Abstract

Companies are recognized by law as an artificial person. Its existence is through registration and its scope is stated, as under Memorandum of Association and Articles of Association. Its members are natural persons but they are not the owners of the company.

It is evident that natural persons commit crime because physically and mentally they can commit, whereas a company cannot though it is a person under law. Corporate Criminal Liability has grown over years. Its origin is from the ancient but became a hot topic after the principle of Globalization, Privatization and Liberalisation was adopted in the world market. The first step in the English development of corporate criminal liability was made in the 1840’s when the courts imposed liability on corporations for strict liability offenses. It was approved that corporate also has mens rea and commit crimes through actus.

Initially, it was concluded that criminal liability could be imputed to the corporation based on the benefit it received as a result of the criminal acts of its agents. Corporate crime also includes fraud and other illegal activities, which affects general laws. Many frauds committed by corporate in India and abroad initiated the legislature to look into the law and make proper changes. The laws were amended as and when required to accommodate the corporate criminal liability. Law commissions have also played a pivotal role in bringing changes in the law inserting corporate criminal liability. Recently in India, Companies Act, 2013 has been enacted but it has not elaborately covered all types of crimes committed by the company and to fix its liability respectively. It is not that there were no legislation but they did not cover the punishment to be imposed on the corporate.

Many cases have come before various courts in India as well as in various countries. 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. The precedents have contributed for the development of this principle. Again, jurists have also given different theories which contribute to the criminal liability of the companies. This type of crime is committed all over the world and every State has drafted its own law
on the subject. The English and French models requires that individuals acting on behalf of the corporation hold a high position or play a key function within the corporation’s decision structure.

Indian legal system adopted the “alter ago” theory which is known as identification theory now. All the crimes stated in Indian Penal Code are applied to corporate also. Different kind of punishments like death sentences, life imprisonment, simple or rigorous imprisonment cannot be imposed on corporation because of its legal characteristic personality. And hence different types of punishments are imposed to corporate under special legislation. At present, corporate criminal liability is virtually as broad as individual criminal liability, corporations being prosecuted even for manslaughter.

Special investigation team has been appointed to investigate into corporate criminal liability. The next aspect which has emerged in recent years Corporate Social Responsibility has gained growing recognition as a new and emerging form of governance in business. The current CSR concept comes from concern over the environment.

After establishment of WTO and after entering into the General Agreement for Trade and Tariff, business in the world has got due importance. Industrialization has boosted the trade and commerce across the universe. There is a need to control criminal activities of the company for which separate legislation is to be enacted in all the countries. And this is the theme which is covered in this thesis.