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**CORPORATE CRIMINAL LIABILITY: ITS PRESENCE IN INDIAN
LAW**- Daksh Kayastha¹**Abstract**

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**

The issue of corporate criminal liability therefore has emerged as a significant concern in India due to the rapid expansion of the corporate sector, leading to a rise in instances of corporate wrongdoing. This study provides an in-depth examination of corporate criminal liability in India and how it is incorporated in Indian scenario by analysing its legal framework, practical implications, and the obstacles to its effective enforcement. It delves into the historical background and development of corporate criminal liability in India, shedding light on key legislative advancements and pivotal judicial rulings that have influenced its current status. The paper explores the fundamental principles of corporate criminal liability in India. It scrutinizes the statutory regulations governing corporate criminal liability in India, with a specific emphasis on the Companies Act, 2013, and other pertinent legislations. The study also investigates the various types of corporate offenses that give rise to criminal liability, underscoring their repercussions on both the corporate realm and society at large.

Literature Review**Praveen Dalal, "Corporate Entity in Existing Legal system; its rights and Liabilities**

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under the Constitution and other enactments”, Corporate Law Adviser. Vol.61 2004, pp. 96-103.

The statement highlights the principle of corporate personality, wherein a company is treated as a separate legal entity distinct from its members. This principle is generally respected, and dealings are conducted with the company itself, disregarding the individuals behind it. However, it is emphasized that the separate personality of the company is a statutory privilege that must be used for lawful business purposes only. If the company is used fraudulently, dishonestly, or improperly, individuals behind the company cannot hide behind the corporate veil. In such cases, the courts may pierce the corporate veil and hold those individuals personally liable for the company actions. Overall, the statement underscores the importance of upholding the integrity of the corporate entity while also recognizing that the corporate veil can be pierced in cases of misuse or abuse of the corporate structure for unlawful purposes. The author of the article argues that while the concept of corporate criminal liability is well-established in India, there are still gaps in legislation regarding economic offenses. Despite landmark judgments like the one in the Standard Chartered Bank case, there remains a debate and unresolved issues between legislative and judicial functions. To address these concerns, the author suggests that suitable amendments should be made to the Code of Criminal Procedure. These amendments would aim to prevent judicial interference in legislative matters and provide clearer provisions for corporate criminal liability. However, the author believes that merely amending punishment provisions may not be sufficient. Instead, the author proposes the enactment of a separate, comprehensive corporate criminal legislation. Such legislation would provide a more tailored and effective framework for addressing corporate wrongdoing and would help to clarify the legal obligations and liabilities of corporations in criminal matters. Overall, the author emphasizes the need for legislative action to address the complexities and challenges surrounding corporate criminal liability in India.

Jennifer A Quaid, “The assessment of Corporate Criminal Liability on the basis of corporate identity: An Analysis”, McGill Law Journal Vol.43, pp-67-114.

The author's perspective on corporate criminal liability reflects a balanced approach, acknowledging that not all corporate misconduct should be subject to criminal

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sanctions. Indeed, the decision to impose criminal liability on corporations should consider various factors beyond just the act itself. It is essential to evaluate the nature and severity of the offense, the impact on society, and the culpability of the corporation and its agents. Criminalization should be reserved for the most serious and harmful conduct, where alternative forms of punishment or regulation may be insufficient to deter such behavior. Moreover, attributing criminal liability to corporations requires careful consideration of legal principles and procedural safeguards to ensure fairness and accountability. The assessment should include factors such as the corporate culture, compliance measures, and the degree of involvement of corporate officers and employees in the wrongdoing. By taking a nuanced approach to corporate criminal liability, policymakers and legal authorities can strike a balance between deterring corporate misconduct and ensuring that the punishment fits the offense, thereby promoting justice and social welfare.

V.S.Khanna, "Corporate Criminal Liability: What purpose does it serve?" Harvard law review, Vol.109 may 1996, pp-1477-1534.

Indeed, legal and social sanctions play important roles in holding corporations accountable for their actions. In the United States, legislatures have empowered judges and administrative agencies to impose a variety of sanctions in corporate criminal proceedings, beyond just cash fines. These sanctions may include probation, debarment, loss of license, and other related penalties. This multifaceted approach allows for a more nuanced response to corporate wrongdoing, ensuring that appropriate consequences are imposed based on the nature and severity of the offense. Furthermore, social sanctions, such as loss of reputation or stigma, can also have significant impacts on corporations. Negative public perception can harm a company's brand, leading to loss of customers, investor confidence, and business opportunities. This social pressure can serve as a powerful deterrent against unethical behavior and incentivize corporations to prioritize ethical conduct and corporate social responsibility. In India, similar measures to expand the range of legal sanctions available in corporate criminal proceedings could enhance the effectiveness of corporate accountability efforts. By allowing courts to impose a broader spectrum of penalties tailored to the specific circumstances of each case, the legal system can better address corporate wrongdoing and promote compliance with the law. Moreover, fostering a culture where social sanctions are taken seriously can complement legal measures by reinforcing ethical norms and promoting

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responsible corporate behavior. By aligning legal and social sanctions, India can strengthen its approach to corporate accountability and promote a more ethical and transparent business environment.

Gilbert Geis and Joseph F.C. Dimento, “Empirical Evidence and the Legal doctrine of Corporate Criminal Liability”, American Journal of criminal law Vol.29 summer 2002. pp341-375.

The author highlights an important aspect of the development of corporate criminal liability, emphasizing the lack of empirical research in shaping legal principles in this area. The author suggests that the understanding of corporate criminal liability has primarily been driven by expediency rather than evidence-based analysis. To address this gap, the author advocates for the use of empirical research to inform the legal principles governing corporate criminal liability. Conducting surveys and studies to assess the actions of corporations and their impact on society could provide valuable insights into the effectiveness of existing legal frameworks and help identify areas for improvement. By incorporating empirical evidence into discussions surrounding corporate criminal liability,

policy makers, legal practitioners, and scholars can make more informed decisions and develop more effective strategies for holding corporations accountable for their actions. This empirical approach can lead to a more nuanced understanding of corporate behaviour and its societal consequences, ultimately contributing to the advancement of corporate governance and accountability.

RESEARCH OBJECTIVE:

The primary objective of this study is to conduct a comprehensive investigation into corporate criminal liability within the context of Indian legislation. The research will focus on understanding the legal mechanisms, their practical implications, and the broader impact on corporate governance, business ethics, and public welfare. The aim of this research is to enhance our understanding of how India addresses corporate wrongdoing, promotes accountability, and strikes a balance between economic growth and safeguarding public interests.

RESEARCH QUESTIONS:

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1. What are the main statutory provisions and legal frameworks that govern corporate criminal liability in India, and how have they evolved over time?
2. How do Indian courts interpret and apply the principles of attribution, mens rea, and corporate intent in cases involving corporate criminal liability?
3. Which significant landmark cases have influenced the jurisprudence of corporate criminal liability in India, and what insights can be derived from them?

HYPOTHESIS

Corporations have become an essential part of our society, and as they continue to grow, they play a significant role in our economy. However, there is a risk that our society may fall victim to the actions of these corporations. Therefore, it is important to deter them. While punishment can be imposed on offenders for various reasons in criminal law, deterrence is the most relevant rationale for economic entities and therefore provisions in criminal law and companies act 2013 has adopted certain means to curb these crimes.

INTRODUCTION

Criminal liability refers to the condition of being legally obliged or accountable, being legally responsible to either another individual or society, and subject to criminal punishment. Consequently, corporate criminal liability pertains to the degree to which a corporation, as a legal entity, can be held criminally responsible for its actions and failures, as well as those of its employees. This document aims to explore different intricacies associated with corporate criminal liability and ultimately propose several recommendations that should be integrated into legislation.

Corporate entities are managed by skilled professionals who conduct business activities in an organized manner using modern techniques. This makes it challenging to gather evidence to establish intent or knowledge related to the commission of a crime. However, in order to address economic crimes and protect society, it is essential to hold corporations and their employees accountable for corporate crimes. Strict liability rules are in place, where the mental element is presumed upon proving the prohibited act. In addition to strict liability, corporate criminal laws also include absolute liability and imputed liability rules. These laws shift the burden of proof from the prosecution to the alleged corporate entity, with a

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presumption regarding the mental element. The nature of corporate criminal liability varies based on whether the presumption is rebuttable or conclusive. While some may argue that mental element is not a requirement in corporate crimes, it is important to note that corporate crime is still a form of crime, necessitating a mental element, albeit presumed rather than proven through evidence.

JUDICIAL PRONOUNCEMENTS AND LEGISLATIONS

Corporate entities conduct their business operations through individuals acting as their agents. This gives rise to a dilemma regarding the allocation of criminal liability. Should criminal liability be imposed solely on the natural person, solely on the corporate body, or on both? Since corporate bodies lack a mind and physical body, it is possible for harmful criminal acts to be committed by natural persons on their behalf. In order to hold the corporate body criminally liable, it must be established that the crime was committed by a natural person and that there is a connection between the crime and the corporate body. Corporate crimes are dependent on the criminal actions of natural persons acting as agents of the corporate body. The corporate body operates through the minds and bodies of the individuals working for it. However, the mind of any individual working for the corporate body cannot be equated with the mind of the corporate body itself. According to standard corporate procedures, it is believed that the corporate body operates under the control and will of the person in charge. Therefore, if these individuals controlling the affairs of the corporate body have the necessary intent or knowledge, it can be attributed to the corporate body. Consequently, the corporate body, the natural person committing the criminal acts, and the individuals controlling the affairs of the corporate body may all be held criminally liable. In larger corporate bodies, higher-ranking individuals often attempt to evade corporate criminal liability by claiming that the affairs of the corporate body are decentralized and that the employee acted independently, thus only the employee should be penalized. In order to avoid corporate criminal liability, there is often an effort to demonstrate that the acts were committed by an employee who lacked authorization to make decisions on behalf of the corporate body.

In the case of *Standard Chartered Bank v. Director of Enforcement*, the Supreme Court established that a company can be prosecuted and convicted even for offenses carrying a minimum prison sentence. A corporate entity cannot evade liability by claiming that the

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punishment involves imprisonment, as in such cases, fines are imposed. Individuals responsible for corporate crimes may face penalties as per penal provisions.

In the case of Iridium India Telecom Ltd. v. Motorola Inc., the Supreme Court ruled that corporate criminal liability can be imposed even for offenses requiring criminal intent. The court emphasized the attribution and imputation rule, attributing the criminal intent of the company's "alter ego" to the corporation.

The principle of vicarious liability is rooted in two Latin maxims. The first, *qui facit per alium facit per se*, signifies that one who acts through another is considered to have acted on his own behalf. The second, *respondeat superior*, translates to "let the master answer." In the case of *Bartonshill Coal Co. v. McGuire*, Lord Chelmsford LC stated that every action performed by an employee in the course of their duties is seen as being carried out on behalf of their employer, and therefore is equivalent to the employer's own actions.

While vicarious liability typically pertains to civil liability, the Massachusetts court in *Commonwealth v. Beneficial Finance Co.* held three corporations criminally responsible for a bribery conspiracy. The first corporation was held accountable for the actions of its employee, the second for the actions of its director, and the third for the actions of the Vice-President of a wholly owned subsidiary. The court justified corporate criminal liability by emphasizing that a corporation, being a legal entity composed of individuals, should be held responsible. Although the concept of vicarious liability has been integrated into criminal liability cases by various courts, it has been increasingly rejected as unjust to hold one individual accountable for the wrongful actions of another.

The 47th report of the law commission has put forward several suggestions to address this issue:

Judges should be granted some discretion to impose penalties as they see fit for each case.

According to Para 8(3) of the 47th law commission report, it is recommended that, "in cases where the offense is punishable by imprisonment only or by imprisonment and a fine, and the offender is a corporation, the court should have the authority to impose a fine only on the offender."

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CONCLUSION

In today's industrialized, business-oriented society, it is no longer feasible for individuals to engage in various activities such as manufacturing, service provision, marketing, and other business endeavours on their own. As a result, natural persons come together to form corporate entities to carry out these business activities. The actions taken by these corporate bodies have an impact on individuals, society, and the nation, leading to the necessity of regulating their activities. To regulate the actions of corporate bodies, they are recognized as legal persons. The most effective way to regulate the behaviour of any entity is through the criminal justice system. Any actions taken by corporate bodies and their employees that have serious repercussions on the public, society, and the nation are deemed criminal, and criminal liability is imposed. Corporate crimes, which are highly dangerous criminal activities committed by corporate bodies and the individuals who control them, can have severe consequences on public health, national development, and the financial well-being of the entire country, and even the world at large. Corporate bodies are established with the goal of conducting business and earning profits. In order to achieve profit and expand market share, legitimate means may not always be sufficient, leading to the adoption of illegitimate practices. The pressure to succeed can drive individuals in charge of corporate affairs to resort to unlawful methods to achieve their goals, making strain a major factor in learning the techniques to commit corporate crimes.

In order to effectively address any crime issue, it is crucial for both the general public and criminals to acknowledge that the actions committed are indeed criminal and wrongful. Only when the public perceives an action as criminal will they respond and collaborate with law enforcement authorities. An individual engaged in unlawful activities can only be rehabilitated if they recognize their wrongdoing. Public and corporate criminal activities should not be viewed as skilled business practices, but rather as criminal acts that require appropriate punishment. It is imperative to change this perception and ensure that such actions are not only recognized as crimes, but also met with effective consequences. All necessary steps must be taken to label these actions as criminal offenses.

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