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Criminal Liability of a Company

Shankar Banerjee[1, *] ***Prince Soni***[2]**,**
[1]Assistant Professor, Sangam University, Bhilwara, Rajasthan, India
[2]Student, Sangam University, Bhilwara, Rajasthan, India

Abstract

The imposition of criminal liability is only one means of regulating corporations. There are also civil law remedies such as injunction and the award of damages which may include a penal element. Generally, criminal sanctions include imprisonment, fines, and community service orders. This work is made on the study of criminal nature of a company. Whether the company should be liable or not, the total analysis in this report, and at last, the three top business companies are liable or not for their crimes, this will be shown in this report.

Keywords: *Corporate crime, criminal liability, scams*

****Author for Correspondence*** E-mail: shankar.banerjee@sangamuniversity.ac.in

INTRODUCTION

The purpose of this report is to investigate the criminal liability of companies. The legislation has defined actions to be of criminal nature & provide for punishment for such offences. IPC (Indian Penal Code) is one of such legislation [1]. The report will also recommend preventive measures of criminal liability of companies. How a company got criminalized and by what reasons all are shown in this report. The punishments include fines, forfeiture of property, imprisonment and death sentence. The information was received from various platforms like online and offline references. The list of activities of criminal liabilities of companies is very long. Such activities include violation of rules and regulations in financial market, violation of pollution and environment standards, violation of several provisions of company law and evasion of taxes. Let us take note of some general issues in relation to the legislations, and gather ideas from them regarding criminal liability of a company

BASIC CONCEPT OF CRIMINAL LIABILITY OF A COMPANY

What a Term 'COMPANY' Derives?

The word company is derived from the Latin word *companion* ("one who eats bread with you") [2]. Company is precisely named as 'co'. It is a legal entity which can be structured in different ways like partnership, corporation, etc. A company is an artificial person.

P Ramanatha Aiyer, the Lexicon has defined company as

An association of a number of individuals for the purpose of carrying on trade or other legitimate business; a number of people united for the same purpose, or in a joint concern for profit; as a company of merchants; private partnership; or incorporate bodies of men; house or partnership; or a corporation …[3]

Types of Companies

A company can be classified into various types depending on the following basis:

On the Basis of Incorporation

I. Royal chartered companies: The companies formed under royal charter by special order of a king or a queen; for example, East India company.

II. Statutory Companies: The companies which are incorporated by a special Act passed either by the central or state legislature. For example, Reserve Bank of India was formed under RBI Act, 1934.

III. Registered Companies: The companies which are incorporated under the Companies Act passed by the government. For example, any company registered under Companies Act, 2013.

On the Basis of Liability of the Members

I. Companies Limited by Shares: The companies in which liability of the members/shareholders is limited, i.e., they are not liable for the unpaid value of shares held by the members.

II. Companies Limited by Guarantee: These companies may or may not have a share capital and the liability of each member is limited by the memorandum to the extent of the sum of money he had promised to pay in the event of liquidation of the company for payment of debts and liabilities of the company.

On the Basis of Number of Members

I. Public Companies: The company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company [4]. Thus, even if it has restrictions specified in the articles, it will be treated for all purposes as a public company and will have to comply with the formalities.

II. Private Companies: A private company is a firm held under private ownership. Its shares do not trade on public exchanges and are not issued through an initial offering [5].

Liability

Liability is a responsibility for the consequences of one's act, where company liabilities determine the legal responsibility of the company for problems, which are committed by the employees of the company. If the actions, which are done for the benefit of the company, but that action affects company laws, then the company should be punished in that case. So, the whole management of the company is liable for the punishment. The companies which are doing fraud with it, this fraud is known as crime and as the company is a legal person so, these companies are called as criminals.

There are two ways in which a company can be liable:

- Strict liability: Strict liability, sometimes called absolute liability, is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. Strict liability has been applied to certain activities in tort, such as holding an employer absolutely liable for the torts of her employees.
- Vicarious liability: Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury but who has a particular legal relationship to the person who did act negligently. It is also referred to as imputed negligence.

What is a Crime?

Black's Law Dictionary, (9th Edition), defines company crime as:

A crime committed by a company's representative acting on behalf... [6].

Thus, offense committed by the directors or officers of a company, which are criminal in nature, also fasten on the company body, being an independent legal entity, in the same manner and to the same extent as that of its perpetrators.

How the Companies Become Criminally Liable?

The following are the ways a company gets criminally liable:

- A fraud with the company.
- Benefit for company but against the law.
- Violation of duties, policies.
- Crimes committed by contractors/consultants.

Q. If a company is criminally liable, are individuals punished?

In that case, responsibility also falls on individuals. The board of directors, officers, other high-ranking officials will always be criminally liable.

Penalties and Punishments

Penalty is a type of punishment for the criminalized companies where the company had to pay large amount of money and face imprisonment.

The penalties for the criminal companies are like:

- Cease of the company.
- Permanent loss of deposit insurance.
- Negligence of govt. contracts.
- Cease of security deposits.

Whether the company should be criminally liable when employee unfollow company policy?

The criminal liability is the liability of the company in any criminal case. When the company infringes the laws made by the Companies Act, 2013, it shows adverse effect on the company and may be closed or wound up in the form of punishment.

What are the punishments when the company becomes criminalized?
The punishments are:
- Restitution
- Fines
- Public apologies
- Forfeiture clauses
- Probation under court supervision [7]

Key Points
- Both the individual offender and the company can be convicted for the same offence.
- The company has to be informed firstly about the initiation of criminal investigations.
- The board of directors and the senior-level managers are the witnesses against the company.

Difference between Fraud and Crime:
What Is a Fraud?
The new Act has defined ‘fraud’ under section 447 as:
“frauds” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure to interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss [8].

This definition states that the gain from unlawful property to which person gaining is not legally entitled and loss from unlawful property to which the person losing is legally entitled.

Corporation does not commit crime; people commit crimes. Some of these people work for corporations. Fraud occurs when one intentionally misrepresents a material fact to another.

Mens Rea
Mens rea is a Latin word which means guilty mind. It comes from the writings of Edward Coke, an English jurist who wrote about common law practices. Mens rea is a legal term which is used to describe the mental state while a person committed a crime. It is an act which does not make a person guilty unless their mind is also guilty. In simple, the mens rea determines whether someone committed a criminal deed purposefully; this is called mens rea.

VARIOUS SCAMS AND CASES OF CRIMINAL LIABILITY OF COMPANIES

There are lots of companies which are filed under criminal liability so, we can have examples of such companies and court cases against them.

RCM Scam
RCM is India’s famous multilevel marketing company. RCM came in spotlight by such crimes, a fraud of about Rs. 20,000 crores been reported. About 10 million customers were joined with RCM. It was established in 2000 at Bhilwara Rajasthan. Trilokchand Chhabra, MD of RCM, introduced the company over 3000 outlets across the country with various ranging products like food products, household products, commercial products, fashion products, etc. After getting information about fraud, the police raided the company’s headquarters in Bhilwara.

Police got the evidence that the company was not registered with any government department. When the police gave notice to the company’s director, Trilokchand Chhabra, his son Sourabh brothers Bhagchand Chhabra, and Kailashchand Chhabra, and daughter Priyanka fled. The police sent notices to all the airports across the country that they cannot flee out India.

More than half a dozen employees of RCM were arrested by the police. The superintendent of police Umesh Chandra Dutta said during the raid that they found 9500 sacks of wheat and 2100 sacks of flour of Food Corporation of India meant for BPL families. RCM sold these sacks with their label to their customers. The police found the company's director and family had around 40 accounts in 15 different banks. The transactions were banned at the time. The whole property of the company was seized.

Sahara Scam

Sahara scam is one of the biggest scams in India. Sahara Pariwar was a privately held company. It was founded in 1978. Lucknow is the headquarters of Sahara Group. This company covered various sectors like finance, infrastructure, real estate, housing, sports, etc. They had huge capital of US $25.94 billion as on March 2011. In 2004, Sahara was awarded as the second largest employer in India by the Time magazine. Sahara was founded by Subroto Roy [9].

Sahara scam was mainly associated with two companies of Sahara Group, that is, Sahara Housing Investment Corporation Ltd. (SHICL) and Sahara India Real Estate Co. Ltd. (SIRECL). On 30th September 2009, the company named Sahara Prime City submitted its DRHP (draft red herring prospectus) to SEBI for issuing IPO (initial public offering) to raise funds from the public. DRHF of SPC contained 779 pages. At page No. 640 para 49, they analyzed the DRHF of SPC. SEBI realized that two companies of Sahara (SIRECL) and (SHICL) had raised funds in an illegal manner. On 25th December 2009, and 4th January 2010, it received a complaint against these two companies on issuing of OFCD in a wrong way. SEBI started the investigation and found that these two companies had raised OFCD of Rs. 24,000 crores from 2 to 2.5 crore investors without any permission. As soon as this scam was exposed, SEBI banned the issuing of new OFCD and ordered to return the money to investors with 15% interest. But Sahara didn't agree and filed a case against SEBI in Allahabad High Court on Dec 2010. The High Court ceased the orders of SEBI. Later on, April 2011, it found that SEBI was right, and Sahara lost the case. Sahara appealed in the Supreme Court, which suggested to Sahara to approach SAT Securities Appellate Tribunal. Again, SAT realized that Sahara was guilty and ordered Sahara to follow the order of SEBI. Following the orders of Supreme Court, Sahara Group sent 127 trucks filled with files and documents to SEBI. They found that details of the investors were incomplete, and that this case was of money laundering. The court found this matter more critical and froze bank accounts and sealed the property of Sahara Group. Finally, on 28th February 2014, Subroto Roy and two other directors of Sahara were arrested. In November 2017, the Enforcement Directorate (ED) filed a case of money laundering on Sahara Group.

PNB Scam

Punjab national bank is an Indian multilevel banking and financial services company. This bank was founded in 1894 by Dayal Singh Majithia [10]. The headquarter is in New Delhi. PNB scam is the latest scam in the Indian crimes which affects the economy. On 14th February 2018, PNB declared a fraud of an estimated amount of Rs. 12,600 crores. PNB is the second largest government-owned bank in India. The whole scam started from Mumbai branch where this was done by some employees of the bank and the diamond businessman Nirav Modi and Gitanjali Group owner Mehul Choksi. This fraud started in 2011 and the same year PNB issued letters of undertaking (LoUs) to some overseas branches of Indian banks like Allahabad Bank and Axis Bank for Nirav Modi. Nirav Modi asked for these LoUs for borrowing money from the overseas branches to buy imported diamonds and pearls. The foreign branches obtaining these LoUs from Punjab National Bank since 2011 to 2017 because every letter of undertaking has a fixed expiry date. The total amount of Rs. 12,600 crores have emerged, that is the total value of letter of undertaking which PNB issued to Nirav Modi and Mehul Choksi's group of companies. Now Modi and Choksi had two choices: either they repay the amount taken by the foreign banks or provide another fresh LoU. Both of them came back to PNB and asked for another LoU. The new LoU amount covered previous loans plus the interest. This cycle continued till 2017. They did this trick every time and the total estimated liability was Rs. 12,600 crores. The global messaging system SWIFT (Society for Worldwide Interbank Financial Telecommunication) through which PNB and foreign branches communicated that PNB's core banking solution (CBS) is not integrated with it. The LoUs sent via SWIFT were not shown on CBS. Thus, Modi and Choksi exploited the gap of SWIFT not integrated with PNB's CBS to commit the fraud.

CONCLUSION

To conclude, the crimes in companies have inflicted severe damage upon the economy. Thus, it has not become possible to hold a company criminally liable for acts committed through their agents and employees and attribute men related to them.

SUGGESTION

The company has travelled a long distance from being a clan-owned entity to being known as a legal person, which has legal rights and owns half the world around them. It is high time that the never-ending debate of whether the company should be criminally liable and dealt with under the criminal justice system should end. There is need to develop law and jurisprudence world over to deal with the criminal liability of a company. Almost in all the jurisdictions, there is a concern about the criminal activities of the company. The problem is being addressed in different manners, and different means are being adopted to meet the ends of justice. In this study, the researcher has traced the different developments that have taken place in different jurisdictions and the legal systems. As such, emergence of various theories of criminal liability of the company have been studied. The approach adopted by different countries/legal systems has been separately studied and analyzed. Further, criminological aspect of company crime, emergence of new forms of criminality in company's culture, their nature and impact have also been studied.

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