superior which is commonly known as The rationale for imposing criminal liability upon corporation and is often expressed in terms of justifications sole for the purpose of punishing corporations for their actions. The basic rule of criminal liability is that it revolves around the Maxim-actus non facitrem, nisi mens sit rea¹.

Sutherland, who is perhaps the first and most influential researcher in this field, introduced the term “White-collar Crime” in The United States in the 1940’s. Even though his studies focused on the unlawful actions of corporations his definition of white-collar criminality came to involve any “offense committed by a person of respectability and high social status in the course of his occupation.” This definition focus on the characteristics of the offender. This broad definition meant the scrutiny of not just corporate misconduct per se but also that of employees and of professionals in general.²

The criminal liability of any act is based on the Latin maxim “Actus non facitremmensit it rea” which means that to make a person or any entity liable it must be shown that there is an act or omission which is forbidden by law and with mensrea which is legally understood as having guilty mind mensreus refers to the guilty mind, intent or recklessness, of the individual perpetrator that has to be established for a conviction. It comes under the category of White-collar crimes.

Corporate criminal liability: Is the liability imposed upon a corporation for any criminal act done by any natural person associated with such corporation. Liability is imposed so as to regulate the acts of a corporation. The principle of corporate criminal liability is based on the doctrine of respondent superior which is commonly known as the theory of vicarious liability, where the master is made liable for the acts of his servant. Any corporation can be made liable for act of its agent or servant if.

- Commits a crime;
- Acts within the scope of employment;
- With the intent to benefit the corporation³.

The issue of vicarious criminal liability for the directors and other key personnel of companies take a somewhat alarming turn when it comes to the provisions of the Companies Act, 2013 The Companies Act approaches the issue of criminal liability in an all-embracing fashion when compared to the statutes.

Much like the other legislation concerned with economic crime, the Companies Act also criminalises various kinds of activities in the course of the economic life of the company, chief among them being fraudulent activities committed by the company (through its employees). For all offences committed by the company, the Companies Act imposes special vicarious liability on officers (of the company) who are 'in default'⁴.

Companies Act, 2013 and Corporate Criminal liability: Which has replaced the Companies Act, 1956 has increased the corporate liability of the directors. The Act has also increased the monetary 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.

The corporate criminal liability is recognized under the following sections of the Companies Act, 2013

- **Section 53** - Prohibition on an issue of shares on discount - The Company will be fined for the amount not less than one lakh but which may extend up to five lakhs. Further, the officer in default may be imprisoned for up to six months or fine of minimum one lakh which may extend to five lakhs or both.
- **Section 118(12)** - Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot- If a person is found tampering with the minutes of meeting then such an officer in default may be imprisoned for the term which may extend to 2 years or with fine of not less than twenty-five thousand but may extend to one lakh.
- **Section 128(6)** –Maintenance of Books of account, and other relevant books etc., to be kept by Company- Officer in default- Maximum imprisonment of 1 year or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.
- **Section 129(7)** - Financial statement - Officer in default- Maximum imprisonment of 1 year or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.
- **Section 134** - Financial statement, Board’s report, etc to be approved in the Board of Directors if not complied by Company-Fine- Not less than Rs. 50,000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 3 years or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.
- **Section 188(5)** - Related party transactions- In case of unlisted Company, be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.
- **Section 57** - Punishment for personation of shareholder- Such person in default- Minimum 1 year to Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.
- **Section 58(6)** - Refusal of registration and appeal against refusal- if a person contravenes the order of Tribunal. Such person shall be punishable - Minimum 1 year to

¹M. Arshiya Thansum and 2M.Kannappan‘A Critical Study on Corporate Criminal Liability with Reference to Indian Case Laws’. International Journal of Pure and Applied Mathematics Volume 119 No. 17 2018,

²Rasmus Hane-Weijman Jansson“ Corporate Criminal Liability” <https://www.diva-portal.org/smash/get/diva2:1247370>.

³<https://definitions.uslegal.com/c/corporate-criminal-liability/>

⁴Nigam Nuggehalli“ Vicarious Criminal Liability for Corporate Officers in India: Problems and Prospects” <https://azimprenjuniuniversity.edu.in/SitePages/pdf/Vicarious-Corporate-Criminal-Liability%20.pdf>

- Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.
- **Section 182(4)** - Prohibitions and restrictions regarding political contributions.- Company-Fine- 5 times of the amount of contribution in contravention and Officer in default- Maximum imprisonment of 6 months and Fine- 5 times of the amount of contribution in contravention.
 - **Section 184(4)**- Disclosure of interest by the director - Such person in default- Minimum 1-year imprisonment or Fine- Not less than Rs. 50,000 and may extend to Rs. 1 lakh or both.
 - **Section 187(4)**- Investments of Company to be held in its own name - Company-Fine- Not less than Rs.25,000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 6 months or Fine- Not less than Rs. 25,000 and may extend to Rs. 1 lakh or with both.
 - **Section 447**- Punishment for fraud - Any person who is found to be guilty of fraud- Maximum imprisonment of 6 months may extend to 10 years. Such person also liable to fine which may extend up to 3 times the amount involved⁵.

IPC and Criminal laws on the Concept of Corporate Criminal Liability:

Interpreting Section 11 of the IPC it can be understood that corporates can be prosecuted under the provisions of IPC. But while imposing punishments the courts had to discuss the scope of the same. The Indian Penal Code, 1860 defines 'person' under section 11. This definition provided for under section 11 includes any company or association or body of persons. Further, it extends to include all body corporates whether incorporated or not. Therefore, the criminal liability of the corporates can be traced from the Indian Penal Code. In addition to this, the corporates are held criminally liable under the provisions of the Companies Act, 2013 as discussed in previous paragraphs. Further Section 305 of the Code of Criminal Procedure, 1973 prescribes procedure when a corporation is an accused. The term corporation under this section includes companies which are incorporated and other body corporates. This provision empowers the court to decide who will represent the corporation in the cases where the corporation is the accused.

Judiciary on Corporate Criminal Liability in India: Has been evolved through the judicial interpretations. Therefore, the following cases are considered to be the landmark decisions in evolving the concept of corporate criminal liability.

In the case of **Assistant Commissioner v. Velliappa Textiles Ltd:** The Supreme Court held that the body corporates cannot be prosecuted for the offences which mandate imprisonment as punishment. Therefore, only fine can be imposed as punishment and only such offences which prescribe fine as the punishment or alternative punishment can only be prosecuted against body corporates.

Later this decision of the Supreme Court was overruled in the case of **Standard Chartered Bank v. Directorate of Enforcement**, where the Court held that the corporates cannot be provided with blanket immunity from being prosecuted under the provisions which mandates imprisonment as

punishment. Further, in the case of **Iridium India Telecom Ltd. v. Motorola Incorporated and Others**, the Supreme Court clarified the position of corporate criminal liability under the provisions of IPC. The Court observed that a corporation as similar to an individual can be prosecuted in the offences involving mensrea. The mensrea of the persons controlling the affairs of the body corporate is considered in prosecuting such offences⁶.

The Prevention of Corruption Act: Is the principal legislation in India which provides for penalties in relation to corruption by public servants and also for those who are involved in the abetment of an act of corruption. The term 'public servant' has been broadly defined in the Prevention of Corruption Act to mean "any person who is in the service or pay of the Government or remunerated by the Government for the performance of a public duty and statutory corporations". Until 2018, the Prevention of Corruption Act only took into consideration and criminalised bribe-taking by public servants and not bribe-giving, thereby excluding bribes given by private entities.

The Prevention of Corruption Act was amended in 2018 by way of the Prevention of Corruption (Amendment) Act, 2018 which sought to prospectively include, within its scope, commercial organisations (which includes companies) and its employees who are involved in the payment of bribes to public servants in order to (a) obtain or retain business for such a commercial organisation; or (b) obtain or retain an advantage in the conduct of business for the commercial organisation.

The Foreign Contribution (Regulation) Act, 2010:

Regulates the acceptance and use of foreign contributions and hospitality by individuals and corporations. Prior registration or prior approval of the Ministry of Home Affairs is required for receipt of foreign contributions and in the absence of such registration or approval, receipt of foreign contributions may be considered illegal.

The Money Laundering Act and Corporate Criminal Liability:

As per the Section 37 of the Prevention of Money-Laundering Act, 2002 (PMLA), the offence of Money-Laundering is defined as under: "Whosoever directly or indirectly, attempts to indulge, or knowingly assists, or knowingly is party, or is actually involved in any process, or activity connected, with the Proceeds of Crime, including its Concealment, Possession, Acquisition or use; and Projecting or Claiming it as Untainted Property shall be guilty of offence of Money-Laundering." The definition of "Money-Laundering" in India is comprehensive enough to cover most of the instances of converting the black money into white, as the same will depend upon the willingness of Enforcement Authorities for strong implementation of, which is in any case subject to judicial scrutiny. Some of the examples of Money-Laundering in the corporate world cover the instances relating to Shell Companies, Foreign Investments, Corporate Mismanagement, Insider Trading and Bribery.

Section 70 of PMLA: Deals with offences by Companies, providing that Where a person committing a contravention of any of the provisions of this Act or of any Rule, Direction or Order made there under is a Company (company" means anybody corporate and includes a firm or other association of

⁵AntimAmlan 'Corporate Criminal Liability in India' <https://www.myadvo.in/blog/corporate-criminal-liability-in-india/>

⁶<http://lawtimesjournal.in/corporate-criminal-liability/>

individuals); and Every person who, At the time the contravention 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 contravention and shall be liable to be proceeded against and punished under PMLA. The only exception to such rule is that if such person proves that the contravention took place without his Knowledge, or that he exercised all due diligence to prevent such contravention. Further, notwithstanding anything contained in sub-section (1) of Section 70 of PMLA, where a contravention of any of the provisions of this Act or of any Rule, Direction or Order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other Officer of any Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly⁷.

CONCLUSION

Corporate Crimes like Satyam inflict severe damage upon the economy. Over the years, the approach to corporate criminal liability has changed. India endow with for Corporate Criminal Liability in broad terms. As noted earlier, after the recent ruling of the Supreme Court in Standard Chartered, companies in India can be prosecuted for almost every penal offence that exists in any Indian statute. Corporate crimes cannot be dealt by implementing more laws or governance practices, but rather by effective and stringent action against the perpetrators. To combat corporate crimes, the regulatory mechanism would have to be strengthened and provisions would have to be made for imposition of stringent legal penalties.

⁷Vijay Pal Dalmia, 'Law Of Money-Laundering In India'
<https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/245524/law-of-money-laundering-in-india>