

DE JURE NEXUS LAW JOURNAL

Author:

Cherie Dharmani

Jitendra Chauhan College of Law, Mumbai

LL.B. (3Years).

**CRIMINAL LIABILITY OF CORPORATE BODIES IN INDIA: AN
ANALYTICAL STUDY**

“A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself. The importance of incorporation is that it makes the company itself liable in certain circumstances, as well as the human beings.”

-Glanville Williams

Abstract

When a crime is committed, of all the elements that make ‘crime’, mens rea (state of guilty mind) is of utmost importance and this is what set the ground for argument when a company committed a crime. Holding a company liable for criminal offences prior to the landmark case of Standard Chartered Bank and ors v Directorate Of Enforcement And ors was difficult as it was stated that the company could not have mens rea and thus, companies escaped the punishment of ‘imprisonment’ for offences it committed.

The Latin maxim “non facet reum, nisi mens sit rea” states that when an act of commission or omission is committed, for it to be illegal its very necessary element is guilty mind and thus, to prove an illegal act, it should have been such which is forbidden by law and done with guilty mind.

The paper focuses on the changes that have been brought about in respect of companies being held and punishable for criminal offences.

Introduction

When we first hear “criminal liability of corporate bodies”, understanding the same gets difficult, and thus, to know what it exactly means we should first know what a company and criminal liability is.

As per Section 2(20)¹ of the Companies Act, 2013 states, a "company" means a company incorporated under this Act or under any previous company law.

A company is an entity that is separate from its members, and thus called an artificial legal person. It is formed by people, who later become the members of the company, who have common ideologies and hence, they come together to act upon the same in the form of commercial or industrial business. As it is an artificial legal entity it is managed and supported by a group of individuals called the Board of Directors. A company is called an incorporated company only when it gets itself registered with the ROC (Registrar of Companies), and on receiving the Certificate of Incorporation.

Criminal Liability is a wrong committed by an individual for which he is made liable and punishable under the law. Such a liability arises when an act has been committed which is forbidden by law and thus, is called a crime.

Hence, criminal liability of corporate body arises when a company does an act which the law forbids and the extent to which the company as a "separate legal entity" can be held liable and punishable for the same.

Standard Chartered Bank And ors v Directorate Of Enforcement and ors².

Facts of the case- This was an appeal case, filed on 7th November, 1998, where the appellant filed an appeal against the judgment passed by the Bombay High Court where the appellant stated that the judgment passed contending that the appellant company was not liable to be prosecuted for committing an offence under Section 56 of the Foreign Exchange Regulation Act (FERA) was not correct and that the appellant company should be punished with imprisonment for a term not less than 6 months, as is stated under Section 56(1)(i) of the FERA Act.

Issue to be addressed- The Case dealt with two major questions being,

- a) if an incorporated company, which has committed an offence, can be punished with 'imprisonment' if the punishment mandates it?
- b) If the punishment includes both fine and imprisonment, could only fine be imposed?

Judgement- The verdict given passed by the majority of 3:2, and it being that if a company faced a punishment wherein it states 'imprisonment' or 'fine and imprisonment', the company will not be

¹ The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

² Standard Chartered Bank And ors v Directorate Of Enforcement And ors, AIR 2005 SC 2622.

let lose just because it cannot be imprisoned, instead, the court has the discretion to impose only a fine for the same.

It was also stated that one must take the law as it is stated, but that did not mean that the companies could escape the liability of being punished by claiming it to be an 'artificial entity', rather the law has been made such, that it treats all as equals and that the companies cannot be excluded from the same. The statutes are to be interpreted in such a manner as they serve justice and not on the basis of its strip construction and literal meaning.

Hence the said case is a landmark one as prior to this case, the companies escaped the liability of being punished on the grounds that it could not be imprisoned as happened in the case of **A.K. Khosla and ors. v. T. S. Venkatesan**³, where two body corporate were let off the hook and were not punished for committing an offence under I.P.C. on the grounds that, as the mandatory punishment was imprisonment and that a company could not be imprisoned.

Kanoria Jute And Industries Ltd.v. Employees' State Insurance⁴ was yet another case where the judgment of the case above was referred and it was stated that the body corporate could not be imprisoned and thus, a company could not be prosecuted for offences with punishment of compulsory imprisonment. In this case, the suit was filed by the company against the managing directors for offence committed under Section 85(a) of Employee State Insurance Act, 1948, where here, they were made liable and punishable with imprisonment. Hence, it was laid down that if a suit is filed against both a juristic person and a person who committed the said offence, the suit shall not fail solely on the grounds that the juristic person cannot be imprisoned, rather the person who committed the crime shall be punishable.

Position of Criminal Liability of Corporate bodies in India

The Indian Penal Code very specifically defines who is to be deemed as a 'person' which helps in imposing the liabilities when an offence is committed.

Hence, as per Section 2⁵ of the Indian Penal Code, "Every person shall be liable to punishment under this Code" and Section 11⁶ of the Indian Penal Code defines a 'person' as, "the word person includes any Company or Association or a body of persons, whether incorporated or not."

³ A.K. Khosla and ors. v. T. S. Venkatesan, (1992) 1 CALLT 77 HC.

⁴ Kanoria Jute And Industries Ltd. v. Employees' State Insurance, (2003) ILLJ 364 Cal.

⁵ Indian Penal Code, 1860, Act No. 45, Acts of Parliament, 1860 (India).

⁶ Ibid.

These definitions clearly show that, be it a corporate body or an individual human, the act makes no sort of differentiations between the two and that when an offence shall be committed, both shall be treated equally.

In 2005 came along the case of Standard Chartered Bank And ors v Directorate Of Enforcement and ors where the apex court gave clear guidelines as to the criminal liability of corporate bodies.

The Standard Chartered Case which dealt with two major questions, as stated above, being:

- a) if an incorporated company, which has committed an offence, can be punished with 'imprisonment' if the punishment mandates it?
- b) If the punishment includes both fine and imprisonment, could only fine be imposed?

This was a landmark case as it set the ground rule that, just because a company could not be 'imprisoned' it did not mean that it could escape the liability of the offence committed.

The judgment passed in the case case stated that, "In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only."

Theories of Corporate Criminal Liability

1) Vicarious Liability.

Holding the employer liable for the wrongs committed by the employee in the course of employment, or holding the master liable for the acts of the servant is what vicarious liability is. Similarly, from the corporate perspective, the criminal liability of an employee can be held onto the company, provided that the employee committed an offence or performed the said act during his course of employment, and only then can a company can be punished with fine or seizure of property for the acts of its employees. The said theory derives its essence from the latin maxim 'Respondeat Superior' which means, let the superior be held responsible and "qui facit per alium facit per se" which means he who acts through another shall deemed to have acted on his own.

2) Identification Theory.

"The Board of directors is the brain and only brain, of the company which is the body, and the company can and does not act only through them."⁷

This theory is based on identifying the mind, the guilty mind behind the actions of the company as the company is a body, but its mind are the board of directors. The theory stated that the company

⁷ Bath v. Standard Land Co., (1910) 2 Ch. D. 408.

acts on the decisions and actions of the mind hiding behind the company's corporate personality and thus, there should be focus on the acting employees of the company.

3) Sanctioning Theory.

This theory simply lies down that the company should be fined the requisite amount, as is deemed to be correct, for the offence committed. Deciding onto the amount could get difficult, but such an amount should be imposed which is fair and just.

4) Direct Liability Doctrine.

Identifying the person who has committed the offence within the company is what the doctrine states. Under this doctrine, the person is made liable for their own acts of commission and omissions.



Conclusion

Holding a corporate liable prior to the Standard Chartered case was impossible. The company could very well commit a crime, and be off the hook solely because it could not be imprisoned but one could see things changing after judgment of the said case. The above analysis show that though there has been immense progress when it comes to holding a company liable for its actions, yet somehow the statutes are not stringent enough, and there is yet a need to make laws that entirely focus on holding the companies liable for their actions. Keeping in mind the fast paced world and globalisation, it is high time we now have statutes that deal only with criminal liabilities of corporate bodies.