A COMPARATIVE STUDY OF CORPORATE CRIMINAL LIABILITY

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Abstract :

This paper endeavours a comparative study of corporate criminal responsibility in the USA, Australia, Germany, France, England, Brazil, Canada, India, and so on. Enormous scope corporations are the truth and deciding factor behind the globalized world. Exploiting the corporate cloak made by legal arrangements, people working behind this shroud frequently perpetrate crimes. Remembering this, the legal executive all throughout the not really settled the grounds and rules for criminal risk of Corporations. This research article is an endeavour to investigate the legal patterns in the USA, UK and India concerning the criminal obligation of corporations. Corporate Crime is also known as Organizational or Occupational crimes, in White collar crimes. Corporate as a different legal element differs from normal individual its crime carried out by the Corporation and they are at risk and blameworthy for the act. In this paper, the precept of Corporate Criminal Liability is examined completely with the factors that comprise it. The paper explained the requirement for the foundation of the regulation. The different landmark decisions are also cited that has been talked about on the issue of Corporate Criminal Liability.

Keywords*— Corporation, Corporate Crime, Corporate Criminal Liability, Criminal Justice System*

INTRODUCTION

Corporate crime is by a long shot the most genuine of a wide range of crime so it needs to understand why the most extravagant, most impressive enterprises on the planet regularly, efficiently disregard the law.

Corporate crime is a marvel that denoted the twentieth century. The principal half was set apart by two significant world monetary emergencies (The Great Depression) and another with an expanding number of weighty corporate scandals. What is significant is that this kind of misrepresentation is spreading, and thus, there has been a need to consider this idea from a scientific and professional point of view, able to find a solution and prevent corporate crime.

Corporate crime, also known as white-collar crime or made crime suggests criminal offences that are completed by people during genuine business activities. Crimes are as often as possible quiet and incorporate crimes like extortion, insider exchanging and tax evasion. Such a crime is a state-corporate crime, in which companies that depend upon states for monetary help unlawfully do crimes to get benefits. The bosses and overseers of companies can be faulted for corporate crimes, and organizations can figure out themselves for crimes. Workers of organizations and partnerships can also do crimes, regularly without the data of business proprietors or directors.

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Indian Journal of Business Administration (IJBA)
(A National Peer Reviewed Refereed Journal)
ISSN: 0975-6825, Volume 15, Issue 1, January - June 2022, pp. 78-90

A few laws make it conceivable to delay the arraignment of corporate crime, and a few lawbreakers may also have the option to maintain a strategic distance from it. Non-indictment understandings and conceded arraignment understandings are events of ways that hoodlums can work with law endorsement to keep a fundamental detachment from arraignment. With a yielded arraignment understanding, the public authority denounces the charge; however, if the partnership doesn't submit any further offence, it can waive the charges within a certain period. The non-arraignment arrangement permits wrongdoers to pay fines, yet try not to be accused of crimes.[i]

Meaning of Corporate Crimes

Australian Criminologist John Braithwaite characterized corporate crime as "the director of a corporation or workers following up in light of a legitimate concern for a corporation," which is prosecuted and deserving of law. This definition stands the preliminary of time as these crimes can be classified into two sub-orders. In the main subject, the worker or company submits off-base and in the subsequent subject, the company faces wrong against itself. Both these classifications lead to corporate crimes. As a rule, the criminal's face is different from that of the company, however in the previous many years, apparently the corporate cover has stowed away numerous appearances behind him and saved him from being rebuffed. Corporate has, for some time, been represented by corporate laws. The time has come to address a company's obligation for criminal wrongs. Customary laws make a corporation in danger for the activities of its administrators when delegates/experts act inside the degree of their work and with that act create a benefit for the corporation.

Nature of Corporate Crimes

Corporate crimes are viewed as normal assortments of white-collar crime. Word related crimes are also implied as word related crimes. The difference between corporate crime and business crime is that while corporate crime alludes to circumstances in which corporate supervisors perpetrate a criminal act to help the corporation, Occupational offences are carried out by singular representatives against the corporation or during work by the corporation's clients or purchasers. At the point when we manage corporate crime, the main inquiry that emerges is whether a corporate actually perpetrates a crime. This inquiry can be replied by taking a gander at circumstances in which there is an extensive misfortune in the activity of corporations which is a lot higher than the customary crimes perpetrated by people.

Another significant part of corporate crime is that the reaction of criminal equity to singular crime is snappy and forceful; it is a reduction or reduction in corporate crime. Simultaneously, the negligent social reaction also will in general diminish the earnestness of the corporate crime.[ii] Consequently, corporate crime has obtained another implying that should be understood and tended if we are to control and combat this emerging nature.

CONCEPT OF CORPORATE CRIMINAL LIABILITY

Corporate criminal liability has its inceptions in the old law, and became the focus of theoretical discussions in the late 19th century. History, law, economics and governmental issues remarkable to every nation have significantly affected the selection and improvement of the concept of corporate criminal liability. The possibility of criminal responsibility of partnerships has encountered a different progression under customary law systems than being dealt with under point of reference based law structures. All the while, under precedent-based law or exclusively based law structures, corporate criminal obligation has grown differently to reflect the verifiable and financial genuine elements of different countries. The recorded improvement of corporate criminal obligation recommends that corporate criminal responsibility is dependable with the standards of criminal law and the possibility of partnerships.

Definition of Corporate Criminal Liability

Corporate crime means a crime committed either by the corporation, or by someone who can be identified with the corporation. A corporate crime is its personal act and should not be approved or confirmed by its officers. This is adequate if the officers were practicing standard powers to help the corporation. In this way, to a sufficient degree, the corporation's crime is tied to the acts of its officers. Such criminal acts reflect the character of the individuals managing the corporation.

Now, criminal liabilities of corporations are taking its sweep. The term corporate crime describes these corporate activities, which are perused to involve some aspects of criminal law. Corporate crime is commonly used to denote bridges of regularity offences. Corporate crime also includes fraud and other illegal activities, which affects general laws.

CREATION OF CORPORATE CRIMINAL LIABILITY IN DIFFERENT COUNTRIES

The possibility of corporate criminal liability for the illegal lead of representatives is increasing. Among the appropriate reasons for this upward spiral is to increase corporate malpractices and fashion more responsible corporate behavior, i.e. monitoring, by preventing illegal acts of corporate employees.[iii] The response to this corporate criminal event is the making of a legitimate structure that can prevent and rebuke corporate awful conduct. Corporate misbehaviour has been tended to by normal, definitive, and criminal laws. All countries have aggregately agreed that corporations can be embraced under common and managerial laws. Be that as it may, the corporation's criminal risk has been more dubious. Numerous wards have acknowledged and applied the idea of criminal risk under different models. The American model includes countless criminal sanctions for corporations (E.g. fines, corporate probation, negative publicity order, etc.) with an end goal to punish corporations effectively by any employee inside the extent of their business and acting in the interest of the corporation.[iv]

The English and French model requires that individuals acting in the interest of the corporation hold a high position or perform an important function within the decision framework of the corporation. The Indian legal system, which is a legacy of the customary law system, follows the English model that when a higher officer commits his crime while acting on behalf of the company, the corporate is criminally liable.[v]

Germany and Italy actually decline to acknowledge the corporation's criminal liability and stay faithful to the old Maxim *societas delinquere non potest* on the corporation's capacity to work, absence of culpability, and unseemliness of criminal approvals.[vi] Proponents of German philosophy began from the reason that corporations are fictitious institutions, aside from the different people who work for the benefit of the imaginary entity, there is no existence. Malblanic and Savigny are the primary makers to keep up with the speculation of *societas delinquere* non-battle in the nineteenth century. The central conflict was that a corporation is a legitimate story lacking body and soul, read by criminal *mens rea* or to act in *propria* person. In addition, corporate criminal liability would disregard the standard of individual criminal discipline. The German creators Bekker and Breeze contended that corporations have an unadulterated conjugal character made for a specific reason and needed legal capability. Therefore, corporations cannot be subject to criminal liability. They feel that there is a social need to punish institutions that "no soul be damned, and no one should be kicked".[vii] Put differently, it defies all logic of criminal law. This premise can quickly lead to the end that corporate criminal risk is uncalled for in light of the fact that it punishes innocent outsiders (shareholders, representatives, and so forward) for the acts of individuals who commit crimes while in employment of these imaginary.[viii]

Opponents, then again, suggest that corporations are real but not imaginary. Critics of "narrative theory" such as Guerre and Zittelman argued that corporations are bodies and units of spirits and can function independently. The will of the corporation is the consequence of their members. They will have independent legal presence separated from the members of the corporations.[ix] The law recognizes that corporations can buy and sell property in their own name.[x] Corporations can enter into contracts with others, it can sue and sue others[xi], and it can commit atrocities.[xii] In fact, the US Supreme Court held that corporations have many constitutional rights under the US Constitution.[xiii] Apart from this, the creation of power by the corporation now is both huge and unprecedented in human history. It misses a lot to compare corporations like Horse or Cart to Exxon Mobil, Microsoft, or AIG that were regarded as déodands under ancient English law. The top ten Fortune companies had assets of over $ 2.1 trillion in 2008 and profits of over 176 billion. Modern corporations not only build for all intents and purposes remarkable force, yet they do as such in a style that regularly causes genuine damage to both individuals and society. The malpractices of WorldCom, Dynergy, Adelphia Communications and Global Crossing caused widespread damage. US authorities imposed the highest fine of $ 500 million for a worldwide plan to fix the price of vitamins and fines from the nine most serious anti-trust cases totaling $ 1.2 billion.US investigative officials found the Siemens Company guilty of criminal offenses of bribery and fines.

Indian companies were also not lagging behind in this case, Ramalinga Raju rigged the accounts of Satyam Computers, there was a huge loss of investors' money in UTI's Unit-64 as the top officials of the company concealed the truth, by the company's top officials Improper lending means led to liquidation of Global Trust Bank, and stockbroker of the stock market system exploitation Mehta and Ketan Parekh. Hence the German and Italian philosophy that corporation is only fiction and cannot be punished is also imaginary and distortion of real facts. In fact, corporations are genuine and a vital part of society.

Corporate Criminal Liability in United States of America

Alongwith England, countries such as the United States and Canada also took the lead in accepting and enforcing the concept of corporate criminal liability. The Industrial Revolution first took place in these countries, so they were the first few people who started facing the danger of corporate mistakes in terms of losses. Even though the courts of England were slightly different from initially punishing companies, till now it was only the courts that accepted the principle of liability through criminal law and in 1842 fired the corporation for failing to perform a statutory duty.[xiv]

Initially the pattern of courts in the United States regarding corporate criminal liability was parallel to that of the English courts. They soon withdrew from the position taken by the English courts. Toward the start of the century, some US courts started to expand the concept of corporate criminal liability to include offenses, a move that was confirmed by the US Supreme Court in *New York Central & Hudson River Railroad Company* v. *U.S.*[xv] Congress passed the Elkins Act, stating that the acts and omissions of an officer acting inside the extent of his act are considered for the corporation, thus promoting the concept of promiscuous liability.[xvi] Although the earlier case of the Supreme Court concerned statutory offenses, the lower courts rapidly expanded their scope of offenses in common law. Several decades later, in 1983, the 4th Circuit Court held that "a the corporation may be considered criminally obligated for retaliatory encroachment executed by its labourers if they are acting inside the domain of their position or clear right, and to serve the corporation, regardless of whether ... such demonstrations were against the corporate approach."[xvii]

The Criminal Liability of Corporate in Australia

Corporate crime has considered important dimensions as a public and official concern in Australia. Although there were over 850,000 Australian registered companies in the early 1990s that hold a significant place in the monetary and social construction of this country[xviii], efficient investigation of corporate malpractice and control has gotten relatively little attention from lawyers and criminals, at least when compared with other types of criminal conduct. While this has started changing, the complexity of corporate life and corporate law means that some people have sought to assess the nature and consequences of corporate criminality in Australia, in particular it applies to large or complex corporate groups.[xix]

In Australia, it is notable that manipulations made in the interest of a corporation or corporate form over the last two decades have not been taken as separate acts performed to help the corporation. In other words, not only is the corporation responsible for the commission of a company known as a corporate crime, the corporation is often an arena in which corporate crime such as insider trading, corporate tax evasion and corporate treasury have been rigged. Misuse of the corporate form by corporation officers, associates or advisors in situations involving an element of moral immorality therefore calls for a more complex definition of corporate crime that might not otherwise arise. Much of the scholastic writing on corporate crime has been inspired by the corporation or its agents to focus on criminal actions and on corporate crimes that rely on the corporation or its securities as a vehicle for corporate crime.[xx] It is certainly important to focus on the corporation's utilization of the legal structure as a method for crime.

Application of Corporate Criminal Liability in Republic of Germany

Whether or not German law ought to be revised to incorporate criminal obligation for corporate law has long been debated. The large fines levied by foreign officials against corporate scams and corporate fines keep this discussion alive, notwithstanding being over and over fulfilled that such obligation is conflicting with the quintessence of German criminal law.[xxi] While many European nations could cause a fuss for American rule, for the motivations behind this discussion, Germany serves as a particularly suitable model for comparison. France, England, Italy, and many other European countries have recently started cautiously to experiment with corporate criminal liability, but Germany is refusing to hold corporations criminally liable. Subsequently, the logical inconsistency between German and American systems is the highest.[xxii]

Prevalence of Concept of Corporate Criminal Liability in France

France has left the familiar Maxim societas delinquere non potest and has received a thorough, yet prohibitive, a framework that tends to corporate security commitments. This change was a genuinely necessary reaction to the increasing corporate crime occurrence, particularly when France previously came up short on an all-around created and set up an arrangement of managerial law in Germany. The French system is more restrictive than the American one since it is a decently new and administrators are probably going to be careful while executing new concepts. In addition, the adoption of corporate criminal liability has faced stiff opposition from French corporations.[xxiii]

In France, *Ordonnance de Blois* of 1579 enacted by Henry III, enlisted the Police Reform Directions and mentioned with them the concept of criminal liability of corporations. The decision taken collectively should result in crime. Therefore, although corporations were still considered a legitimate dream, the presence of corporate criminal risk surmises that corporate criminal obligation was not in struggle with the possibility of corporations. Prior to the French Revolution, the French Grand Ordnance

Criminal of 1670 set up[xxiv] the criminal liability of corporations on this premise. Likewise, mandates are accommodated criminal offenses that perpetrate crimes like offenses. The French Revolution achieved outrageous changes in French law; Corporations including areas and non-benefit clinics have been totally abrogated and every one of their possessions seized.[xxv]

Laws Related to Corporate Criminal Liability in Brazil

For the Brazilian legal system, the axiom *societas deliquere non potest*[xxvi] is still revered. It is important to understand the general rule provided by the Brazilian Criminal that Law. Directors, Officers and Administrators of a legal entity can't be expected criminally to take responsibility for acts committed by other people. On the contrary, Directors, Officers and Administrators can be expected criminally to take responsibility for acts performed by them.[xxvii]

Since, in Brazil the environmental criminal the law doesn't accommodate the minimum and the maximum penalty of pecuniary fine, the general rule of the criminal code is followed to calculate these patterns. The financial fine is not a civil penalty. It is also a criminal penalty, calculated and based on Article 49 of the Criminal Code. The pecuniary fine can vary from 1 to 360 "units". Each unit is dictated by the appointed authority, going from at least 1/30th of the lowest pay permitted by law to a limit of multiple times the lowest pay permitted by law (presently, the lowest pay permitted by law in Brazil is R$ 415.00 --approximately US$ 259.00). The measure of the monetary fine is determined dependent on the financial circumstance of the respondent. Subsequently, Article 60 of the Criminal Code approves the appointed authority to expand multiple times the measure of the financial fine if the maximum fine is not sufficient to punish the defendant.[xxviii]

In 2014, Brazil enacted the Clean Companies Act against corruption and bribery by national and international corporate bodies based and operational there. The Act establishes liability for companies that engage in bribery in Brazil or Overseas. Before the new law, no one but people could be rebuffed for defilement under Brazil law.[xxix]

Corporate Criminal Liability in India

Company law in India as such has its origin in English Company Law as various Companies Acts have been modelled on the English Acts. The first legislature for registration of Joint Stock Companies was passed in 1850 which was based on English Companies Act 1844. The 1850 Act recognised companies registered under the Act as distinct legal entity but did not introduce the concept of Limited Liability, which was later provided in the Companies Act, 1857 on the lines of English Companies Act, 1856. Banking companies were kept out of limited liability clause; however, it was extended to them in

1858. The Indian Companies Act was re-enacted in 1862, 1866 and 1882. The 1882 Act was replaced by 1913 Act following English Companies Consolidation Act 1908 which remained in face till 1956 as such principles of English Companies Law remained applicable to Indian Law. The Companies Act 1956 has been corrected from time to and has now been replaced by 2013 Act.

Corporate Criminal Liability in England

During the sixteenth and seventeenth hundreds of years, corporations turned out to be more normal and their significance in financial life expanded. A requirement for controlling corporate wrongdoing became more and more obvious. The initial phase in the English improvement of corporate criminal danger was made during the 1840s when the courts' constrained commitment on corporations for demanding liability offences.[xxx] Master Bowen reasoned that the best method of pressuring corporations was by presenting the idea of corporate criminal responsibility in the English law.[xxxi] Soon after, by borrowing the hypothesis of vicarious obligation from the misdeed, the courts were forced vicarious criminal risk on corporations in those situations when regular people could be vicariously responsible too. Lord Denning laid down the foundation for doctrine of "alter ago" theory in *H.L. Bolton (Engerring) Co,Ltd.* v. *T.J. Graham & Sons Ltd.*[xxxii] His Lordship held that the corporation is liable even where the board of director may not have been aware of the specific acts making up the crime and hence the "directing mind" of the actor whose acts and intent attributed to the company.

Corporate Criminal Liability in Canada

Canada has followed the Common law doctrine of "identification" laid down in Tesco in respect of corporate criminal liability. Supreme Court of Canada in *R* v. *Canadian Dredge and Dock Co*[xxxiii], it was held that the identification theory establishes the "identity" between the directing mind of the company and the company. Justice Estey J, for the Court observed,

> *"A few groups in the company are more labourers and experts who are simply hands to achieve the work and can't be said to address mind and will. Others are chiefs and heads who address the planning cerebrum and will of the company and control it. The viewpoint of these bosses is the viewpoint of the company and is thought of so by law."*[xxxiv]

By this reasoning a company may have more than one coordinating mind and further not only is delegation probable but even sub-delegation also. Lordship noted the principle will just work where the activity is attempted by the "directing mind" and action,

a. was inside the field of action designated to the planning mind,
b. was not totally in distortion of the corporation,
c. was an arrangement or result halfway to assist the company.

The doctrine was further clarified in *Rahone (The) v. Peter A.B. Wider (The),*[xxxv] in which Lordship Iacobucci J, for the Supreme Court of Canada stressed the label of directing mind must be confined to only those cases where,

> *"Where an offence has been submitted by a company under this Act, each individual who was introduced at the time the offence was submitted and was prepared for the orientation of the matter of the company, in the way wherein the company is seen as harmed of the offence and There will be a danger of proceeding and disgusting on a case by case basis."* [xxxvi]

Phases such ability to "design and supervise the implementation of corporate policy" and "full discretion to act without guidance" and the capacity to "practice dynamic expert on the issue of corporate approach" clarified the policy versus implementation role as being the bright line which had to be crossed to find a "directing mind". The Canadian Supreme Court instead of using word "brain" used phase "the power to plan and administer the execution of corporate policy". The officer must have the power to design the policy and the discretionary power to execute the same without any restrictions. Such acts of the officer might be ascribed to the criminal responsibility of corporation. Acts of senior officer which are merely executing the policy does not attract the criminal liability of corporations. The Court of Appeal of Ontario held that even though the employee may have extensive responsibilities and discretion, unless this is accompanied with "power to plan and oversee the execution of corporate policy" or "governing executive authority".[xxxvii]

CONCLUSION

Legal system in general and criminal justice system in particular have not been fully capable of keeping pace with the new developments. There are gaps and lack of uniformity in the different system to handle the corporate crime.

Various theories have been expounded to extend the criminal liability to the corporations as fictions entity. Many developments have taken place from the concept of liability as *respondeat superior* in England corporate fault in Australia. English Courts extended the principle of no-fault in civil cases to criminal violation where *mens rea* as such was not required; after going away from the notion that corporations couldn't be expected criminally to take responsibility. Further expansion of standard of

vicarious risk in England was by taking the *mens rea* of agents as that of corporations. England in *Tesco* case further developed the directive mind and will theory which says that culpable mind set of senior functionaries of the company are actions and will of the company itself. Such person having directive mind can be identified through an investigation into whether they have the status or authority in law to make their demonstrations the demonstrations of the company. Statutory development has taken place in England by enactment of Manslaughter Act, 2007 which provides for liability for murder by net carelessness by identifying individual sufficiently senior to constitute directing mind. Still it is difficult to identify such individual in the present-day corporate structure.

In America, initially criminal liability of corporations was fixed for statutory offences later it was extended to *mens rea* cases when committed by employees in the course of employment. The legislative enactments were there to restrict cartels and restraining infrastructures in the end of nineteenth century. The American Law Institute Model Penal Code permitted inconvenience of corporate criminal liability for acts authorised or so by the Board of Directors or by a high authoritative expert representing the corporation, inside the level of the workplace or business. However, due diligence to prevent the offence was permissible defence. Thus, the board parameters of corporate criminal liability were 'within the extent of work, 'to serve the corporation', and the 'collection intent'. The doctrine of 'collection intent' can be fixed in any event, when it is beyond the realm of imagination to expect to identify a corporate specialist with criminal expectation.

As compared to America the French System to deal with criminal liability of corporations is relatively new and restrictive. After the French revolution the corporate were considered a threat to government because of their economic power and political influence. In the course of time France revised its Penal Code in 1992 and 1994 and became first European country to apply and acknowledge the corporate criminal liability by providing principles and sanctions. It recognised that juristic persons except for State are guiltiness obligated for the offences submitted for their benefit by the organisation or representatives. The judiciary gives strict interpretation to provisions by affirming the need to attributing offence to representations to indict company.

In Brazil Corporations are liable for administrative, law or criminal violations of its management board which are committed in the interest or for the benefit of it. The crime includes economic harm and environment damage. Law also provide for corruption and bribery by national and International Corporation for their sake by management with corrupt intention.

India followed England company law by enacting different companies Acts. Major developments have taken place in corporate sector with globalisation and liberalised policies followed in India. Common law principle of no-fault liability has been stretched out to absolute liability by the Apex Court.

Moreover, civil and administrative liability of corporations is not sufficient. Victims do not always have the finical resources to pursue a civil action. Criminal law rebuffs suitably; its indispensable retaliatory, preventive and rehabilitative highlights fulfil public demand for the counter. The criminal discipline of corporations sends a representative message: no crime is unrecoverable and crime won't ever pay.

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