

CORPORATE CRIMINAL LIABILITY

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ABSTRACT:

A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through a living person, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his act is the mind of the company. Here the person who acts on behalf of the company must be a legally appointed guardian. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persons of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case the liability of the company can only be a statutory or vicarious liability.

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INTRODUCTION:

A corporation is a separate legal entity established through some legislation or registration process. They have rights and liabilities separate from that of their shareholders. Some of these corporations have assets and facilities in other countries apart from their home country as well and such corporations are known as multinational corporations (MNCs).

The doctrine of corporate criminal liability is essentially the doctrine of respondent superior which has been imported into criminal law from tort law. This doctrine states that a corporation can be made criminally liable and convicted for the unlawful acts of any of its agents, provided those agents were acting within the scope of their actual or apparent authority. Apparent authority is that authority which an agent can be inferred to have by an average reasonable person, whereas actual authority is authority that a corporation knowingly entrusts to its agent or employee. To simplify matters, if a rational relationship can be established between an employee's criminal conduct and his corporate duties, the corporation will be held criminally liable for the employee's conduct.³

WHAT IS CORPORATION?:

The term 'corporation' derived from latin word 'corpus' which means body or institution enjoying perpetual succession and the status of an independent legal entity. A business organization owned by a group of stakeholders each of whom enjoys limited liability (that is, each can be held responsible for losses only up to the limit of his or her investment). A corporation has the ability to raise capital by selling stock to the public.⁴ A corporation is an artificial being in visible, intangible and existing only in contemplation of law. Being, the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidentally to its very existence.⁵

CORPORATE CRIME:

Corporate crime means crimes committed either by a business entity or corporation, or by individuals that may be identified with a corporation or other business entity. A corporate crime is the act of its personnel and need not be authorized or ratified by its officials. It is

³ Company law- Dr.S.RMyneni-Asia law house Hyderabad pgno.17

⁴ Company law- Dr.S.RMyneni-Asia law house Hyderabad pgno. 18

⁵ Dartmouth college case - Dr. S.R Myneni.

sufficient if the officials were exercising customary powers on behalf of the corporation. Thus, to a substantial degree, the crime of the corporation is interwoven with the acts of its officials. Such criminal acts are reflective of the character of the persons who manage the corporation.

FOR A CORPORATION TO BE LIABLE FOR THE ACTS OF AN INDIVIDUAL THE COURT CONSIDERS FOLLOWING ELEMENTS:

First, the individual must be acting within the scope of his employment. Second, the individual must be acting to benefit the corporation and third element is the act and intent must be imputed to the corporation.⁶

DEFINITION OF CORPORATE CRIMINAL LIABILITY:

Akhil Mahesh,

A corporation is a separate legal entity and considered a legal person. However, a corporation can be made criminally liable for unlawful acts done by its agents when they are acting within the scope of authority. The criminal act should be committed in furtherance of the benefit of the corporation as well as the benefit of the agent. This doctrine of corporate criminal liability is increasingly gaining importance all over the world and is a recognized principle in India, especially after the landmark judgment.⁷

Any corporation can be made liable for act of its agent or servant if s/he:

1. commits a crime;
2. acts within the scope of employment;
3. with the intent to benefit the corporation.

CORPORATE CRIMINAL LIABILITY UNDER COMPANIES ACT:

The Companies Act, 1956 also impose criminal liability on companies as well as on the directors and other officers of the company. The majority of the sections impose liability on

⁶ Company law

⁷Standard Chartered Bank v. Directorate of Enforcement.

the company as well as officers/directors of the company. However, certain section imposes criminal liability exclusively on officers/directors of the company.

If any officer of the company (a) knowingly conceals the name of any creditor entitled to object to the reduction ;(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or (c) abets or is privy to any such concealment or misrepresentation as aforesaid; he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Sec. 272 imposes criminal liability on directors under certain circumstances. A company secretary fraudulently hired cars for his own use without the knowledge of the managing director. A company secretary routinely enters into contracts in the company's name and has administrative responsibilities that would give apparent authority to hire cars. Hence, the company was liable.⁸ According to this section, 'if after the expiry of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 270, he shall be punishable with fine which may extend to five hundred rupees for every day between such expiry and the last day on which he acted as a director'. If any person who holds office, or acts, as a director of more than fifteen companies shall be punishable with fine which may extend to fifty thousand rupees in respect of each of those companies after the first twenty.

REQUIREMENTS FOR ESTABLISHING CORPORATE CRIMINAL LIABILITY:

Act within the scope of employment: For corporate criminal liability to arise, there are several requirements that must be met. First and foremost, the employee committing the offence must be acting within the scope of his employment, i.e. he must be performing duties authorized by his parent company. Thus the MPC allows corporations to evade liability as long as the higher ups in their hierarchy exhibit due diligence in the monitoring and stamping out of wrongdoing.⁹

Benefit to the Corporation: The second requirement is that the agent's behavior must, in some way, benefit the corporation. The corporation need not actually directly receive the benefits nor must the benefit be enjoyed completely by the company, but the illegal act must not be contrary to corporate interests. This has been elaborated on because it is extremely rare

⁸ Panorama Developments (Guildford) Limited v Fidelis Furnishing Fabrics Limited

⁹Dollar Steamship Co. V. United States

that an employee commits an illegal act selflessly, with no intention to make any personal gain.

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.

The Collective Blindness Doctrine

Courts have found corporations liable even when it wasn't a single individual who was at fault. The Courts considered the sum knowledge of all the employees to come to this conclusion. This is known as the "Collective Blindness Doctrine". The rationale behind this is to prevent corporations from compartmentalizing their work and duties in such a way that it becomes elementary for them to evade liability by pleading ignorance in the event of any criminal prosecution.

Willful Blindness Doctrine

Corporations are made criminally liable if they knowingly turn a blind eye to ongoing criminal activities. If a corporate agent becomes suspicious of some ongoing illegal acts but to avoid culpability, he takes no action to mitigate the damage or investigate further or bring the offender to book, the corporation becomes liable.¹⁰

Conspiracies

A conspiracy has been traditionally defined as two or more people who agree to commit an offence, with one or more people taking affirmative action to further the aim of the conspiracy. Corporations can be made liable for a criminal conspiracy amongst its employees or involving one employee and others not on the payroll of the corporation.

Mergers, Dissolutions and Liability

Corporations can be made criminally liable for the previous criminal acts and violations of another corporation with which it has merged or has consolidated. Corporations, after a

¹⁰ Company law- company secretaries.

merger, will also have to defend themselves against charges of conspiracy against the predecessor corporation. Similarly, it is not always necessary that corporations will evade prosecution if dissolution occurs before filing of charges. Depending on the law of the land, sometimes even defunct corporations are forced to defend themselves against criminal prosecution.

Misprision of Felony

A corporation may also be held liable for misprision of felony that is the offence of concealing and failing to report a felony. This consists of four elements:

- That the principal committed a felony
- That the defendant knew about said felony
- That the defendant failed to notify the concerned authorities at the earliest, and
- That the defendant took proactive steps for the concealment of the felonious act.

Assessing the common law theories of corporate criminal liability

The endorsement of criminal liability of corporations has largely been a twentieth century judicial development, influenced by the "sweeping expansion"[1] of common law principles. The majority of theories of corporate criminal liability are typical of common law developments; they have been constructed on a case-by-case basis. Despite their importance, these theories have proved to be ineffective, for their lack of strong theoretical basis and their individualistic roots.¹¹

Agency Theory

The agency theory was first developed in tort law and gradually "was carried over into the criminal area . According to this theory, the corporation is liable for the intents and acts of its employees.

The theory encompasses a simple and logical method of attributing liability to a corporate offender, if corporations do not have intention, someone within the corporations must have it and the intention of this individual as part of the corporation is the intention of the

¹¹David Brody and James Acker, "*Criminal Law*", 2nd ed. Jones & Bartlett Publishers.

corporation itself.¹² Courts in the United States, where the theory is widely used, have developed a three-part test to determine whether a corporation will be held vicariously liable for the acts of its employees. First, the employee must be acting within the scope and course of his employment. Secondly, the employee must be acting, at least in part, for the benefit of the corporation, yet it is irrelevant whether the company actually receives the benefit or whether the activity might even have been expressly prohibited. Thirdly, the act and intent must be imputed to the corporation. It was held that independent contractors might act for the benefit of the corporation thereby exposing it to criminal liability.¹³

Identification of theory

The doctrine of identification is the traditional method by which companies are held liable in most countries under the principles of the common law. The limitations of the agency theory led to the construction of a direct liability theory. This theory was developed as an attempt to overcome the problem of imposing primary, as opposed to vicarious, corporate criminal liability for offences that insisted on proof of criminal fault. Viscount Haldane fashioned a model of primary corporate criminal liability for offences that require mens rea that would later be known as the identification theory. A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody, who for some purposes may be called an agent, but who is really the directing mind and will of the corporation; the very ego and centre of the personality of the corporation.¹⁴

Guilty Mind

The main underlying principle of the identification theory is the detection of the guilty mind, the recognition of the individual who will be identified as the company itself, who will be the company's very ego, vital organ, or mind. The House of Lords held that the manager was not a person of sufficiently important stature within the corporate structure to be identified as the company for this purpose, and since there had been due diligence at the level of top management, the company could use the defense.¹⁵

Aggregation Theory:

¹² Company law – DrMyneni

¹³United States v. Parfait Powder

¹⁴Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd.

¹⁵Tesco Supermarket v. Nastrass

Over the past decades the corporation's internal structures have been altered and expanded. Large modern corporations are no longer set up with a clear, pyramid-like hierarchal structure of authority and power. On the contrary, modern corporations have multiple power centers that share in controlling the organization and setting its policy. where the bank was found guilty of having failed to file CTRs (currency transactions reports) for cash withdrawals higher than \$10, 000. The client made thirty-one withdrawals on separate occasions between May 1983 and July 1984. Each time, he used several checks, each for a sum lower than the required total, none of which amounted to \$10, 000. Each check was reported separately as a singular item on the Bank's settlement sheets¹⁶. Once the checks were processed the client would receive in a single transfer from the teller, one lump sum of cash which always amounted to over \$10,000. On each of the charged occasions, the cash was withdrawn from one account. The Bank did not file CTRs on any of these transactions. Each group of checks was presented to a different teller at different times.¹⁷

CORPORATE PUNISHMENT:

In India, certain statutes like the Indian Penal Code talk about kinds of punishments that can be imposed upon the convict and as per Section 53 include death, life imprisonment, rigorous and simple imprisonment, forfeiture of property and fine. In certain cases the sections speak only of imprisonment as a punishment like in case of offence under Section 420. Thus the problem arises as to how to apply those sections on the companies since a criminal statute needs to be strictly interpreted and in such statutes there is no scope for corporations to be imprisoned B.N. Srikrishna J. said that corporate criminal liability cannot be imposed without making corresponding legislative changes. The court is not given a discretion to impose imprisonment or fine and therefore, the company cannot be prosecuted as the custodial sentence cannot be imposed on it.¹⁸

CONCLUSION:

¹⁶ Dharm Veer Singh, "*Corporate Criminal Liability: A Jurisprudential and Comparative Approach*"

¹⁷United States v. Bank of New England

¹⁸The Assistant Commissioner, Assessment- II, Bangalore and Ors v. Velliappa Textiles Ltd. and Ors

The criminal law jurisprudence relating to imposition of criminal liability on corporations is settled on the point that the corporations can commit crimes and hence be made criminally liable. However, the statutes in India are not in pace with these developments and the above analysis shows that they do not make corporations criminally liable and even if they do so, the statutes and judicial interpretations impose no other punishments except for fines. Apart from fines, punishments such as winding up of the company, temporary closure of the corporation, heavy compensation to the victims, by stepping on the weakness of the corporation i.e., its goodwill, etc. Such means of punishment would have a deterrent effect on the corporate and the sole aim of punishment under criminal jurisprudence would be achieved.