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RESTRUCTURING CRIMINAL LIABILITY TO PROMOTE RESPONSIBLE CORPORATE BEHAVIOUR

SwarnikaRawat[1]

Niti Gupta[2]

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

ABSTRACT:

Where corporations are being privileged with a pleasure of human immunities, to bound them by liabilities should be a legal necessity. There exists a wheeling and dealing between the corporation and the society. The conceptual evolution of corporate criminal liability took a turn over from vicarious liability and is leading further towards the area of judicial interpretation. As a company lacks the element of *MensRea*, it can be made liable for the acts of its agents when acting under the scope of authority. The notion indulges a slight reflection of heterogeneous theories and models. The criminal act should be a beneficiary to the corporation as well as the agent. This issue has been acknowledged with different laws around the world but India is yet to make a convincing move. As stated by the 41st report of the Law Commission, which appealed changes to the deficit laws in India. This paper aims to explore the multiplicity of the corporate criminal amenability from its fall to the lot.

KEYWORDS: Corporation, Criminal, Liability, Models

INTRODUCTION:

Around the globe, the position of law with respect to corporate criminal liability has been masked in conjecture, contradiction and disagreement.[3]An artificial person or legal

[1] Student of Law Bishop Cottons Women's Christian Law College, Affiliated to KSLU Bangalore
[2]Student of Law Bishop Cottons Women's Christian Law College, Affiliated to KSLU Bangalore
[3] See e.g., Pamela Bucy, Corporate Ethos: A Standard for Imposing Corporate Criminal Liability, 75 MINN. L. REV. 1095 (1991) (the 'corporate ethos' standard of liability as representing corporate mens rea); Hall,

entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular oltice, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded In law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authoritiesconferred upon such bodies by law. [4] Corporate liability in criminal law outlines the extent to which a corporation as a legal body can be made liable for the wrongdoings of the natural persons it employs.The fundamental rule of criminal amenabilityrotates around the Latin maxim 'actus non facitreum, nisi mens sit rea'. It formulates that to make one liable, it is a must to display that the act or omission has been done which was prohibited by law and has been committed with a guilty mind. A crime revolves around two elements one physical known as actus reus and other mental known as mens rea[5]. The Bhopal Gas leak tragedy in 1984 flashed beams on corporate criminal liability under the Indian legal system.[6] By the outburst of this tragedy, there was a realisation that the age old provisions of the Indian penal code were woefully insufficient to control the nature of crimes committed by large business corporations [7].

EVOLUTION:

Corporate Criminal Liability, AM. CRIM. L. REV.549 (1998) (analysing the elements of corporate criminal liability and discussing the use of corporate compliance programs to limit liability); V.S. Khanna, Is the Notion of Corporate Fault a Faulty Notion: The Case of Corporate Mens Rea, 79 B.U. L. Rev. 355 (1999) (discussing the various standards of mens rea and arguing for their replacement by a strict liability or negligence standard); Brent Fisse& John Braithwaite, The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Accountability, II SYDNEY L. REV. 468 (1988) (proposing that courts impose criminal liability on a corporation that covers up criminal conduct); Developments in Law -Corporate Crime: Regulating Corporate Behaviour through Criminal Sanctions, 92 HARV. L. REV.1227 (1978-1979) (discussing a liability standard based on corporate procedures that fail to prevent corporate criminal violations); Thomas J. Bernard, The Historical Development of Corporate Criminal Liability, 22 CRIMINOLOGY3 (1984) (analysing the historical development of corporate criminal liability); V.S. Khanna, Corporate Criminal Liability: What Purpose Does It Serve? 109 HARV. L. REV.1477 (1996) (comparing the costs and benefits of corporate criminal liability vis-à-vis other liability strategies).

[4]See Case of Sutton's Hospital, 10 Coke. 32; Dartmouth College v. Woodward, 4 Wheat. 518, 636, 657. 4 L. Ed. 629; U. S. v. Trinidad Coal Co., 137 U. S. 160, 11 Sup. Ct. 57. 34 L. Ed. 640; Andrews Bros. Co. v. Youngstown Coke Co., 86 Fed. 585, 30 C. C. A. 293; Porter v. Railroad Co., 76 111. 573; State v. Payne, 129 Mo. 468, 31 S. W. 797. 33 L. R. A. 576; Farmers' L. & T. Co. v. New York, 7 Hill (N. Y.) 2S3; State BL.LAW DICT.(2D ED.)

[5] Russell, W.O.,"Russell on Crime", J.W.C. Turner Ed., New Delhi; Universal Law Publishing Pvt., 2001 at p.17-51

[6] See UPENDRA BAXI & AMITA DHANDA, VALIANT VICTIMS AND LETHAL LITIGATION: THE BHOPAL CASE(1990).

[7] No. 45 of 1860 [hereinafter the Code]

The concept of corporate criminal liability developed in the Anglo- American tradition of common law from small and obscure beginnings in a process of accretion that lacked any conscious or overall direction. From a situation in which corporations were considered capable of committing no (or almost no) crimes, there has developed the situation in which corporations are considered capable of committing all (or almost all) crimes. Mueller (1957:21) compared this development to the growth of weeds, stating, "Nobody bred it, nobody cultivated it, nobody planted it. It just grew." In contrast, the concept of corporate criminal liability did not develop at all in civil-law countries, where all criminal liability is laid to individuals, and none to the corporation itself (Mueller, 1957)[8]. The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable[9]. The belief that corporations could holdupon the moral blameworthiness necessary to commit crimes of intent was not a believable facts to the legal intellectuals.[10]The notion that "A corporation has no soul to damn, and no body to kick" was extensively prevalent at that period[11].

TWIN MODELS OF CORPORATE CRIMINAL LIABILITY:

DERIVATIVE MODEL:

This model seeks out to connect liability to a company as a imitation of individuals liability. This is an individual centered model wherein the corporation enters only at the secondary level.

VICARIOUS LIABILITY/ RESPONDATE SUPERIOR THEORY:

According to this doctrine, the company shall be accountable and made liable for the acts of its employees or agents. This doctrine is based on two maxims. They are: Qui facit per alium

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[8] Thomas J. Bernard Pennsylvania State University CRIMINOLOGY, Vol. 22 No. 1, February 1984 3-17 Q 1984 American Society of Criminology 3

[9] Lord Holt reportedly said in 1701 that "[a] corporation is not indictable, but the particular members of it are." Anonymous Case (No. 935), 88 Eng. Rep. 1518, 1518 (K.B. 1701). However, the reasons behind Lord Holt's decision are not clear because the case consists only of this single sentence

[10] James R. Elkins, Corporations and the Criminal Law: An Uneasy Alliance, 65 KY. LJ. 73, 87-88 (1976)

[11] Coffee, "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 MICH. L. Rev. 386 at n.1 (1981). Quoted in Micheal E. Tigar, _ It Does the Crime but Not the Time: Corporate Criminal Liability in Federal Law', American Journal of Criminal law, Vol 17:211, 1990

facit per se- It means that he who acts through another shall deemed to have acted on his own.

Respondent Superior- It means that the superior/master shall be made liable for the acts of its servant. In the case of *Bartonshill Coal Co. v. McGuire*, Lord Chelmsford LC opined that: "every act which is done by an employee in the course of his duty is regarded as done by his employer's orders, and consequently is the same as if it were his employer's own act." The concept of vicarious liability is generally applicable to civil liability but the court in the case of Commonwealth Beneficial Finance CO., held the three corporations criminally liable for the acts of company, its employees, directors and vice- president.

IDENTIFICATION DOCTRINE:

This doctrine is an English law doctrine which tries to identify certain key persons of a company who acts in its behalf, and whose conduct and state of mind can be attributed to that of the corporation. In case of *Solomon v. Solomon & Co*. House of Lords held that corporate entity is separate from the persons who act on its behalf. The persons who are associated with the corporations must be acting within the ambit of employment. This Identification doctrine is narrower in scope as compared with the vicarious liability doctrine, which means that instead of holding corporation liable for act of any employee, this doctrine narrows it down to certain persons.

ORGANISATIONAL MODEL:

Unlike derivative model which focuses on individual, organizational model takes corporation into consideration. Offences require mental state (MENS REA) to commit a crime along with physical act (ACTUS REUS), but the problem that arises while holding corporations criminally liable is how a corporation which is juristic person could possess requisite mental state to commit a crime.

Derivative model was one way to attribute mental state to corporation. Other way could be by proving that there existed an environment in the corporation which directed, tolerated, led-on, and even encouraged the non-compliance of specific law which made it offence.[12] Moreover, physical act that too is required to complete the requirement of commission of an offence can

[12]Criminal Law Officers Comm. [Code Committee] of the Standing Comm. of Attorneys-General, Austl., Model Criminal Code: Chapter 2, General Principles of Criminal Responsibility Section 501 (1992)

be derived rather be proved from the act of its employees, officers, directors, etc. Thus, culture of a corporation is to be seen while determining its criminal liability.

Corporate culture may help for commission of an offence requiring mental state by- FIRSTLY, providing the environment or necessary encouragement that it was believed by the offender working in the corporation that it was perfectly alright to commit that offence, or corporation has psychologically supported the commission of offence; SECONDLY, it is quite possible that the corporation created an environment which led to commission of crime. Both ways it was the corporation and its working culture that let the offence committed.

PROVISIONS IN INDIA:

A company is recognized as a juristic person, and being a person it has to face the punishment that has been provided by the various acts. . Section 11 of Indian Penal Code, 1860 (the Code) define person. It reads "the word person includes any Company or Association or a body of persons, whether incorporated or not." There are various provisions in Companies Act, 2013 itself which hold a company liable for its wrongdoing. However, there are provisions which provides mandatory imprisonment for a person including company, such as Section 447 of Companies Act, 2013 Act, Section 420 of The IPC, 276B of The Income Tax Act etc. Further section 2 of the Code provides that "Every person shall be liable to punishment under this Code." Thus, section 2 of the Code without any exception to body corporate, provides for punishment of every person which obviously includes a Company. Therefore, by analysisof these two provisions, the concept of corporate criminal liability can be derived, though it is not the sole legislation which provides for the punishment of corporate body, Companies Act, 2013, Income Tax Act, etc. A corporation is liable to be punished by fine, indeed the only punishment that can be inflicted on a corporation for a criminal offence, is a fine or seizure of its property which can be levied by an execution issued by the court . An association cannot be captivated and is not liable to prosecution for a criminal offence which is only punishable by death or imprisonment. However, the fact that the penalty provided for the violation of a statute is a fine or imprisonment, or both in the discretion of the court, and also makes it applicable to a corporation, and the same rule applies where the statute creating the offence provides for imprisonment if the fine imposed not paid. Many a times, a statute providing that the sentence for a particular crime is imprisonment may be read in conjunction with a general statute allowing the imposition of a fine, and the fine may be forced on the company as a

replacement of imprisonment. The issue of whether a company or a juristic person can be prosecuted for an offence for which the mandatory punishment prescribed is both imprisonment and fine has come up in several cases in India such as the cases of *THE ASSISTANT COMMISSIONER, ASSESSMENT-II, BANGALORE& ORS. V VELLIAPPA TEXTILES*[13] *and STATE OF MAHARASHTRA V. SYNDICATE TRANSPORT*[14] wherein 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.

The doctrine of corporate criminal liability in India was made crystal clear in the recent groundbreaking judgment in 2005 of the Apex Court in the case of *STANDARD CHARTERED BANK AND ORS ETC. V. DIRECTORATE OF ENFORCEMENT AND ORS ETC*[15] that overruled all the previous views. This case was related to the now defunct Foreign Exchange Regulation Act (1973), otherwise known as FERA. The majority held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. As the company cannot be sentenced to imprisonment, the Court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the Court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section viz., S. 56 of Foreign Exchange Regulation Act (1973) (FERA) and Ss. 276-C and 278-B of Income-tax Act (1961) so far as the juristic person is concerned. Of course, the Court cannot exercise the same discretion as regards a natural person. As regards company, the Court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. It cannot be said that, there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The bench by a majority of 3:2 held that a corporation can be punished and is criminally liable for offences for which the mandatory punishment is both imprisonment and fine. In case the company is found guilty, the sentence of imprisonment cannot be imposed on the company and then the sentence of fine is to be imposed and the court has got the judicial discretion to do so. This course is open only in the case where the company is found guilty but if a natural person is so found guilty, both sentence of imprisonment and fine are to be imposed on such person. This particular judgment in has further crystallized the Court's

[13](2003)11 SCC 405
[14]AIR 1964 Bom 195
[15]AIR 2005 SC 2622

interpretative power with regards to a penal statute, by departing from the traditional view and endorsing that for the punishment of the crime the court should go beyond the strict word, and not let offences go unpunished due to application of too technical an interpretation that is restrictive, strict and constricting to the very intent of the statute.

LIABILITY UNDER THE IT ACT, 2000:

The companies are expected to act within the framework of statutory laws. For instance, Section 85(1) of the Information Technology Act, 2000 (IT Act, 2000) states that where a person entrusting a infringement of any of the provisions of this Act or of any rule, course or order made there-under is a Company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the demeanor of business of the company as well as the company, shall be guilty of the infringement and shall be liable to be proceeded against and punished accordingly. The proviso to section 85 (1) provides that such person will not be liable for punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Section 85(2) provides that where a flouting of any of the provisions of this Act or of any rule, direction or order made thereunder 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 the 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 accordingly.

The explanation to section 85 provides that the expressions “company” means anybody corporate and includes a firm or other association of individuals and the expression "director", in relation to a firm, means a partner in the firm. The language of the section is not alien to our legal system and it is surprising that a lot of hue and cry has been raised recently regarding the “due diligence” requirement. It is strange that people are demanding to take aid of the American System, whereas the matter has authoritatively and conclusively decided by the Supreme Court in various cases that arose under different statutes. The accountability, reasonableness and due diligence requirement are incorporated in all the statutes so that the Fundamental and other rights of the people are safeguarded in their widest and truest perspectives. The law expects every person to act fairly, reasonably and diligently. That is why deviations from these standards are made punishable by the law. One cannot in the zeal

of earning profit or in the sense of indifference take the law casually. There are certain well-recognized cardinal principles of criminal law. These are:

(1) The ignorance of law is no excuse,

(2) The "presumption of innocence" continues until the guilt of the accused is proved,

(3) The guilt of the accused must be proved "beyond reasonable doubt",

(4) No person is guilty of an offence unless it is accompanied by both an act/ omission and the guilty intention for the same,

(5) The law may presume the guilty intention if the commission of the act is proved. This is known as "strict liability offences", and

(6) The law may fix the liability of certain individuals on a "notional basis".

The judgment of the Supreme Court in *IRIDIUM INDIA TELECOM LTD. V. MOTOROLA INC.*[16] on 20 October 2010 merely reiterated the principles laid down previously in the STANDARD *CHARTERED BANK* Case. This was a case in which Iridium India Limited filed a criminal complaint against Motorola Inc. alleging offences under section 420 (cheating) read with section 120B (conspiracy) of the Indian Penal Code (IPC). The complaint alleged that Motorola Inc. had floated a private placement memorandum (PPM) to obtain funds/investments to finance the 'Iridium project'. The project was represented as being "… THE WORLD'S FIRST COMMERCIAL SYSTEM DESIGNED TO PROVIDE GLOBAL DIGITAL HAND HELD TELEPHONE DATA…AND IT WAS INTENDED TO BE A WIRELESS COMMUNICATION SYSTEM THROUGH A CONSTELLATION OF 66 SATELLITES IN LOW ORBIT TO PROVIDE DIGITAL SERVICE TO MOBILE PHONES AND OTHER SUBSCRIBER EQUIPMENT LOCALLY."On the basis of the information contained in and representations made through the PPM, several financial institutions invested in the project. The project turned out to be unviable and resulted in massive losses to the investor which was alleged by Iridium India Limited to have been caused as a result of Motorola Inc.'s false representations in the PPM.

NECESSITIES FOR ESTABLISHING CORPORATE CRIMINAL LIABILITY:

[16] 2004(1)Mh.L.J. 532

There are a few necessary requisites whose existence must be established before criminal liability can be imposed on a corporation of any other kind of legal entity:

1. 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. But not all agents of a corporation are considered worthy of representing a corporation for the purpose of establishing liability. There are two conflicting systems which approach this issue differently, namely the common law and the Model Penal Code (MPC). Common law states that a corporation is liable for its agents' activities irrespective of the employee's status or position in the corporation's bureaucracy. In the case of *DOLLAR STEAMSHIP CO. V. UNITED STATES*, the common law system upheld the criminal liability of a steamship company for polluting the waters even though the employee dumping refuse overboard was a mere kitchen worker. MPC on the other hand states that the illegal act must be "authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment." [MPC § 2.07 (1) (c)]. 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.

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

3. Special problems arise when it comes to establishing mental culpability of a corporation. There are two main methods by which this is done:

    - **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.

- **The 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.

IMPOSITION OF LIABILTY ON CORPORATIONS:

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 found liable by courts at times when there wasn't a single individual who was at mistake. The sum total of knowledge of all the employees came to this conclusion by the courts. The reasoning behind this is to bar corporations from dividing their work and duties in such a way that it becomes simple for them to dodge liability by insistent ignorance in the event of any criminal trial.

2. **Willful Blindness Doctrine**

If companies knowingly turn a blind eye to ongoing criminal activities they are made criminally amenable. If a corporate representative becomes distrustful of current illegal acts but to shun culpability, he takes no action to lessen the damage or examine further or bring the lawbreaker to book, the corporation becomes liable.

3. **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.

4. **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 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.

5. **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.

Merely failing to notify the authorities is not enough to qualify as misprision of felony and neither is merely having the intent to conceal the felony if such intention is not carried out

GLOBALPRESENCE OF CORPORATE CRIMINAL LIABILITY:

Corporate Criminal Liability in the USA

On an initial note, corporations were not held criminally amenable for any business activities as a corporation was considered to be a fabricated legal entity incompetent to form a requisite mens rea essential for the commission of a crime. The above mentioned notion was finally rejected by the Supreme Court in 1909 in New York Central & Hudson River Railroad v. U.S. A railroad company employee paid rebates to shippers in breach of federal law. The court upheld the company's criminal conviction, finding no reason to which the corporations could not be held "liable for and charged with the information and objective of their agents, acting within the boundary of authority conferred upon them." The Supreme Court concluded that criminal amenability could be imputed to the corporation based on the gain it received as a consequence of the criminal acts of its agents. The above case basically imported the doctrine of respondeate superior from tort law into criminal law.

Corporate Criminal Liability in the United Kingdom

Trial of a corporation isn't seen as a replacement for the trial of criminally culpable individuals who can be like shareholders, officers, employees and directors. The prosecution process of such personates grants a firm deterrent against the upcoming corporate wrongdoing. On an equal scenario, when prosecuting individuals, the possible amenability of the company where the criminal manner is for corporate gain is given due consideration.

The case of *Tesco Supermarkets Limited v. Nattrass*, Tesco was dependent on the defense of the "act or omission of another person" who in the above case was an employee of the store, to depict that they had taken all rational precautions and attentiveness necessary to not be criminally responsible. "The person who acts is not speaking or acting for the company. The individual is acting as the corporation and his mind which expresses his acts is the mind of the corporation. If it is a guilty mind then that guilt is the guilt of the company." Lord Reid held the above statement, in order for amenability to attach to the actions of an individual.

Undertaking the seriousness of any crime, the courts hold that whether the corporate entity's culpability in committing the offence and any injury which the said offence caused, was initiated to cause or might, predictably, have been caused. Strategy issued on the evaluation of seriousness of any given offence recognize four levels of blameworthiness for imprisoning purposes starting with intention to cause harm to negligence in committing the offence. The strategies also refer to annoying factors which are known boundaries: as whether the offence was devised or resulted in high profit and whether there was a failure to respond to threats or worries reflected by others about the offender's conduct. The corporate entity's level of co-

operation with the prosecuting and regulatory authorities is also a factor in assessing the course of action taken by a regulator and the level of penalty suitable where there has been corporate criminal wrongdoing. Fines, confiscation, compensation orders and debarment from public procurement are included under the categories of penalties which are faced by the corporate entities.

Corporate criminal liability in the rest of Europe

Until the 1970s, the Western European countries primarily prohibited the imposition of criminal amenabilities on companies and other such legal entities. The particular conflict was reflected in the principle of societas delinquere non potest, which states that, ‘a legal entity cannot be blameworthy ’. the recent trend of obligating companies criminal amenability for acts done by their agents began in earnest in the 1970s.

Netherlands

In the year 1976, the Netherlands became one of the first Western European countries to espouse legislation enacting comprehensive corporate criminal amenability. The corporations were made liable for all offenses by the legislation. The 1976 legislation also distributed with the requirement that liability be predicated on the actions of natural persons acting on the corporation’s behalf, which was a prerequisite of the preceding existing law. Liability may be predicated on scarce decision-making arrangement within the corporation or on the amassed knowledge of several individuals.

Denmark

In 1926, with the course of the Butter Act, Denmark commenced corporate criminal liability for some felonies. By the end of the century, Denmark had greatly enlarged the list of enterprise wrongdoings.

Switzerland

In late 2003, Switzerland inflicted criminal liability on companies, after having formerly rejected such accountability time and again for policy reasons. Swiss criminal liability is dependent on the concept of ‘subsidiary liability’, i.e. a business can be held liable for crimes committed on its behalf only if fault cannot be featured to a particular individual ‘because of a deficiency of organization within the enterprise.’ The felony must be ‘in furtherance of a business activity constant with the principle of the enterprise,’ anobligation which

unquestionably will requires to be defined by the courts. Criminal fines can sprout up to 5 million Swiss francs.

France

The basis for corporate criminal liability in French law is codified in the New French Penal code in the Article 121-2, which states: "Juridical persons, with the exception of the State, are criminally liable for the offenses committed on their account by their organs or representatives . . . in the cases provided for by statute or regulations." Article 121-2 further provides the "criminal liability of legal persons does not exclude that of the natural persons who are perpetrators or accomplices to the same act."

RECOMENDATIONS AND CONCLUSION:

The 47th law commission report has recommended various solutions to deal with such problem:

1. Some discretion is to be given to judges to impose penalties as they deem fit for the case.
2. Para 8(3) of the47th law commission report recommended that, "*in every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is the corporation, it shall be competent to the court to sentence such offender to fine only."*

In cases where the wrongdoing is punished with imprisonment and any other punishment not being fine and the offender is a corporation, it shall be capable to the court to sentence such reprobate to fine.

Unfortunately, the legislatures have ignored these recommendations by law commission and failed to incorporate these provision, and thus the problem is where it was earlier. It is still very difficult for court to punish the offenders. Therefore, it can be said that even though Corporate Crimes are much in vogue today, but the methods to tackle them are still in their pre-mature stage. From this paper we acknowledge that corporate liability can arise in various circumstances. The application of the doctrines which determine corporate liability, vary and as we have seen so far, their and relevance depends upon the circumstances of each case.

Surely the principle has certain lacunae which either needs to be filled or wholly replaced. A high level of optimism regarding the prospect is expected resulting in more prosecutions and higher fines for corporations. Even though it may not be considered appropriate to apply the very existing rules designated for human beings to corporate organizations, the author views that, the realist approach should be that a company, being an artificial body created by law, cannot act, except through its agents- so the acts and intents of its agents should be those of the company itself. In the actual economic climate, and with regards to the post-economic meltdown world, it is crucial for companies to ensure that adequate anti-corruption strategies, health and safety regulations, and proper organizational structures are in place so that they can proactively manage and keep any potential litigation risk to a strict minimum.