ABSTRACT

A ‘company,’ is included in the definition of a legal person within the Indian Penal Code, thereby making a company culpable for its criminal acts. Corporate criminal liability is an institute that draws its origins from the Anglo American legal culture. It historically developed in England and was later adopted in other jurisdictions in various forms. Analyses of historical and current development of the concept in these countries indicate that its legal character differs from the Continental legal culture which has brought basis of imputability of the criminal offence of legal person. Corporate Criminal Liability in India has undergone a sparse evolution since its inception. Courts in India have absorbed the various doctrines that have arisen from courts in the United States of America and the United Kingdom. This paper in that sense seeks to highlight some of the robust standards in determining the culpability of a company. It also critiques the bureaucratic redtapism involved while determining the culpability of a company. It concludes by providing a question as to whether corporate criminal liability is socially desirable.

Keywords: Corporate Criminal Liability; Bureaucratic; Redtapism
INTRODUCTION

Corporate criminal liability under environmental, antitrust, securities, and other laws has advanced expeditiously over the last two decades in India and abroad. A Company is primarily recognized as a separate legal entity. However, the Indian legislature has codified a codified the company as a Person under Section 11 of the Indian Penal Code. Section 11 of the Indian penal Code states, ‘The word “person” includes any Company or Association or body of persons, whether incorporated or not.’ Additionally, Section 3(42) of the General Clauses Act also includes a company in the definition of a person.

Ergo, it is quite ambiguous to distinguish or demonstrate the criminal intention of a company as it is a juristic, fictional being. As companies are intangible legitimate bodies, determining the mens rea is vital for the commission of a criminal act. Penalizations are additionally necessary. A company cannot be detained or executed and the consequences of imprisonment which plays a vital part in criminal law cannot be affected. This led to the perception that criminal law was not suitable for the implementation of corporate bodies, as, Courts required the accused in a criminal case to be present before them for procedures to occur. This was clearly impractical on account of a corporate organizations.

The vital question of law that arises is the feasibility of a company to be penalized for a crime, when it is not a living breathing entity in itself.

Hence the primary research question in this paper, is to try and pinpoint the most justified procedure in determining the mental culpability of a company.

To a huge degree, the discussions encompass two central questions: first, whether there is a fundamental conceptual avocation for treating individuals and companies equally under the criminal system of a country; second, what value corporate criminal liability could have given concurrent probabilities of civil remedies against them.

In most jurisdictions' courts determine the mental culpability of a company based on mentality of the agents of the company. Hence, courts held the agents of the company liable for frauds, anti-trust violation, etc. Therefore, corporate criminal Liability arises only when an agent of the company acts on the behalf of the company, as the company is bound by his/her actions.
HISTORY OF CORPORATE CRIMINAL LIABILITY IN INDIA

Overtime corporations have been penalized for committing crimes such as money laundering, tax evasion, etc. However, the jurisprudence regarding this penalization varies across jurisdictions and there is no standard measure for determining mental culpability. This position becomes immensely crucial especially in the 21st century, as there are an increasing number of corporates that dwell into various types of felonious activities. Hence, firms that engage in such unlawful activities must be held liable for their deeds. As Lord Denman of the House of Lords once stated, “There can be no effectual means for deterring from an oppressive exercise of power for the purpose of gain, except the remedy by an individual against those who truly commit it, that is the corporation acting by its majority, and there is principle which places them beyond the reach of the law for such proceeding...... its members can be induced by an effective sanction to make its outward conduct conform to a standard, and where they can control its directors, public policy demands that they should be responsible in their corporate capacity.”\(^1\) Lord Denman voiced his concern over this matter in 1846, while the laws governing a company had not been effectually implemented.

The reason there is much ambiguity over this position is a result of the corporate being treated as a separate legal entity.\(^2\) Most Criminal Acts across various foreign jurisdictions include the word ‘company’ in the definition of a person. However, the catalogue of offences a company can commit or abet is again significantly limited. A company cannot be liable for murder\(^3\) (as a company cannot be given life imprisonment), bigamy (as a corporation cannot be married), etc. If so, why was the word ‘company’ added to the definition of a person under the Indian Penal Code and the penal provisions of various other jurisdictions? Since a company was recognized as a separate legal entity, jurists possessed the inherent need to include the company under the definition of a person.

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\(^1\) Gt Northern Railway Co Case (1846) 9 Q.B. 315.
\(^2\) AVTAR SINGH, COMPANY LAW 14 (E. Book Co.) (2015).
\(^3\) Hawke v Hulton & Co., 2 K.B. 93 (1909).
In India, the Supreme Court ended the dubiety of the sections in the case of *Arjun Prasad v Shantilal Shankarlal Shah and others* The court observed, “a company is a "person", so that whenever the word "person" is used in any statute a company would be included thereunder.”

In the case of *State of Maharashtra v Syndicate courts*, the Supreme Court held that a company which is liable to be punished by imprisonment, cannot be penalized due to the lack of mens rea on part of the company. The company was recognized as a separate legal entity and hence, could not be imprisoned as it is an intangible juristic person.

In *Ak Khosla v S. Venkatesan*, two corporations were accused to have committed fraud under the Indian Penal Code. The judicial magistrate issued decrees penalizing the corporations. However, the Supreme Court held that for the commission of a crime, two prerequisites need to be fulfilled. The first being mens rea, and the second being actus rea. As a corporate does not possess the trait of mens rea, it cannot be prosecuted. The court maintained a similar opinion in the case of *Oswal Vanaspati & Allied Industries v State of Uttar Pradesh*, as well.

In the case of *Zee Tele Films Ltd v Sahara India Co. Ltd.*, a complaint of defamation under Section 500 of the Indian Penal Code was filed against the appellant. The complaint alleged that the appellant broadcasted a program which had portrayed the respondent in a bad light. However, the Supreme Court dismissed the appeal, stating that the appellant did not possess the requisite mens rea to commit the crime. Ergo, the appellant was acquitted.

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4 AIR 1962 SC 1192 (India).
5 Id.
6 AIR 1964 Bom 195 (India).
7 Id.
9 The Indian Penal Code, 1860, Section 421, Acts of the Parliament, 1860 (India).
10 Id.
11 1993 1 Comp LJ 172 (India).
12 2004 Cri LJ 1576 (India).
13 Id.
This discrepancy had been reintroduced in the Supreme Court in the case of *The Assistant Commissioner, Assessment II v Velliappa Textiles*, the Supreme Court held that a court of law can levy only a fine on a company when the penalization requires both, a fine and an imprisonment. The court relied on two reports of the Law Commission of India which recommended certain amendments to Section 11 of the Indian Penal Code. The amendments were recommended to remove the lacuna in law with regard to the juristic identity of a company.

Paragraph 24.7 of the 41st report of The Law Commission of India stated, “As it is impossible to imprison a corporation, practically the only punishment which can be imposed on it for committing an offence is fine. If the penal law under which a corporation is to be prosecuted does not provide for a sentence of fine, there will be a difficulty.”

Paragraph 8.3 of the 47th Report of the Law Commission of India recommended that certain provisions must be inserted into section 62 of the Indian Penal Code. These provisions were-

1. In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.
2. In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.
3. In this section, 'corporation' means an incorporated company or other body corporate and includes a firm and other association of individuals.

Although, the court found a company guilty of a crime, it had various shortcomings. This Juristic position worried the judiciary and the legislature, the courts were obstructing themselves from the complete implementation of a penal provision. Such a position also had the imminent threat of individuals using the façade of a company to pursue unlawful activities. Secondly, the court did not completely shed light on the procedures required for punishing of a company. While, it decreed that

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14 AIR 2004 SC 86 (India).
16 LAW COMISSION OF INDIA, LAW COMISSION REPORT 47 (1972).
a corporate could be fined, it did not provide a solution for when imprisonment was a mandatory form of retribution.

Fortunately, the ambiguity surrounding this conceptualization was remitted in 2005 in the case of *Standard Chartered Bank v Directorate Enforcement and Others*. The case served as a landmark judgement as it cleared the lacuna surrounding the mental culpability of the company.

The concise facts of the case were that the appellant company instituted a writ petition in the High Court of Bombay. The petition challenged certain sundry notices issued to the appellant under Section 50, section 51 and section 56(1) of the Foreign Exchange Regulation Act, 1973 (FERA). The sections provided imprisonment as a form of punishment for those who contravene the FERA. The primary contention in the case was whether a corporate body can be prosecuted for sentences where imprisonment was mandatory. The Supreme Court invoked the Latin doctrine of Lex non cogit ad impossibilia, which meant, “The law does not compel a man to do that which is impossible.” Justice KJ Balakrishnan delivering the majority opinion in the judgement stated, “If a person includes a company, there is no reason to confine Section 68 to a person only, because the company as a person is liable to be proceeded against under Section 50 and Section 56 of the Act, though in a criminal prosecution the punishment by way of imprisonment can be imposed only on the officer or officers of the company referred to in Section 68 of the Act.”

The court overruled the Velliappa Textiles judgement stating that where imprisonment is the only form of punishment, the company is not excused. As the corporate cannot be condemned to detainment, the Court cannot force that punishment, yet when detainment and fine is statutorily mandatory, the Court can impose a fine which could be upheld against the organization. However, the court also added that there cannot be blanket immunity for companies where the law requires it to be mandatorily imprisoned.

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17 AIR 2005 SC 2622 (India).
19 Id.
20 Velliappa, supra at 14.
21 Standard Chartered, supra at 17.
any statutory penalization. However, in the event that a human being is so discovered liable, both sentence of imprisonment and fine are to be forced on such individual.22

This judgement is especially significant as the court adopted the maxim of ejusdem generis while interpreting the relevant statute. It laid a significant standard for the penalization of companies. A recent case which reiterated the principles laid down in Standard Chartered Bank23 was Iridium India Telecommunications Ltd. V Motorola Incorporative24 The fact matrix of this case was that the appellant company lodged a criminal complaint against the respondent under Section 420 and Section 120B of the Indian Penal code. The sections provided for the penalization of a person for cheating or inducement.25

The complaint alleged Motorola Inc. To have put forward a Private Place Memorandum (PPM) encouraging investors to invest in an ‘Iridium Project.’ The project was to develop a state-of-the-art wireless communication system. Based on the PPM several companies invested in this project, however the project was unfeasible and hence, the investors suffered major losses. The High Court of Bombay quashed the plea and held that a corporation cannot be punished for ‘cheating’ under section 420 of the Indian Penal Code due to the lack of mens rea on behalf of the company.

However, the Supreme Court on appeal against the decision of the High Court, reiterated the principles of Standard Chartered,26 stating that a company can be prosecuted under Section 420 and Section 120B of the Indian Penal Code for cheating and criminal conspiracy respectively. The courts allowed the appeal stating that corporates do not have a ‘blanket immunity’ from being prosecuted only because a company lacks the mens rea to a commit a crime.27

In the case of Central Bureau of Investigation v. M/s Blue-Sky Tie-up Ltd28 an appeal arose in the High Court of Calcutta under section 13 of the Prevention of Corruption Act, 1988. However, the

22 Id.
23 Standard Chartered, supra at 17.
24 2004(1)Mh.L.J. 532 (India).
26 Standard Chartered, supra at 17.
27 Iridium Telecommunications supra at 24.
28(2005) 4 SCC 530 (India).
court quashed the appeal on the premise that a company is not a ‘mental being’. However, on reappeal the Supreme Court allowed the petition stating that a fine can be imposed when the penalization requires a form of imprisonment. 29
Ergo, the Standard Chartered judgement has become a landmark precedent against companies trying to evade criminal liability.

JURISPRUDENCE SURROUNDING MENTAL CULPABILITY OF CORPORATES
A plethora of doctrines surrounding Corporate Criminal Liability exist, but this paper focuses on certain exceptional doctrines. Courts on many occasions have settled on certain doctrines while determining the outcome of a white-collar crime. Some of them have been mentioned below in the succeeding sections.

LIFTING OF THE CORPORATE VEIL IN RELATION TO CRIMINAL LIABILITY OF A CORPORATION
A company is an intangible juristic entity governed by various penal laws. However, all companies act on behalf of its agents. Companies adopt the characteristic of Separate Legal entity, which divides the company from its directors, managers, etc. In addition to the doctrine of separate legal entity the shareholders of a company have a limited liability, 31 meaning that the creditors of a company cannot seize the assets of a shareholder on the failure of a company to pay a debt. Besides the above doctrine, the personal creditors of a shareholder cannot seize the assets of the company on failure of a shareholder to pay a debt. 32 A dilemma arises when trying to hold the company liable for its activities, as the directors of a company hide behind under the garb of the corporate veil. Ergo, to hold the company liable for their action, several courts invoke the doctrine of lifting the corporate veil. This principle was enunciated in the case of Salomon v Saloman. 33 The appellant was a creditor of the company, withal the company due to bankruptcy could not repay the creditor. Hence, the appellant filed a suit for repayment of the debt. The court dismissing the appeal stated that due

29 Id.
30 Standard Chartered, supra at 17.
31 See Avtar, supra, at 2.
32 Id.
33 UKHL 1, AC 22
to separate legal personality, a veil is drawn over the company segregating it from its members, directors and creditors. Hence, the directors and owners were not liable for the debt. This is still celebrated as forming the core principle of, not only the English company law, but of the universal commercial law regime. Ergo, individuals possess the capability of abusing this principle to their interests. However, courts have laid certain guidelines while exercising this ability.

THEORY OF VICARIOUS LIABILITY

Based on this conception, one person is liable for the torts of another. The employer is liable for the torts of his employee. This liability arises only when the employee is acting the course of his or her employment.34 Hence, the theory of vicarious liability can be applied on a company by holding the company liable for the actions of its employees. In the case of Iridium Telecommunications35 the respondent pursued an argument stating that the employees of the company were criminally liable and not the company. The Supreme Court, as noticed, rejected this argument stating that the company is vicariously liable for the actions of its employees.

However, the House of Lords in the case of Tesco Supermarkets Ltd. V Nattrass,36 held that the doctrine of corporate criminal liability was not based on vicarious liability. It was only a mere attribute of it. The court added that vicarious liability required mens rea which is absent on behalf of the company. Hence, it follows from Tesco Supermarkets that corporate criminal liability is not a species of vicarious liability but is a species of attribution of natural actions and states of minds to artificial entities.37

However, this theory has its flaws. The actions and mental states of the directors of a company are deemed to be the actions or mentality of the company. But, suppose a company commits a crime,
can the directors of the company face the criminal liability? As, there is no statute governing this issue, the judicial position is unclear.

The Supreme Court in the case of *Sunil Bharti Mittal v Central Bureau of Investigation (CBI)*38 pondered over this lacuna in the law. The Government had issued certain telecommunication licenses to a few companies. However, suspicion arose against the appellant for having engaged in bribery to procure the license. Hence, the CBI launched an investigation against the appellant. The chairman of the company, Sunil Bharti Mittal was made an accused in the proceedings at the Special Court investigating the matter. The appellant appealed against the decision of the Special Court in making the chairman an accused in the investigation, the Supreme Court allowed the appeal stating that without statutory backing the person in charging of a company cannot be held vicariously liable. The court stated that the doctrine of vicarious liability cannot be applied when there is no statutory basis.39

The gap surrounding issues on vicarious liability has been further widened with the Supreme Court’s decision in *Iridium Telecommunications*.40 The court held that extended actions of the directors of the company were the actions of the company itself and hence, held the entirety of the company criminally liable.

Ergo, it is seen that the Indian judiciary approaches the idea of attribution of vicarious liability in a single route by holding the company liable for the actions of its directors. It does not hold the directors of the company liable for the actions of the company.

However, the Income Tax Act, 1961 (ITA) has certain exceptions to the one-way attribution of a company to its directors. Section 278B of the ITA states, “Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable.”41 The ITA

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38 Criminal Appeal No. 35 of 2015 (arising out of Special Leave Petition (Crl.) No. 3161 of 2013 (India).
39 Id.
40 Iridium Telecommunications supra at 24.
hence, fortunately holds the people liable for the actions the company liable in the commission of a crime. This model is followed by a plethora of Indian legislation. Section 27 of the Securities and Exchange Board of India Act, 1992, provides for the vicarious liability of the key management personnel of companies. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, has also if individuals refusing to disclose and declare tax on their tax on their foreign assets and income are criminally liable. Companies are included in the definition of a person under the Act. These statutes enunciate the principles enshrined under the doctrine of piercing of the corporate veil and making the directors vicarious liable for the acts of the company.

These provisions were given the spotlight in the case KK Ahuja v VK Vora. A corporate issued a cheque which was dishonored due to a shortfall in the bank balance of the company. The issuance of a cheque which proceeds to get dishonored is a criminal offence. Mr. Ahuja, the deputy general manager of the company that issued the cheque was penalized as he was said to be 'in charge of, and responsible to the company for the conduct of the business of the company.' The Supreme Court applied two tests, the first being 'person in charge of' and second, 'person responsible of,' of the corporate. Hence, the Supreme Court set these two tests to test the mental culpability of the company.

WILLFULL BLINDNESS

The doctrine is grounded in the notion that "deliberate ignorance and positive knowledge are equally culpable." The theory is derived from the understanding that an individual "knows of facts of which he is less than absolutely certain." On this basis, the doctrine allows the prosecution

45 KK Ahuja supra at 43.
to infer guilty knowledge where there is proof that the respondent deliberately averted the presence of illegal activities.48

A significant judicial decision governing this doctrine is United States v. MacDonald & Watson Waste Oil Co.49 The court held, ”In determining whether a Defendant acted knowingly, you also may consider whether the Defendant deliberately closed his eyes to what otherwise would have been obvious. If so, the element of knowledge may be satisfied because a Defendant cannot avoid responsibility by purposely avoiding learning the truth. However, mere negligence or mistake in not learning the facts is not sufficient to satisfy the element of knowledge.”

COLLECTIVE KNOWLEDGE DOCTRINE AND AGGREGATION THEORY

According to this theorization, the company amalgamates the compounded knowledge of all its officers to deduce criminal liability. Aggregation of employee’s knowledge means that corporate culpability does not have to be contingent on one individual employee’s satisfying the relevant culpability criterion.50

The pioneering case that entrenched the collective knowledge doctrine was United States v. Bank of New England.51 The Currency Transaction Reporting Act, 1970 imposed a criminal liability if a monetary organization ’willfully, ‘violated currency reporting requirements. A primary requirement of the Act was for financial institutions to file a Currency Transaction Report (CTR) for transactions higher than 10,000 dollars. A customer of the Bank, James McDonough through a string of 31 transaction withdrew 100,000 dollars. However, the bank failed to file a CTR, which was required by the Currency Transaction Reporting Act, 1970. In the circuit court, the Bank pleaded that the failure to file a CTR was not the fault of the Bank but the 31 Tellers of the Bank that were engaged in this transaction. However, the jury of the Circuit court convicted the

48 Id.
49 933 F.2d 35 (1st Cir. 1991).
51 821 F.2d 844 (1st Cir. 1987)
respondent for failing to file the CTR. The jury convicted the respondent because the respondent was said to have the aggregate knowledge of all its tellers. The respondent appealed against the judgement at Supreme Court. The respondent in the Supreme Court pleaded that the bank needed the aggregate knowledge of all tellers to meet that amount of damages and would hence hold the tellers of the Bank criminally liable and not the bank.52 Ergo, the fundamental issue which arose was whether the circuit court’s instructions on knowledge was well founded.

The court ruled that the language of the regulations themselves gave the bank fair notice that McDonough’s transactions were reportable. Evidence was enough for a finding of willfulness, which is defined as a voluntary, intentional, and bad purpose to disobey the law. The court upheld the decision of the jury, stating, “financial institution’s knowledge is the sum of the knowledge of all of the employees. That is, the bank’s knowledge is the totality of what all the employees know within the scope of their employment. So, if Employee A knows one facet of the currency reporting requirement, B knows another facet of it, and C a third facet of it, the bank knows them all.”53 However, this doctrine has failed to be implemented within the courts of India.

PROCEDURAL PROTECTIONS INHERENT IN CRIMINAL CORPORATE LIABILITY

The corporate enterprise has five inalienable features, that can be used to protect itself from law suits. The five features are namely, separate legal entity, limited liability, delegated management, investor ownership and transferability of shares. Majority of these features can be used to protect the company. Although, there are a plethora of justifications for the protection of a company, many a time these safeguards are abused.

The first feature which is generally abused by corporates is the unquestionable right of Separate Legal Entity. As the company can be recognized as a separate legal entity, several jurists argue that the company lacks the mens rea and hence cannot be held criminally liable. The only way the
directors of a company can be liable is if a court of competent jurisdiction pierces the corporate veil or holds the directors of the company vicariously liable for the acts of the company.

The Supreme Court in the case of LIC v Escorts,54 set certain benchmarks for piercing the corporate veil of a company. This case involved the respondent violating the guidelines the enshrined under FERA. The court allowing the appeal laid certain guidelines for when a company’s corporate veil could be pierced. The corporate veil of a company could be pierced when the company is undertaking fraudulent transactions, evading tax or inextricably linked to a subsidiary of a company. Although, the Supreme Court has set these benchmarks, directors still violate laws under the façade of a company.

A second procedural route a company abuses is the burden of proof. In criminal proceedings, the prosecution must prove its case beyond a reasonable doubt to obtain a conviction.55 A more merciful prevalence of the evidence standard is utilized in civil cases. On account of the higher standard of proof, criminal cases are regularly more exorbitant than civil cases.56 There are several difficulties associated with detecting, investigating and proving corporate criminality. Due, to the highly procedural requirements large corporates find it easy to manipulate the procedural system. Hence, a court of law ought to ensure that the standard of proof is lower or higher based on the circumstance. A lower standard of proof would reduce the false acquittals where as a higher standard of proof is likely to lower the false convictions. Both shortfalls impact society by adding to the pre-existing costs of society.

A third procedural protection is found in the case of double jeopardy enshrined under Article 20(3) of the Indian Constitution. In spite of the fact that protection against double jeopardy applies to corporations, the methods of reasoning for its application are weaker in the corporate setting.57 A possible reasoning for the protection against double jeopardy is that this protection reduces and

54 (1986) 1 SCC 264 (India).
prevents false convictions. This method of reasoning is indicated by the rule, exclusive to double jeopardy, that bars the pleas of the government but not the pleas of a respondent.58 However, as the dialogue with reference to the standard of proof illustrates, of worrying of false convictions ludicrous a corporate background. Another probable explanation for double jeopardy protection is that it "restricts the ability of the government to use its power and resources to inflict the uncertainty and financial drain of trial on a defendant more than once."59 Nevertheless, this burden does not seem compelling in the background of cases involving large corporations.60 In any event, the application of double jeopardy protection may be of little consequence because legislation that clearly delineates different offenses can easily avoid double jeopardy.61

POSITION OF CORPORATE CRIMINAL LIABILITY IN THE UNITED STATES OF AMERICA

The paramount legislation to establish the mental culpability is the Federal Sentencing Guidelines. Chapter Eight of the Federal Sentencing Guidelines is restricted to “organizational Guidelines.”62 This chapter was established to provide an outline for the internal auditing of a company. However, the scope for determining the mens rea of corporates is much lower in comparison to India. Notwithstanding the corporate violations in India, the USA has faced far severe corporate violations which have not only adversely affected its economy but also the economies of several third world countries that are dependent on the functioning of the American Economy. Ergo, the USA have enacted a greater number of legislations in order to reduce the scope for establishing the criminal liability of a corporate. However, in 1991 the U.S. Department of Justice added a new chapter to the Federal Sentencing Guide Lines Manual. It contrived four facets to be examined toward increasing the penalization of corporations: 1) tolerance of or involvement in criminal activity; 2) the corporation's prior history; 3) if the corporation violated an order; and 4) if the corporation

58 Id.
61 Id.
obstructed justice. A corporate's acquittal could be based on two characteristics, the first being, an effective compliance and ethics program in place and the second, self-reporting, cooperation, or acceptance of responsibilities.

For example, instances of corporate misconduct such as the Enron scandal and Worldcom ponzi scheme ultimately led to increasing public demand for holding corporations accountable for their unlawful activities. Consequently, in 2002 the Corporate Fraud Task Force was created President George W. Bush. The purpose was to "strengthen the efforts of the Department of Justice and Federal, State and local agencies to investigate and prosecute significant financial crimes, recover the proceeds of such crimes, and ensure just and effective punishment of those who perpetrate financial crimes." The U.S. Congress additionally imposed liability by enforcing the Sarbanes-Oxley Act in 2002, which provides for a stricter corporate oversight and acquiescence. Accordingly, Federal prosecutors became contentious and, as a result, there were more than 1,100 convictions in corporate fraud cases. Ergo, it is vivid that the United States have laws curbing unlawful acts of corporates.

**IMPORTANT CASES IN THE USA SURROUNDING CORPORATE CRIMINAL LIABILITY**

American Courts and jurisprudence failed to accept the notion of corporate criminal liability for a plethora of years. But, a century ago, the milestone Supreme Court judgement in the 1909 case of New York Central & Hudson River Railroad Co. v. United States, paved the path for American Courts to enforce the doctrine of criminal liability on corporates. The appellant company was found to have violated the Elkins Act, which provided for common carriers to be held vicarious liable for

63 Id.
64 Id.
68 212 U.S. 481 (1909).
illegal rebates admitted by the corporation's agents or officers.69 The primary point of contention surrounding the case was the legal validity of the legislation as it allowed an imposition of criminal liability on corporates. The Supreme Court pronounced that a corporation was legally capable of possessing a criminal intent. It added “[a corporate] may be liable criminally for certain offenses of which specific intent may be a necessary element."70 The Supreme Court maintained the appellant company’s conviction, articulating that to give a blanket immunity to corporations "from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject matter and correcting the abuses aimed at."71 This judgment served as a benchmark for determining the mental culpability in American Jurisprudence.

In the case of United States v A&P Trucking Co,72 the Supreme Court held that only because an owner of a corporate enterprise does not personally participate in a criminal act does not mean that "the business entity [can] be left free to break the law." The established principle is that a corporation may be held criminally responsible for the "acts of its officers, agents, and employees committed within the scope of their employment and for the benefit of the corporation."73 Hence, this principle works in pari-materia to vicarious liability. To illustrate, the Court held in United States v. Cincotta,74 that "within the scope of employment" meant that the agent had been "performing acts of the kind which he is authorized to perform," and that the agent in part had the intent to benefit the employer. However, if the employee, director, etc. Is committing a crime for the betterment of himself of herself the, company will not be vicariously liable.

Several principles are formulated within the court while determining the criminal liability of a corporation. Such, was noticed in the case of United States v Automated Medical Laboratories.75 The court stated that a corporation need not necessarily benefit from unlawful activities pursued by any employee(s). The court stated, “Thus, whether the agent's actions ultimately benefit the

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69 Elkins Act, sections 57-103 (1903).
70 Id. at 493.
71 Id. At 496.
73 Id.
74 689 F.2d 238 (1st Cir. 1982)
75 770 F. 2d 399, 407 (4th Cir. 1985).
corporation is less significant than whether the agent acted with the intent to benefit the corporation. The basic purpose of requiring that an agent have acted with the intent to benefit the corporation, however, is to insulate the corporation from criminal liability for actions of its agents which be inimical to the interests of the corporation.”76

IS CORPORATE CRIMINAL LIABILITY SOCIALY DESIRABLE?

In a capitalist economy most, companies yearn for profit. However, this yearning for profit may come at a weighty cost to society. Most Multi-National Corporations (MNCs) outsource their labor-intensive work to third world countries. While, this outsourcing of work may generate employment, increase the GDP in that economy, it faces several shortcomings. Several MNCs violate human rights and the ecology in the countries where their work is outsourced. A recent report by the Guardian stated that corporate violation of Human Rights has increased by about 70% in the past decade.77

Various clothing companies violate the rights of workers by employing children in clothing factories situated in Vietnam, India or Bangladesh. Brands such as H&M, Zara, Esprit have been accused to have violated human rights. Several reports say that hundreds of these workers are abused daily.78 Zara’s clothes had notes stitched stating in them that the rights of workers are violated at factories.79

In India for example, Coca-Cola deteriorates local agriculture by privatizing the country's water resources. In Kerala after the company drained a large amount of the groundwater, thousands of

76 Id.
communities were faced with water shortages, by virtue of this, the remaining water became contaminated causing scabs, eye problems, and stomach aches in the local population.80 Coca Cola, one of the leading corporations has been accused of assassinating eight union leaders from the Coca-Cola bottling factories in Columbia after these leaders were protesting the labor practices being implemented in the factories. Additionally, several protestors have alleged to have been kidnapped and tortured.81

The United Nations Guiding Principles on Business and Human Rights (UNGPs) was hence formulated to provide guidelines in ensuring businesses do not violate the rights of humans.82 The UNGP formulated certain guidelines for corporation to implement. The first, was to ensure that the state protects the human rights of its workers, the second was to ensure the corporate’s responsibility to protect human rights and the third, was to provide remedies for workers of business violations. While the UNGPs exist, not all corporations adhere to its principles.

Criminal Corporate Liability is hence socially desirable in holding the corporates criminally liable for all the felonious activities undertaken by its directors. While, this paper restricted itself to Asian violation of human Rights, there exists a plethora of countries In South America and Africa where humans face dire situations due to the violation of corporates.

CONCLUSION

The purpose of the current study was to primarily determine the position of Corporate Criminal liability in India. The second aim of this study was to distinguish the various doctrines surrounding corporate criminal liability. The second aim of this research paper was also to determine the most efficient doctrine in determining the mental culpability of a corporate. However, all the existing doctrines work in Pari Materia with each other, hence, it is profoundly onerous to assess the most

81 id.
82 UNGP, ART. 1, UN Declaration, 2011.
efficient doctrine. This study has also found that the doctrines surrounding corporate criminal liability suffers a few shortcomings in comparison to the United States of America. The judiciary of the United States of America have reduced the scope for determining criminal liability of a corporate. The American Congress have also formulated various legislations which provide a vivid set of guidelines for determining the mental culpability of corporate which Indian legislation has failed to provide. Ergo, it is left to the Indian Judiciary in most instances to interpret the statutes available to them.

While, companies still abuse the inherent characteristic of Separate Legal Entity, the Judiciary of the country has plausibly maintained a balance between retaining the characteristic of the company as a legal entity and a basis for convicting corporates. As seen in landmark precedents of the Supreme Court of India, they have resolved the lacuna involved in determining the mental culpability of companies. However, there are still certain shortfalls. Firstly, the Indian penal Code, has several crimes which were traditionally impossible for a company to commit. But, with the rapid progress of technology, the scope for commission of crimes have increased. Secondly, in most large corporates, there exists a plethora of employees. A single employee’s mistake will cause a chain reaction which can possibly affect the entire corporation. This chain reaction can possibly portray the company as criminally liable. The Judiciary of the country has not resolved this complication in the law. While some of the analysis of the shortcomings may be restrictive due to the limits on research, it must be viewed emphatically as a fight towards the rights of under trodden Human beings.