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An analytical study on Corporate Criminal Liability: Comparative study of India and USA

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ABSTRACT

Due to the rise in industrialization and globalisation, big scale companies are emerging worldwide and have established a dominating position during the last two centuries. Multinational Corporations now have a significant impact in almost every aspect of human existence. It is apparent that natural individuals commit crime because they are physically and intellectually capable of doing so, but a corporation cannot, even if it is considered a person under the law. England, United States, And Canada which are also known as common law countries were among the first to attempt to establish corporate criminal responsibility. Despite an earlier reluctance to penalise companies, English courts began to recognise corporate criminal responsibility in 1842, when a company was penalised for failing to carry out a statutory obligation. But due to many reasons there was a lot of reluctance in recognising corporate criminal liability. The current position is that a company can be guilty of any crime except those that require a certain level of intention by the accused. This is frequently true in situations of economic offences such as the Foreign Exchange Act, the Food Adulteration Act, and so on. Companies were used to held liable for criminal offences under common law with specific exclusions such as theft, burglary, abduction, homicide, assault. There was no requirement for a mental state in this regard, and only fine used to be imposed on corporations as fine. Section 305 of the Criminal Procedure Code provides the procedure for dealing with the accused company, however the tough subject of imposing punishment when the legislation mandates a minimum time of imprisonment as penalty arises. The present research paper attempts a comparative analysis regarding the criminal liability of corporate entities in USA and India.

I. INTRODUCTION

(A) Overview of the Research

Due to the rise in industrialization and globalisation, big scale companies are emerging worldwide and have established a dominating position during the last two centuries.

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Multinational Corporations now have a significant impact in almost every aspect of human existence. Companies have now become an essential element of our community and environment, and as these corporate entities have grown, they have now become crucial players in the economy. Large MNCs have expanded to dominate both domestic and international economic sectors. Corporations operate independently, have their own existence, have a separate legal entity, and are different from its members.², yet this is insufficient to hold them accountable and penalize them. It is apparent that natural individuals commit crime because they are physically and intellectually capable of doing so, but a corporation cannot, even if it is considered a person under the law. England, United States, And Canada which are also known as common law countries were among the first to attempt to establish corporate criminal responsibility. Despite an earlier reluctance to penalise companies, English courts began to recognise corporate criminal responsibility in 1842, when a company was penalised for failing to carry out a statutory obligation. But due to many reasons there was a lot of reluctance in recognising corporate criminal liability. Those reasons include the following

1. Under the notion of ultra vires, the company was deemed a legal fiction and they can only perform those actions that were clearly given and written in the company's charter.
2. The second reason is that how is it possible that a corporate entity be physically dragged and taken to the court and penalised?

These are some of the strands that are relevant even in the present scenario. Although the laws related to corporate criminal liability has grown in many areas, global recognition of criminal liability has not reached its pinnacle.

The contenders who were rejecting corporate criminal liability highlighted numerous issues and objections which includes, lack of required mens rea and acknowledgment of Company's separate legal entity. There was a problematic position of penalising companies due to lack of adequate punishments that can be imposed to corporate entities. Later, the English courts adopted to the theory of respond eat superiors, or vicarious responsibility, under which an employee's actions are imputed on the corporate entity. But even vicarious Liability rule was applied for few offences and then was substituted by the theory of identification. The procedure was different in USA. Instead of indirectly finding the company responsible, the federal courts used the idea of vicarious responsibility. While the courts first applied this idea exclusively in those cases where there was no requirement of mens rea, subsequent decisions expanded to include this category of cases and offences as well. This was a significant shift from the position

² *Salomon v. Salomon & Co.*, (1897AC 22)

held by English courts.

In India, commercial scandals are having a negative impact. However, with the growth and development that is taking place in India, companies are not deemed legally responsible, and if punishments are enforced, they are limited to fines as it was held in the case *Velliappa textiles*³ that a company cannot be punished for those crimes which requires mandatory imprisonment.

As a general rule, Criminal Accountability is associated with actions that violate Penal Law, i.e., liability cannot be imposed for such conduct or omissions unless they are prohibited and penalised by Penal Law of the specific country. *Actus non facit reum, nisi mens sit rea* is the Latin principle that underlies the fundamental basis of criminal responsibility. This implies that in order to hold someone accountable, it must be proven that they committed an illegal act or omission with the intention or guilty state of mind which was prohibited by law.

The current position is that a company can be guilty of any crime except those that require a certain level of intention by the accused⁴. This is frequently true in situations of economic offences such as the Foreign Exchange Act, the Food Adulteration Act, and so on. Section 305 of the Criminal Procedure Code provides the procedure for dealing with the accused company, however the tough subject of imposing punishment when the legislation mandates a minimum time of imprisonment as penalty arises.

The present research attempts a comparative analysis regarding the criminal liability of corporate entities in USA and India. Companies were used to held liable for criminal offences under common law with specific exclusions such as theft, burglary, abduction, homicide, assault. There was no requirement for a mental state in this regard, and only fine used to be imposed on corporations as fine.

(B) Objectives of the Study

1. To research that whether a corporate entity is capable of committing a crime and if yes, then how a company may be held criminally liable under the law.
2. To research and analyse various laws and legislations governing corporate criminal Liability in India and USA.
3. To research about the different types of crimes that may be accredited to a corporation.

³ Assistant Commissioner, Bangalore and ors V. Velliappa Textiles Ltd and ors, AIR 2004 SC 86.

⁴ Standard Chartered Bank v. Director of Enforcement, AIR 2005 SC 2622, (2005)4 SCC 530.

4. To analyse the extent of criminal liability of multinational corporations and to determine the consequences.
5. To analyse the judicial trend with respect to criminal liability of corporate entities in USA and India.

(C) Hypothesis of the Research

1. Since corporate entities are not natural persons, corporate entities are immune from criminal prosecution and are not capable of committing crimes.
2. The corporation is not held criminally responsible primarily because it lacks the required mens rea.
3. Corporate crimes are caused by the actions and behaviours of one or more human individuals and do not immediately arise from the corporate entity.
4. There is a need to define corporate crimes, and to assess corporate criminal liability and impose legal penalties with companies as wrongdoers in mind. The criminal justice system should now deal with growing circumstances in which corporations are increasingly affecting people and society as a whole through malicious acts which includes white collar crimes, organised crimes etc
5. To deal with corporate criminal responsibility in India and USA under the current legal and economic framework, a unique procedural method is essential and specific policies are required.

(D) Research Questions

1. Is it possible for corporations to commit crimes? If yes, what is the nature of such offences?
2. What are the essential requirements for determining corporate criminal liability?
3. What are the various laws regulating the criminal liability of corporate entities and what are the most recent and significant developments in establishing the criminal liability of corporate entities in India and USA.?
4. What are the judicial trends with respect to corporate criminal liability in USA and India?
5. What steps in the present scenario must be taken to address the issue of criminal liability of corporate entities?

(E) Research Methodology

The research methodology which has been used in the present research is doctrinal. The word doctrinal has been derived from doctrinal. The Latin term “Doctrina” which signifies teaching, knowledge or learning. Doctrinal research focuses on legal propositions and theories. It deals with doing an analytical study of current laws, related cases, and reliable literature on a given subject. The study will be focused on secondary sources. Secondary sources for the topic include scholarly books, research reports, journals, dissertations, textbooks, and relevant websites. These secondary sources have been examined for the present research to analyse about the corporate criminal Liability. The present research also entails the comparative analysis of developments in India and USA regarding the same topic. Reviewing case laws and case studies would be the very important part of present research.

(F) Literature Review

- Avtar Singh, Company law, (14th Ed)

The author of this book addressed how, as a body corporate, a corporation can both sue and be sued in its own name. A company may file a criminal complaint, but it must be handled by an individual. The complaint must be capable of being rejected due to the absence of the representative in the same manner as an individual complaint is capable of being dismissed if the complainant is absent.

The author of this book correctly pin points that, while the directors and officials of the company's business are natural people as a group, the corporate entity is unique from its members since it is entitled to sue individuals and others can sue the company.

- Corporations and Criminal Responsibility by Celia Wells (1993)

In this book, the author argued on the proper basis for criminal conduct of companies, where two distinct components developed. One-line seeks to equate the company with the natural person, seeking to discover corporate characteristics that may be linked to the core of individual accountability. And the other takes use of the distinctions between individuals and group membership.

- K.R.S Sampath, Law of Corporate Governance, (New Delhi: Snow White Publication).

The author in this well written book concentrated on vicarious liability and how it has been used under environmental legislations regulations. According to environmental rules and legislation, if a corporation does an illegal act, it is made responsible for that work. As corporations commit the bulk of environmental crimes, imposing liability on them is crucial:

just punishing corporate officials for such offences would not be enough to discourage the corporation. By using the respondent superior rule, the corporate entity is held vicariously liable for the conduct of its workers in the due course of their employment and for the benefits of the company.

- Corporate Criminal Liability as revisited by the Standard Chartered Bank decision by M Sivaraman

There can be no two opinions that companies, like natural persons, should be punished severally for grave and serious offences and should not be allowed to escape punishments simply because they cannot be imprisoned, but when it remains within the realm, command, and competence of the law, this would not logically follow that the courts are there to move in and supply the same. Thus, in the humble opinion of this author, and with all due respect to their Lordships, it appears that the courts in the Standard Chartered Bank's case overreached the problem by reading into the laws a discretion that is not legislatively granted to the courts. The author argues in this piece that companies should be penalised in conformity with current regulations, and he criticises the court's discretion, which is not authorised and permitted by the legislation.

- Vol.3, Kumar Askand Pandey, "Corporate Criminal Liability in India some reflections", Corporate Law Cases.

The author has suggested in this article that the Parliament of India be conscious of the scandals and issues surrounding corporate criminal liability; nevertheless, even present laws and regulations involving economic offences do not contain specific provisions to facilitate the imposition of penal liability on corporations, and this needs to be addressed immediately. There appears to be little doubt that the concept of criminal liability of companies is well established in India, but the debate between legislative and judicial functions looks to be far from over, especially after the Supreme Court's ruling in the Standard Chartered Bank case. As a result, the author has proposed the appropriate modifications in the criminal procedure code which can be made in this respect.

- Andrew Weissmann, "A New Approach to Corporate Criminal Liability", American Criminal Law Review, Vol. 44, No. 4, 2007

Through this article, the author examines the rules established by the American Congress and the American Supreme Court for dealing with corporate criminal liability. He examines the theory of corporate criminal liability and concludes that the present framework of state laws

has failed to address the doctrine of corporate criminal liability since it casts all corporations in the same light.

- **Vol.1, Abhishek Anand, “Holding Corporations Directly Responsible for Their Criminal acts: an Argument”, Company law Journal 2004.**

In general, the evolution of law in the sphere of criminal liability of companies is based on indirectly holding a corporate entity liable for its criminal wrongs. As a result, companies must be held personally responsible for their illegal activities. therefore, a discussion began over direct corporate liability in the period of neo-realism, in which the economy is the primary power and big MNCs are the key participants. In his piece, the author argues that the corporation should be held personally accountable for its actions. The author's reasonings are impressive.

- **Brickey, K.F., “Corporate Criminal Liability”, 2 ed, Clark Boardman Callaghan, 2011**

This book is a remarkable attempt to analyse the idea of corporate criminal liability via numerous case studies and important federal legislation of USA such as RICCO, CERCLA, the RLRA, Foreign Concept Practices Act, and so on. The book addresses crimes like as fraud, forgery, misleading claims, bribery, and tax crimes, and what not. Author also examines the ways for controlling such activities and minimising company criminal culpability.

- **Vol.1 issue 2 Angira Singhvi, “Corporate crime and sentencing in India: Required amendments in law”, International Journal of criminal justice sciences, 2006**

Criminal liability of corporate entities is predicated on the idea that corporations are capable of committing crimes. However, Indian legislation are out of step with these changes, and the judiciary will only levy a fine. As a result, modifications should be implemented as quickly as feasible by the legislature. According to the author, because the judiciary lacks discretion, it should not levy fines in place of punishment, and so legislative change is necessary in this regard.

- **Vol.27 1&2, 2003, Ratna R Bharamgoudar, “Corporate criminal liability: an overview”, Cochin University Law Review.**

In this article, the author examines that although companies can be considered "persons" in some legal contexts, but they cannot be easily considered criminals. The law has been hesitant to recognise criminal responsibility for business entities. The author of this article correctly

said that Indian laws are hesitant to identify corporate entities as criminals, yet the Indian judiciary has acknowledged corporations as criminals.

II. CONCEPTUAL ANALYSIS OF CORPORATE CRIMINAL LIABILITY

The question of the need for a corporate criminal liability notion have arisen throughout time. This question does not have a one-size-fits-all answer. Before reaching a decision on corporate criminal culpability, it must be studied and analysed in each case. Opponents of this idea feel that the corporate criminal liability paradigm is insufficient for two reasons:

To begin, they believe that it is people, not companies, who commit criminal acts. Second, the consumers and investors bear the brunt of the retributive consequences. It suggests that shareholders and consumers bear the weight of corporate criminal fines and repercussions as a result of corporate acts. In criminal law, corporate responsibility explains the extent to which a firm, as a legal entity, can be held liable for the criminal acts and omissions of the natural person it employs. It is seen as a type of criminal vicarious responsibility.

(A) Nature and Types of Corporate Criminal Liability

Corporate crimes are considered to be typical categories of whitecollar crimes, and it is also understood with active crimes. The difference among corporate crimes and vocational crimes is that corporate crimes refer to criminal acts committed by corporate managers for the benefit of the company, whereas vocational crimes are committed by individual workers against the company itself⁵.

For Instance: Vocational Crimes include theft, Money Laundering etc.

If we look at crime committed by companies, we can observe that it differs from ordinary crimes perpetrated by people. As a result, there is no special branch for the offenses perpetrated by the companies. Corporate crimes may be classified into several kinds. Corruption, forgery, counterfeiting, fraud, insider trading, blackmail, and other forms of corporate crime are the most common⁶. Companies are capable of committing a broad range of crimes, including those that cause bodily injury, such as industrial catastrophes, occupational dangers, manufacturing dangerous goods, generating industrial pollution that leads to environmental deterioration, and violating human rights. When diverse methods and chances are accessible in the business environment and culture, the economic impact is catastrophic.

⁵ Sara Sun Beale, "The Development and Evolution of the U.S. Law of Corporate Criminal Liability", *Zeit schrift Fur Die Gessate* 126 27-54 (2014)

⁶ Sara Sun Beale, *Is Corporate Criminal Liability Unique?* 44 AM. CRIM. L. REV. 110-112, 2007.

Organised crimes or transnational crimes are the crimes which are a new type of illegality in which companies are discovered to be engaged. Laundering, extortion, cybercrimes, funding terrorists, drug smuggling, and human trafficking are all examples of corporate crimes. Employees in hazardous industries are killed and injured on the job, which leads to long-term impacts of occupational illnesses. Corporate executives are mostly to fault for such vast majority of fatalities because they violated work health & safety regulations or chose not to develop appropriate levels. As of now, most corporate entities or companies disregard many labour legislation norms and regulations and do not exercise due diligence in performing commercial activities. Even after several disastrous situations, such as the Bhopal gas tragedy, the Upar tragedy, and the Satyam case, large corporations frequently avoid criminal liability, which is a serious issue.

People these days are subjected to violence in the form of pollution and environmental crimes. There are several distinct types of environmental crimes, but they are all committed for profit and they damage the environment. Although, we have laws and regulations of government to address such issues (the Environment Protection Act of 1986), but corporates frequently avoid punishment or criminal liability. The multinational companies had already relocated production plants to countries that do not have many laws regulating pollution, and although there are specific mechanisms or regulations in India that originate under the "environment protection act 1986," the companies that relish a culture of corruption have gotten away from any criminal liabilities as they continued to be involved in significant environmental damage.

Companies are involved in a variety of regulatory crimes. Various regulatory offences Depending on the actions conducted by the corporation, they may commit other types of regulatory offences. These offences might be committed during the normal course of their employment or via noncompliance. Furthermore, the Companies Act includes procedures to guarantee conformity with the regulatory environment.

(B) Necessary Requirements for determining Corporate Criminal Liability

In order to hold a company criminally liable, several factors must be present. The following are some examples:

a. The intentional act has to be within the course of the employment: The first criteria is that the employee committing the offence act within the extent of his employment. He must be carrying out tasks that have been approved by his employer.

b. That conducts has to be in the company's best interests: The second need is that the employee's actions or behaviours help the business. It makes no difference if an employee does a selfless deed with no intention of gaining or benefiting himself.

(C) Tests to determine Corporate Criminal Liability

1. Identification Test

Lord Reid stated in the case "Tesco Supermarkets Ltd v. Nattrass"⁷, that the person who acts does not speak or acting for the corporation. He is functioning like the company, and his thinking, which controls his actions, is the firm's mentality. If it is a guilty mentality, then that guilt is the company's culpability." This exam is sometimes referred to as the alter ego test and the directing mind and will hypothesis. This test is used in English courts to identify the company's controlling and guiding mind in order to assess criminal responsibility of companies.

2. Aggregation Test

There could be instances in which a company's wrong-doing is the outcome of a group of guilty minds. The actus-reus and mens rea can be extracted from the behaviour and understanding of numerous individuals by aggregating the activities of two or more people.

The court of appeals confirmed in the case "United States v. Bank of New England"⁸ that collective behaviour and collective understanding is permissible since companies would split obligations and minimize liabilities. This test has been used in Australia, but it has been rejected in England.

3. Respondeat Superior Test:

The courts have given many justifications to uphold a company's culpability for the actions of its agents. A firm can be held liable for the activities of its agents

- who commit criminal activities
- while carrying out their duties
- with the goal of doing good for the company.

This was stated explicitly in the case of **United States v. A. P Trucking Co⁹**.

⁷ UKHL 1, AC 153

⁸ NA 821 F 2d 844 (1st Cir. 1987)

⁹ **358 U.S. 121 (1958)**

III. PUNISHMENTS FOR CORPORATIONS FOR CRIMINAL ACTS IN INDIA

After the determination of guilt, the kind and forms of punishment to be inflicted on the company must be determined. However, the conviction itself is a stigma that harms a company's financial prospects, and the purposes of criminal justice can only be satisfied by imposing suitable punishments. Contention to be raised that why a company should be penalised. The goal of criminal justice would need the conviction of the criminal even when it is a company. Once corporations are considered distinct from individual people within themselves, and they act in a different way than its executives, there are requirements of punishing them even though, Imprisonment is not possible, which has been the problem in determining the criminal liability on corporations.

Certain theories of punishment under criminal law are focused on retribution, deterrence, prevention, and reformation. The question is, how far can these theories be taken to identify rational corporate punishment?

(A) Theories of Crime

There are several ideas and theories of punishment, including retribution, deterrence, prevention, and reformative theory, each of which addresses distinct aspects of crimes and criminals. As wiseman points out, expressive retribution supports corporate punishment. The expressive retributivist's purpose is to declare ethical truth in the face of rejection.

According to the notion of deterrence, the penalty is much harsher in order to discourage the offender and potential offenders from committing crimes in the future. Furthermore, while company's punishment isn't really achievable in the case of companies, various methods of deterrence can be used in dealing with companies. If one begins with the belief that there is a need to dissuade corporate misbehaviour in order to limit corporate criminal responsibility, one will find that laws are mostly focused on corporate civil liability.

In most circumstances, companies operate for advantages and gains, therefore the threat of extravagant penalties for noncompliance with the law may be more deterrent to them, but this is not often true in the case of individual illegal action. It has been observed that the deterrent fines placed on corporates would harm many innocent workers, shareholders, or members of the public, but this should not be used as an excuse, since we have seen examples when corporates profit from the crime committed and enjoy a culture of impunity.

In respect to the preventive theory of punishment, which has generally been used to incapacitate or prevent convicts from committing more crimes, the question arises as to how extent the

preventive theory is applicable in deciding and punishing companies, and if so, under what circumstances.

Prevention is much more effective with corporate criminals since their unlawful conduct is based on their ability to retain respectability in structured positions in the industry. The company can be rendered permanently incapacitated by an order of winding up, which can be equivalent to death punishment in specific cases¹⁰. The corporation can also be barred from engaging in activities that contravene the law. Several corporate crimes have also been observed to be the result of a faulty management system, completely insufficient checks and balances to ensure that the law is followed, as well as lack of communication and insufficient operating procedures that perform poorly to integrate safeguards against reckless behaviour. These flaws might be the result of negligence or deliberate actions that can still be handled by effective governmental authorities that supervise business policies and procedures. In any case, formal processes can be used by placing the corporation under the supervision of auditors, environmental specialists, and other authorities to ensure that such order is controlled and functions correctly.

(B) Corporate Sentencing policy in India

Whenever it comes to corporate sanctions a punishment, most of the time they are penalised under both civil and administrative law, regardless of the fact that corporate crimes are one of the most contentious topics. Criminal liability of corporations has been legislatively acknowledged in India, since Section 11 of the IPC, 1860 defined a "person" as any Corporation, Association, or group of persons, either incorporated or otherwise. The illegality of companies as a distinct entity has also been acknowledged by the judiciary. However, there is no specific punishment procedure for businesses.

The subject matter of penalty was examined in the case of "**Assistant Velliappa Textiles Ltd and ores**"¹¹, where the court stated that Company's criminal liability cannot be enforced if the penalty for the offence explicitly requires imprisonment. The Law Commission of India in its 41st¹² and 47th reports did recommend the punitive measures for corporate's criminal liability which are either imprisonment or fine as in most cases the corporate should be fined in relation to white collar crimes but, sadly, the recommendations given by Law commission of India never got through even though there are many provisions under Indian laws which deal

¹⁰ Vikram Aditya S. Khanna, "Corporate Crime Legislation: A Political Economy Analysis", *Washington Law Review* 82 100-141(2004)

¹¹ Assistant Commissioner, Bangalore and others V. Velliappa Textiles Ltd. and another's (2003) 11 SCC 405.

¹² 41st Report of Law Commission of India para 24

with the matter of corporate crimes like fraud, bribery, insider trading etc. which in most cases are punished under civil law but no punitive measure or punishments were incorporated to punish the corporates or companies.

The primary issue which has been faced today is that corporations could not be imprisoned and penalties by way of fines and compensation been paid which could be the easiest way to get aside from any criminal liability or imprisonment. It is not much to pay fines or compensation in case of violation of laws for those Companies or corporations who are economically and financially strong even though it affects the society badly. It is also pertinent to mention that Indian Parliament has recognised this concern and proposed to change the IPC in this respect in 1972 by including a fine as an alternative to jail where companies are involved. The bill, however, was not enacted by parliament.

However, in the case "**Standard Chartered Bank v. Directorate of Enforcement**"¹³, the Apex court reversed the Velliappa judgement and concluded that in such cases, the court can only impose a fine. Despite the fact that the law has been decided by the Supreme Court's judgement that companies can be tried and convicted for offences punishable by jail and fine, India still lacks a proper sentencing strategy. Given the rise of corporate crime, it is necessary to implement a punishment strategy along the lines of that used in the USA and UK.

In India, the Mali math Committee, constituted by the Ministry of Home Affairs, focused on improving the criminal justice system and presented its conclusions in 2003. Among other things, the panel's findings emphasised the significance of creating sentencing legislation. It has been proposed to establish a Statutory Commission to develop sentencing guidelines. The necessity of statutory sentencing guidelines was emphasised by the Madhav Menon Committee on Draft National Policy on Criminal Justice in 2008. The government was still considering the issue, as India's Law Minister declared in October 2010 that the country is looking into instituting a uniform sentencing policy comparable to that of the United States of America and the United Kingdom¹⁴. Given worldwide trends in the formation of effective corporate sentencing policies, India urgently needs to implement a competent sentencing policy along the lines of those in the United States of America and the United Kingdom.

IV. JUDICIAL APPROACH TO CORPORATE CRIMINAL LIABILITY IN INDIA

The court plays a crucial part in assessing corporate criminal liability since there are specific examples that illustrate what issues the judiciary experienced in finding corporate criminal

¹³ (2005) 4 SCC 530.

¹⁴ Government for a Uniform Policy by Courts, Zee News, 9th October, 2011

liability and what observations it made, and the following cases are being critically examined.

1. In the Landmark case of **Velliappa Textiles**¹⁵, Court decided that the company could not be punished for offences that required the imposing of a compulsory term of jail as well as a penalty by way of fine. It was also decided that when the sentence is jail and a fine, the fine merely cannot be imposed by the court. The court went on to say that the parliamentary mandate would be to keep courts from deviating from the mandatory minimum punishment recommended by the Statutory provision, and when analysing a penal statute, if many interpretations are possible, the court must lean towards the interpretation that excludes a person from punishment instead of the one that imposes the punishment.

2. It was determined in the case "**State of Maharashtra V. Jugminder Lal**"¹⁶ that the phrase "must be penalised for imprisonment and also for fine" indicates that the court is required to impose a punishment that includes both imprisonment and fine. As a result, the case against the corporation has been dropped by the court. As a result, the court ruled that unless a statute expressly states otherwise, the firm cannot be held liable for the actions of his officers or employees. The following is refused. The nicest part of this case is that the court at least took the law reports and other factors into account.

3. In the case "**Kusum Products Limited V. S.K. Sinha**"¹⁷ The court stated unequivocally that a corporation, as a legal entity, could not be imprisoned because it is not possible for the judge to impose a fine or grant any punishment if the court finds the corporation guilty, and if the judge does so, it would be changing the very system of the Act and attempting to usurp legislature.

4. However, the perspective of the judiciary shifted in 2005 with the Supreme Court's decision in the case "**A.K. Khosla V. T.S. Venkatesan**"¹⁸, Under the Indian Penal Code, two corporations were charged with fraud. The Magistrate issued the process against the corporations. The defendants' counsel argued before the Calcutta High Court, among other things, that the businesses, as juristic persons, could not be prosecuted for IPC offences requiring mens rea. The judge agreed. The court emphasised that corporate organisations must meet two elements in order to be indicted: mens rea and the ability to inflict the requisite penalty of incarceration. Each of these prerequisites rendered prosecution of the defendant corporation's moot: a corporate entity cannot be alleged to have the required mens rea, nor can

¹⁵ (AIR 2003 SC 721)

¹⁶ (AIR 2005 SC 380)

¹⁷ 126 ITR 809 Cal, 1980.

¹⁸ Cr LJ. 1448, 1992.

it be imprisoned since it lacks a physical body.

5. In the case **Assistant Commissioner V. Velliappa Textiles Ltd**¹⁹, private firm, Velliappa Textiles, was charged for violating crucial sections of the Income Tax Act. In the above-mentioned case, Sections 276-C and 277 of Income Tax Act, provided for imprisonment and a fine for the breach they have done. The Apex Court ruled that the defendant corporation could not be punished for violations under the above-mentioned specific provisions as each of these sections required the imposition of a mandatory term of imprisonment as well as a fine. Due to the provisions in question, the court was only entitled to impose a fine. Using a rigorous and precise logic, the Apex Court determined that a company lacked a corporeal and physical person to jail and hence could not be punished by imprisonment. Furthermore, the Apex Court held that the legislative aim was to prevent courts from straying from the Act's minimum obligatory sentence.

6. In the Case **Standard Chartered Bank and ors. V. Directorate of Enforcement and ors**²⁰ It overturned earlier opinions on Corporate Criminal Liability and gave the theory a fresh new look. Standard Chartered Bank was being tried in this matter for violating several sections of the Foreign Exchange Regulation Act of 1973. ("FERA"). The Supreme Court stated that no organisation is immune from prosecution for criminal offences just because the prosecution demands compulsory sentence. The Supreme Court held that where both incarceration and penalty are needed, firms must be penalised.

V. CORPORATE CRIMINAL LIABILITY IN USA

Respond eat superior is the idea that supports corporate criminal culpability in the USA. According to this an organisation is liable for any activities taken by its workers acting within the scope of their employment and, at least in part, for the profit of the corporation. Although certain states have different standards, it is not required in federal jurisprudence that the employee have a specific level of corporate responsibility, including being able to talk for the corporation, being member of a control group, or being a directing mind. This has been the case in the USA that a corporation may be held legally accountable for the activities of any of its workers, despite not having a soul to damn, as the phrase goes. The same is true for partnerships, closely held corporations with a small number of controlling owners, and limited liability corporations.

Corporate Criminal Liability is extensive enough that the company may be held criminally

¹⁹ Comp L.J. 21, 2004.

²⁰ AIR 2005 SC 380.

liable even when the employee violates corporate policy. Even detailed counter-instructions would not help to protect the corporation if the employee commits a crime while acting within the scope of his or her job. Under law of USA, even a company with a robust compliance programme may be held legally accountable for the unlawful activities of its workers. Given the foregoing, USA government prosecutors consider it simple to charge the corporation with a crime. As a result, USA companies are significantly more likely to reach an agreement with prosecutors to avoid going to trial.

In furtherance to respondeat superior liability, the "collective knowledge" theory in the Law of USA makes it simpler to prosecute companies. The government does not even have to prove that an individual has the knowledge to fulfil the intent component of a crime under this approach. Alternatively, the government may collect the information of several corporate personnel to construct the company's knowledge of the offence. This has the potential to broaden corporate criminal responsibility in the United States of America to circumstances where no one employee may be held criminally accountable.

The Supreme Court of America explicitly held in "**New York Central and Hudson River Rail Road Co. V. United Nations**"²¹ that companies are crimes with intention.

In the case "**H. L Bolton and Co. ltd v. T.J Graham and sons**"²², Lord Denning observed that a company can be compared to a human body in many respects. They have a mind and a nerve centre that govern what they are doing. They also have hands that grip the equipment's and operate in compliance with the centre's commands. Several employees in the firm are only workers and agents who are nothing but hands to execute the task and cannot be claimed to reflect the intellect or will. Everyone else are directors and managers who reflect the company's controlling mind and will and govern what they do. The state of mind of these executives is the state of mind of the company, and it is regarded as such by law.

Lord Haldane's held in the case "**Lennard's Carringing Firm Ltd v. Asiatic Petroleum Co. Ltd**"²³ that, under criminal Jurisprudence, if the law demands a criminal mind and criminal intent of directors or management, the corporation itself is guilty.

VI. CONCLUSION

Corporate crime is one of current societal most severe issues. loopholes of corporate crimes that lead to a judicial remedy are supposed to get a positive impact on the community

²¹ 53 LEd; 613, 215 USA 481, 1908

²² 3 ALL ER 604, 1956, 632

²³ 1915 AC706, 113 LJ 195.

and society. Corporate crime includes crimes conducted by the Company or personnel working on its behalf that are legally accountable and punishable. Corporate offences that may be prosecuted under the law are more effective, and a change is required. One of the most immediate threats to human survival and environmental preservation is industrial disaster and destruction of the environment caused by certain criminal activities by the companies. With regard to current corporate operations, the criminal justice system is necessary especially taking into account the criminological and penological aspects. To assess or deal with corporate criminal acts and conducts, distinctive and particular policies must be devised.

The subject of corporate criminal Liability has often been contentious. The legal position of corporate criminal liability has changed and continues to grow through time, and Indian courts have taken a stringent approach in finding accountability of a corporate body for the planned acts performed by its directors, employees, and other agents. The Courts in India have always attempted to discern the corporate mentality (controlling and directing), and this notion is employed in numerous instances and legislation when determining the criminal responsibility of these businesses. The Indian Legislature should take various actions, such as enacting additional punitive punishments, to reduce the criminal activities of businesses in the country.

After examining and analysing all the landmark judgements, it can be concluded that post standard charted decision, Companies are capable of having a mens-rea. In keeping with this judicial tendency, the recently passed Companies Act 2013 has placed distinct penalties on businesses as well as the persons operating on their behalf.

Companies and people may be found criminally accountable for illegal activities in the United States of America under both federal and state law. The common law creates this idea of corporation criminal liability, which is predicated on the civil law system's doctrine of respond eat superior. The role of the USA Department of Justice in charging businesses is studied, with a focus on delayed trial and non-prosecution agreements as indicated in relevant cases. In the United States of America, the stringent application of the respond eat superior concept to corporate behaviour in a criminal setting is currently entrenched.
