Chapter-5

Judicial Response to Corporate Criminal Liability in India

5.1 Introduction

Unlike United States (US) and United Kingdom (UK) legal system, the Indian judiciary was very slow in responding to the need of the criminal liability of corporate. Industrial revolution took place in UK and gradually spread across European Countries and North America. Industrial growth in India was at snail pace up to 1980s. India liberalized its industrial policy during 1990 decade during the regime of Narashimh Rao government under the supervision of then the Finance Minister of India Shri ManMohan Singh. In the contemporary world, India is forced to reckon in industrial growth. More number of National and International Companies invested huge amounts in India and started more number of businesses, which has changed the outlook of India. The volume of companies’ transaction multiplied by number of times and living life style of Indian people changed considerably.

Indian companies are not lagging behind in adopting new technology in the business in order to compete with foreign companies and to enhance their reputation as global company in the world. Equally, the companies started to show the other face of company that it could employ unfair means to achieve their desired results. Further some persons started to make use of artificial creation of company’s personality to commit crime because they took the advantage of loophole in the law that company could not be prosecuted for criminal offence because company cannot be punished effectively.
5.2 Classification of Corporate Criminal Liability

Criminal liability of corporate in India can be broadly classified in following manner-

i. Criminal liability of corporation under strict liability based upon the vicarious principles.

ii. Criminal liability of corporation explicitly provided under specific legislations.

iii. Criminal liability of corporation under general law of Indian Penal Code.

5.2.1 Criminal Liability of Corporation under Strict Liability Based Upon the Premises of Vicarious Principles

Existence of guilty mind is an essential ingredient of crime at Common Law and the principle is expressed in the maxim “Actus non facit reum nisi mens sit rea.”¹ The legislator may, however create an offence of strict liability where mens rea is dispensed. Strict liability is the act for which a man is responsible irrespective of the existence of either wrongful intent or negligence. Strict liability implies legal responsibility despite lack of mens rea.² It is plain that if guilty knowledge is not necessary, no care on the part of the defendant could save him from sanction.³ Indeed that even high degree of care is quite irrelevant. Strict liability has expanded so considerably in recent years and in such various forms that it is impossible to generalize regarding it. Quite apart from the diverse major crimes that have been brought within this sphere. Strict liability is the product of modern legislative policy and not of traditional morality. In other words, it is matter of malum prohibitum rather

¹ Director of Public Prosecution v. Majewski, [1976] 2 All ER 142.
³ Sherras v. Derutzen, [1895] 1 Q.B. 918.
than *malum in se*. *Malum in se* means it is universally recognized that these are wrongs of ethics.\(^4\) *Malum prohibita* are sometime called “quasi-criminal offences”—offences that are regarded as “not criminal in any real sense, but acts which in the public interest are prohibited under penalty.”\(^5\) It is some time argued that strict liability offences are instances of petty offences and are not immoral. They are merely conventional wrongs because prohibited by the positive law. Another justification for strict liability is it increases care and efficiency, even by those who are already careful and efficient. Human beings knowing about strict liability, they will take precautionary measures beyond what they would otherwise employ. Under strict liability only the act of the offenders is taken into consideration. Therefore the act of the servant or agent which is committed during the course of employment is attributed to the company. Hence company could be made liable for the socio-economic offence that is acknowledged across universe which is un-debatable.

### 5.2.2 Criminal liability of corporation explicitly provided under specific legislations.

Legislators have thought that company could also commit certain categories of crimes of socio-economic offences. Therefore, it becomes essential to provide explicit provisions in respect of corporate criminal liability under specific legislations. The main thrust of such legislations is that society should be protected from the harm likely to be caused by the company. Moreover, the offences attributable to the company by such legislations are akin to the business carried by the corporations. Under this, devices criminal liability not only applied to concerned guilty officer but also company and even it could be extended to the person in charge of the company at the time of commission of act of crime. Why the in charge person

\(^4\)Jerome Hall, *op. cit.*, p 296.

is held guilty along with guilty officer and company for criminal liability is to make sure that person who is responsible for the affairs of the company should be alert, vibrant and take necessary precautionary steps to prevent the occurrences of crimes. Failure to take such preventive precautionary measures from the commission of crime on the part of such officer would be perfectly justifiable ground for attributing criminal liability in the larger interest of the society. Moreover nature of the activity covered by these legislations is likely to have vast ramifications on the society unless those activities are unchecked. Indeed, these kinds of legislations are accommodated across the legal system of universe.

5.2.3 Criminal liability of corporation under general law of Indian Penal Code.

Section 2 of the Indian Penal Code (IPC) deals with intra-territorial operation. It refers to offences committed within India and declares that every person shall be liable to punishment under Code for every act or omission contrary to the provisions of the Code, which he shall be guilty within the territory of India. The section asserts the principle of criminal liability based on the locality and places of the offence committed. The section makes “every person” irrespective of his nationality or allegiance, or his rank, status, caste, color or creed, liable to punishment under the Penal Code for an offence committed within India. The word “every person” has a wider connotation. It includes not only citizens, but also non-citizens. Further, Section 11 of IPC defines who is person. It says the word ‘person’ includes any company, Association, or body of persons, whether incorporated or not. Obviously, the literal interpretation of Section 2 read with Section 11 of IPC makes it explicitly clear that juristic person like company or association of persons like partnership firm could be

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prosecuted or indicted for every offence proscribed in the IPC. However, jurisprudence of juristic personality suggests that corporate personality cannot be equated with personality of natural person in respect of all offences mentioned in the law of crimes. Even eminent authors of criminal law text like K.D. Gaur and Ratanlal and Dhirajlal endorse this view.\(^7\) Even there is no unanimity among the judiciary in respect of corporate criminal liability on the ground that unlike natural person, corporation is incapable of forming the *mens rea* and it is impossible to punish company. However, much of water has flown in the society after such thought in the late 20\(^{th}\) and beginning of 21\(^{st}\) century. Therefore, researcher has undertaken the critical analysis of trend of judicial response in respect of corporate criminal liability.

### 5.2.3.1. Presumption of innocence of accused:

Whenever a court is called upon to decide any question of fact, it may do either by obtaining actual evidence or by prior presumptions. The doctrine *praesumptiones juris sed non de jure* means inferences of facts hold good until evidence has been given which contradicts them.\(^8\) Accused is presumed to be innocent until his guilt is proved. So strong is this presumption that, in order to rebut it, the prosecution must prove accused guilty beyond reasonable doubt and the graver the crime the greater will be the degree of doubt that is reasonable.\(^9\) The golden rule of

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\(^7\) Gaur K.D. in his book writes that person under IPC does not a non-judicial person such as a corporation or a company, because a company cannot be indicted and charged for offences such as murder, dacoity, robbery adultery bigamy and rape etc., as these can only be committed by a human being. See, Gaur, K.D. *The Indian Penal Code*, (4\(^{th}\) Ed.), (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2008), p.35. Further, Ratanlal and Dhirajlal also says that a company cannot be indictable for offences which can be committed by a human individual alone, like treason, murder, perjury etc., or for offences which are compulsory punishable with imprisonment or corporeal punishment. See, Ratanlal & Dhirajlal, *The Indian Penal Code*, (33\(^{rd}\) Ed.), (Nagpur: LexisNexis Butterworths Wadhwa, 2010), p.3.


evidence has emerged from the case of Woolmington v. D.P.P.,10 wherein the House of Lords asserted that accused presumed to be innocent is fundamental doctrine of criminal cases. Lord Chancellor Viscount Sankey said, “If the jury is left in reasonable doubt whether act was unintentional or provoked, the prisoner is entitled to be acquitted.”11 Further, the following general statement of Lord Chancellor has affected the entire criminal jurisprudence.

“Throughout the web of English criminal law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt, subject to the defense of insanity and any statutory exception. If at the end of the whole case there is a reasonable doubt, as to whether the prisoner killed the deceased with malicious intention, the prosecution has not made out a case and the defendant is entitled to acquittal.”12

The burden of proof so placed upon the prosecution remains with them throughout the trial. Obviously, it does not shift to the defendant merely because the prosecution makes out a prima facie case.13 The burden of proof in criminal cases is heavier because in civil cases it is balance of probabilities.

There are several reasons for placing the burden of proof on the prosecution, which is a universal rule. Firstly, the State has huge resources, network and work force to collect the evidence compared to the position of accused.14 Secondly, criminal proceedings are initiated and structured by the prosecutor before the court. Naturally, it is the duty of prosecutor to answer the charges.15 Thirdly, proving the positive act of person is easier than the negative act. Fourthly, placing the burden of proof

10 (1935) AC 462 (HL).
11 Id.
12 Id
15 Section 101 of the Indian evidence Act 1872.
proof on accused results in serious injustice, that is unfair, and unjust. Failure of the accused to convince the court of his innocence simply results in his conviction.

5.3 Judicial Response; Period from 1950 to 1970.

Initially it was argued that company being artificial person, unlike natural person cannot be held liable for criminal offences. Moreover, company does not have body or soul. Hence, it cannot be punished like natural persons. Therefore, the company ought to be kept outside the jurisdiction of the criminal jurisprudence. These are the issues raised in the Ananth Bandu v Corporation of Calcutta.  

5.3.1 Ananth Bandu v Corporation of Calcutta

Facts of the Case-

Messrs Samanta Industries Ltd was charged for the adulteration of Mustard oil under Section 407 of Calcutta Municipal Act (III [3] of 1923) read with Section 408. The Third Municipal Magistrate of Calcutta sentenced the proprietor of Messrs Samanta Industries Ltd Shri Anath Bandhu Samanta instead of Shib Kanta Samanta who was the General Secretary of company and in charge of the company to the extent of Rs 500 fine because company being legal person could not be punished.

Against this conviction, Ananth Bandhu made an appeal before the West Bengal High Court for quashing the conviction. Section 3(32) of the Bengal General Clause Act (Bengal Act I (1) of 1899) stated that “person” shall include any company or association or body of individual whether incorporated or not.” Further General Clause Act 1872 also gives the same definition of person. Section 407 of Calcutta Municipal Act (III [3] of 1923) criminalizes the sale of adulterated Mustard oil and punishable to the extent of Rs. 500. Justice Chunder held that in case of a limited

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16 Ananth Bandu v Corporation of Calcutta, AIR 1952 Cal 759.
company, there can be no proprietor and it is the person in charge of the limited company that is, the Secretary who has to be proceeded against under section 407. Further Justice reasoned that principal cannot be bought to trials does not prevent a charge of abetment against the abettor under section 108 of *Indian Penal Code*. The Hon’ble High Court has laid down the following important ratio of corporate criminal liability.\(^\text{17}\)

i. If there is anything in the definition or context of a particular section in the Statute which prevent the application of the section to a limited company certainly a limited company cannot be proceeded against. There are heaps of sections in which it will be physically impossible by limited company to commit the offence.

ii. Then again a limited company cannot be generally be tried when mens rea is essential.

iii. Company cannot be tried where the only punishment for the offence is imprisonment because it is not possible to send limited company to prison.

iv. Where there is other sentences than imprisonment or transportation or death is provided, there is nothing prevents the Court from inflicting a suitable fine and a sentence of fine need not carry with it any direction of imprisonment in default.

Court rejected the argument of state that under Indian Criminal Law a limited Company cannot be charged. State governments based its argument on the common law theory that “committed for trial means committed to prison with a view to being

\(^{17}\text{Id at 780.}\)
tried before the judge.”

Therefore, company cannot be committed to prison for trial, hence it cannot be prosecuted under Criminal law. However, the Court rejected the argument and held that except above stated class of cases there is nothing to prevent Indian criminal law to apply to the limited company.

Judgment is appreciable because it is empathetically stated that company is not outside the preview of criminal jurisprudence even though it is not held for the offences which requires mens rea but at least beginning has been made in respect of criminal liability of company. Another important notable principle of the judgment is that it dispensed the presence of the accused company during the trial. It is well established cardinal principles of criminal law, that trial of accused should be conducted in the presence of accused. Even on this count the company being legal person could not secure its presence during the trial. Hence company could not be tried. That rule was not made applicable in case company being the accused. Judiciary over came the major hurdle to hold company criminally liable. However, the company could be made liable for only statutory or strict liability not for common offence which requires mens rea. Another notable ratio of the case is that court had used the word “suitable fine” for imposing fine on company. It means that quantum of fine should be adequate to be deterrent for company. Ironically, the Court held that Magistrate may either proceed against company or against in-charge officer of the Company where the offence is punishable by means of fine only. The Honorable Court should have been held that proceedings should have been preceded against company as well as against officer because it would work out to be deterrent for both company and concerned officer otherwise not. High Court bench of Nagpur of

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20 Id.
Maharashtra further expanded the theory of corporate criminal liability in *State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd and others*.²¹

### 5.3.2 *State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd and others.*

**Facts of the Case.**

The Messrs Syndicate Transport Company (Private) is Ltd Company registered under the *Indian Companies Act* (Act No 7 of 1917). The opponent 3 is the Managing Director of the Company and opponents 4,5,6,7 and 8 are the Directors of the company. The opponent Manohar is the ordinary share holder of the Company. Manohar wrote letter to the complainant Khemaka Motors, that requesting to advance Rs 11000 to Syndicate Transport Company to purchase diesel engine which could be fitted into one bus. The letter also suggested that bus would be transferred in the name of Khemaka Transport and operated by the Syndicate Transport Company till the satisfaction of the amount of the Khemaka Transport. However, the bus was never transferred in the name of Khemaka Transport and even the amount was not paid by the Company. The complaint filed complaint under section 420, 406 and 403 of the Indian Penal Code. The trial court Magistrate passed separate order discharging the directors and framed charges against Company, its Managing Director and share holder Manohar. Company filed review petition before the Session Court for quashing order but Session Court referred the matter to High Court with recommendation of quashing the order. Section 403, 406 and 420 of IPC requires the ingredients of *mens rea*.

The Government contended that section 2 of IPC says that “every person shall be liable to punishment under this Code . . . .” and section 11 says that word “person”

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includes any company or Association or body of persons whether incorporated or not. Therefore, corporate body like company like any other person ought to be indictable for any offence punishable under the Code. However, the Court did not accept the argument but held that “it is not disputed that there are several offences which could be committed only by individual human being, for instances, murder, treason, bigamy, rape, perjury etc.”

Further it said that where the offence carries only corporeal punishment then company cannot be held guilty because prosecuting a company for such offence would only result in the Court “stultifying itself by embarking on a trial in which a verdict of guilty is returned, no effective order by way of sentence can be made” Therefore, Court observed that in a broad sense ‘a person which included a corporate body will have to be read as being subject to some kind of limitation’. Court said that person under section 11 of IPC is subjected to “unless there is anything repugnant in the subject or context.” Section 420 of IPC carries mandatory punishment of imprisonment therefore, company cannot be held criminally liable.

However Section 403 and 406 does not carry the mandatory punishment of imprisonment. Nevertheless those sections require the element of mens rea. Therefore, company being juristic person incapable of forming the mens rea, hence company cannot be held liable for crime. Justice Paranjpe J, did not accept that agreement and observed that “ordinarily a corporate body like a company acts through its managing director or board of directors or authorized agents or servants and the criminal act or omission of an agent including his state of mind, intention, knowledge or belief ought to be treated as the act or omissions including state of mind, intention,

\[\text{Id at 196.}\]

\[\text{Id.}\]

\[\text{Id at 197.}\]
knowledge or belief of the company.”\textsuperscript{25} The adoption of theory of identification to make company criminally liable is progressive steps on the part of judiciary. The decision of the Hon’ble Court is laudable because the company cannot take conventional defense that mens rea element cannot be attributed to company. The ratio decedendi of Ananth Bandu v Corporation of Calcutta suggested that company could not be held liable for those offences which requires mens rea element. Another major hurdle for holding company criminally liable is sorted out. The decision has to be appreciated because it has empathetically stated that company could be held criminally liable for those offences which even require mens rea. However, the doctrine of identification theory was adopted in broader sense because it included not only its managing director or board of directors but even its authorized agents or savants also. The company could be held liable even for the acts of its ordinary servants and agents who are not holding responsible positions that are committed during the course of their employment.

Further, the Court commented that a corporate body ought to be indictable for criminal acts or omissions of its directors, or authorized agents or servants, whether they involve mens rea or not provided they have acted or have purported to act under authority of the corporate body or in pursuance of the aims or objects of the corporate body.\textsuperscript{26} It means that officials of the company acting during the course of the employment for the benefit of the company makes company criminally liable even though the concerned officials might not have formed the mens rea of individual benefit. Someone may say that the decision seems to create some kind of contradiction because it says that even corporate officials are not having mens rea still the company could be held for offence. If the officials acted honestly, naturally the

\textsuperscript{25} Id at 200.
\textsuperscript{26} Id.
company also acted honestly. Therefore, the offence which requires *mens rea*
ingredient is not complied. Hence it amounts punishing the honest company in the absence of *mens rea*. Here, the benefiting the company by illegal means itself is equivalent to the *mens rea*. On the basis of these reasoning the court came to conclusion that dealings between the Manohar share holder of the company and Khemaka Transport was private agreement. Hence company and its managing directors and directors cannot be criminally held liable but criminal proceedings can be instituted against Manohar who is share holder of the company.

5.4 Judicial Response; Post 1970s Period

During the 1970s there were not much cases of criminal liability of company because the corporate sector in India was still in its initial stage of its expansion. Section 10 of the *Essential Commodities Act 1955* states that if the person being company and contravenes the Section 3 of the Essential Commodities Act 1956. Any person who is responsible to the company for the conduct of the business of company at the time of contravention will be prosecuted along with the company. The meaning of company for this section is anybody corporate and includes a firm or other association of individuals. This section explicitly states that company could be prosecuted under Essential Commodities Act 1955. The Company cannot take the defense that it is incapable of forming the mental element of committing the crime and it cannot be punished. Further, it cannot say that contravention of law committed by its official is the individual responsibility of officer but not of company. Such of kind of provisions are noticed in other laws also which specifically deals with socio-economic offence.\(^{27}\) Those legislations say company could be criminally liable along

\(^{27}\) See, Section 10 the *Essential Commodities Act 1955*, s Section 70 of the *Money Laundering Act 2002*, Section 85 of the *Information Technology Act 2000*, Section 48 of the *Competition Act 2002*, Section 38 of the *Narcotic Drugs & Psychotherapic Substances Act 1985*, Section 140 of the
with concerned guilty officers. Further, even the officer who is in charge of the company at the time of commission of offence also held liable.28 Another notable point feature of those legislations are that, any other officer who is consented, facilitated or failed to prevent such offence is also criminally held liable.29

In Giridhar Lal Gupta v. D.H. Mehta and Another,30 Supreme Court of India faced the important question of interpretation of word “in charge” under the section 23-C of the Foreign Exchange Regulation Act 1947.

5.4.1 Giridhar Lal Gupta v. D.H. Mehta and Another

Facts of the case

The registered partnership firm had contravened Section 8 of the FERA by the act of the cashier. At the time of commission of act, Giridhar Lal who was partner of the firm and in charge of the firm was aboard. Giridhar Lal contended that he was not in charge of the company at the time of commission of offence.31 Therefore he could not be made criminally liable for the act of cashier of the firm.

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28 Section 70 of the Prevention of Money-Laundering Act 2002, says (1) where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-Section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. The same kind of provision finds place in other legislations also.

29 Further, Section 70 (2) says that ‘Notwithstanding anything contained in sub-Section (1) where a contravention of any of the provisions of this Act or of any rules or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also deemed to be guilty of the contravention and shall be liable to proceeded against and punished accordingly.’

30 Giridhari Lal Gupta v. D.H. Mehta and Another, SCC (3) 189.

31 Section 23-C (1) of the FERA says “if the person committing a contravention is a company every person who, at time the contravention was committed, was in-charge of, and was responsible to,
Then the Chief Justice Sikri S.M speaking through Supreme Court interpreted the phase “a person in-charge and responsible for the conduct of the affairs of the company” means, it will be noticed that the word “company includes a firm or other association, and the same test must apply to a director-in-charge and a partner of firm in-charge of a business. In that context a person “in-charge” must mean that the person should be in over all control of the day to day business of the company or firm. Further Hon’ble Court clarified that when a partner in-charge of a business proceeds abroad, it does not mean that he ceases to be in-charge unless there is evidence that he gave up charge in favor of another person. The Court’s ratio decedendi in respect of absence from the duty of office due to various other reasons unless the in-charge was given to others do not ceases to be in-charge, is worthy to be appreciated because it creates sense of obligation on the part of the concerned officer to give charge to others otherwise he would be held criminally liable for the acts of his subordinate officers. That ultimately increases the quality of supervision and control over the acts of subordinate officers and reduces the scope of committing the offence.

However, the interpretation that “in-charge” must mean that he should be in over-all control of the day to day business of the company or firm is not rational and

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company for the conduct of the business of the company as well as the company, shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Further section 23-C (2) of FERA says that “Notwithstanding anything contained in sub-section (1) where a contravention under this Act has been committed by a company and it is proved that contravention has taken place with the consent or connivance of , or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manger, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly, further explanation attached to that section says that Company means anybody corporate and includes a firm or other association of individuals: and “director”, in relation to a firm means a partner in the firm.

32 Section 164-175 of the Companies Act 1948
33 Supra note 31.
appropriate in reducing the crimes of the company. Today’s structures of the company are very complicated. Moreover, the powers of the officer of the company for running day to day business of company are decentralized and distributed among the various officers from top to bottom. Under such circumstances identifying the person who is over-all in-charge of company is a hilarious task and some time the officers of the company can escape the liability on this ground also. Moreover, unlike USA and European Countries, the companies in India are conducting their activity according to conventional, traditional and conveniences. Particularly this happens in case of small companies which are running their activity not in professional manner. According to this kind of interpretation only over-all responsible officer of the few well-established companies could be held criminally liable. Therefore this interpretation requires reconsideration that any officer who is in-charge of that concerned subordinate officers alleged act of offence should be held criminally liable even though officer may not be having over-all in-charge of the company day –today affairs. This kind of interpretation is conducive for better implementation of deterrent philosophy criminal justice system. Nevertheless the Supreme Court took the note of Giridhar aboard tour at the time of commission of offence by Clerk of firm and reduced his punishment from six months imprisonment to Rs 2000 fine is not in accordance with its own ratio decedendi.

The Supreme Court had to deal with questions whether partnership firm is person or not and whether currency is goods or not under Sea Custom Act 1878 in M/s Agarwal Trading Corporation and others v. The Assistant Collector of Customs Calcutta.34

5.4.2 M/s Agarwal Trading Corporation and others v. The Assistant Collector of Customs Calcutta.

Facts of the case

M/s Agarwal Trading Corporation was registered partnership firm carrying on business of import, export, commission agents, brokers and general merchants. Giridhari Lal and Pooran Mal Jain were partners of the firm. Bhagawan Tiwari servant of firm handed over a consignment of wooden case to the Swiss Airways at Dum Dum Airport for being sent by airfreight to Hongkong. Sender and receiver name were fictitious. The shipping bill showed that consignment purported to contain Rassogolla, Achar, Papar and dried vegetables but in fact wooden case contained cash worth of Rs 51000. Custom authorities seized the wooden case and confiscated the cash under Section 8 of the FERA 1947\(^{35}\) and punished the firm and Giridhar Lal under Section 23 of the FERA.\(^{36}\) Section 19 of the Sea Custom Act 1878 has been incorporated under the Section 23 of FERA.\(^{37}\)

Supreme Court speaking through Justice P. Jagannmohan Reddy held that perusal of these provisions would show that no gold or silver or any currency notes or Bank notes or coin, whether Indian or foreign can be sent to or brought into India, nor can any gold, precious stones or Indian currency or foreign exchange other than

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\(^{35}\) Section 8(1) of FERA Act says that the Central Government may by notification in the Official Gazette, order that subject to such exemptions, if any, as may be contained in the notification, no person shall except with the general or special permission of the RBI and on payment of the fee, if any prescribed bring or send into India any good or silver or any currency notes or bank notes or coin whether Indian or Foreign.

\(^{36}\) Section 23(1-A) of FERA says whoever contravenes (a) any of the provisions of this Act or of any rule, direction or order made there under, other than those referred to in sub-section (1) of this section and section 19 shall upon conviction by a court, be punishable with imprisonment for term which may extend to two years or with fine or with both. Further section 23-A of FERA says that without prejudice to the provisions of Sections 23 or to any other provisions contained in this Act, the restrictions imposed by sub-sections (1) and (2) of section 8, sub-section (1) of Section 12 and clause (a) of sub-section (1) of Section 13 shall be deemed to have been imposed under S 19 of the Sea Custom Act 1878 and all the provisions of that Act shall have effect accordingly …..

\(^{37}\) Section 19 of the Sea Custom Act 1878 says that the Central Government may from time to time by notification in the official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified descriptions into or out of India across any custom frontier as defined
foreign exchange obtained from an authorized dealer can be sent out of India without the general or special permission of the RBI. These restrictions by virtue of Section 23-A of the FERA are deemed to have been imposed under Section 19 of the *Sea Custom Act.*

The Second contention is that the partnership firm is not legal entity. Therefore, it cannot be person within the meaning of section 8 of FERA and *Sea Custom Act.* There is no definition of person under either FERA or *Sea Custom Act.* However, person is defined under section 2(42) of the *General Clause Act 1897.* Person has been defined as including any company, association, or body of individuals whether incorporated or not. No doubt, the registered company enjoys the separate existence of its legal entity, which is different from its shareholders. However, same thing cannot be said in respect of partnership firm because firm does not enjoy separate legal existence from its partners. Partnership firm and partner are one and the same person. But this general principle cannot be applied to present case because section 23C of FERA negates this proposition.

For the purpose of section 23C, Company is defined to mean any body corporate and includes a firm or other association of individuals and a Director in relation to a firm means as partner in the firm. Therefore, Supreme Court rightly said that once it is found that there has been a contravention of any provisions of the FERA read with Sea Custom Act by a firm the partner of it who are in-charge of its business or are responsible for the conduct of the same cannot escape from the

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38 Act no 8 of 1878.
39 Act no. 10 of 1897.
liability unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention.\textsuperscript{40}

The Supreme Court also rejected the third contention that it is only particular member against whom there is evidence of guilt should be alone held liable but not firm or partner of firm. The sufficient evidence has been adduced by the prosecution that partner of the firm was interested in or involved in attempting to export Indian currency notes out of India. Therefore the partner is also liable for the same. It means that any servant of the firm with intention to benefit the firm does any illegal act during the course of his employment; the firm becomes accountable to law. The \textit{ratio decedendi} of the case is that unlike Company Partnership firm generally does not enjoy the separate legal existence but this can be negated by the explicit provision of any particular legislation.

Supreme Court in, \textit{State (Delhi Administration) v. I.N.Nangia},\textsuperscript{41} held that under Prevention of Food Adulteration Act 1954 not only person actually effecting the sale of an adulterated article of food is responsible but servants and agent of the company also liable because the expression “by any person on his behalf “covers those persons also.

\textbf{5.4.3 State (Delhi Administration) v. I.N.Nangia}

\textbf{Facts of the case}

M/s Ahmed Oomer Bhy, Ahmed Mills Bombay a registered company manufacturing famous “Postman” brand of refined groundnut oil. The Company had appointed Mr Y.A. Khan Manager of Quality Control of Ahmed Mills as responsible

\textsuperscript{40} \textit{Supra note 37.}
\textsuperscript{41} \textit{State (Delhi Administration) v. I.K. Nangia}, (1980) 1 SCC 258.
person under section 17(2) of *Prevention of Food Adulteration Act*\(^{42}\). M/s Gainda Mull Hem Raj was registered partnership firm in Delhi was sale distributor of Postman oil and Mahar Jain was Managing partner of the firm. Shri I.K Nangia and Y.P. Bhasin were the sales mangers of Delhi branch office of the Ahmed Mills Bombay. On 24\(^{th}\) August 1976 authorities seized the adulterated Postman groundnut oil from shop. It was alleged that this adulterated oil was sold to M/s Gainda Mull Hem Raj by M/s Ahmed Oomer Bhoy Company through its Sales managers at Delhi Branch office. The charge sheet was filed against M/s Ahmed mills of Bombay, M/s Gainda Mull Hem Raj through its managing partner, Y.A.Khan Quality Manger of company who is nominated person, and sales managers of the Company at Delhi Branch office.

The Supreme Court held not only retail shop owner who stored the adulterated oil is liable even other person who are named in the charge sheet are also liable for punishment. Supreme Court based its findings on section 7 of the *Prevention of Food Adulteration Act* which says “No person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute-(i) any adulterated food . . .” The Supreme Court speaking through Justice Sen, J observed that the words “by any person on his behalf” are capable of including servants and agents of the company are also liable for punishment.\(^{43}\) The Court widened the scope of vicarious liability principles beyond the actual offenders and company and made applicable to all those persons who are responsible for sale of such adulterated food. This is well-come interpretation because it works to be deterrent for companies’ servants and agents. Obviously, servants and agents of company would become more alert while

\(^{42}\) Act no. 37 of 1954.  
\(^{43}\) *Supra note 41* at 261.
discharging their duty, which ultimately reduces the scope of committing the crimes by company.

Sales Manager Shri. I.K.Nangia argued that Ahmed Company has nominated Shri Y.A.Khan Manager of Quality Control of Ahmed Company to be in charge of, and responsible to the company for the conduct of the business of the company under section 17(1) (a) (i) of Prevention of Food Adulteration Act. Therefore only Shri Y.A. Khan is accountable for this misdeed of the company. However the Court relied on the explanation attached to section 17(2) and 17(4) of the Act. Apex Court opined that where there is large business origination, with a widespread network of sales organizations throughout the country; it ought to nominate different persons for different places or faces the consequences set forth in Section 17(2) of the Act. The Court said even though explanation uses the word company “may nominate” but considering the power coupled with public duty, the word “may nominate” has to be interpreted as “shall nominate”. Now it has become mandatory not directory for the companies to nominate persons for its different units or branches otherwise the person who is in charge of that unit or branches becomes liable for criminal act of the company. Therefore, the sales managers of Delhi office of Ahmed Company on whose orders the company has supplied the oil also becomes liable under Act.

Further Court observed that the individual liability of the sales Managers is distinct and separate from the corporate criminal liability of the Manufacturer. In case of a “company prosecution”, the company along with its agent, that is, the person nominated under section 17(2) as well as the Sales Manager can both be prosecuted

Explanation—where a company has different establishments, or branches or different units in any establishment or branches, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.
under section 7(2) of the Act. This interpretation is worthy to be appreciated because Calcutta High Court in *Ananth Bandu v Corporation of Calcutta* 45 held that Magistrate may either proceed against company or against in charge officer of the Company where the offence is punishable by means of fine only. Calcutta High Court’s interpretation is not rational because act of individual officer and company are distinct and separate. Obliviously liability of individual officer and company is several. Therefore the *ratio decedendi* of Calcutta High Court in *Ananth Bandu v Corporation of Calcutta*46 is over ruled by the *ratio decedendi* of Supreme Court in *State (Delhi Administration) v. I.N.Nangia*,47

5.5 Judicial Response; Post 1990s Period

The Supreme Court of India in *Radhey Shyam Khemka v. State of Bihar*48 faced a unique question that any irregularities and misappropriation of amounts in issue of share by the officials of the company has to be dealt under the Companies Act rather than IPC.

5.5.1 *Radhey Shyam Khemka v. State of Bihar*

**Facts of the case**

M/s Bihar Cable and Wire Industries Limited, which is public limited company, registered under the Companies Act. Managing director and directors of the company had issued prospectus to the public for the application of shares. The statement was also issued that application has been made to the Calcutta Stock Exchange for enlisting the shares of the company for official quotation. However, the Calcutta Stock Exchange rejected the company application. Nevertheless, Managing
director and director of the company collected the share application money in spite of their application rejected by the Calcutta Stock Exchange. Moreover, the managing director and director of the company neither informed the public about the rejection of their application nor money was returned to the public in accordance with provisions of the Companies Act 1956.\textsuperscript{49} The collected amount of share application money in fact transferred to another account of the company. The CBI registered case and filed charge sheet against the Managing director and director of the company for offence under Section 405\textsuperscript{50} and 409\textsuperscript{51} of the \textit{Indian Penal Code} before the Magistrate Court. Accused filed a petition under Section 482 of CrPC before High Court for quashing the charge sheet and High Court refused to do so. Therefore, they appealed to the Supreme Court to quash charge sheet.

\textbf{Decision-}

The Supreme Court refused to quash the cognizance taken by the Magistrate against the Managing director and other directors for the offence committed under section 405 and 409 of IPC. Further it held that even the relief under the Companies Act against alleged act of directors does not bar the prosecution under the IPC provisions.

Appellants argued that it was open for share applicant to proceed against them under the Companies Act; obviously, they cannot be prosecuted under section 405

\textsuperscript{49} Section 69 of the \textit{Companies Act 1956} says that all money received from the application for shares have to be deposited and kept in an account and in the event the shares are not issued the moneys so received have to be repaid with interest. Further section 73 requires that every company intending to offer shares or debentures to the public, before issue of such shares, make an application to recognized stock exchange for listing such shares. All the money received in pursuant of application of shares has to be kept in the separate account. In case the permission for listing of the shares is rejected by the stock exchange, the collected application amount has to be returned to the applicant within certain period along with interest.

\textsuperscript{50} Section 405 of IPC speaks about Criminal breach of trust.

\textsuperscript{51} Section 409 of IPC states about Criminal breach of trust by public servant, or by banker, merchant or agent.
and 409 of IPC. Supreme Court speaking through Justice N.P. Singh refused to buy the argument, and held that if there is sufficient evidence to prove their guilt then appellants are liable to be prosecuted under IPC penal provision. Hon’ble Court made emphatically clear that, the persons managing the affairs of the company could not use the juristic entity and corporate personality of the company as a shield to evade them from prosecution for offence under the Penal Code.\textsuperscript{52} It means that act of person is likely to be actionable under the Companies Act as well as IPC, and then both actions can be maintainable. \textit{Ratio decedendi} of the case is laudable because the object and purpose of Companies Act and IPC are quite different. Moreover, the concerned individual officer of the company may be punished in the form of imprisonment and company can be punished in the form of fine that is just appropriate interpretation. The Hon’ble Court held that the mere fact that directors collected the applicant fund in spite of their application for listing shares rejected, the same information is concealed from the disclosures to applicant and the collected amount is transferred to another account sufficiently proves that they intended to utilize the money without doing business for which it is meant and defraud the applicants. Therefore, the provisions of section 405 and 409 are attracted.

However, ironically CBI has charge sheeted only directors of the company for the offence but not company. These directors are the agents of the company and committed the alleged act of misappropriation and breach of trust during their course of employment. Moreover they were the responsible officer of the company. Directors have done the acts with intention to benefit the company. IPC explicitly and unmistakably says that person includes company under Section 11. Therefore, the CBI should have charge-sheeted the company on the basis of doctrine of identification

\textsuperscript{52} \textit{Supra} note 48 at 58.
theory. The Bombay High Court has already observed in the *State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd and others* that “ordinarily a corporate body like a company acts through its managing director or board of directors or authorized agents or servants and the criminal act or omission of an agent including his state of mind, intention, knowledge or belief ought to be treated as the act or omissions including state of mind, intention, knowledge or belief of the company.”

In this case the Supreme Court should have directed the CBI to proceed against the company also otherwise decision of the Supreme Court likely to lead for the inferences that company could not be made criminally liable for the acts done by the directors on behalf of the company which negates the well-established doctrine of “alter ago” theory. This major lapse on the part of the CBI has occurred because there is lack of precise legislation in this respect.

Supreme Court had to answer another vital question that whether juristic person could be prosecuted for those offences for which mandatory punishment is imprisonment in *M.V. Javali v. Mahajan Borwells & Co.*

### 5.5.2 M.V. Javali v. Mahajan Borwells & Co

#### Facts of the case

Assistant Commissioner of Income Tax filed complaint against M/s Mahajan Borewell & Co. a registered partnership firm (respondent-1) and its three partners (respondents 2 to 4) in Special Court for economic offence alleging commission of an offence under Section 276-B read with Section 278-B of the *Income Tax Act*,

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53 Supra note 21.
55 Section 276-B of *Income Tax Act* states that if person fails to pay the credit of the Central Government which he has deducted the income tax at source, then such person shall be punished
The Special Court allowed the application of respondents on the ground that authority did not provide personal hearing to respondents prior to exercising the power of prosecution. Therefore respondents were discharged. The High Court of Karnataka also upheld the order of special court. Hence, the Income Tax authority filed this appeal.

**Decision**

The Supreme Court allowed the appeal of Income Tax Authority and directed the High Court of Karnataka to decide the case in light of interpretation of section 276-B and 278-B of *Income Tax Act* 1962 made by this Court.

Division Bench of Supreme Court consisting Mukherjee, M.K.J, and Jagannatha Rao, JJ held that plain reading of above sections without any confusion manifestly makes inference that if an offence under the Act is committed by a company the persons who are liable to proceeded against and punished are: (i) the company (which includes firm),(ii) every person who at the time the offence was committed, was in charge of, and was responsible to the company for its conduct of business, and (iii) any Director,(in relation to firm means partner), Managers,
Secretary or other Officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed. 58

Respondents argued that section 276-B mandates that guilty person shall be punished by imprisonment and fine only, therefore company being juristic person it cannot be punished in the form of imprisonment. Hence company cannot be prosecuted for such offence. The Supreme Court took the note of Law Commission of India’s recommendation in this matter. The prosecution of company for offence of mandatory punishment of imprisonment is already debated in depth by the fifth Law Commission of India in its forty first report in the year 1969 and sixth Law Commission of India in its forty seventh Reports in 1972. The Law Commission of India in its forty first reports admitted the fact that unlike natural person it cannot be imprisoned. In order to get over this difficulty the Law Commission of India recommended that IPC should be amended and judiciary should be empowered to impose fine on guilty company. 59 Further, Law commission of India noticed that Parliament has not yet acted upon such important recommendation and hence again in its forty seventh report made elaborate recommendation for not only IPC even for other economic statute to amend the necessary provision to enable the judiciary to punish the corporate for criminal offence. 60 The Supreme Court by exercising its

58 Supra note 54.
59 Law Commission of India recommended that a provision should be added to the section 62of the India Penal Code on the following lines, “In every case in which the offence is only punishable with imprisonment & the offender is the company or other body corporate or an association of individuals, it should be competent to the court to sentence such offender to fine only.” See, Law Commission of India’s Forty First Report on “ Code of Criminal Procedure 1898”
60 Law Commission of India in its forty seventh Reports on “The Trial and Punishment of Social and Economic offences” in chapter 8, at pp, 61-69, observed that, “In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases it shall be competent to the court to impose a fine. This difficulty can arise under the Indian Penal Code also but it is likely to arise more frequently in the case of economic laws. We therefore recommend that the following provision should be inserted in the Indian Penal Code as say section 62.
power of interpretation through its innovative idea and dynamic judicial creativity observed that,

“we are of the opinion that the only harmonious construction that can be given to Section 276-B is that the mandatory punishment of imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on company, fine will be the only punishment. We hasten to add, two other interpretation could also be given: (i) that a company may be prosecuted, or (ii) a company may be prosecuted and convicted but not punished, but these interpretation will be dehorns Section 278-B or wholly inconsistent with its plain language.”

The Supreme Court substantiated its finding on the following reasons,

“. . . [T]hough the company had no physical body and traditional punishment might thus prove ineffective, the real penalty could be inflicted upon its respectability, that is by way of stigma. Therefore, it was appropriate that the company itself be punished so that in the public mind the offence would be linked with the name of the corporation and not merely with the name of the director or manager who might be a non-entity. Punishment of fine in substitution of imprisonment could solve the problem in this behalf.”

(a) 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.

(b) 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.

(c) In this section, “corporation” means an incorporated company or other body corporate, and includes a firm and other association of individuals.

The recommendations of the law commission focus on the gaps left by the legislature which renders it impossible for a court to convict a corporation where the statutes mandates a minimum term of imprisonment and fine. The recommendation seeks to empower the court with the discretion to sentence an offender to fine only, where the offence is punishable with imprisonment, or with imprisonment and fine. However due to in action on the part of legislatures, the bill prepared on the basis of the recommendation did not fructify into law and lapsed.

61 Supra note 59.
62 Id at 76.
Supreme Court negated the philosophy of Blackstone theory that courts merely interprets the law but does not make law. Judiciary is empowered by its power of interpretation that it may plug the loopholes or cure the defects by filling the gaps in the legislation where “casus omissus” is existed. This is well accepted norm of judiciary in the interest of justice based on the philosophy of “realism theory of law.” The nutshell of this judgment is that the words “imprisonment and fine” will be read as “imprisonment or fine” in appropriate cases.

Therefore, judiciary has some extent modified the rule of punishment which is worthy to be applauded by considering the fact that legislature failed to carry necessary changes to IPC and other statutes which was overdue long ago. The judgment makes ratio that merely company cannot be imprisoned it does not mean that company is not guilty of such offences. Conviction and punishment are two different things. Supreme Court explicitly and loudly makes it clear that company cannot escape from its criminal liability on the technicality of law. Therefore, what matters for justice is substance not technicality.

Terrorism has severally affected the Indian more than any nation in the universe. Terrorist offences are horrible, shocking, and aggregated forms of criminal acts. “Terrorism” is of the manifestation of increased lawlessness and cult of violence. In Madan Singh v. State of Bihar the expression, “Terrorism” was observed to be “the peacetime equivalent of war times” as stated by a noted United Nations official, Dr Alex P. Schmid.

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63 It is application of principle that a matter which should have been, but not been provided for in a statute cannot be supplied by courts, as to do will be legislation and construction. But equally there is opposite school of thought that such casus omissus can be cured by the judiciary in the interest of justice otherwise judiciary would be failing in its statutory obligation of discharging its duty.
India has been the victim of an undeclared war by the epicenters of terrorism with the aid of well-knit and resourceful terrorist organization engaged in terrorist activities in different states.\(^{66}\) Therefore, India, at different point of time, enacted different anti-terrorist legislation in the last thirty years to check the menace of terrorism.\(^{67}\) Supreme Court of India faced the crucial question whether company could be prosecuted for terrorist offences under section 3(4) of the *Terrorist and Disruptive Activities (Prevention) Act*, 1987.\(^{68}\)

### 5.5.3 Kalpanath Rai v State (Through CBI),

#### Facts of the case

Twelve accused were charged for various offences before the Designated Court in New Delhi under the TADA 87. Ten persons were convicted for various offences under TADA 87. Three persons including a former Union Minster of State for Power (Kalpanath Rai) were found to have harbored hard core terrorists besides a finding with accused no 12 (M/s East West Travel and Trade Links Ltd a registered company). All of them except Company were sentenced to varying terms and fine ranging from ten lakhs downwards. The company was sentenced to a whopping fine of Rs fifty lakhs. The company was convicted under section 3(4) of the TADA 87.\(^{69}\) Against the findings of the Designated Court appellants were made appeal to Supreme Court.

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69. Section 3(1) of TADA defines terrorist acts which start with words “whoever with intent to over the Government . . . .” therefore offence punishable under section 3(1) requires the ingredients of *mens rea*. However, section 3(4) does not mandates the presence of *mens rea*, the wordings of that section is as follows, “Whoever harbors or conceals, any terrorist shall be punishable with imprisonment for term which shall not be less than five years but which may be extend to imprisonment for life and shall also be liable to fine.
Decision-

The Court held that TADA 87 is penal statute which prescribes heavy punishment with mandatory minimum punishment; therefore it should be construed strictly. Section 3(1) of TADA 87 being principal offences which constitute terrorist act unless done with mens rea, therefore section 3(4) which depends upon section 3(1) should also be read with implied requirement of mens rea. The company is being juristic person incapable of forming the mens rea. Hence company is acquitted from the offence of harboring the offenders under the said provision.\(^{70}\)

Judgment was delivered by division bench of Supreme Court. Justice Thomas J who authored the judgment observed that,

“[t]he company is not a natural person. Mens rea being an essential ingredient of offence under Section 3(4), there is no question of prosecuting it for the same. In many recent penal statutes, companies or corporations are deemed to be offenders on the strength of the acts committed by persons responsible for the management or affairs of such companies or corporations. But there is no such provision in TADA which makes the company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a company for the offence under section 3(4) of TADA.”\(^{71}\)

Ratio of judgment makes inference that unless penal Statute explicitly makes company criminally liable for the acts of its officers who are responsible for the affairs of the company, company could not be prosecuted for criminal offence on whatsoever reason is untenable. TADA had not defined the word “person”.

However definition of person under General Clause Act is very clear that it includes the company also. General definitions defined under the General Clause Act

\(^{70}\) Supra note 68 at 750.

\(^{71}\) Id at 735.
are applicable to all Central laws on those matters on which Central legislation is silent. Therefore section 3(4) of TADA read with definition of person under General Clause Act is very clear that TADA offences are applicable to even company also.

High Court bench of Nagpur of Maharashtra in State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd and others has empathically stated that mens rea can be attributed to company, if the act is committed by its servant during their discharge of their duty. Justice Paranjape J in that case observed that “ordinarily a corporate body like a company acts through its managing director or board of directors or authorized agents or servants and the criminal act or omission of an agent including his state of mind, intention, knowledge or belief ought to be treated as the act or omission including state of mind, intention, knowledge or belief of the company.” United States of America’s Supreme Court in the beginning of 19th century itself has held that company could be prosecuted for those criminal offences which require ingredient of mens rea based upon the theory of vicarious liability principles.

Even the Common law legal system has also acknowledged during middle of 19th century that company could not escape from the criminal liability on the ground that it is being juristic person and incapable of forming the mens rea which is essential to constitute crime. Common law legal system adopted the doctrine of identification theory (alter ago) to make company accountable for criminal offences. The Supreme Court of India, in, M.V. Javali v. Mahajan Borwells & Co

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73 Id at 200.
74 New York Central & Hudson River Railroad Co. v. United States, 53 L Ed 613 : 212 US 481 (1908)
75 Lord Mac Naghteen held that circumstances may force us to acknowledge that knowledge of agent may be imputed to the body of corporate in, Director of Public Prosecutions v. Kent and Sussex Construction Ltd, (1944) 1 All ER 119 : 1944 LJ KB 88 : 170 LT 41, Lord Denning in 1956 itself admitted that state of mind of directors and managers of the company is the state of mind of
has held that company could be prosecuted for even those offences for which mandatory punishment is imprisonment. Further it observed that in case of company the Court has discretionary power to impose fine. In the light of these developments in the law, Supreme Court of India should have held that corporation could be prosecuted for criminal offences even though such offences require mens rea on the basis of either vicarious liability or identification theory. The only issue in this case should have been whether the person who is in charge of that Hotel, who gave shelter to the hard core terrorist has knowledge that accused are hard core terrorist. Secondly, question is, whether a person who gave shelter to those accused has intention of benefiting company than his personal benefit. If answers to these questions are in affirmative, then company should have been held criminally liable under section 3(4) of TADA.

Supreme Court of India, that too in 1990 decade without looking into all these issues and holding that company cannot be criminally liable simply on the basis of old and outdated theory that company is juristic person and incapable of forming mens rea proves that Indian Supreme Court is not in touch with factual situation of contemporary society. Moreover the Supreme Court is refusing to take into consideration the development that has taken place in legal system of other country in respect of corporate criminal liability. It simply proves that Indian judiciary is immature. Terrorism is serious threat to integrity of India therefore it has been considered serious offence. Why terrorist succeed in their attack because they are heavily financed by so many organizations, it may include company also. The best company on the basis of organic theory in H.L. Bolton (Engg) Co Ltd v. T.J. Graham &Sons, (1956) 3 All ER 624 : (1957) 1 OB 159 (CA), finally House of Lords adopted the doctrine of identification theory and held that state of mind of high responsible officer is treated as state of mind of company in, Tesco Super Market Ltd, v. Nattrus, (1971) 2 All ER 127 : 1972 AC 153: (1971) 2 WLR 11166 (HL).

example in this matter is TATA Tea Company which was charged for paying huge amount of money to United Liberation Front of Assam (ULFA which is terrorist organization) as protection money and TATA Tea top officials are aware the fact that collected money was used for committing terrorist attack in Assam. Generally terrorist organizations or terrorists’ transfer the money either through Bank or company which is involved in the money transfer business.

Usually such accounts are in the name of fake identity or address, suppose the top Bank officials are aware of these transactions nature and decided not to reveal the matter to the authority otherwise they thought that they would lose huge amount of transactions. Under such circumstances such Banks and companies ought to be held liable for the abettor or conspirers of terrorist act otherwise letting such banks and companies from the criminal liability on the ground that they cannot form mens rea would be watering down the deterrence of anti-terrorist law which would defeat the very purpose of law for which it is enacted.

5.6 Judicial Response; Post 2000 Period

Beginning of the 21st century is the boom period for the Indian companies. Indian economy showed the growth rate at around 9 percentage of GDP. Indian companies began to make their mark globally and their turnover and profit increased numerously. Indian Government liberalized its industry, tax, and export and import

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78 India’s growth rate of Gross Domestic Product for the year 2009 is 8.5/, for 2010 year is 10.5/ and for 2011 year is 6.3. See, allinfoindia.com/finance/currentgdpgrowthrateinindia.html. Accessed on November 12 2013.
79 Indian Giant steel Company TATA acquired famous Cores Company of UK for outstanding price of 12.98 Billion Pound Sterling in October 2006. In February 2010, Indian leading mobile service provider Bharathi Airtel added 180 million new customers in its list by acquiring African mobile network provider called Zain Africa of Kenay Country against amount of $ 10.7 billion, another leading industries of automobile sector TATA Motors acquired famous Jagur Cars and Land Rover company of UK in March 2008 which is worth of 2.3 billion Pound Sterling, and Oil and Natural
policy to encourage the companies. Finally the western countries acknowledged the potentiality of India and started investing in the Indian companies. However, equally the people of India experienced the other face of the company that it is also like natural person, which is not free from blame worthy of committing numerous crimes for its selfish end. Obviously the role of judiciary becomes very vital to see that guilty company should not go unpunished and harm the nation and people.

Division Bench of Supreme Court of India in Assistant Commissioner, v. Velliappa Textiles Ltd, again had to address the earlier settled issue that whether company could be prosecuted for the offences for which mandatory punishment is imprisonment and can mens rea could be attributed to company.

**5.6.1 Assistant Commissioner, v. Velliappa Textiles Ltd**

**Facts of the case**

M/s Velliappa Textiles Ltd is registered company and C Velliappa is its Managing Director. The company had showed income of Rs 43,940 for the annual year 1985-86 after deduction of Rs 916442 on account of depreciation and investment. The company had claimed that in the previous year it had purchased machinery worth of Rs 1479589 and installed in the factory but the company failed to substantiate its claim by not producing necessary documentary evidence. Income tax officer made enquiry and found that Managing director had submitted false information with deceitful intention of defrauding the government for evading the tax liability.

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The commissioner of income tax sanctioned the prosecution of company and Managing director under Section 276-C,\(^{81}\) 277\(^{82}\) read with Section 278-B\(^{83}\) of *Income Tax Act, 1962*. The Respondent 1 Company and Respondent 2 Managing director challenged the prosecution before the Karnataka High Court. High Court quashed the prosecution on the ground of not providing chance of being heard to the respondents before the prosecution but gave liberty to income tax officer to prosecute the respondents after complying natural justice principles. Therefore, the respondents filed appeal to this Hon’ble Court to quash the findings of High Court.

Division Bench of Supreme Court consisting of Justice S Rajendra Babu, Justice B.N. Srikrishna and Justice G.P. Mathur had to answer three issues,

1. Whether it is incumbent on the part of the authority to hear the accused before the authorization of sanction.

2. Whether the Mens rea of the person in charge of the affairs of the company could be attributed to the company.

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\(^{81}\) Section 276C-(1) states that any person who willfully attempts in any manner to evade any tax, penalty or interest chargeable under this Act, without prejudice to any penalty that may be imposable on him under any other provisions of this Act shall be punishable (i) in case where evaded amount exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine, (ii) in any other, with rigorous imprisonment for term which shall not be less than three months but which may extend to three months but which may extend to three years with fine. Sub section (2) says that a person willfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, without prejudice to any penalty imposable under this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months, but which may extend to three years and shall, in discretion to the court, also be liable to fine. Explanation, willful attempt to evade shall includes where any person (i) has in his possession or control any books of accounts containing any false entry, (ii) makes or causes to be made false entry or statement in such books of accounts or documents, (iii) willfully omits or causes to be omitted any relevant entry or statement in such books of account or documents.

\(^{82}\) If person makes statement in any verification under this Act which is false, and which he either knows or believes to be false or does not believes to be true, he shall be punishable (i) in case where amounts one thousand Rupees, with rigorous imprisonment for term which shall not be less than six months but which may extend to seven years and with fine, (ii) in any other cases, with rigorous imprisonment for term which shall not be less than three months but which may extend to three years and with fine.

\(^{83}\) *Id.*
3. Whether company could be prosecuted for those offences for which mandatory punishment is imprisonment.

**Decision.**

The Supreme Court *per curiam* held that permission for sanction is being administrative nature. Therefore, authorities are under no statutory obligation to comply the natural justice principles before authorizing the sanction for prosecution.\(^{84}\) Supreme Court positively answered the second issue by saying that *mens rea* could be attributed to the company but negated the third issue by saying that company could not be prosecuted for those offence for which imprisonment is mandatory punishment. Thus it has refused to follow the *ratio decedendi* of *M.V. Javali v. Mahajan Borwells & Co*\(^{85}\) in which it was held that company could be prosecuted for those offences for which imprisonment is mandatory punishment.

It is interested to note that *ratio decedendi* of *M.V. Javali v. Mahajan Borwells & Co*\(^{86}\) is delivered by two judge’s bench of Supreme Court. Whereas ratio decedendi of Assistant Commissioner, v. Velliappa Textiles Ltd\(^{87}\) is delivered by three judges bench of Supreme Court. Thus, it can be argued that *ratio* of M.V Javali is overruled by Velliappa Textile case. But that is not the correct analysis because both cases are decided by the division benches of Supreme Court which are of equal hierarchy that does not amount overruling of M.V Javali case principle by Velliappa case *ratio*. It is only Constitutional bench which is authorized to overrule the rulings of division bench’s *ratio*. Hence it is justifiable to say that both cases *ratio* stands valid. Therefore, it can be critically analyzed that it is failure on the part of the Supreme

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\(^{86}\) *Id.*.

\(^{87}\) *Supra note 84*
Court to adjudicate the issues of corporate criminal liability on the basis of objective sound rational principles rather than relying on subjective and ad-hoc principles. The pragmatic approach of Supreme Court is not good thing for settlement of legal issues which would create confusion and uncertainty. Confused and uncertain law is always worst than no law.

The Supreme Court has divided over the second and third issue. Regarding the second issue Mathur. J, and Srikrishana. J. both have held that *mens rea* could be attributed to company but Justice Rajendra Babu dissented. Offences under Section 276-C and 277 of *Income Tax* 1962 both contemplates the presence of *mens rea* ingredients. Appellants argued that company being juristic person therefore it is incapable of forming *mens rea*. The Court sighted the principles evolved in America and England that *mens rea* could be attributed to the company. Further, Court took the note of development in the Canada on Corporate criminal liability which is very analogous to English System. Hence, Honorable Court came to conclusion that company is liable for the criminal offence which requires ingredients of *mens rea*. Main critic of the judgment is that Court has arrived to the conclusion subjectively because Court judgment is based neither on rational principles of vicarious nor identification. Simply Court said *mens rea* could be attributed to company.

The question is whose intention and under what circumstances is attributable to company because company being juristic person cannot have its own mental state. Does it mean that *mens rea* of every worker, agent and servant of the company is attributable to company or only few highly responsible officers’ *mens rea* could be

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88 *Id* at 419.
attributed to company? Another question is whether the alleged act of worker should be within the course of his employment or outside the course of employment would crop up. Neither had it laid down any principles nor doctrines for holding company criminally liable. This is subjective and pragmatic approach which is not appreciable. Moreover, in US the courts have adopted the theory of “aggressive vicarious liability” and where as in UK, courts have followed the doctrine of “alter ago”. Supreme Court of India made reference to both historical case of criminal liability of corporation in USA and UK, but ironically failed to endorse any one of the theory of corporate criminal liability. Therefore judgment has created the vacuum on which theory the corporate would be held criminally liable in India.

Justice Rajendra Babu’ dissenting judgment seems to be more rational than the Majority judgment. Justice Babu acknowledged that criminal liability of company arises only where an offence is committed in the course of company’s business by a person in control of its affairs to such degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the company but in other cases it is not possible to attribute the elements of mens rea to juristic person. Minority judgment accepted the criminal liability of corporation on the principles which is similar to “alter ago” even though it has not explicitly used that word.

In respect of third issue, again judges are divided. It is interested to note that Justice Srikrishna J who admitted that mens rea could be attributed to company but refused to hold company criminally liable for that offence for which mandatory punishment is imprisonment. Justice Rajendra Babu also endorsed the view of Justice Srikrishna J. the Supreme Court said that Sections 276-C and 277 mandates the

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92 Supra note 80 at 436.
mandatory imposition of imprisonment and fine. Both sections have used the word “imprisonment and fine” and not “imprisonment or fine”. The court felt that if the company is punished in the form of fine only, then it amounts to alteration of statute which is the domain of legislature not of judiciary otherwise it would amounts transgression upon the function of legislature. It is impossible to put company behind the bar of jail therefore company cannot be prosecuted. Ratio of judgment makes proposition that company could not be punished therefore company is not guilty even though there are sufficient evidence available to prove the guilt of the company. The logic is ill-founded and irrational. The correct proposition is that company cannot be punished because it is not convicted for guilty.

Punishment and conviction are two different issues which are mutually exclusive but interdependent in the sense that accused is not guilty so he is not punished. Punishment depends upon the guilt of accused but guilt does not depend upon the punishment. Guilty person is guilty irrespective whether he is punished or not. In this respect minority judgment of Justice Mathur J is worth to be appreciated. Lordship reasoned that even though company could not be sent to imprisonment but yet the stigma of guilty sends strong message to the society. Unlike natural person company has high stake of its reputation in the economy of market, which is very vital for its sustaining in the long run business. The mere fact that company is held guilty of offences even though it is not punished would works to be very effective deterrent on economic factor of the company than mere punishment.

Justice Mathur said that section 235(2) of CrPC gives discretionary power to court to impose punishment in accordance with law subjected to sound judicial

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93 Id at 425
principles.\textsuperscript{94} Lordship said the punishment like fine can be imposed on company and other kinds of punishment can be thought of it. It is worth to quote the words of Justice Mathur,\textsuperscript{95}

“The publication in newspaper about prosecution and conviction of a company is bound to bring bad name to the company and lower its image before the public at large. . . . A company may be black listed or may be denied licenses with the result that its manufacturing activity may come to a standstill which may have greater financial repercussions on it.”

Even though minority judgment is not binding on the lower court as ratio decidendi but its utility and importance cannot be ignored because some time minority judgments ratio likely to provide insight to future case for majority judgment.

Nut shell result of the majority judgment is that it endorses the philosophy of Blackstone theory that judges merely interprets the law but does not make law which is outdated in the modern legal system. The judiciary has inherited the power from the concept of “justice” to remove the flaws in the law through its authority of interpretation that is what the active and dynamic judiciary expected to be. It is traditional and conventional judges who still stick to old principle that it is not the domain of judiciary to unplug the loopholes in the legislations but the function of legislator. In this regard it is worth to quote the words of Lord Denning L.J.

“When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the

\begin{flushleft}
\textsuperscript{94} Supra note 80 at 425. \\
\textsuperscript{95} Id.
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written words so as to give "force and life" to the intention of legislature."\textsuperscript{96}

The Supreme Court of India endorsed the philosophy of Lord Denning in Bangalore Water Supply\textsuperscript{97} case while dealing with definition of Industry in the Industrial Dispute Act 1947, the then CJ Beg J said that definition of industry is general and ambiguous and situation called for "some judicial heroic to cope with the difficulties raised."\textsuperscript{98} The courts strongly lean against a construction which reduces the statute to a futility.\textsuperscript{99} Majority judgment virtually relied upon the literal interpretation of those sections and made unworkable against the company which is impermissible according to established norms of interpretation because under such situation the judiciary must go beyond the words of statute, and relay on the principle of "functional interpretation" by considering the object and subject of legislation and make statute workable and functional.\textsuperscript{100} Lord Denning has rightly said, "[W]hen a statute has some meaning even though it is little to choose between them, the courts have to say what meaning the statue is to bear, rather than reject it as nullity."\textsuperscript{101}

Finally the two inconsistent decisions of Supreme Court in respect of the prosecution of company for those offence which carries imprisonment as mandatory punishment, forced to clear the confusion by Constitutional Bench of Supreme Court. Supreme Court’s five judge’s bench in \textit{Standard Chartered Bank v. Directorate of Enforcement}\textsuperscript{102} explicitly affirmed the ratio of \textit{M.V. Javali} case\textsuperscript{103} that company could

\textsuperscript{96} \textit{Seaford Court Estates Ltd v Asher}, (1949) All ER 155 at 164 (CA)
\textsuperscript{97} \textit{Bangalore Water Supply v, R Rajappa}, AIR 1978 SC 548
\textsuperscript{98} \textit{Id.}
\textsuperscript{99} M.Pentiah v, Veeramallapa Muddala, AIR 1961 SC 1107, further see, \textit{Tinsukhia Eletric Supply Co Ltd v, State of Assam} AIR 1990 SC 123.
\textsuperscript{100} \textit{Tinsukhia Eletric Supply Co Ltd v, State of Assam} AIR 1990 SC 123 at 153.
\textsuperscript{101} \textit{Farwell Properties v Buckingham Country Council} (1960) 3 All ER 503.
\textsuperscript{102} \textit{Standard Chartered Bank v, Directorate of Enforcement}, AIR 2005 SC 2622.
\textsuperscript{103} \textit{M.V. Javali v, Mahajan Borwells & Co}, (1997) 8 SCC 72.
be prosecuted for those offences which carries mandatory punishment of imprisonment and overruled the *ratio* of *Velliappa Textiles Ltd* case.\(^{104}\)

### 5.6.2 Standard Chartered Bank v, Directorate of Enforcement,

**Facts of the case**

The appellants in Civil Appeal No 1748 of 1999 filed writ petition before the Bombay High Court challenging various notice issued under Section 50 read with section 56\(^{105}\) of the *Foreign Exchange Regulation Act* 1973. Hence against the decision of Bombay High Court the appeal is filed before the Supreme Court.

**Decision.**

Majority judgment was delivered by Justice K.G. Balakrishna with concurrence judgment of Justice D.M. Dharmadhikari, and Justice Arunkumar who have held that company could be prosecuted for those offences for which mandatory punishment is imprisonment. On the other hand minority judgment was delivered by Justice Srikrishna JJ along with Justice Santosh Hegde who held that company cannot be prosecuted for such offences.

Court said that Section 56 of FERA read with aid of the definition of “person” in General Clause Act; it is clear there is no immunity to the companies from prosecution merely because the mandatory punishment is prescribed. When imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such discretion is

\(^{104}\) *Assistant Commissioner, v. Velliappa Textiles Ltd.* (2003) 11 SCC 405

\(^{105}\) Section 56 (1) of FERA says that without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act . . . or of any rule, direction or order made there under, he shall upon conviction by a court, be punishable, -(i) in the case of an offence the amount or value involved in which one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may be extended to seven years and fine, provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence or imprisonment for a term of less than six months, (ii) in any other cases, with imprisonment for a term which may extend to three years or with fine or with both . . . .
to be read into the Section.\footnote{Standard Chartered Bank v, Directorate of Enforcement, AIR 2005 SC 2622.} Ratio of Court suggested that word “imprisonment and fine” is applicable to natural person and in case of company word would be read as “imprisonment or fine.” Some critics may criticize the judgment saying that it is amounted to reformation of law but it was necessary in the interest of justice. Justice Arun Kumar observed that conviction is not dependent on sentencing. Rather it is other way round i.e. sentencing follows conviction. However, for difficulty in sentencing the Court need not let the offenders escape from prosecution.\footnote{Id at 2624.} It is worth to quote Justice Arun Kumar,

“The mandate of the provisions is quite clear that is the corporations are liable to be prosecuted of offences under FERA as per Section 56 and allowing corporations to escape from liability for prosecutions on plea based on difficulty in sentencing as per the section, will be doing violence to the statute. There is no scope for any doubt that corporations are subject to provisions of S 56 of FERA. The statutory mandate is loud and clear. Any interpretation which leads to contrary to the statutory mandate will be in violation of the statute.”\footnote{Id.}

Supreme Court acknowledged that there is no dispute that a company is liable for the criminal offences even though there are authorities to the effect that corporations cannot commit crimes.\footnote{Id at 2632.} Further, Court admitted the exception to the criminal liability of corporation that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent. Court observed that a corporation may be subjected indictment of other criminal process, although the criminal act is committed through its agent. As usual
the Court failed to elaborate the principles or doctrines on which the company could be held criminally liable.

The approach of Supreme Court in respect of corporate criminal liability is deplorable because it adjudicates the matter only from the prospective of incumbent case. The Court must have once for all decided the matter of corporate criminal liability from the perspective of general and larger scope based upon the principles or doctrines which would become ratio for future potential cases. Unless this is done by the Supreme Court the confusion over the criminal labiality of corporation would consistently persist in every case that is not conducive for healthy legal environment for corporate body or even to society.

Nevertheless minority judgment held that it is not open to Court to read the words “imprisonment and fine” as “imprisonment or fine”. Such construction is impermissible because it virtually amounts to rewriting of Section 56 of FERA.\textsuperscript{110} Justices are reasoned that such interpretation would be applicable to different situations with different meaning. If the offender is corporate entity, then only fine is imposable, if the offender is natural person, he shall be visited with both mandatory term of imprisonment and fine.

Such exercise would be varying interpretation on the statute depending upon the circumstances which is neither permissible on by any principles nor on precedent. At one point they admitted that word “and” may be read as “or” or vice versa, then it must be uniformly applied. Under such circumstances, the Court may either impose fine or imprisonment. That would be contrary to the intention of the Parliamentarian

\textsuperscript{110} Id at 2628.
because natural person would not be subjected to mandatory imprisonment punishment.\textsuperscript{111}

They reasoned for this conclusion that because the prosecution failed to show any authority for the proposition that it is open for the Court to put interpretation on statute which would vary with the factual matrix. Logical analyses of minority judgment is hard to digest because it does not proper to suggest that new creativity decisions cannot be given unless there is existence of precedent to support the arrived decisions. The House of Lords in the year 1962 itself has deviated from the strict compliance of doctrine of \textit{stare decisis}.\textsuperscript{112} They said for the development of law and in the interest of justice, the Court may create new precedents. The Supreme Court of India categorically stated that in exceptional situation, whenever justice demands, the Court may over rule previous precedent and create new precedents.\textsuperscript{113} Further minority judges relied upon the maxim “\textit{lex non cogit ad impossibilla}” that law does not contemplate impossible things. Neither that maxim does empower the Court to break up the section into convenient parts and apply them selectively.\textsuperscript{114} Majority judgment is logical, rational and appreciable because it is based upon the factual situation. Moreover their \textit{ratio} is running close to the real life of the contemporary society. Whereas minority judgment resolving around the technicality of law based upon the ideology and philosophy which has no utility would not be certainly appreciated.

\textsuperscript{111} \textit{Id.}
\textsuperscript{112} \textit{Scrations Ltd} v. \textit{Midland Siliconnes Ltd} (1962) A.C. 446 where House of Lords refused to follow the \textit{Elder, Dempster} Case (1924) A.C. 522, Lord Ried with Lord Keith concurred, refused to follow the case partly on the ground that if it was contrary to fundamental principles concerning privity of contract and partly on the ground that its ratio was obscure.
\textsuperscript{113} \textit{Bengal Immunity Co} v, \textit{State of Bihar}, AIR 1955 SC 661.
Even though the constitutional bench of Supreme Court firmly established the principle that company could be prosecuted for criminal offence which carries mandatory punishment of imprisonment but yet that judgment is not free from criticisms. The Court reasoning that fine could be imposed on company instead of imprisonment is plausible. What the Supreme Court omitted to answer vital question is about the quantum of fine. In case of company imprisonment punishment of imprisonment is replaced by fine. Primary object of criminal law is being deterrent; therefore it prescribes imprisonment and fine as supplementary to that. Further, the word “fine” is not quantified by the figures except in the Securities and Exchange Board of India Act, 1992.\footnote{Section 15G, 15H, and 15H of the Securities and Exchange Board of India Act, 1992 have prescribed two modalities for imposing fine on companies for contravention of the Act. These sections uses the words, “penalty of twenty five cores rupees or three times the amount of profits made out of such failure whichever is higher.”} Moreover, the concept of fine under criminal law, unlike compensation under civil law, does not involve of huge amount. Generally Court imposes meager amount in the form of fine on the offenders of the crime in the criminal justice system. If the judiciary imposes the fine on these lines on the company for its criminal liability, then it would be futile attempt on the part of judiciary to achieve the object of criminal law.

Therefore the Supreme Court should have laid down specific criteria for determining the fine amount objectively which should be in the nature of deterrent based upon the financial position of the offender of the company. Hence the discretionary power of judiciary to impose fine on offending company needs to be explicitly regulated based upon well-established parameters otherwise it would leads for subjective determination of fine which creates confusion and uncertainty and that may not work as deterrent factor.
Supreme Court of India has come cross another question that in the absence of specific provision of vicarious liability, whether officer of the company could also be prosecuted for the offence committed by the company in S.K. Alagh v. State of U.P.\textsuperscript{116}

### 5.6.3 S.K. Alagh v. State of U.P

**Facts of the Case**

M/s Akash Traders was wholesale dealer of Britannia Industries Limited (the Company) for Azamghar in U.P. It was earlier informed that goods will be delivered only against the receipt of demand drafts. Meantime wholesale dealership of Akash Traders was terminated by the Britannia Industries. Nevertheless, the Akash Traders sent two demand drafts in the name of company worth of Rs 1,68,000/- to Britannia Industries for supply of goods. However, neither goods were supplied nor was cash returned to appellant. The complaint was filed against officer of the company under section 406 of the IPC. Trial court found that prosecution failed to make out its case against officers therefore ordered for their acquittal. The decision of the trial court was challenged; High Court allowed the appeal and directed the trial court to dispose the trial after hearing the complaint effectively. Hence the appeal is filed before the Supreme Court.

**Decision.**

The Supreme Court of India held that Managing Director of the Company cannot be said to have committed offence under section 406 of IPC. Division Bench of Court speaking through Justice S.B.Sinha gave reason that Directors or officers of the Company cannot be held vicariously liable for any offence committed by

company itself unless statute explicitly provides vicarious liability. The demand drafts were issued in the name of the company and the goods were not supplied by the company. Moreover, the company was named accused in the complaint therefore order of the High Court quashed and finding of trial court was upheld.\textsuperscript{117} Court observed that “Indian Penal Code, save and except some provisions specially providing there for, does not contemplate any vicarious liability on the part of party who is not charged directly for commission of an offence.”\textsuperscript{118}

The Court took the note of other socio-economic offence legislations which have created vicarious liability fiction, but however such fiction is missing in the IPC, therefore officer of the company cannot be held criminally liable for the acts of the company unless legislator makes such fiction in IPC also. Court admitted that limited fiction is created in section 405 of IPC but it must be used for that purpose only.\textsuperscript{119} Court further commented that even in that fiction, vicarious liability cannot be extended to juristic person like company.\textsuperscript{120} The explanation to Section 405 of IPC

\textsuperscript{117} \textit{Id} at 1733.
\textsuperscript{118} \textit{Id.}
\textsuperscript{119} Section 405 of IPC starts with words “ Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”;

[Explanation(1)- A person, being an employee of an establishment whether exempted under Section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1972 who deducts the employees’ contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution, to so deducted by him and if, he makes default in payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of direction of law as aforesaid. [Explanation-2-A person being an employee, who deducts the employee’s contribution from the wages payable to the employee for credit to the Employee’s State Insurance Fund held and administered by the Employee’s State Insurance Corporation established under Employee’s State Insurance Act, 1848 shall be deemed to be have been entrusted with amount for the contribution so deducted by him and if he thinks default in the payment of such contribution to the said fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

was added in the year 1975 with object to prevent the employer from misusing the
deducted amount from the wages of workers in respect of provident fund and state
insurance fund because in earlier cases whenever the employer was charged for
misuse those funds, he used to take defense that worker had not entrusted that amount
to him hence employer could not be held criminally liable under section 405 of IPC.

The *ratio decedendi* of case suggests that the employer who deducted the
amount of worker for provident fund and insurance fund must be natural human
being. Ramification of this ratio is devastating. This ratio is acceptable in case
business is carried by individual but what about in the case of company. It would
produce ironic results. Let us analyze objectively. In case of company always officer
of company deducts the amount of worker not company itself. The deducted amount
is always credited to account of company. If person who deducted the amount has
utilized for his own selfish purpose then concerned officer would be criminally held
liable but not company is under stable.

On the counter part, if the amount is utilized for other benefit of the company,
under such circumstances the company should have been held criminally liable. But
this cannot be done because above ratio suggest that employer must be natural person.
It means that innocent officer of the company who actually deducted the amount is
held criminally liable and guilty company is let off because of only reason that
Supreme Court relied upon the conventional ideology that company is juristic person,
incapable of forming *mens rea* and cannot be imprisoned. Implication of this kind of
interpretation is that it totally defeats the purpose for which the amendment is carried.
Therefore it is imperative that the word employer in the explanation which is attached
to section 405 of IPC must include not only natural person but even the juristic person
also. This interpretation is permissible and justifiable by the mere fact that section 11
of IPC very clearly says that person includes not only natural persons but company also. Therefore ratio of *S.K. Alagh v. State of U.P* requires immediate reconsideration by the larger bench of Supreme Court of India in the public interest otherwise it perpetuate injustice.

5.7 Judicial Response; Post 2010 Period.

Indian investor’s thousand crores of money was duped by the American Company. Obviously investors filed criminal complaint against the USA Company. However, the High Court of Bombay quashed that criminal complaint through its writ jurisdictions on the ground that company cannot commit the offence of deception. The stakes were of high therefore the matter surfaced before the Supreme Court again for the determination of corporate criminal liability. This would continue till the judiciary decides the matter in the larger perspective by laying down certain criteria by which the corporate criminal liability would be decided. Finally the Supreme Court of India decided to adjudicate the matter upon the rational principles rather than pragmatic and ad-hoc basis in *Iridium India Telecom Ltd v, Motorola Inc.*

5.7.1 *Iridium India Telecom Ltd v, Motorola Inc*

**Facts of the case**

Motorola Inc is respondent no. 1 who was USA based registered global company engaged in the business related to the mobile manufacturing, providing mobile network service, and inventing technology which would able to provide more effective and satisfactory service to mobile customer across universe. Respondent 1 was the chief founder and promoter of Iridium LLC and Iridium Inc which were incorporated in USA. Both companies were subsidiary of Respondent 1. Finally the

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121 *Iridium India Telecom Ltd v. Motorola Inc*, (2011) 1 SCC 74.
Iridium Inc was merged with Iridium LLC. Initially, the entire equity of Iridium LLC was held by Motorola Inc but later, some equity was diluted to others by way of sale of equity, yet substantial shares of Iridium Inc are with Respondent 1 which has exercised effective control over the Board of Directors of Iridium Inc. It was further stated that most of the persons on the Board of Directors of Iridium Inc were either current employees or former employees of Respondent 1 who were either deputed or seconded to Iridium.

Iridium Inc launched a project Iridium System which was based upon the latest technology invented by the Respondent 1. All the cost and expenditure of the Iridium System project was initially met by the Respondent 1. Respondent 1 stated that the technology was successfully adopted by the NASA of USA and other defense projects of America and it was successful also. Respondent 1 called for investment in launching such a project in India also. Upon the invitation of Respondent 1, the Indian Banking financial institutions, LIC of India and other investment institutions invested to the extent of 6.5 Billion US dollar (Rs 19,500 crores) in the Iridium India Telecom Ltd which was launched by Respondent 1. Iridium system was totally failure and it was revealed that the technology which invented by Respondent 1 was never used and tested by NASA and other defense projects of USA. Further, it was found that the amounts collected from the Indian companies were utilized for the payment of outstanding liability of Respondent 1. Iridium Inc of USA filed bankruptcy suit in USA court within nine months of its launch of Iridium system. Thus Indian companies were forced to sell their huge investment for mere 25 million. Indian Companies who are appellants in this filed criminal complaint of cheating against Respondent 1 and directors of the company. However, the Bombay High Court
quashed the complaint on the ground that company being juristic person cannot commit the offence of cheating which requires \textit{mens rea}.

There were two issues before the Supreme Court of India to determine,

i. Whether non-disclosures of information amounts to deception.

ii. Whether company could be prosecuted for criminal offences which requires \textit{mens rea},

The two judge’s bench of Supreme Court of India speaking through Justice S.S. Nijjar held that even the deliberate non-disclosure of material fact amounts to deception. Further it held Section 415\textsuperscript{122} Explanation of IPC gives statutory recognition to the judiciary evolved principle that misleading statement which withheld vital facts for intentionally inducing a person to do or omit to do something, would amount to deception.\textsuperscript{123} Therefore the Court came to conclusion that Respondent 1 had concealed certain vital information from disclosing to the Indian Investors. Thus, such misleading statement had fraudulently caused wrongful damage to the deceived Indian Investor that amounted to cheating.

The second issue was more important from the prospect of public interest because in earlier case the Apex Court has categorically stated that corporation could not be prosecuted corporation for the offences unless statute explicitly provides and

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{122} Supreme Court observed that Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either (a) deliver property to any person: or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induced the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such acts or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that the deception is a necessary ingredient for the offence of cheating under the both parts of this section. Further court commented that the explanation appended to the section 415 gives statutory recognition to the legal principles established through various judicial pronouncement that misleading statements which with hold the vital facts for the intentionally inducing a person to do or omit to do something would amount to deception. see \textit{Iridium India Telecom Ltd v, Motorola Inc}, (2011) 1 SCC 74 at 103.
\item\textsuperscript{123} Supra note 121
\end{enumerate}
\end{footnotesize}
mens rea which is essential ingredient of crime cannot be imputed and attributed to company because it is juristic person.\textsuperscript{124} However the Supreme Court in this case noticed the developments which have taken in other country’s legal system and differed from its earlier precedent.

Apex Court rejected the philosophy that company could not be prosecuted for criminal offence by quoting the judgment given by the USA Supreme Court in New York Central & Hudson River Rail Road Co v United States,\textsuperscript{125}

“We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and can only act through its agent and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has entrusted authority to act in the subject matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. While the law should have regard the rights of all, and those of corporations no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interstate commerce, is almost entirely in their hands, and to give them immunity 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 effectively controlling the subject matter and correcting the abuses aimed at.”

The reason why company cannot be let off from the criminal law is that today’s corporations are interacting with every person in the society and major portions of commercial activities of the states are carried by the corporation. Under


\textsuperscript{125} New York Central & Hudson River Rail Road Co v United States, 53 L Ed 613 :212 US 481 (1907)
such circumstances relying on the doctrine and stating that corporation could not be prosecuted for crime would be death note for criminal laws which are the only means of regulating the discipline in the society.

Apex Court justified the application of law of crimes on the reasons cited in the above mentioned American case. But the Apex Court refused to relay upon the theory of “vicarious liability” of USA legal system to make corporation criminally liable but it thought that common law doctrine of “identification” or “alter ago” would be more appropriate to the Indian legal system because Indian legal system is the legacy of common law. Supreme Court approved the principles laid down by Lord Denning in the *Bolton (H.L.) (Engg) Co. Ltd v T.J. Graham & Sons Ltd* and quotes,

“A company may in many ways be likened to human body. They have brain and a nerve centre which controls what they do. They have also hands which hold the tools and act in accordance with directions from the centre. Sum of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and the will of the company, and control what they do. The state of mind of these managers is the state of mind of company and is treated by the law as such. So you will find that in cases where the law requires personal faults as condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Hldane’s speech in Lennard’s Carrying Co Ltd v. Asiatic Petroleum Company Ltd, (AC at pp 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of criminal offence, the guilt mind of the

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126 *Id.*
127 *Bolton (H.L.) (Engg) Co. Ltd v T.J. Graham & Sons Ltd*, (1957) 1 QB 159 : (1956) 3 WLR 804 : (1956) 3 All ER 624 (CA).
directors or the managers will render the company themselves guilty.”

Further Supreme Court observed that afore said principles is firmly established by the House of Lords in *Tesco Supermarkets Ltd v, Nattrass* and it quotes,

“I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living person, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of company. If it is guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing a particular things is to be regarded as the company or merely as the company’s servant or agent. In that case any liability of the company can only be statutory or vicarious liability.”

The Lord Denning theory of “organic” has firmly established the criminal liability of corporation. Principles says in case of natural person it is brain which form the intention and regulates the hands, legs, and other organs of the body, therefore, guilty intention of brain is attributed that person. In same fashion the board of directors and managers are the brain of the company because it is they who regulates and controls the activities of company. Other servants and agents of the

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129 Supra note 121 at 99.
130 *Tesco Supermarkets Ltd v, Nattrass* 1972 AC 153; (1971) 2 WLR 1166; (1971) 2 All ER 127 (HL).
131 Supra note 121
company simply carry the instructions given by such board of directors and managers of the company. Therefore, mind and thought of board of directors and managers is the mind and thought of company. Here the company is identified through the board of directors and managers. This is what is called the doctrine of “identification” or “alter ago” theory. Hence the Mens Rea of directors and managers is imputable and attributable to the company. The Supreme Court of India also on theory of alter ago held that company could be prosecuted for the criminal offence even it requires the ingredients of mens rea. Therefore it overruled the judgment of Bombay High Court and paved the way for trial of Motorola Inc for the offence of cheating under section 420 of IPC.

The doctrine of identification is applied by the common law in relation to the directors of company with company. It means that personality of company is identified with personality of directors of the same company. But in the case Motorola, the personality of directors of Iridium Inc is not identified with Iridium Inc but with Motorola Inc because it is who they appointed the board of directors and exercise control over them. Therefore Apex Court of India in fact has extended alter ago theory invented by the common law. Even in case of subsidiary company, the personality of directors is merged with personality of company in which they are appointed not with persons who have appointed them and regulates them. This kind of extension may likely to lead some kind of problem.

For Example, TATA Sons Ltd which is established in the year 1868 is the holding company of TATA Groups and holds the bulk share holding in these companies like TELCO, TATA Motors, TATA Steel, TATA Power, TATA Docomo, TATA Sky, and TATA Consultancy services. It is the TATA Sons Ltd which appoints, regulates and controls the directors of its established companies.
TATA Sons Ltd becomes holding company and other companies become subsidiary company of TATA Sons Ltd. Further that subsidiary company of TATA Sons Ltd may establish another subsidiary of company of its own. Under these circumstances the Supreme Court of India’s extended theory of identification in Motorola Inc case goes and stops at the TATA Sons Ltd for the criminal responsibility of its every company and its subsidiary company which would create more problems and confusion for the ultimate determination of criminal liability of corporation. Therefore, the ratio of Motorola Inc has cropped up more problems than providing solution to problem. Therefore the issue whether the doctrine of identification should be confined to the company in which directors are employed or it should be extended to its holding company, further to holding company to its parent company is another area where judiciary is likely to face tough questions from the point of ideology and from the point of realistic. Ideologically the theory may extended on the premises of logic but whether that logic would work by taking into consideration of factual situation is million dolor question.

Further the theory of identification works out to be efficiently where the sole director is in charge of the company or board of directors have taken unanimous decisions. But that does not happen in reality. The Board of Directors is the body responsible for framing and implementing the policy for the company. The question is what about the honest directors who have opposed the guilty decision of the majority of directors. Under such circumstances honest mind of directors is clubbed with dishonest mind of directors and attributed to the company looks law is crude. But there is no alternative solution to this for holding company as one unit for criminal liability because company cannot be spilt for such liability and the only way for such honest director is to demit the office.
Even though the Supreme Court of India has evolved criminal liability of corporation upon the premises of principles of identification, yet it has not addressed one important issue where the directors and managers have taken the decision not with intention to benefit the company but to benefit themselves. The Board of Directors and managers in fact have two identities; one is in the capacity of individual and another in the capacity of directors. Suppose that person in capacity of individual abuses the position of directors and intended to benefit himself, takes decision on behalf of the company, would that circumstances warrants the application of doctrine of identification is another question which ought to have been answered by the judiciary. Logic suggests that company cannot be held criminally liable for such acts.

Supreme Court of India categorically said that company could be prosecuted for even those criminal offences which require the mens rea but did not spell out for which offences company could be prosecuted which is million dolor question persistently is raised at various point of time. There are two kinds of criminal acts prohibited by the state; one is statutory offences which are of socio-economic offences and another common law offences which are of conventional and traditional offences under IPC. Criminal liability of corporation for socio-economic offence does not create problems because the nature of offences is such it could be committed by both natural and juristic persons. But the question in relation with offences prescribed in IPC, could company be prosecuted for all the offences prescribed in IPC. Supreme Court of India on previous occasions in align with decisions of USA’s Supreme Court held that company could not be prosecuted for offences like treason, rape, theft, bigamy, sexual offences and murder etc but could not give comprehensive list.\textsuperscript{132} The

\textsuperscript{132} See, Ananth Bandu v Corporation of Calcutta, AIR 1952 Cal 759, The Nagpur Bench of Bombay High Court in State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd and others (AIR 1964 Bom 195.), held that it is not disputed that there are several offences which could be
question is, is it possible for the judiciary to answer the question. The Indian Judiciary has adopted the adversary system of adjudication which does not allow the courts to adjudicate the matter on hypothetical bases unless the matter is raised before the court through some kind of petition. To what offences company could be prosecuted can be answered only through comprehensive legislation enacted by legislators. Moreover it is domain of legislature because it is the matter of policy. Further it is domain of legislator to decide whether such kind of policy is appropriate in given circumstances or period. Nevertheless, the courts also cannot abdicate its responsibility from stepping in matters on which the legislators failed to discharge their responsibility.

Even though the Supreme Court has adopted the principles of alter ago on which company could be prosecuted for criminal offences in Iridium India Telecom limited case would not settle the matter of corporate criminal liability conclusively because it is given by the division bench of Supreme Court not by Constitutional Bench. The Standard Chartered Bank case was decided by constitutional bench of Supreme Court but issue in that case was whether company could be prosecuted for those offences which carries mandatory punishment of imprisonment under the specific legislation of Foreign Exchange Regulation Act 1973 and Income tax Act 1963. But Supreme Court in Iridium case was decided under general law of Indian Penal Code which does not have specific provisions like FERA and Income Tax Act. Therefore, the ratio of Standard Chartered Bank case is not applicable to the crimes under Indian Penal Code. Further the another division bench of Supreme Court in

committed only by individual human being, for instances, murder, treason, bigamy, rape, perjury etc. the Supreme Court in Kalpanath Rai v State (Through CBI), (1997) 8 SCC 732, held that company could not be prosecuted for the offence related to terrorist offence under TADA 87. Further Supreme Court of India in Assistant Commissioner, v. Velliappa Textiles Ltd, (2003) 11 SCC 405, held that company could not be prosecuted for those offences which mandates the mandatory punishment of imprisonment. Even Constitutional Bench of Supreme Court in Standard Chartered Bank v, Directorate of Enforcement, (AIR 2005 SC 2622), admitted the exception to the criminal liability of corporation that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent.
Kalpanth Rai case held that company could not be prosecuted for those offences which requires mens rea. Hence, there are two conflicting decisions of Supreme Court of same hierarchy which needs to be resolved by the constitutional bench of Supreme Court otherwise the uncertainty or chaos in respect of criminal liability of corporation in the absence of specific provision in the IPC continues to be unabated which is not good in the larger interest of society as well as in the interest of the company.

5.8. Special authority of investigation for corporate crime.

Corporate crime is complex phenomena which require special investigation. Corporate crime is generally investigated by the police who do not special knowledge of corporate structure, its operations, its activities, its banking operations, and its account system. Moreover it becomes more complicated in case of Multi National Companies because its activities are spread across the globe. The general police do not have knowledge about these activities. Hence the investigation of corporate crime should be investigated by special authority consisting of Charted Accountants, Bank Experts, Income Tax Officers, trained police officers and experts in cyber crime. Section 211 of the Companies Act 2013 provided the Establishment of Serious Fraud Investigation Office, the persons who are appointed in this office should have special knowledge of banking, corporate affairs, taxation, forensic audit, capital market, information technology and law. This is welcome step because authorities who have special knowledge about these matters may investigate corporate crime in more meaningful manner which will help in ensuring more conviction of offenders of corporate crime.
5.9. Different Method of trial of Corporate Crime.

Corporation is also person. Therefore any crime committed corporation is tried under *Code of Criminal Procedure 1973*. One of the components of fair trial is that trial of offence should be conducted in the presence of accused. But the company is being artificial person which does not have physical existence. Therefore it is impossible for judiciary to conduct the trial of corporate crime in the presence of accused company. Logically under such circumstances, conduct of corporate crime trial in the absence of accused amounts violations of fair trial. However on this technicality ground a company cannot be let off from the trial of offence. Section 305 of Code of Criminal Procedure 1973 provided devices to overcome this technical problem. That Section states that accused corporate company can be represented through its representative. The presence of representative of accused corporate during the trial is only alternative method is available. Moreover this option is in tune with alter ago theory because the identity of higher officer of the company is merged with company. When the higher officer of the company is charged for corporate offence, naturally the company is also charged for the same offence. Therefore the presence of those higher officers amounts to presence of the company itself. Therefore it does not violate corporate right of fair trial. Further the provisions of arrest in the Code of Criminal Procedure 1973 are not applicable to company because accused company cannot be arrested. Again the provisions of recording the confession of accused by the Judicial Magistrate during the police custody are not applicable. Nevertheless it may be possible that confession made by the higher officer of the company who are charged for offence along with company may be used against company because alter ago theory submerges the identity of responsible officer with company. Therefore confession of higher officer of company is confession of company. Further the bail
provisions in the Code of Criminal Procedure are also not applicable to accused company. Further whatever statement is made by the representative of company is binding upon the company in the form of admission during the trial.

5.10. Conclusion.

Initially the judiciary was reluctant to hold company criminally liable on the ground that it was juristic person, therefore it was incapable of forming the mens rea and it is impossible to punish the company. However, the judiciary gradually changed its attitude towards the company criminal liability. Indian judiciary noticed the changes taken places in other legal system in respect of corporate criminal liability particularly in USA and UK. Initially the judiciary did not face much hurdle in respect of corporate criminal liability under strict liability because it does not require the presence of the mens rea. Later on judiciary tried to hold the company liable for those criminal offences which do not require the mens rea ingredients.

Further, it held that company could be made liable even for that offence which requires the ingredients of mens rea. However, it made clear that company could not be indicted for those offences which can be committed by only natural persons. Indian judiciary is akin to common law legal system therefore it adopted the common law theory of “alter ago” or “identification theory.” But theory of alter ago is not free from the confusion. Ratio of decided cases does not say anywhere where the guilty officer committed the crime on behalf of the company for the benefit himself rather than company. Another important question is still unanswered is that whether the intention to benefit company is enough even though company is not actually benefited?

On the other hand whether company could still be indicted for criminal offence even when the officer intended to benefit him rather than benefit company.
The theory of alter ago creates more problems when think tank of the company is consisting of multi member body. If there is unanimity among the board of directors, then it would not be problem to make company criminally liable. But, where the board of directors was divided over the decision, the problem is which directors brain would represent the company is difficult to determine it. Another notable question is whether personality of director is merged with the personality of subsidiary company or will it merged with the personality of holding company. Indian judiciary has held that director of subsidiary company is appointed by the holding company; therefore, personality of directors of subsidiary company would be merged with the holding company. This would create further problem because on the same logic even it can to the extent of making share holder liable because it is share holders who appoints the directors. in most of the companies even the share of the holding company is held by the parent institution of entire group of industries like TATA Sons Ltd. According to the ratio of Iridium case the buck of appointing director to the holding company in TATA companies’ stops at TATA Sons Ltd. then TATA Sons Ltd becomes criminally liable for the every act committed by the holding and subsidiary companies of TATA Sons Ltd. This kind of logic does not work in reality rather it creates more problems.

Another gray area about corporate criminal liability is about which Offence Company could be indicted. The judiciary is very firm that certain offence could be committed by only natural person not company like murder, rape, bigamy, adultery, theft and dacoity etc. It is very difficult to illustrate exhaustively for which offence company could be made liable. However, it can be determined on the basis of nature of business carried by the company and the nature of act committed by the servant of the company. But today looking at the variety of business conducted by the company,
particularly in the marriage engagement business, the company could be held liable as abettor or conspirator for the offences like bigamy or adultery. Even the company could be made liable for the sex offences also. In the light of the tough competition in getting the tenders, there is possibility of company committing the theft of the documents of the rival company.

So far Indian judiciary has exercised the option of imposing fine on company as punishment but never thought about the other option of punishments like winding up of the company, cancellation of license of company for particular business, disqualification of company for certain benefits, forfeiture of illegally earned profit by the company, probation of company, and the publication of company name in the newspaper or Tele Vision. Some critics argues that imposing fine on company in fact does not amounts punishment of company but amounts punishment of share holder, creditors, debenture holder of the company because the share prices of the company goes down in the market the movement the companies is punished. However, this happens even in case of natural person also because if the bread earner of the family goes behind the bar, naturally the dependent of that person also suffers. But in case of company it is not question of one or two members suffering but entire share holders who are in lakh numbers, debenture holders who are also in lakh numbers, creditors are also in large numbers and even the nation also suffers. However, this is inevitable if the law is to rein the company for its criminal activity in the larger interest of the society otherwise unchecked criminal activity of company would cause greater harm than benefit derived from not punishing company.

Another area in which judiciary is not made much inroad is whether the company is being accused person, can it claim the right of accused from the perspective of fair trial under the Article 14, 20, and 21 of the Indian Constitution.
The question is about whether company could raise issue that its trial procedure is discriminatory because it is not allowed to take defense provided in the IPC which are available to natural persons. Further such procedure is not fair and just under Article 21 of the constitution. Another important issue is whether company as accused can claim the right of silence is worthy to be debated but so far the corporate criminal jurisprudence has not made any progress in that direction. Is it inevitable to provide the defense available in the IPC to company also is another million dolor question? All these questions look very philosophical but sooner it would become reality. The researcher would discuss all these issues in the conclusion chapter.