

Corporate Criminal Liability

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Abstract

Introduction-: Corporate criminal liability came in to existence due to the growing of business beyond specified boundaries and horizons due to demand from the consumers' world wide

A corporate in the view of law is considered as a separate legal entity and has got a separate identity and existence beyond the death of its promoters and directors and which can execute a contract and deal with the business on its own with the help of Board of Directors

In view of separate legal identity it is also liable to perform according to the set of rules and regulations as specified in the MOA & AOA of the company

While performing as a separate legal entity in the eyes of law it can make mistakes and commit illegal actions and frauds which are not according to the law of land thus corporate criminal liability can come into picture and attributed by criminal law as *Mens Rea* and *Actus Reus*

Evolution-: Earlier to twentieth Century the *Mens Rea* concept in the corporation was not recognized as corporations were believed to have no soul to damn and no body to kick was widely prevalent.

Present-: In Today world the doctrine of corporate criminal liability to be applicable, the criminal act of the employee must:

- I. Be committed with the intention of benefiting the corporation in some manner, or
- II. Be committed with the intention of increasing his own personal gain and this conduct ultimately end up benefiting the corporation as well.

How Corporations can be made Liable

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:

1. The Collective Blindness Doctrine

Corporations are made liable by courts on the basis of collective knowledge of facts that went wrong in the hands of individuals who are part of the corporation therefore it is known as collective blindness doctrine. The main idea in doing such a way is to make everyone in the organization liable for their duties and does not evade liability by pleading ignorance in the event of criminal prosecution.

2. Willful Blindness Doctrine

Corporations who do not oppose ongoing criminal activities in the premises and which are subject to questioning by agents or outsiders on getting suspicious of some illegal acts and on which corporations does take any action then the corporation become liable.

3. Conspiracies

When two or more people join hands to commit an offence with one taking affirmative action to further the aim of conspiracy and in such situations if both of them are employees of corporation or one is the employee and other is not an employee on rolls then there exists criminal liability..

4. Mergers, Dissolutions and Liability

Corporations in case of merger can be made liable if the company with whom they are merging has committed criminal acts and in case of dissolution they are liable criminally if before such process take place and if a person or persons committed fraud and the filling of liability takes places after the dissolution takes place.

5. Misprision of Felony

In four cases of misprision of felony a corporation can be held liable including concealing and failing to report a felony. This consists of four elements involving Principal in one case and Defendant in second case and when defendant fails to notify the concerned authorities and last when defendant took proactive steps for the concealment

CRIMINAL LIABILITY: IS IT REALLY NECESSARY?

Repeatedly the question has arisen about the need for corporate criminal liability. Often it is asked whether we need to address the issue of "criminal corporations" or "corporate criminals" There is no correct answer in general to this question.

With regards to the corporate liability each case has to be carefully examined and then a decision has to be taken

Corporate Criminal Liability in India& Rest of the world

In India the issue corporate criminal liability of whether a company or a juristic person can be prosecuted for an offence in which mandatory punishment prescribed is both imprisonment and fine has come up in several cases for example *The Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles*[iv]and *State of Maharashtra v. Syndicate Transport*[v]. In this case a ruling was given stating that the court cannot impose only a fine where the mandatory punishment laid down by the appropriate statute is both imprisonment and fine.

In case of majority opinion the court should not deviate from the minimum prescribed punitive sanctions. In case it did prosecute for such offences and found the defendants guilty, it ran a massive risk of stultifying itself by not being able to impose an effective order by way of sentence.

In 2005 Apex Court in the case of Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors. Etc The doctrine of corporate criminal liability in India was made crystal clear in this recent groundbreaking judgment

The court in accordance with law finds a corporate entity has breached or committed a fraud will impose fine on the corporate and in case of individual connected with the corporate or juristic person is found to have breached the law the Courts can impose both fine and punishment in accordance with the rule of the land

In one of cases between Iridium India Telecom Ltd against Motorola Incorporated the question of punishing a corporation came up recently in the Supreme Court the allegations were cheating and criminal conspiracy which was previously heard by local court and then referred to high court and later challenged in supreme court which asserted that a corporate can be prosecuted according to IPC law for cheating and conspiracy

According to law the offences for which companies can be criminally prosecuted are not only limited to the specific provisions made in the Income Tax Act, but also

- a) The Essential Commodities Act, and
- b) The Prevention of Food Adulteration Act.
- c) *Several other statutes also make a company liable for prosecution, conviction and sentence.*

The court also observed that companies and corporate houses are not allowed to go on claiming that they are incapable of possessing the necessary mens rea for committing of an offence and also stating that they are artificial person The legal position in USA & UK has now crystallized to leave no manner of doubt that a corporation would be liable for crimes of intent.

United States of America Corporate criminal liability

According to US Law corporations were not held criminally liable for corporate activities as a corporation was considered to be a fictitious legal entity (or) artificial person incapable of forming the requisite mens rea necessary for the commission of a crime but In the year 1909 in a major case verdict given against this rule saying that the corporation represented by it employee who are acting in violation of law and with an intention of criminal conspiracy leading to a conclusion in the organization and therefore the organization is not an artificial person which conclusion was imported from the doctrine of respondeat superior from tort law.

U K Corporate Criminal Liability

In United Kingdom Prosecution of a company isn't seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. In this regard it must be noted that prosecuting such individuals provides a strong deterrent against future corporate wrongdoing.

When prosecuting individuals according to law, due consideration is given to the possible liability of the company where the criminal conduct is for corporate gain if so the seriousness of any offence, the courts consider whether the corporate entity's culpability in committing the offence and any harm which the offence caused, was intended to cause or might, have been caused.

There are four levels of culpability according to the Guidelines issued on the assessment of seriousness of any given offence

1. For sentencing purposes starting with intention to cause harm to negligence in committing the offence.
2. The guidelines also refer to aggravating factors which are familiar territory:
 - a. As whether the offence was planned,
 - b. If the offence resulted in high profit
 - c. *Circumstances like failure to respond to warnings or concerns expressed by others about the offender's behavior.*

Netherlands

Legislation was adopted in the year 1976 in Netherlands that became one of the first Western European countries to adopt comprehensive corporate criminal liability.

By enacting the legislation corporations became liable for all offenses and also dispensed with the requirement that liability is predicated on the actions of natural persons acting on the corporation's behalf, which was also a requirement of the existing and earlier versions of law

Denmark

Corporate criminal liability was introduced In 1926, with the passage of the Butter Act, for some offenses and during the

end of the century, the country had expanded enterprise offenses list.

Switzerland

In 2003, that Switzerland imposed criminal liability on corporations and it is based on the concept of 'subsidiary liability' which means that corporation can be held liable for offenses committed on its behalf only if fault which is committed cannot be attributed to a specific individual and if and only offense must be 'in furtherance of a business activity.

France

According to the French law as codified in Article 121-2 which forms basis for corporate criminal liability and the new French penal code, which states: "Juridical persons, excluding state are all criminally liable for the offenses committed by and on behalf of them directly or by representation and it also provides a expansive list of statutory criminal penalties.

CONCLUSION

To conclude corporate criminal liability is steadily gaining importance in the spheres of social concern such as

- i. environment law
- ii. consumer protection,
- iii. Occupational health and safety norms.

In the past, corporate governance wasn't given much thought, but with the emergence of this particular doctrine that focuses on corporate blameworthiness and accountability of superiors, this mindset is changing rather rapidly and with such Issues regarding the operation of corporations are now being closely linked to their governance so as to avoid potentially triggering criminal liability

Thus corporation criminal liability through their agents and employees, it has now become possible to hold it for acts committed and attribute mens rea to them. Such a principle has assumed paramount importance in corporate governance in this days and age of economic advancement where corporations have a say in almost every aspect of life.