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COMPARATIVE STUDY OF CORPORATE CRIMINAL LIABILITY IN INDIA, UNITED KINGDOM, AND UNITED STATES

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ABSTRACT

The idea of corporate criminal liability (CGL) has been employed to develop a point of focus in regulating corporate malpractices in the modern legal systems that have been characterized by globalisation, technology and complex systems of organisation. In the past criminal law was restricted to natural persons only whereby it is founded on the requirement to have mens rea, which is the intent to be guilty. Corporations are legal persons and they were believed to have no capacity to cultivate such intention. However as the years went by this perception of the old fashioned has been eroded by the increasing realization that corporations are run by people whose actions can be attributed to the organization. The paper gives a comparison study detailing the Indian, United Kingdom and the United States criminal liability on corporates. It explores the conceptual premises of corporate liability such as identification, vicarious liability and corporate culture model. The paper also examines the evolution of the law within such jurisdictions in regard to statutes and landmark court cases.¹⁹⁰³

The US possesses a broad and enforcement-based paradigm based on respondeat superior and the United Kingdom has long adhered to the doctrine of restrictive identification but is moving towards the lean of failure to prevent framework. Having adopted the common law tradition, India has developed its structure primarily through the judicial interpretation, yet, it is not able to enforce it and the clarity of the doctrines. The paper will critically evaluate these strategies and propose a hybrid scheme in integrating the attribution approach, the organizational fault approach and the compliance based liability as a way of facilitating the effectiveness of corporate accountability.¹⁹⁰⁴

GRASP - EDUCATE - EVOLVE

¹⁹⁰³ Arlen, J. (2012). Corporate criminal liability: Theory and evidence. Research Handbook on the Economics of Criminal Law, 144–203.

¹⁹⁰⁴ U.S. Department of Justice. (2020). Justice manual: Principles of federal prosecution of business organizations.

I. Introduction

The development of corporate criminal liability is a paradigm shift criminal jurisprudence, due to the dynamics of the economic activity and the growing role played by the corporations in the society. Business corporations today have become a central force in the world markets, determining global economic policies, influences in the structure of governance and the effects on the environment and social results. Consequently, the likelihood of harming people, especially defrauding, corruption, environmental degradation, and misconduct of finances have made it necessary to establish strong legal frameworks to render them accountable.

In the past, the criminal law has been based on personal culpability. Actus reus and mens rea provided a hardship to pin criminal responsibility to corporations as they do not have a physical presence and being. The courts of the day conformed to the perception that corporations were incapable of committing crime, at least crimes that were intentional. But, in the growth of corporate activity that marked the industrial revolution and beyond, this stance became more and more unsustainable. The failures of the current legal systems to deal with corporate malpractice were made famous with high profile corporate scandals and disasters.¹⁹⁰⁵

In reaction to this, modern courts have evolved theories to allow corporations to be charged criminally via their agents. These doctrines however differ greatly in jurisdictions as they represent various legal traditions, policy decisions, and enforcement priorities. The United States has a wide and practical policy, which focuses on the deterrence by imposing broad liability. The United Kingdom, with its common law traditions, has always been more conservative, basing itself on the identification doctrine but slowly integrating statutory novelties. Having borrowed the English law, India

has made its own framework based on judicial interpretation, which is the reason why it has a hybrid model. This deviation poses some critical issues regarding the effectiveness, fairness, and future projection of corporate criminal liability. In this paper, the author attempts to respond to them by providing a thorough comparison and contrast between their foundational doctrines and practical implications.¹⁹⁰⁶

II. Theoretical Basics of Criminal Liability of the Corporation

The theoretical background of the liability of corporations to a crime lies in the problem of balancing artificiality of corporations to the criminal law principles. The doctrine of separate legal personality, which was put down in *Salomon v. Salomon and Co.Ltd.* acknowledges the corporations as separate legal entities. Although this doctrine enables an easier economic activity through the limitation of shareholder liability, it poses problems when it comes to assigning criminal responsibility. To help us overcome such challenges, there are a number of attribution theories that are developed.¹⁹⁰⁷

The identification doctrine is the attribution of the acts and mental state of some key persons – usually senior management – to the corporation. These people are regarded as the directing mind and will of the company. Although this is a sure way of making the liabilities attached to the decision-making authority, it is naturally constrained in large companies in which the authority is decentralized. Vicarious liability doctrine, on the contrary, takes a more liberal approach and makes corporations responsible of the actions committed by the employees in the course of the employment. In this model, emphasis is put on enforcement and deterrence however, the aspect of fairness is questioned because the model could make the corporation liable even

¹⁹⁰⁵ Ashworth, A. (2018). *Principles of criminal law* (9th ed.). Oxford University Press.

¹⁹⁰⁶ Wells, C. (2001). *Corporations and criminal responsibility* (2nd ed.). Oxford University Press.

¹⁹⁰⁷ Wells, C., & Elias, J. (2005). Catching the conscience of the king: Corporate players on the international stage. *Criminal Law Review*, 2, 126–140.

when they have done something to stop the bad act.¹⁹⁰⁸

The alter ego theory works under the assumption that some people perform well as the corporation. Their actions and will are regarded as the actions and the will of the corporate itself. The theory is more applicable in courts such as India where it has been used by courts to prove corporate mens rea. However, in the recent past, the corporate culture model has come out as an advanced mode that pays attention to organizational practices, policies, and culture. This model appreciates that corporate malpractices are usually systemic and not an individual action. It places the emphasis on the role of the organization and not on the personal responsibility, which is consistent with the legal liability and the new principles of corporate governance.

III. Criminal Liability of corporations in the United States

The United States takes the broadest approach to the liability of corporations, based on the doctrine of respondeat superior. The doctrine was developed in *New York Central and Hudson River Railroad Co v. United States* and provides a chance to attribute criminal liability to corporations because their employees did it. An important characteristic of this method is breadth. The imposition of liability is possible even where the employee is acting against the corporate policy as long as the act is within the employment scope and is aimed at benefiting the corporation. This makes the level of accountability high but there are concerns of overreach.

The American system is one that has harsh enforcement measures. The department of justice is highly involved in criminalization of corporate crimes, which usually encounters the use of Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs). The mechanisms allow corporations to escape conviction and be brought to book in terms of

imposing fines, compliance and monitoring. But the strategy has been criticized as fostering a culture of settling cases, with corporations choosing to compromise instead of fighting the charges. This could deter the establishment of legal precedents and lower transparency. Moreover, fines imposed tend to impact shareholders and employees instead of the perpetrators of the vice.¹⁹⁰⁹

IV. Evolution of Corporate Criminal Liability: A Historical Perspective

The evolution of the corporate criminal liability is a symptom of the larger change of the legal system in reaction to industrialization and globalization. The early common law considered corporations as artificial persons unable to have intent or moral blameworthiness. This standpoint was based on the fact that criminal liability necessitated both actus reus and mens rea which were traditionally attributed to natural human beings. In the nineteenth century, the courts started admitting that companies were liable to regulatory and commonwealth crimes. The crimes, which usually touched upon safety of people, did not presuppose the demonstration of intent, so the courts could result in imposing liabilities without overcoming the conceptual challenge of determining the presence of mens rea. Nevertheless, this method was weak and could not deal with serious economic crimes.¹⁹¹⁰

The twentieth century was an important turning point. The growth of corporate activity and the further sophistication of organizational structures were the reasons that required a more solid legal answer. This contributed to the emergence of the respondeat superior doctrine in the United States that expanded the liability considerably. The United Kingdom, on the other hand, embraced the identification doctrine that attempted to maintain the conventional need of the mens rea and make it applicable in a corporate context. India, having inherited the

¹⁹⁰⁸ Braithwaite, J. (1984). *Corporate crime in the pharmaceutical industry*. Routledge & Kegan Paul.

¹⁹⁰⁹ Stein, S. (2017). Corporate criminal liability in India: A critical analysis. *Indian Journal of Corporate Law*, 9(2), 115–140.

¹⁹¹⁰ Clarke, J. (2016). Corporate criminal liability: A comparative study of the US and UK models. *Journal of Business Law*, 5, 423–445.

principles of common law, originally followed the restrictive English but also over time developed by adapting its principles through judicial interpretation. One of the decisive steps in this development is that of moving away to acknowledging corporate mens rea. Generally, the historical pattern of corporate criminal liability is characterized by a slow transformation of formalism to pragmatism based on the necessity to respond to the real-life harms.¹⁹¹¹

V. Part of Mens Rea in Criminal Liability in the company

The establishment of the concept of mens rea is taking the center stage in criminal law although its application to company is highly contested. The attribution of intent is therefore not made in the empirical reality, but in legal constructs since corporations are non-conscious. In the US, the doctrine of vicarious liability can be said to dilute the requirement of mens rea. Any action performed by an employee within the confines of an employment can be attributed to the corporation, no matter what the position of the employee happens to be. This is the one that has the greatest emphasis on the actions of enforcement, but creates issues of fairness because in some cases, the organization may not be at fault but the actions of the employee can create liability.¹⁹¹²

The United Kingdom follows a more restrictive method by use of identification doctrine whereby, the mens rea can only be attributed in case it can be traced to senior management. Even though this preserves the conceptual purity of criminal law, it becomes practically difficult to prosecute large corporations where the decision-making is decentralized. Indian strategy may be termed as a compromise. The court by the case of Iridium India Telecom Ltd. v. Motorola Inc. among other related cases has determined that the judicial system may determine that the corporate may have the mens rea through the presence of controlling

minds of the corporation. However, the statutory framework that results into ambiguity in the doctrines is lacking.

The growing acceptance of the notion of organizational fault is an attempt to avoid individualistic notions of mens rea. This is done to align the criminal liability with the fact of modern corporate governance through prioritizing corporate culture, compliance system, and internal policies.¹⁹¹³

VI. Mechanisms and Institutions of Enforcement

The corporate criminal liability is not only as efficient as the law doctrines but depends on the ability to enforce mechanisms. On comparing the institutional capacity and prosecutors tactics, it is possible to observe that there exist severe differences between the two in the context of jurisdiction. United States is very aggressive in enforcing it. The department of justice along with the regulatory agencies such as Securities and Exchange Commission play a critical role in the investigations and prosecution of corporate crime. Non-Prosecution Agreements (NPAs), Deferred Prosecution Agreements (DPAs) allow the flexibility of application allowing the authorities to seek cooperation without necessarily putting a defendant on trial.¹⁹¹⁴

The same trend has been observed in the United Kingdom whereby DPAs have been established under the Crime and Courts Act, 2013. However, it is not as violently imposed as in the United States. Serious Fraud Office (SFO) could play an important role, and resource inadequacy and complexity in the procedures are weaknesses to its performance. India possesses comparatively weak enforcement machinery. The Central Bureau of Investigation and the Enforcement Directorate among other organs also have their role to play in

¹⁹¹³ Ramasastry, A. (2002). Corporate complicity: From Nuremberg to Rangoon—An examination of forced labor cases and their impact on the liability of multinational corporations. *Berkeley Journal of International Law*, 20(1), 91–159.

¹⁹¹⁴ Coffee, J. C. (1981). “No soul to damn: No body to kick”: An unscandalized inquiry into the problem of corporate punishment. *Michigan Law Review*, 79(3), 386–459.

¹⁹¹¹ Slapper, G., & Tombs, S. (1999). *Corporate crime*. Longman.

¹⁹¹² Simester, A. P., & Sullivan, G. R. (2020). *Criminal law: Theory and doctrine* (7th ed.). Hart Publishing.

investigating corporate crimes. This kind of fragmentation is normally associated with delays and coordination issues. Besides, the lack of special expertise and facilities is also a contributing factor to poor enforcement.

It is through such variations that the practical impact of corporate criminal liability in terms of relevance of the institutional capacity can be seen. The law should be thus reformed and the enforcement facilities invested on.¹⁹¹⁵

VII. Effects of Corporate Criminal Liability to Corporate Governance

The liability of the corporate criminal may have a substantial effect on the corporate governance, determining the way in which companies organize their internal control and compliance systems. Risk assessment, employee training, and internal audits are some of the preventive measures that corporations use to curb criminal sanctions. In some countries like the United States and the United Kingdom, the focus on compliance programs has resulted in the emergence of advanced governance systems. In the UK Bribery Act, the so-called adequate procedures defense, the corporate law can be used to motivate corporations to have strong anti-corruption policies.

But the effects of corporate criminal liability are not entirely good. This high liability can result in defensive corporate conduct, whereby organizations focus on doing what is right rather than being innovative. Moreover, often the financial costs of penalties are not paid by those who committed the misconduct, but by those who are shareholders. Corporate criminal liability in India has a low impact in governance because of the ineffective enforcement. However, recent regulatory trends and globalization trend are expected to improve the position of compliance in making corporate decisions.

VIII. Challenges in Prosecuting Multinational Corporations

Globalization of corporate action poses very serious challenge to the implementation of criminal liability. The biggest challenge is that multinational corporations will be operating in various jurisdictions which have a tendency of using the differences in legal systems to reduce their liabilities. It can be tricky to decide which country is going to prosecute, especially in cases where crimes are of a cross-border nature. Also, the dissimilarity of the evidentiary norms and procedural principles makes it more difficult to collaborate internationally.¹⁹¹⁶

Arbitrage in regulations is another problem. Companies can also transfer operations to others where the enforcement mechanism is not as strong and, therefore, the effectiveness of the stricter regimes is subverted. This shows the necessity to have more harmonization of the legal standards and international cooperation. International organizations, including the OECD, have a very important role to play in tackling these challenges. Efforts to fight bribery and enhance corporate responsibilities have led to creation of international guidelines. Nevertheless, the implementation is still uneven, as it shows the differences in the political will and the institutional capacity.

IX. United Kingdom Corporate Criminal Liability

The attitude of the United Kingdom is an indication of a slow move towards old common law principles to new statutory principles. The corner stone in corporate liability is the identification doctrine as explained in *Tesco Supermarkets Ltd. v. Nattrass*. Lately, however, its shortcomings have been more evident in the environment of big, complex organizations. These limitations have been endeavored by statutory reforms. Corporate Manslaughter and Corporate Homicide Act, 2007 shifted the focus of blame to the management failures and this represented the beginning of the organizational

¹⁹¹⁵ Pinto, A., & Evans, D. (2013). Corporate criminal liability. *American Criminal Law Review*, 50(2), 321–372.

¹⁹¹⁶ Ormerod, D., & Taylor, K. (2018). *Smith, Hogan, and Ormerod's criminal law* (15th ed.). Oxford University Press.

blame. The Bribery Act, 2010 also extended the corporate liability into the so-called failure to prevent offense where corporations must prove that they have put sufficient preventive measures in place.¹⁹¹⁷

Meridian Global Funds v. Securities Commission is an important concept in terms of doctrine, it provides some latitude in attribution and the courts left to decide what actions to attribute against the corporation depending upon the context of the statute. With these developments, there are still challenges. In most instances, the idea of identification limits the liability and the failure to prevent model of corporate crime has not yet been applied to every facet of fraud.

X. Corporate Criminal Liability India

The Indian system of covering corporate criminal liability is an evolutionary response to judicial interpretation and legislation. Initial resistance to imposing liability has been overridden by a more liberal approach with leading decisions. In Standard Chartered Bank v. The Supreme Court solved the question on sentencing under the directorate of Enforcement by determining that even upon imposing imprisonment, corporations may be fined. This eliminated a major barrier to prosecution of corporations.

This case, the Iridium India Telecom Ltd. v. Motorola Inc., became a turning point because the concept of corporate mens rea was openly identified. The Court took the theory of alter ego, which states that the intention of the key managerial staff can be ascribed to the corporation. But in the case of Sunil Bharti Mittal v. CBI, the Court made clear that corporate liability is not necessarily imposed on individuals. This difference plays an imperative role in avoiding unfairness and misuse of criminal law. Amidst these changes, India still has a lot of problems such as laxity, absence of

special investigational skills, and slowness in the court proceedings.¹⁹¹⁸

XI. Comparative Analysis

Comparative analysis of the three jurisdictions indicates that the jurisdictions have great variations in both doctrine and practice. The United States uses a broad and enforcement-oriented strategy where deterrence is used based on expansive liability. The United Kingdom though traditionally restrictive is deviating towards a more balanced system that embraces aspects of organizational liability. India, however, is in the middle of the road, and its framework is still in the process of development.

This difference is especially obvious in the mens rea treatment. The intent is easy to attribute to the acts of workers in the United States. In the UK, it is restricted to the directing mind whereas in India, it is obtained via judicial interpretation. Likewise, the enforcement mechanisms are quite different, and the United States is the most active in prosecution.¹⁹¹⁹

XII. Critical Evaluation

Through the comparative analysis, there are a number of structural concerns that still have an impact on the effectiveness and fairness of corporate criminal liability across jurisdictions. The United States model, though generally considered the most formidable with respect to enforcement, is highly questionable with respect to over-criminalization. Vicarious liability as is extensively applied by the doctrine of respondeat superior permits corporations to be responsible of the acts of employees irrespective of their ranking in the organizational structure. This deterrence method is more effective in deterring and making the prosecution easier, but can lead to inappropriate punishment especially where the misconduct is not in the corporate policy or where the corporate has made efforts to keep

¹⁹¹⁷ Dharmapala, D. (2009). Corporate criminal liability: Theory and evidence. *Journal of Law and Economics*, 52(4), 655–685.

¹⁹¹⁸ OECD. (2014). Liability of legal persons for foreign bribery: A stocktaking report. Organisation for Economic Co-operation and Development.

¹⁹¹⁹ Fisse, B., & Braithwaite, J. (1993). *Corporations, crime and accountability*. Cambridge University Press.

the misconduct at bay. In addition, excessive dependence on financial sanctions tends to affect the shareholders and employees but not the actual culprits and this is where distributive fairness is questioned as well as the very real deterrent effect of such penalties.

Even after massive statutory reforms, the United Kingdom model is still limited based on the identification doctrine. The doctrine places significant evidentiary burdens on the prosecution by compelling it to prove that the criminal act was carried out by a person who is the directing mind and will of the corporation by accurately showing such that they are a person, which is not always straightforward particularly in large and complex organizations in which the decision-making process is decentralized. Even though it has undergone changes like the failure to prevent offenses in legislation which is a significant step towards organizational liability, its coverage is easy to specific areas of economic crimes. As a result, the UK framework continues to find it difficult to bring a degree of uniformity on accountability in relation to various forms of corporate misconduct.¹⁹²⁰

Corporate criminal liability legal regime in India is conceptually advanced but limited in practice. The court cases have been instrumental in identifying corporate mens rea and broadening the liability. Nevertheless, the lack of a coherent statutory framework, as well as effective enforcement measures and the delay in the procedures, make the efficacy of these legal principles very low. The disjuncture between dogmatism and practice has been one of the key problems.

One of the major problems that cut across all three jurisdictions is the problem of attributing mens rea to corporations. The decision-making process in a corporation is a process characterized by the plurality of actors, with multiple levels of operation, within the company. Such spreading of responsibility makes it difficult to find one person whose will can be

attributed to the corporation. Consequently, the concept of the liability model, which is based on personal responsibility, is not always applicable to the nature of the contemporary corporate activities. This difficulty highlights the increased necessity to move towards systemic failures, corporate culture, and compliance failures-based organizational models of liability. This would be a better and more precise ground of assigning blame within complex corporate settings.

XIII. New Trends and Future

As of late, it seems as though the world is moving towards a purportedly more pragmatic and future-oriented approach to the regulation of corporate behavior; that is, towards compliance-oriented and organizational models of corporate criminal liability. The conventional teachings, which were quite significant in holding the corporations responsible in the individual way, are gradually being complemented-or even substituted-by the models that focus on prevention, risk management and corporate accountability. Of particular significance in this respect is the introduction of the so-called failure to prevent offense in the United Kingdom. This model redirects the emphasis of the reactive punishment on proactive compliance by putting the burden upon corporations to prove that they had proper procedures in place to avert the misconduct. It motivates corporations to introduce ethical practices into their organisation framework and to create strong internal controls, training initiatives and supervisory systems.¹⁹²¹

This has been supported by the fact that there is an increased focus on corporate governance and Environmental, Social, and Governance (ESG) standards. The world of the modern corporations is gradually being rated not only by the financial performance realized but also by the social and ethical impact. Regulatory authorities, investors and other stakeholders

¹⁹²⁰ Gobert, J. (1994). Corporate criminality: Four models of fault. *Legal Studies*, 14(3), 393–414.

¹⁹²¹ Gobert, J., & Punch, M. (2003). *Rethinking corporate crime*. Cambridge University Press.

now require companies to be transparent, accountable and sustainable in their activities. The corporate criminal liability is, therefore, no more viewed as an action that is punitive but also as a mechanism to promote acceptable business conduct. Corporate governance now includes whistleblower protection, compliance programs, and board oversight, and reflects more broadly a trend towards organization responsibility.

At the same time, the very pace of the technological development, particularly, the introduction of AI and machine learning, has resulted in a range of issues to the legal landscape. The work of the algorithmic systems, which do not imply the human intervention to a considerable extent, increasingly affects (or performs) the role of the corporate decisions in the sphere of the corporate process. This raises some fundamental attribution and responsibility questions: when an AI-managed system is damaging, it is difficult to tell one to whom the causation or monitoring belongs to the corporation. Conventional notions of mens rea are poorly suited to deal with such situations because they depend on human cognition and intent.

Such trends encourage the necessity of law to change as the technological and organizational reality evolves. The future theories of corporate criminal responsibility should be able to include the flexibility of attribution that takes into consideration decentralization of decision making and technological independence. This can include redefining fault as system design errors, failure to manage oversight or risk management failures and not persons. As a matter of fact, the future development of corporate criminal liability will be determined by the capacity of the legal systems to reconcile innovation and responsibility so that the new technologies do not open the loopholes in terms of responsibility and yet facilitates economic and technological development.¹⁹²²

XIV. Recommendations

Comparative examination with the corporate criminal liability in India, the United Kingdom and the United States shows that although the three jurisdictions have come up with a way to handle corporate wrongdoing, there still exists a lot of gaps in the implementation of effective accountability. Based on this, specific reforms are required to enhance the law enforcement framework of every jurisdiction with the introduction of a more uniform approach worldwide. India has a strong necessity to abandon the existing tradition of judicial interpretation into a more codified statutory framework. Introducing failure to prevent offences under the UK Bribery Act, 2010 would be one of the best reforms to put in place. These provisions would not only focus on establishing whether an individual acted with malice, but also determine whether the corporation had proper procedures that were put in place to stop the vice.¹⁹²³

This would not only make them more accountable, but it would also motivate the corporations to have strong compliance mechanisms. Also, it is important to enhance investigative agencies. The lack of resources, technical capability and coordination are seen to be the challenges that several of the enforcement bodies in India have to grapple with and yet fail to prosecute. The solution to the issue of low conviction rates would therefore be institutional capacity-building as well as procedural reforms such as quicker trials and enhanced evidence-collector methods. Though a lot has been done in the United Kingdom in regard to statutory innovations, the limitations of the identification doctrine still need to be dealt with by having more reforms. Enhancement of the organizational liability beyond particular offences would provide that corporations will not escape liability due to the fact that the process of making decisions is decentralized.

¹⁹²² Horder, J. (2016). Criminal liability of corporations: The UK perspective. *Modern Law Review*, 79(6), 1029–1050.

¹⁹²³ Husak, D. (2010). The costs to criminalize. *Criminal Law and Philosophy*, 4(2), 207–225.

The still existing dependence on locating a directing mind is becoming more and more out of date when it comes to large multinational corporations. Hence, the impact of the corporate criminal law would be improved by the wider application of the failure to prevent model to a greater number of crimes in the economy. This would bring the liability closer to the practices of corporate governance and would give more power to prevention than punishment after the fact.

There is no problem of absence of liability in the United States, but that is excessively broad. Though an effective doctrine in making sure that the law is followed, the doctrine of vicarious liability tends to over-criminalize in the sense that the corporations are on the hook when the criminal acts concerned might not be in line with the corporate policy or intent. As a result, this method should be re-calibrated with the introduction of measures that restrict the liability in situations when corporations have proven to be taking due steps to curb wrongdoings. Meanwhile, individual accountability should be put into a higher priority. Enforcement by prosecuting of responsible executives as opposed to imposing corporate fines as the primary method of deterrence would, on top of other issues, improve the fairness concern.¹⁹²⁴

Law In the transnational character of corporate activity is growing at the global level, thus a more harmonization of legal standards is required. The different approaches to regulations in various jurisdictions lead to opportunities to undertake regulatory arbitrage and corporations take advantage of the weaker legal frameworks. The challenge demands international collaboration such as sharing information and joint enforcement to overcome it. In addition, encouraging an ethical corporate culture must be one of the key focuses of the corporate criminal liability regimes. Compliance with the law is not enough; companies have to

encompass ethics standards that will help them to make decisions on all levels. It can be accomplished with the help of a mixture of regulatory incentives, changes to the corporate governance, and involvement of stakeholders.¹⁹²⁵

To sum up, a fair and progressive outlook to the corporate criminal liability should incorporate legal reform, institutional fortification, and ethics governance. This kind of structure would both improve accountability and help in responsible and sustainable corporate behavior.¹⁹²⁶

XV. Conclusion

Corporate criminal liability has developed as a hypothetical impossibility to a practical requirement of the contemporary juridical systems. Historically, the corporations were deemed unable to commit crimes since they were artificial and the traditional criteria of mens rea in criminal law could not be fulfilled by corporations. Nevertheless, the blistering development of corporate activity and the growth of the complexity of organizational structure necessitated the need to make corporations liable in misconduct that they have conducted. Corporate activities today are associated with extensive implications and impact not only the economic stability but also the social well-being, environmental sustainability and public confidence. Consequently, the establishment of the corporate criminal liability has become a paradigm shift in the criminal jurisprudence, which corresponds to the legal principles in the modern realities.¹⁹²⁷

Comparative analysis of the India, the United Kingdom and the United States have shown that all jurisdictions have established their own model of handling corporate misconduct but none of them can offer a fully satisfactory and comprehensive solution. The United States follows a broad model by vicarious liability that

¹⁹²⁴ Khanna, V. S. (1996). Corporate criminal liability: What purpose does it serve? *Harvard Law Review*, 109(7), 1477–1534.

¹⁹²⁵ Laufer, W. S. (2006). *Corporate bodies and guilty minds: The failure of corporate criminal liability*. University of Chicago Press.

¹⁹²⁶ Kraakman, R. (1984). Corporate liability strategies and the costs of legal controls. *Yale Law Journal*, 93(5), 857–898.

¹⁹²⁷ Ministry of Corporate Affairs. (2019). Report of the high-level committee on corporate social responsibility. Government of India.

enforces and deters, yet there are usually issues of equity and excessive criminalization. On the other hand, the United Kingdom has been used to the doctrine of identification that offers a more suitable relationship between the responsibility and top management but has fallen short with respect to large and sophisticated corporations. Although there have been statutory innovations in the recent past such as the failure to prevent model, there are still a variety of limitations evident. The system of judicial innovation has allowed India to evolve under the effects of the principles of common law and it has managed to come up with a hybrid system, which is quite content with a corporate mens rea but suffers other limitations of the doctrines. However, enforcement problems, consistency and ability of the institution remain to undermine its performance.

After these failure points, corporate criminal liability in the future is the improvement of a balanced and harmonized system that will take advantage of the strong aspects of the existing models. An amalgamation between the elements of vicarious liability, organizational fault and compliance based systems is a good alternative. With such a model in place, such enforcement would become practically feasible and the issue of imposing liability would not be arbitrarily and disproportionately. It would also compel corporations to engage in proactive compliance practice therefore deterring bad practices rather than tolerance of a bad practice after it occurs.¹⁹²⁸

Last but not least, the corporate criminal liability should be geared towards providing the appropriate balance between deterrence and justice. Even though society must ensure that business entities are accountable in case of any wrongdoing, the law must also provide a mechanism of safeguarding against unreasonable or unfair liability, which might cause disruption in a normal economic

operation. A more subtle and flexible approach with strong enforcement instruments and ethical corporate management is necessitated by the modern business world and is necessary to ensure that it is accountable and sustainable simultaneously.

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