

CORPORATE CRIMINAL LIABILITY IN INDIA, UK AND USA: A COMPARATIVE STUDY

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Abstract

Corporate Criminal Liability is an idea which holds companies responsible for unlawful actions of its employees or representatives. If a crime is committed by a company such as fraud or environmental violations then it can face legal consequences just like a person. Law can hold companies responsible for actions of its employees if actions are done under the scope of their job and also provides a benefit to the company. If law finds company responsible of any illegal act then fines, penalties or restrictions can be imposed on operations of the company.

This encourages companies to engage in ethical practices and comply to programs to prevent illegal activities. In Conclusion, corporate criminal liability aims to ensure that companies must operate within law and must take accountability of its actions.

I. INTRODUCTION

Corporate Criminal Liability is a legal concept that a company can be held accountable for the acts of its employees that are advantageous to the company. It is based on the idea that a company is an independent legal person or entity that is liable for the deeds of its representatives.³¹⁷ Corporate criminal liability refers to the legal principle that assigns responsibility to corporations and other legal entities for criminal offenses carried out by their employees or representatives while acting in the interest of the organization.³¹⁸

Its definition highlights the principle that a corporation can be held accountable for the unlawful actions of individuals acting on its behalf,

II. EVOLUTION OF CONCEPT OF CORPORATE CRIMINAL LIABILITY

Companies are usually held criminally accountable in a basic legal system. This is in contrast to earlier legal systems where

corporations were solely punished in relation to claims of public annoyance and were not prosecuted for any crimes. Companies could be held liable for any public nuisance penalties that resulted from their noncompliance because of the conditions in the US and the UK. Therefore, it is correct to say that even while the company is required to carry out a specific task, an artificial agency working for it would not be held responsible for the company's failures. The court started setting precedents for private companies to operate similarly to quasi-public organizations once this idea was established. After establishing the benchmark, a business.³¹⁹

The US Supreme Court did not establish its jurisdiction to hold corporations accountable for crimes requiring intent until 1909. But at the time, this version was heavily criticized for going against the spirit of criminal law, which has as its primary goal punishing the perpetrator. The requirement for criminal intent made the division the corporation's culpability for the offense. In the issue of Indian pretense, we see

³¹⁷ Erathi Anudeep, *Corporate Criminal Liability: Analysis with respect to Indian Penal Laws*, 12 IJCR 410 (2024)

³¹⁸ R.S. Afshan, Pavithra Prakash *Comprehensive Analysis on Corporate Criminal Liability in India*, 5 IJFMR 28 (2023)

³¹⁹ Prakhar Dubey, *Corporate Criminal Liability in India, UK and USA: A Comparative Approach*, 14 IJL 86 (2023)

that the supreme court has reiterated on multiple occasions that the legislature intended to impose both a fine and a punishment for a criminal offense. But in a scenario when we are talking about firms in detail, a number of High Courts believe that since we cannot put a company in jail, they would not necessarily be accountable for any sort of penalty. After that, the judiciary took on the duty of handling the inability to attach the notion of mens rea with that of a company unless the statute requires it to be excluded in the case decided by the Supreme Court, **A.K. Khosla v. T.S. Venkatesan**³²⁰.

Then came the case of **Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors**³²¹, in which the Supreme Court took a stand to provide clarification, a move that was later adopted by the legislature. As we can see, there are two laws that establish a company's criminal liability: IPC, 1860, Section 27 of SEBI Regulation, which states that an officer in charge of the company is responsible for any misappropriation committed by the company, as he is the one managing the business; additionally, there is a section 450 of the Companies Act 2013 that imposes a fine on both the company and the officer in charge of the company.

Corporate Criminal Liability in USA

In expansion to Britain, the United States and Canada were among the primary countries to recognize and execute the thought of organization criminal obligation. These countries saw the brunt of the Industrial Revolution, which implied that they were among the first to experience the money related chance of commerce blunders. In spite of the fact that English courts changed in an unexpected way from those that to begin with punished corporations, up to this point, as it were courts that recognized the concept of responsibility through criminal law were able to

end a organization for damaging a administrative obligation, as happened in 1842.

Within the starting of the century, certain US courts started to broaden the definition of corporate criminal culpability to include crimes; the US Supreme Court maintained this choice within the case of **New York Central & Hudson River Railroad Company v. U.S**³²². The Elkins Act, passed by Congress, set up the thought of varied risk by expressing that an officer's actions and inactions within the scope of his act are taken under consideration for the enterprise. Even in spite of the fact that the Supreme Court's past choice managed with statutory infringement, common law offenses were rapidly included to the list by lower courts few decades afterward, in 1983, the 4th Circuit Court ruled that "irrespective of whether such showings were against the corporate approach, the enterprise may be considered criminally committed for retaliatory infringement executed by its laborers if they are acting inside the domain of their position or clear right and to serve the corporation"

Corporate Criminal Liability in India

Since numerous Indian Companies Acts are based on English Acts, company law in India as a entire has its roots in English company law. Based on the English Companies Act of 1844, the primary enactment permitting for the enrollment of joint stock companies was passed in 1850. The idea of restricted liability was not presented within the 1850 Act; instep, it was presented within the 1857 businesses Act, which was modeled after the English Companies Act, 1856, and recognized businesses enlisted beneath the Act as autonomous legitimate substances. The restricted obligation arrangement did not apply to managing an account businesses; be that as it may, in 1858, it did. In 1862, 1866, and 1882, the Indian Companies Act was re-enacted. Taking after

³²⁰ Bank of India & Ors v. O.P. Swarankar etc., AIR 2003 SC 721

³²¹ Standard chartered Bank and Ors. V. Directorate of Enforcement and Ors, AIR 2005 SC 2622

³²² New York Central & Hudson River Railroad Company v. U.S 212, U.S.481,1909

the English Companies Union Act of 1908, the 1882 Act was supplanted by the 1913 Act.³²³

Corporate Criminal Liability in UK

Corporate criminal liability in the UK means that companies can be held legally responsible for crimes committed by their employees or agents while acting on behalf of the company. This liability arises under various laws, including the Companies Act 2006 and the Bribery Act 2010. For a company to be prosecuted, the crime usually needs to be linked to an individual within the organization, such as a director or senior manager, showing that they acted with the company's support or knowledge. Companies can face severe penalties, including hefty fines and operational restrictions, if found guilty. They may defend themselves by proving they had proper procedures in place to prevent wrongdoing. Overall, this legal framework aims to ensure that businesses operate ethically and responsibly, safeguarding public interests and promoting accountability.³²⁴

III. LEGISLATION AND REGULATIONS

INDIA

- **Companies Act, 2013**

This Act is vital in laying down the legitimate structure for how organizations are represented and held mindful. It covers points of interest around the fines and disciplines that companies can confront for their activities, as well as the individual obligation of company officers.³²⁵

- **Money Laundering Act, 2002**

This enactment bargains with wrongdoings related with cash washing and holds both the enterprise and its officials criminally capable. It sets out disciplines for those found blameworthy, which can incorporate imprison time and money related fines.³²⁶

³²³ Pradeep Kumar Singh, *Corporate Criminal Liability in India* 8 AJL 9 (2021)

³²⁴ Dr. Pushpendra Kumar Musha, *A Comparative Study of Corporate Criminal Liability*, 15 IJBA 85 (2022)

³²⁵ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India)

³²⁶ Money Laundering Act, 2002, No. 15, Acts of Parliament, 2002 (India)

- **Environmental Protection Act, 1986**

Made to secure the environment, this law makes organizations totally mindful for any natural harm their operations cause. It demands fines on companies for any breaches, highlighting their obligation to settle natural harm.³²⁷

- **Prevention of Food Adulteration Act, 1954**

Pointed at combating nourishment corruption, this act holds people mindful for company activities and places the burden of confirmation on the blamed. It is noteworthy in guaranteeing nourishment security and buyer assurance.³²⁸

- **Securities Exchange Board of India Act, 1992.**³²⁹

Whereas not expressly tending to corporate criminal obligation, this Act engages SEBI to explore and indict securities advertise infringement. It forces responsibility on enterprises for transgressions committed by their chiefs, officers, or workers.

USA

- **Respondeat predominant**

Doctrine of Respondeat Prevalent Under this doctrine, a enterprise can be held criminally at risk for the illicit acts of its executives, officers, laborers, and specialists in case those acts happen inside the scope of their work and are planning to advantage the organization.³³⁰

- **Model Penal Code**

The Model Penal Code (MPC) gives a system for corporate obligation, expressing that a organization can be indicted of a wrongdoing in case the offense was authorized or persevered by the board of executives or a tall authoritative specialist. This suggests that the data and point

³²⁷ Environment Protection Act, 1986, No. 29, Acts of Parliament, 1986 (India)

³²⁸ Prevention of Food Adulteration Act, 1954, No. 37, Acts of Parliament, 1954 (India)

³²⁹ Securities Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India)

³³⁰ Micheal C. Harper, *Using the Anglo-American Respondeat Superior Principle to Assign Responsibility for Worker Statutory Benefits and Protections*, 18 WUGSLR 168 (2019)

of these high-level individuals can be ascribed to the organization.³³¹

- **Collective Knowledge Doctrine**

Organizations can be held obligated based on the collective information of their laborers. Within the occasion that diverse representatives have data of a wrongdoing, that data can be aggregated to set up the corporation's obligation, indeed in case no single representative had complete data of the offense.

- **Constitutional Protections**

Corporations are entitled to certain constitutional securities, such as assurance against twofold jeopardy. In any case, they can still be charged with criminal scorn for damaging court orders or assent orders.

- Risk of Broken up Organizations Indeed after disintegration, a enterprise can bring about criminal duty for activities taken whereas it was operational. This guideline guarantees that responsibility holds on past the life of the organization.³³²

UK

- **Economic Crime and Corporate Transparency Act 2023 (ECCTA)**

The ECCTA, which received royal assent on 26 October 2023, presented essential changes to corporate criminal obligation, particularly for money related wrongdoing .

- **Environmental Protection Act 1990**

Companies can be held obligated for natural offenses, including pollution and waste administration breaches..³³³

- **Bribery Act 2010**

The Bribery Act imposes strict obligation on companies for failing to anticipate bribery. Under Section 7, a enterprise can be found

blameworthy if it cannot illustrate that it had satisfactory strategies in put to anticipate bribery by its employees or agents.³³⁴

- **Corporate Manslaughter and Corporate Homicide Act 2007**

This Act permits for the prosecution of organizations for gross negligence leading to death. It sets up a system for holding companies responsible when their conduct falls distant underneath the standard anticipated of a competent organization..³³⁵

- **Health and Safety at Work Act 1974**

Under this Act, companies can be prosecuted for failing to guarantee the wellbeing and security of their employees and others influenced by their operations. This incorporates criminal obligation for breaches of wellbeing and security controls.³³⁶

- **Common Law Principles**

Generally, the identification principle has been a foundation of corporate obligation, where the activities and mental state of people who speak to the "coordinating mindwill" of the organization are ascribed to the organization itself. This guideline has confronted feedback for being troublesome to apply, particularly in huge organizations.

- **Vicarious Liability**

Organizations can moreover be held vicariously at risk for the activities of their workers in case those activities are committed within the course of their business and are planning to advantage the organization. This applies basically to strict obligation offenses.

- **Extraterritorial Jurisdiction**

Certain laws, such as the Bribery Act, permit for the arraignment of UK companies for offenses committed overseas, given there's a adequate association to the UK.

³³¹ J J Brosnahan; S R Miller; R E Foy, *Corporate Criminal Liability*, 26 WUGSLR (1980)

³³² M.V. Suresh Kumar and Dr. C. Lakshmana Rao. *Corporate Criminal Liability*, 5 *KSP* 340 (2018)

³³³ Environment Protection Act.1990, No. 29, Acts of Parliament, 1986 (India)

³³⁴ Bribery Act, 2010 (United Kingdom)

³³⁵ Corporate Manslaughter and Corporate Homicide Act, 2007, No. 19, Acts of Parliament, 2007 (United Kingdom)

³³⁶ Health and Safety at Work Act, 1974, No. 37, Acts of Parliament, 1974 (United Kindom)

IV. CHALLENGES TO CORPORATE CRIMINAL LIABILITY INDIA

In India corporate criminal liability faces a few challenges. One major issue is the uncertainty in legal systems, where laws just like the Companies Act and the Indian Penal Code regularly need clarity with respect to the arraignment of corporations. Moreover, the recognizable proof doctrine which traits risk to the company based on the activities of its senior officials can be tricky, because it may shield lower-level employees from responsibility. Besides, the moderate legal prepare leads to delays in arraignment, which can ruin viable requirement. Debasement and political impact moreover posture noteworthy barriers, regularly coming about in lacking punishments for corporate wrongdoers.³³⁷

UK

The UK faces its own set of challenges with respect to corporate criminal risk. One prominent issue is the trouble in demonstrating mens rea (criminal intent) for corporate entities, as companies cannot have aim within the same way people do. The "identification doctrine" can also be constraining, because it ties risk to the activities of senior administration, possibly permitting lower-level unfortunate behavior to go unpunished. Also, the dependence on Conceded Prosecution Agreements (DPAs) can lead to recognitions of tolerance, as companies may dodge criminal charges through arranged settlements instead of confronting full responsibility in court. The complex administrative environment encourage complicates requirement, as numerous agencies may be included with covering wards.

USA

Within the USA, challenges to corporate criminal risk include issues related to corporate structure and governance. Numerous enterprises work as

complex substances with various subsidiaries, making it troublesome to stick obligation on the parent company for the activities of its members. The "mindful corporate officer" convention permits for the prosecution of corporate officials, but demonstrating direct involvement in wrongdoing can be challenging. Moreover, the tolerance of supplication bargains and settlements frequently comes about in negligible punishments, which can weaken deterrence. The requirement scene is additionally divided, with numerous government and state offices included, driving to conflicting application of laws and changing measures of responsibility.

Conclusion

This research paper highlights the differing approaches to corporate criminal liability in India, the UK, and the USA. In the USA, a strong legal framework allows for extensive corporate accountability, supported by laws like Model Penal Code. The UK has made significant advancements with the Corporate Manslaughter Act and the Bribery Act, focusing on the importance of corporate culture in preventing wrongdoing. Meanwhile, India is progressing but faces challenges in enforcement and clarity of laws. Overall, while each country has made strides in addressing corporate criminality, there is a need for improved governance and international cooperation. Learning from each other's frameworks can enhance accountability and ensure that corporations are held responsible for their actions, fostering a more ethical business environment globally. Future research could further explore the effects of globalization and technology on corporate liability.

³³⁷ ACM LEGAL, <https://www.acmlegal.org/blog/employment-arbitration/> (last visited on (September 29, 2024)