CORPORATE CRIMINAL LIABILITY

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**Abstract**

The general belief in the early sixteenth and seventeenth centuries was that corporations could not be held criminally liable. Legal thinkers did not believe that corporations could possess the moral blameworthiness necessary to commit crimes of intent. This research paper discuss on the provision under various law related corporate crime and liability. There is also discussion about the new versions or modern version of corporate criminal activity and various theories of corporate crime by different activist. In this research paper, there is also mention about the problems to prosecute corporate criminal activity with relevant cases.

**Keywords:** corporate crime, standard bank law, companies act, corporate criminal liability.

# Introduction

*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

A corporation was not indictable for any crime under early common law, but the broad general rule is now well established that a corporation can be subjected to indictment for violating a statutory or common-law duty. At the present, most nations agree that corporations can be sanctioned under civil and administrative laws. However, the criminal liability of corporations has been more controversial. While several jurisdictions have accepted and applied the concept of corporate criminal liability under various models, other law systems have not been able or willing to incorporate it. Criminal Liability is attached only those acts in which there is violation of Criminal Law so there cannot be liability without a criminal law which prohibits certain acts or omissions[[1]](#footnote-2).

The basic rule of criminal liability revolves around the Latin maxim *actus non facit reum, nisi mens sit rea*. It means that to make one liable it must be shown that act or omission has been done which was forbidden by law and has been done with guilty mind. Hence every crime has two elements one physical known as *actus reus* and other mental known as *mens rea*. This is the rule of criminal liability in technical sense but in general the principle upon which responsibility is premised is autonomy of the individual, which states that the imposition of responsibility upon an individual flows naturally from the freedom to make rational choices about actions and behaviour. Although, there is an exception to it i.e *Rule of Absolute Liablity* in which one can be made liable even in the absence of mens rea[[2]](#footnote-3).

Developing countries face a major problem of corruption and bribery, especially among the public officials, and this has resulted in increased criminality in under-developed countries that are already burdened with huge debts from the International Monetary Fund. Therefore, the concept of corporate crime must be clearly defined so that it is possible to ascertain the extent of liability to be imposed on them. This is necessary if the motto of the civilized society has to be ‘live and let live’.

India is not an unknown territory as far as corporate crimes are considered. In fact, it is a serious contemporary concern due to multidimensional aspects involved in nature of such kinds of crime, given the number of corporate scams emerging everyday and threatening the overall economy and welfare of the state. Development of any country depends largely on the corporate sector, although the stability of the economy must not depend on its corporate sector. Corporate criminality seriously threatens the welfare of the society, considering its presence and impact in most aspects of social and community life, and the number of people it affects. As a result, corporate entities are in a position of causing massive physical and economic harm.

Corporate liability in the present context must be strengthened. The phenomenon of corporate criminality emerged primarily in the 20thcentury. In India, laws pertaining to corporate liability are being strengthened, particularly after the Bhopal Gas tragedy. However, it is still in a nascent stage. The traditional perspective towards crime never included corporate criminality. Business corporate has become a prominent part of the society. Considering the penetrative reach of the corporate in the various spheres of social existence, and the commercial outlook in our value systems, it becomes all the more important to ascertain the criminal liability of companies.

Laws are being designed to define various acts of companies as criminal if they are harmful for the society even if they are profitable for the business organization. Fraudulent activities and other intentional crimes, particularly in securities and healthcare are dealt under stringent prohibitive laws.

Other criminal legislations, like the various environmental regulations, have been framed to ensure that firms adopt measures to rectify or prevent the harmful impact of their operations. Most legislations are enforced by combining both corporate and individual liability on companies indulging in wrongful activities. The moot question confronting the law enforcers is to find ways to impose structured criminal and civil sanctions against individual and corporate which may serve as a deterrent.

## *Historical Evolution*

It has been said that in sixteenth and seventeenth centuries, the corporations could not be held criminally liable. Legal thinkers did not believe that corporations could possess or commit crimes of intent. It was the common intention of the people that a corporation is not a physical body, hence it cannot have "*actual wicked intent*”. It cannot, therefore, be guilty of crimes requiring evil intention. Betrayal, felony, perjury, and violent crimes against the person could be committed only by natural persons.

Courts in England drew some distinctions, however, between crimes requiring specific intent and those for which general intent would suffice. In one sense the acts of the corporation are the acts of its officers, directors, and employees. During the early twentieth century courts began to hold corporations criminally liable in various areas in which enforcement would be impeded without corporate liability. Indeed, courts were soon willing to hold corporations criminally liable for almost all wrongs except rape, murder, bigamy, and other crimes of malicious intent[[3]](#footnote-4).

The old school thoughts that the corporate acts through its directors and officers, and should not attract criminal liability. It has been argued that punishment for criminal offences such as imprisonment cannot be given to companies and, hence, there cannot be criminal liability on corporations. Major hurdles that faced the attribution of criminal liability on corporate were factors such as artificial juristic personality and absence of criminal intention on the part of the corporate[[4]](#footnote-5).

# Criminal liability of corporation in India

All the Penal activity is generally regulated under the IPC, 1860 in India. It is that statute which needs to be contemplated upon in case of criminal liability of corporation[[5]](#footnote-6). Corporations play a significant role not only in creating and managing business but also give some affect in common lives of most people. That is reason for most modern criminal law systems foresee the possibility to hold the corporation criminally liable for the execution of a criminal offence. The doctrine of corporate criminal liability turned from its infancy to almost a prevailing rule[[6]](#footnote-7).

In India, the need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and Transnational Corporations. Many of these industries are engaged in hazardous or inherently dangerous activities which couses potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though working rules and regulation of such factories and plants is regulated by a 614 number of laws of our country, there is no special legislation providing for compensation and damages to general public who may suffer due to any accident by industry[[7]](#footnote-8).

*Corporate Criminal Liability: Pre-Standard Chartered Bank Case Law*

Until recently, Indian courts were of the opinion that corporations could not be criminally prosecuted for offenses requiring mens rea as they could not possess the requisite mens rea. Mens rea is an essential element for crime, if not all, of offenses that would involve imprisonment or other penalty for its violation. Adopting on overly generalized rationale, pre Standard Chartered decision, Indian courts held that corporations could not be prosecuted for offenses requiring a mandatory punishment of imprisonment, as they could not be imprisoned.

In *A. K. Khosla v. S. Venkatesan[[8]](#footnote-9)*, two corporations were charged with having committed fraud under the IPC. The Court in this case pointed out that there were two requirements for the prosecution of corporate bodies, the first being that of mens rea and the other being the ability to impose the mandatory sentence of imprisonment. A corporate body could not easily be said to have the necessary mens rea, nor can it be sentenced to imprisonment as it is not a physical body.

In ***Kalpanath Rai v State (Through CBI****)[[9]](#footnote-10)*, a company accused and arraigned under the Terrorists and Disruptive Activities Prevention (TADA) Act, was alleged to have harbored terrorists. The trial court convicted the company of the offense punishable under section 3(4) of the TADA Act. On appeal, the Indian Supreme Court referred to the definition of the word "harbor" as provided in Section 52A of the IPC and pointed out that there was nothing in TADA, either express or implied, to indicate that the mens rea element had been excluded from the offense under Section 3(4) of TADA Act.

The Indian Supreme Court referred to its earlier decisions in ***State of Maharashtra v. Mayer Hans George***[[10]](#footnote-11) and ***Nathulal v. State of M.P***[[11]](#footnote-12). and observed that there was a plethora of decisions by Indian courts which had settled the legal proposition that unless the statute clearly excludes mens rea in the commission of an offense, the same must be treated as an essential ingredient of the act in order for the act to be punishable with imprisonment and/or fine.

There is uncertainty over whether a company can be convicted for an offence where the punishment prescribed by the statute is imprisonment and fine. This controversy was first addressed in ***MV Javali v. Mahajan Borewell & Co and Ors***[[12]](#footnote-13) where the Supreme Court held that mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, but where it cannot be imposed ,namely on a company then fine will be the only punishment.

In ***Zee Tele films Ltd. v. Sahara India Co. Corp. Ltd***.[[13]](#footnote-14), the court dismissed a complaint filed against Zee under Section 500 of the IPC. The complaint alleged that Zee had telecasted a program based on falsehood and thereby defamed Sahara India. The court held that mens rea was one of the essential elements of the offense of criminal defamation and that a company could not have the requisite mens rea.

In ***The Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles***[[14]](#footnote-15), a private company was prosecuted for violation of certain sections under the Income Tax Act. Sections 276-C and 277 of this act provided that the sentence of imprisonment and a fine in the event of a violation. The Supreme Court held that the respondent company could not be prosecuted for offenses under certain sections of the Income Tax Act because each of these sections required the imposition of a mandatory term of imprisonment coupled with a fine. The Court held that a corporation did not have a physical body to imprison and therefore could not be sentenced to imprisonment.

***Standard Chartered Bank and Ors. v. Directorate of Enforcement (2005) 4 SCC 530***

This is the landmark case in which the Supreme court overruled the all other laid down principles. In this case, Standard Chartered Bank was being prosecuted for violation of certain provisions of the Foreign Exchange Regulation Act, 1973. Ultimately, the Supreme Court held that the corporation could be prosecuted and punished, with fines, regardless of the mandatory punishment required under the respective statute. The Court did not go by the literal and strict interpretation rule required to be done for the penal statutes and went on to provide complete justice thereby imposing fine on the corporate[[15]](#footnote-16).

The Court initially pointed out that, under the view expressed in ***Velliappa Textiles***, the Bank could be prosecuted and punished for an offense involving rupees one lakh or less as the court had an option to impose a sentence of imprisonment or fine to the bank. However, in the case of an offense involving an amount more than rupees one lakh, where the court is not given discretion to impose imprisonment or fine that is, imprisonment is mandatory, the Bank could not be prosecuted.

The Supreme Court in Standard Chartered Bank observed that the view of different High Courts in India was very inconsistent on this issue. For example, in State of ***Maharashtra v. Syndicate Transport***[[16]](#footnote-17), the Bombay High Court had held that the company could not be prosecuted for offenses which necessarily involve the corporal punishment or imprisonment; prosecuting a company for such offenses would only result in a trial with a verdict of guilty and no effective order by way of a sentence. Justice Paranjape had stated:

“*the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of the offence disclosed by the allegations in the complaint or in the charge-sheet, the relative position of the officer or agent, vis-a-vis, the corporate body and the other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act…*”

On the other hand, in ***Oswal Vanaspati & Allied Industries v. State of Uttar Pradesh***[[17]](#footnote-18), the appellant-company had quashed a criminal complaint by saying that the company could not be prosecuted for the particular criminal offense in question, as the sentence of imprisonment provided under that section was mandatory.

The Full Bench of the Allahabad High Court had disagreed: “*A company being a juristic person cannot obviously be sentenced to imprisonment as it cannot suffer imprisonment. It is settled law that sentence or punishment must follow conviction; and if only corporal punishment is prescribed, a company which is a juristic person cannot be prosecuted as it cannot be punished. If, however, both sentence of imprisonment and fine is prescribed for natural persons and juristic persons jointly, then, though the sentence of imprisonment cannot be awarded to a company, the sentence of fine can be imposed on it. Legal sentence is the sentence prescribed by law. A sentence which is in excess of the sentence prescribed is always illegal; but a sentence which is less than the sentence may not in all cases be illegal*”.

**Criticism**

The well known maxim *'judicis est jus dicere, non dare'* best explains about the role of the court that to interpret the law, not to make it. This read with the Doctrine of Separation of Powers has bound the Court‟s hands in imposing various kinds of punishments and all that it is left with is to impose fines. In order to avoid compelling the Courts to go out of the statute and interpret, it is advised that the legislature amends the various penal statutes in a way so as to bring in various forms of punishments for the corporations as well, thereby maintaining the separation of powers regime and hence the rule of law.

It must be stated that environmental degradation resulting from industrial pollution in recent years has become a positive danger to social security. Legal provisions are therefore incorporated in the Indian Penal Code, to punish industrial and business corporations which create danger to public life because of pollution, and District Magistrate can initiate proceedings against them under Section 133 of the code of Criminal Procedure, 1973. Section 16 of Environment (Protection) Act, 1986 and Clause 2 of Section 47 of Water (Prevention and Control Pollution) Act,1974 also explicitly lays down provision for the offences by companies. It states companies can be prosecuted under certain circumstances and thus, reflect the concept of vicarious criminal liability.

## Purpose of corporate criminal liability[[18]](#footnote-19)

It is necessary to understand the purpose for corporate liability because the choice of liability strategy is to be determined by this ultimately i.e. whichever strategy achieves the purpose better must be used.

* A number of purposes can and have been offered to justify ideas of corporate fault.
* Supporting fundamental values of our society by punishing their breach.
* A another purpose is that to prevent from the occurrence of undesirable activity. So corporate liability should aim to create incentives for corporations to monitor the activities of its employees. This argument restates the justification of corporate liability for vicarious, absolute and strict liability offences.
* Corporate criminal liability deters corporate managers and employees. Corporations and other groups are an important source of norms of behavior for individuals. An individual is an instrument through which an individual organizes his/her affairs, and a larger corporation is more likely to be a highly developed organization that passes on its norms to its members. This refers to criminal organizations, i.e. organizations set up under a façade to basically facilitate criminal activities. Deterrence effect is needed to prevent corporations being set up for illegal purposes, as well as to prevent existing corporations from doing harm in any way.
* According to some scholars, there is a retributive purpose in holding corporations criminally liable because of the possibility that the corporations might profit from engaging in illegal activities. It is proper that the fines should be carried by those who received the fruits of the illegal enterprise so as to prevent unjust enrichment.

## Corporate criminal liability under the Companies Act, 2013

The Companies Act, 2013 has been reformed considerably to control and deter corporate frauds and standardize governance process more effectively. There are clear provisions under this Act dealing with frequent corporate crimes like fraud, cheating etc. The Act controls frauds and deters their recurrence by bringing in more accountability and responsibility upon independent directors, auditors etc. they are the watchdogs to ensure company’s compliance to The Companies Act and other such legal provisions of the law. The Act also prescribes personal liabilities upon Key personnel, auditors, employees etc[[19]](#footnote-20).

The present Act has received appreciations from industry experts and legal fraternity alike because it is not only comprehensive but is also strict with practical penalties effective in controlling frauds. Collectively it can be said that India’s legal system is evolving and adopting towards the rising need for curbing and controlling multidimensional nature of corporate crimes.

*Punishment for Corporate Fraud*

Section 447 of Companies Act defines fraud as an act of omission or commission leading to consequences against the interest the company misusing or abusing his/ her authority by virtue of his position. According to this Act, fraud is an offence punishable by imprisonment not less than six months and can go up to maximum of ten years. The provision for fine cannot be less than the amount of fraud and may extend up to three times the fraud amount. The Act has been effective in controlling corporate crimes and frauds. The Report of the Companies Law Committee[[20]](#footnote-21) received suggestions that the ambit of Section 447 was too broad and would result in minor infractions being punished with severe penalties, which are non-compoundable.

However, it was also suggested during the discussions that once the offence of fraud is established, it would not be tenable to provide for a threshold for it to be punishable under Section 447. The Committee observed that “*the provision has a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc. and, therefore, recommends that only frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 (and non-compoundable). Frauds below the limits, which do not involve public interest, may be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved.*”

## Various theories that govern corporate criminal liability[[21]](#footnote-22)

### Optimal penalty theory for corporate crime

The economic theory of optimal penalties has developed significantly since Becker’s insight that the penalty should equal the social harm divided by the probability of detection. Becker also stated that in the commission of a corporate crime there are different possible actors who play the role in committing and preventing a crime. Fines are preferred to imprisonment since the latter is socially costly. It states that the only time imprisonment is required when the offender is unable to pay the optimal fine.

### Deep-pocket hypothesis

It has been found according to this theory that jurists treat corporate defendants less favorable than individual defendants. “Under the “deep pockets” theory favored by many jurists, big companies end up subsidizing customers and lawyers.” – *Barbara Hackman Franklin, U.S Secretary of Commerce (1992).*

“*The only answer I wouldn’t believe is one that says they didn’t [take defendant wealth into account]. I can’t imagine that people wouldn’t think about that.”* – G. Marc Whitehead, Director of the ABA Litigation Section, National Law Journal (1993).

### Theory of vicarious liability

Originally this doctrine developed in the context of tortious liability which was later imported into company liability. This particular doctrine states that a person is liable to answer for the acts of another or master will liable for the act of his servent. In the case of companies, the company may be held liable for the acts of its employees, agents, or any person for whom it is responsible.

### The identification theory

This theory specifically developed to hold corporations liable in case of offences which required the presence of intention*.* This theory stipulates that the actions and also the mental stage of the corporation found within the action stage of the employees or the directors are to be considered to be the action and mental stage of the corporation itself. In the famous *Dredge & Dock Case (1985)* the Supreme Court of Canada had characterized the Theory of Identification :

* A corporation may have several directing mind. Thus where corporate activities are wide spread, it will be inevitable that there will be delegation and sub delegation of authority from the center and thus leading to several directing minds.
* The action and intent of the directing mind is merged with the intent of the corporate entity, thus there exists no defense for the company to claim.
* It is the Courts adopted rule the mental state of mind is equally same to that of the virtual body that is the corporate entity.
* As per the assessment of the Court if the agent’s directing mind and will assigned of the duties and responsibilities of the corporation then it shall be intended to be the act of the Company itself.
* The main essence of the test is to identify the existence of the meeting of the minds of the company with that of the agent.

## New dimensions of corporate crime

Several new kinds of frauds and crimes are emerging each day and most of the times we are caught unaware. Different dimensions of corporate crimes as have been witnessed by the world, According to Deloitte India Fraud Survey; in times to come India could witness four common frauds due to emerging trend of using high technology digital media in regular business models. Media scams, e-commerce scams, scams related to cloud computing and virtual currency scams. The following are the excerpts from the Deloitte India Fraud Survey and the information given below is taken from the survey only:

**(i)** *E-commerce Fraud*

Presently e-commerce is involved in almost every business and numerous transactions are conducted using computer networks, Internet and online media. E-commerce industry has been growing at a very fast pace and presently it is valued at nearly INR 224 Bn. It is expected to grow to nearly twice this figure in next two years.

Travel industry occupies much of the e-commerce space presently with transactions ranging from ticket bookings, hotel bookings, online buying etc. internet penetration in India has been increasing and so is the possibility of transacting online. It is estimated that by year 2014 the total number of Internet users will increase to more than 243 million.With increasing number of computer literate who are also good prospect for online companies give significant scope for online scammers.

**(ii)** *Cloud Computing Fraud*

People are increasingly using and demanding online access to their data and applications which can help them do so. Several devices are being used like desktop PC’s, smart phones, laptops, tablets etc. Cloud computing solves this problem very effectively. Not only is the Indian younger generation using cloud solutions, companies are also using cloud access for speedy and simultaneous sharing of internal data. This leaves a large possibility of online frauds.

Presently, with the use of cloud technology companies can share and edit data and documents and simultaneously viewing and using it from different locations. People on cloud can interact on real time basis at a very low cost. Applications and uses of cloud based computing are so many that it has become target to online scammers risking the data shared on cloud computing. Intellectual property, internal information and several other data are at risk of being stolen or misused. Cloud computing has also increased the risk of identity threat, hacking etc.

**(iii)** *Social Media Fraud*

Now-a-days, social media is one greatly popular and used tool. Companies are using it to improve their visibility and popularity among people. Social media is also a platform where companies can come closer to customers and interact with them. Although companies have started using social media as strategic marketing and customer relationship tool, they are still in the process of understanding how it works. Whereas social media is widely used by customers of all ages, gender and all places but at the same time hacker may hijack the data and manipulate it against the marketer. Moreover there are other risks like negative publicity, customer data loss etc. that makes it risky and tempting ground for corporate crimes.

**(iv)** *Virtual / Crypto-Currency Fraud*

A crypto currency is a digital or virtual currency that uses cryptography for security. ‘Bitcoin’ is one virtual currency that is much popular on black market website which was under scrutiny by US authorities. This currency is based on complex systems and networks and is accepted in exchange for goods and services at various online portals. The transactions involving crypto currency range from online transfers, mobile recharges and several online trading or exchanges for goods or services. Whereas production of physical money is regulated and controlled, generation of crypto currency is far less regulated and can be manipulated relatively easily.

## Difficulties to prosecute corporations under the criminal law

There was a time when corporate crime was just an insignificant part of legal considerations more of notional relevance. The reason was that there were not too many corporations in existence and their prosecution was rather difficult. An important consideration was that in case of criminal trials it was necessary to put in personal physical appearance. A company being an artificial person existing only in the eyes of law was unable to perform acts that it had not been authorized to perform, and so by its very definition, such acts would be *ultra vires*. Therefore, whether the company could perform or even support such acts was debatable. Furthermore, it was quite a challenge to determine the *mens rea* or ‘a guilty state of mind’ in a notional concept like a corporation. Most significantly though was the fact that company was an artificial person, and so punishments like imprisonment etc., were not possible[[22]](#footnote-23).

Nonetheless, there are many criminal activities which a corporation can and unfortunately does get involved in, starting from workplace death and hurt to injury to a person and damage to the property of consumers and other members of the public. The lack of perception to associate the corporate image with such crimes has been instrumental towards the abysmal rate of success in assigning liability for them and prosecuting them.

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.

## Imprisonment for Criminal liability of company: possible or not?

It is always a debatable issue and almost agreeable that Corporation can’t be sentenced for imprisonment. Imprisonment, transportation, banishment, solitude, compelled labour are not equally disagreeable to all person under the penal code. It totally depends upon the circumstances of the person for the imposition of punishment. But, in case of corporation, Imprisonment cannot be recognised even for serious offences mentioned under the IPC.

 Since, there is no explicit provision relating to it, Hence the apex court in various cases have held that it is better to impose fine upon the corporation even in the cases where there is a punishment for imprisonment. The imposition of fines is also made in four other ways as provided in the IPC.

There is the sole punishment for certain offences and the limit of maximum fine has been laid down; in certain cases it is an alternative punishment but the amount is limited, in certain offences it is imperative to impose fine in addition to another punishment and in some it is obligatory to impose fine but no pecuniary limit is laid down .

However, Section 357, CrPC, empowers a Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence.

The argument that a company has no soul to damn and no body to imprison cuts both ways. Critics argue that there is no reason to prosecute a corporation. Supporters of corporate criminal liability might turn the argument around and ask for why the corporation can’t go to jail? The legal difficulty arising out of the above situation was noticed by the Law Commission and in its 41st Report, the Law Commission suggested amendment to Section 62 of the Indian Penal Code by adding the following lines:

"*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*."

As per the jurisprudence and under the present Indian law it is difficult to impose fine in lieu of imprisonment though the definition of 'person' in the Indian Penal Code includes 'company'. It is also worthwhile to mention that our Parliament has also understood this problem and proposed to amend the IPC in this regard by including fine as an alternate to imprisonment where corporations are involved in 1972.

Till now, the Courts in India have been able to impose only fine as a form of punishment because of statutory inadequacy and lack of new forms of punishments which could be imposed upon corporate. But as per the recent judgments in India make it clear that corporations are liable to be prosecuted for offences under IPC. With this, India is now in such a platform as the US and the UK when it comes to law in relation to criminal liability on corporation.

## Various provisions which attract corporate criminal liability in india

* *Section 141 of the Negotiable Instruments Act, 1881.* It states that when any offence committed under Section 138 of the Negotiable Instruments Act, then every individual who ever have committed the offence shall be charged for the criminal act and conduct of the business of the corporate. If the person is that the company itself even then the company shall be held to be guilty of the offence and shall be held liable and will be punish accordingly
* *Section 7 of the Essential Commodities Act, 1955*. Section 7 states about penalties under the Act. It states that if anyone contravenes any order made under Section 3 of the Act then he/she shall be liable to imprisonment to three month which may extent to seven years and will also be liable to pay a fine of certain amount.
* By this it is clear that it is not a compoundable offence as it attracts both imprisonment as well as penalty provision. And the term “person” includes “individuals, corporations and companies” as per the GENERAL CLAUSES ACT, 1897.
* *Section 276-B of The Income Tax Act, 1961*. The section states regarding the failure to pay tax deducted at source [TDS] In case of this section it attracts criminal liability if any sort of dispute occurs in the payment of TDS then it will result in rigorous imprisonment which will be minimum of three months and maximum it may extend to seven years and also certain amount of fine will be levied.

## Effect of corporate crimes in the society

The series of activities undertaken by corporate bodies has got adverse effect on the life, property and liberty of the citizens. Various corporations commit large-scale financial irregularities. At the time of globalization the big corporations form a defining force on the globe. This is so because the corporate vehicle now occupies a large portion of the industrial, commercial and sociological sector. Thus liability of the corporation to a criminal law has become essential to have a peaceful society with stable economy[[23]](#footnote-24). Corporations being virtual entities, their criminal behavior are also out of ordinary. Corporate crime has become a very sensitive issue in nowadays.

The Law Reform Commission of New South Wales offers an explanation of corporate criminal activity:

*“Corporate crimes pose a significant threat to the welfare of the community. Given the pervasive presence of corporation in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action, the potential for both economic and physical harm caused by a corporation is great.”*

# Conclusion

After analyzing all these pronouncements, it can be said that post *Standard Chartered* decision, corporations are capable of possessing the requisite *mens rea*. Going in tune with this judicial trend, the newly enacted Companies act 2013 has also imposed separate penalties on companies and upon the individuals acting behind such corporations. The issue of criminal liability of corporations for corporate acts has been controversial in nature. Legal position of corporate criminal liability has evolved over the years and is still evolving and with time the courts in India have undertaken strict approach in determining liability of a corporate body for the intended acts committed by its directors, persons employed and other agents. The Indian Courts have always tried to determine the mind (controlling and directing) of the corporations and this principle is used in various cases and statutes while identifying the criminal liability of these corporations. The Indian Legislature should take some steps in the form of new penal sanctions so as to curb the criminal acts of the corporations in the country.

1. Angira Singhvi ,”Corporate Crime and Sentencing in India: Required Amendments in Law”, International Journal of Criminal Justice Sciences ,Vol 1 Issue.2 July 2006 ISSN:0973 available at http://www.sascv.org/ijcjs/angira.html [↑](#footnote-ref-2)
2. Russell, W.O.,”Russell on Crime” p.17-51 (J.W.C. Turner Ed.,2001) [↑](#footnote-ref-3)
3. Kathleen F. Brickey, Corporate Criminal Accountability: A Brief History and an Observation, 60 WASH. U. L.Q. 411(1981) http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=2261&context=lawreview [↑](#footnote-ref-4)
4. Supra note 2 [↑](#footnote-ref-5)
5. Indian Penal Code, 45 of 1860, Sec.11: The word “Person” includes any Company or Association or body of persons, whether incorporated or not. [↑](#footnote-ref-6)
6. Thiyagarajan, T. Sivanathan; “*Corporate Criminal-concept*”, available at http://www.manupatra.com/Articles /artlist.asp?s=Corporate/Commercial [↑](#footnote-ref-7)
7. Singh.K.N.J, in Charan Lal Sahu v. Union of India, AIR 1990 SC 1480. [↑](#footnote-ref-8)
8. A. K. Khosla v. S. Venkatesan (1992) Cr.L.J. 1448 [↑](#footnote-ref-9)
9. Kalpanath Rai v State (Through CBI), (1997) 8 SCC 732 [↑](#footnote-ref-10)
10. State of Maharashtra v. Mayer Hans George,, A.I.R. 1965 S.C. 722 [↑](#footnote-ref-11)
11. *Nathulal v. State of M.P.,* A.I.R. 1966 S.C. 43 [↑](#footnote-ref-12)
12. MV Javali v. Mahajan Borewell & Co and Ors.,AIR 1997 SC 3964 [↑](#footnote-ref-13)
13. *Zee Telefilms Ltd. v. Sahara India Co. Corp. Ltd*., (2001) 3 Recent Criminal Reports 292 [↑](#footnote-ref-14)
14. The Assistant Commissioner, Assessment-II, Bangalore & Ors. *V. Velliappa Textiles,* (2004) 1 Comp. L.J. 21 [↑](#footnote-ref-15)
15. Tolaram Relumal and Anr. v. The State of Bombay MANU/SC/0057/1954 and Girdhari Lal Gupta v. D.H. Mehta and Anr. MANU/SC/0487/1971. mentioned under ¶ 27 of above mentioned case [↑](#footnote-ref-16)
16. State of Maharasthra v. Syndicate Transport (1963) Bom. L.R. 197 [↑](#footnote-ref-17)
17. Oswal Vanaspati & Allied Industries v. State of Uttar Pradesh (1993) 1 Comp.L.J.172 [↑](#footnote-ref-18)
18. Khanna, V.S., “Corporate Criminal Liability, What purpose does it serve?” Harvard Law Review, Vol.109, No.7, 1996. [↑](#footnote-ref-19)
19. Chopra, Rajiv, *Companies Act, 2013: An Analysis Of Key Rules*, 5 (7) *International Research Journal of Management* (2014). [↑](#footnote-ref-20)
20. Ministry of Corporate Affairs (Government of India), *Report of the Companies Law Committee*. Report submitted to Honourable Finance Minister on 1st February, 2016; Available at: http://www.mca.gov.in/Ministry/pdf/Report\_Companies\_Law\_Committee\_01022016.pdf [↑](#footnote-ref-21)
21. MARK A. COHEN, *Theories of Punishment and Empirical trends in corporate criminal sanctions,* Pg. 400, http://www.jstor.org/stable/2487975 [↑](#footnote-ref-22)
22. Pyne, Radhanath, ‘White Collar Crime and its Punishment Policy’, 49(12) *The Management Accountant Journal* 40-45 (2014) [↑](#footnote-ref-23)
23. VIDYA VISHNU KAMBLLE, Corporate Criminal Liability: An overview, 2008, Pg. 71 [↑](#footnote-ref-24)