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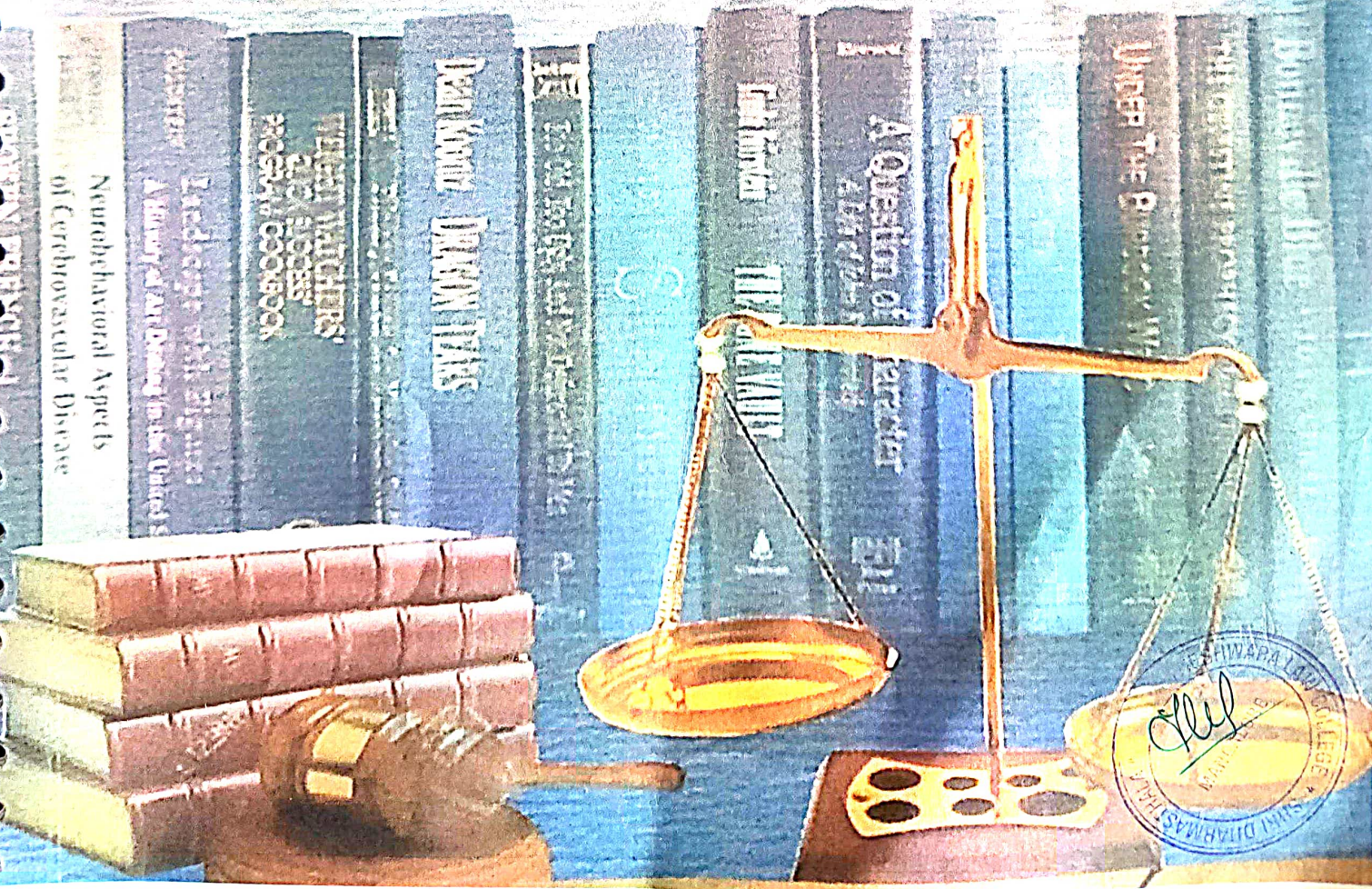
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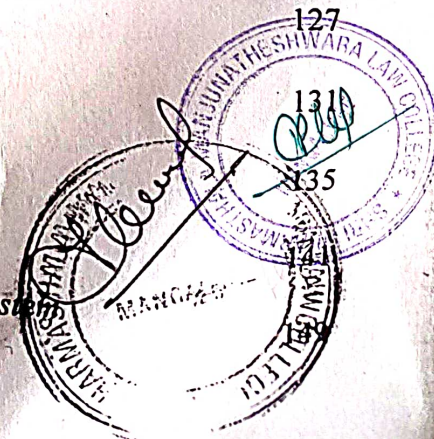
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LEGAL OPUS

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A CRITICAL STUDY ON CORPORATE CRIMINAL LIABILITY IN INDIA IN THE GLOBALIZED SCENARIO.

Ms. Chaitra Kumari A. *

Introduction

There is one and only one social responsibility of corporation i.e. "to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of relevant legislation which is to say engage in open and free competition without deception or fraud" but if there is breach of this social responsibility consequential result is corporate criminal liability.

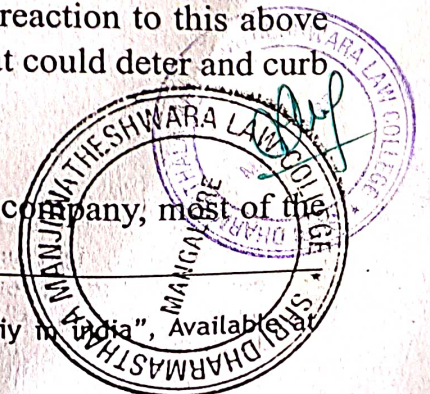
As the advancement in science and technology has made the World borderless, contrary of this dominance is that these giant companies have started involving in criminal activities and considering the fact that they are not natural persons their activities criminal or otherwise are also not ordinary and there should be deterrence too, imposition of punishment upon offenders of any kind can be understood by various rationale that is applicable to such economic entities as corporations. Corporations have their own identity, they have separate legal personality and they are different from their members and this is sufficient to make it possible to hold these entities criminally liable and to punish accordingly, all developing countries including India is facing alarming number of fraud, antitrust, bribery, false statements, food and drug, labour's problem, environmental hazards, financial crimes and many related offences where giant entities are the offenders, we find a variety of giant companies involved in corporate crimes in India, even the private institutions undertake 'N' number of activities for the government and involve the government institution in criminal activities which ultimately hampers credibility and reputation of the government, on the other hand irreparable damages are been done to environment which are very much evident from Bhopal gas disaster, Bofor's scandal, shivakashi fire accident, Sathyam scam and many such incidence. The reaction to this above stated unlawful acts has been creation of juridical regimes that could deter and curb corporate wrong doing.

Overview of the concept of company:

It's very much important to know the meaning of the term company, most of the people believe

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1 Article by arvind prasanna "evolution of corporate criminal liability in India", Available at www.legalbites.com last accessed on 13 October 2019



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In the maxim "two heads are better than one"² that is why partnership and Joint Stock Company came into existence. Our company law by and large is based on English law. The word "company" is derived from Latin word "Companis", 'Com' means with or together whereas 'panis' which means bread, it initially referred to an association of persons who took their meals together³.

Definition:

Sec 2(20) of companies Act defines company as

- i) "a company formed and registered under the companies Act 2013 or under any previous Companies Act".
- ii) Company is also defined a incorporated association, which is an artificial person, having an independent legal entity with a perpetual succession, a common seal, a common capital comprised of transferable share and carrying limited liability".

Prof. Haney defines company as "a company is an artificial person created by law, having separate legal entity, with a perpetual succession and common seal".

Concept of Corporate Criminal Liability in the New Era of Liberalization, Privatization, Globalization.

We are all living in an era of LPG i.e. liberalization, privatization and globalization and in every society, at any point of time whatever may be the type of offender, a crime is being taking place and it is witness since the early dawn of human civilization. Crime is a social eccentricity and is made punishable by the society. It is vital need to prescribe punishment for the unjust and wrongful activities of the wrongdoers as to protect the society and to have a tranquil and peaceful life.⁴

As we know, a corporate body is a legal person, with, few rights just like natural persons. It is a separate person distinct from its members. Now the question is whether a corporation as an artificial person is capable of committing a crime and is criminally liable by the law or not? Courts are especially likely to impose criminal liability on a corporation when the criminal act is requested, authorized, or performed by the board of directors, an officer or person having responsibility for formulating company policy or high administrator having supervisory over the subject matter of the offence and acting within the scope of his employment .

Theories of Corporate Criminal Liability:

The endorsement of criminal liability of corporations has largely been a twentieth century judicial development, influenced by the "sweeping expansion" of common

² Indian corporate law, Dr umesh maiya pg no 1

³ Article on company law in india accessed at <http://www.legal servicesindia.com/company law .htm> last accessed on 11th October 2019

⁴ Rajni (2018), origin, growth and evolution of criminal law in India, *Internat.J.Appl.Soc. Sci*, 5(5) :606-616 last accessed on 15th October 2019

⁵ Harvey, L.pitt, and karl A Groskaufmanis, Minimising corporate civil and criminal liability, *Thr geogetdown journal* 1560

law principles. The majority of theories of corporate criminal liability are typical of common law developments; they have been constructed on a case-by-case basis. Despite their importance, these theories have proved to be ineffective, for their lack of strong theoretical basis and their individualistic roots. Examples of these models are the agency theory and, in a more elaborate form, identification and aggregation theories.

a) Theory of vicarious liability:

vicarious liability which is also known as agency theory was first developed in tort law and gradually was carried over into the criminal arena.⁶ According to this theory, the corporation is liable for the intents and acts of its employees.

Vicarious liability (or respondeat superior) is commonly employed in the United States. In other jurisdictions, this theory is restrictively established in relation to some strict liability and hybrid offences that deal with matters such as pollution, food, drugs, health and safety at work but not to mens rea offences. The agency theory is based on the premise that criminal violations normally entail two elements, actus reus and mens rea.

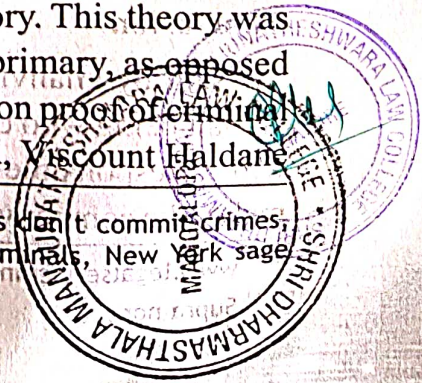
Since corporations are considered to be purely incorporeal legal entities, they do not possess any mental state and the only way to impute intent to a corporation is to consider the state of mind of its employees. The theory encompasses a simple and logical method of attributing liability to a corporate offender, if corporations do not have intention, someone within the corporations must have it and the intention of this individual as part of the corporation is the intention of the corporation itself. Courts in the United States, where the theory is widely used, have developed a three-part test to determine whether a corporation will be held vicariously liable for the acts of its employees. First, the employee must be acting within the scope and course of his employment. Secondly, the employee must be acting, at least in part, for the benefit of the corporation, yet it is irrelevant whether the company actually receives the benefit or whether the activity might even have been expressly prohibited. Thirdly, the act and intent must be imputed to the corporation⁷.

b) Identification theory:

The doctrine of identification is the traditional method by which companies are held liable in most countries under the principles of the common law. The limitations of the agency theory led to the construction of a direct liability theory. This theory was developed as an attempt to overcome the problem of imposing primary, as opposed to vicarious, corporate criminal liability for offences that insisted on proof of criminal fault. In *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd*, Viscount Haldane

⁶ Nicolette parisi, theories of corporate criminal liability (or corporations don't commit crimes; people commit crimes) in hellen hochstedler ed., corporations as criminals, New York sage publications, 1984)41 at 44.

⁷ United states v one parcel of Land, 965 F.2d 311,316(7th Cir.1992)



fashioned a model of primary corporate criminal liability for offences that require mens rea that would later be known as the identification theory⁸.

c) Aggregation theory:

Over the past decades the corporation's internal structures have been altered and expanded. Large modern corporations are no longer set up with a clear, pyramid-like hierarchal structure of authority and power. On the contrary, modern corporations have multiple power centers that share in controlling the organization and setting its policy. The complexity of this new setting has created some challenges for the imposition of criminal liability to corporations under the traditional approaches. Sometimes power and influences are extremely diffused in the corporation context so that it is almost impossible to isolate the responsible individual whose intention could be attributed to the corporation itself⁹.

VI) Role of Indian Judiciary in combating corporate criminal Liability:

The evolution of the concept of criminal liability of corporations is thus characterized by the relentless struggle of the legislature and the judiciary to overcome the problem of assigning criminal blame to fictional entities in a legal system based on the moral accountability of individuals. However, there are many ways to categorize corporate criminal liability viz., liability is only of those individuals committing the crime; company alone is to be held liable; or liability rests with both the individual as well as the company.

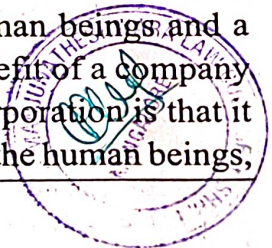
For instance, a corporate vehicle may be used by an individual to commit a crime, wherein the liability definitely rests with the individual using the vehicle. It would be debatable as to the extent and nature of liability to be allocated to the corporate vehicle. Conversely, if it is only possible to identify the vehicle in particular situation, then to what extent will the vehicle be liable as a legal entity separate and independent of its manager or owner is again debatable. There are merits and demerits in each of the above discussed scenarios; the only point of consensus is that at least one entity must be held liable for the crime committed using the Company's vehicle. Prosecution of corporations under Criminal law is riddled with two types of hurdles viz., theoretical and practical. The Standard Chartered bank and ors, v. Directorate of enforcement and ors etc, Irudium India Ltd v. Motorola, are the leading cases where in Corporate entities were criminally held liable and punished accordingly.

Conclusion

As said by Glanville Williams , A company can 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 itself , the importance of incorporation is that it makes the company itself liable in certain circumstances as well as the human beings,

⁸ www.legalserviceindia.com last accessed on 17th October 2019

⁹ Supra note 6



hence in case of corporate criminal liability both the company and the person operating such entity should be punished and in no way money minded entrepreneur's should be allowed to enrich themselves at the cost of others , in case of a company winding up order seems a most suitable order along with imposing fines because winding up order can somehow be equated with the 'death penalty' as winding up order puts an end to the existence of such corporate entity, so far in India available provisions of law are not so effective to mitigate this problem of corporate criminal liability as compared to standings taken by western countries hence its high time that our legislatures as well as judiciary take proper steps to put an end to this dangerous evil.

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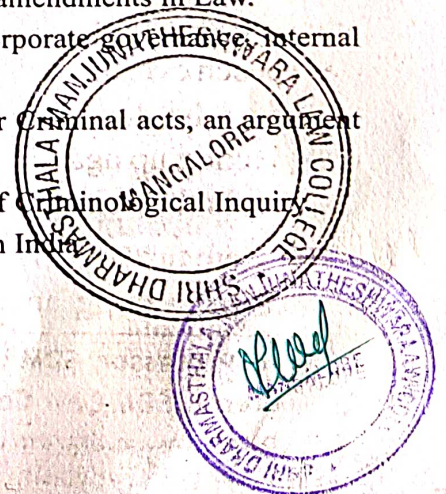
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