CHAPTER I

1.1. Introduction

In India, the need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and under-takings as well as by Transnational Corporations. Many of these industries are engaged in hazardous or inherently dangerous activities, which pose potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though number of laws of our country regulates working of such factories and plants, there is no special legislation providing for compensation and damages to outsiders who may suffer because of any industrial accident.

1.1.1. Origin of the concept of corporate criminal liability

Corporate criminal liability has its origins in ancient law, and became the center of the doctrinal discussions at the end of the 19th century. The history, laws, economics, and politics unique to each country have had a remarkable influence on adoption and development of the concept of corporate criminal liability. The concept of criminal liability of corporations has had a different evolution under civil law systems as compared to its development under common law systems. At the same time, under the civil law or common law systems, corporate criminal liability has developed differently to reflect the historical and socio-economic realities of different countries. The historical evolution of corporate criminal liability shows that corporate criminal liability is consistent with the principles of criminal law and the nature of corporations.

The right of individuals to constitute trade, religious, and charitable associations has been recognized early in the development of the Roman law. Upon
creation by authorization, the entities had their own identity, owned property separate from that of their founders, and had independent rights and obligations. Although these entities were viewed as a fiction of the law, and despite the fact that the Roman doctrine considered that these associations lacked independent will. The existence of independent entities with rights and obligations constituted the basis for the evolution of corporate institutions in the medieval. However, unlike the Roman *universitas*, which were fictitious creations of the law, the Germanic law considered that both the corporations and the individuals were real subjects of law. Territorial units were formed and these territorial entities were liable for the crimes committed on their territory. The rationale of the collective responsibility in the Germanic law relied on the function of the sanction; sanctions were imposed not based on the concept of guilt, but on the outcome of the action. The sanction was viewed more as compensation than punishment, and because the property was owned by the collectivity, it was only logical that the collectivity should pay the damages.

Later, in between 12th and 14th centuries, the concept of corporate criminal liability evolved; the Romanic law clearly imposed criminal liability on the *universitas*, but only when its members were acting collectively. The emperors and popes used to frequently sanction the villages, provinces, and corporations. The sanctions imposed could be fines, the loss of specific rights, dissolution, and spiritual sanctions upon the members of the corporations, such as the loss of the right to be buried, or excommunication.

In the 14th century, the doctrine recognized that corporations had their own willpower and therefore, their criminal liability was given. With a few exceptions such as bigamy, rape, etc., an entity could commit any crime, which could be committed by an individual, regardless of the fact that the crime had no connection
with the scope of the corporation. This theory dominated the continental European doctrine until the end of the 18th Century. The medieval conception was based on the belief that all the corporations should be liable, both civilly and criminally, for the acts committed by their members. Cities, villages, universities, trade, and religious associations have been required to pay fines for their crimes. The French New Penal Code established, for the first time in any civil law system, a comprehensive set of corporate criminal liability principles and sanctions, with the exception of the State, all the juristic persons are criminally liable for the offenses committed on their behalf by their organs or representatives. France’s example was followed by numerous other European countries. Thus, Belgium modified the Belgium Penal Code and instituted the criminal liability of juristic persons. Netherlands adopted the concept of corporate criminal liability even earlier, in 1976. The Dutch Penal Code provides that natural persons as well as juristic persons can commit offenses. Initially, England refused to accept the idea of corporate criminal liability for several reasons. Corporations were considered legal fictions, artificial entities that could do no more than what “legally empowered to do (ultra virus theory)” Because corporations lacked souls, they could not have mens rea and could be neither blameworthy, nor punished.

During the 16th and 17th centuries, corporations became more common and their importance in the socio-economic life increased. A need for controlling corporate misconduct became more and more obvious. Corporations have been recognized as independent entities, which owned property distinct from that of their members. The first step in the English development of corporate criminal liability was

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made in the 1840s when the courts imposed liability on corporations for strict liability offenses. Soon after, by borrowing the theory of vicarious liability from the tort law, the courts imposed vicarious criminal liability on corporations in those cases when natural persons could be vicariously liable as well.

In 1944, the High Court of Justice decided to impose direct criminal liability on corporations and established that the *mens rea* of certain employees was to be considered as that of the company itself. The motivation of the decisions was vague and confusing due to the lack of clear and organized criteria for attributing the *mens rea* element to corporations. This issue was clarified in 1972 in a case in which the civil law *alter ego* doctrine was used to impose the criminal liability on corporations; this is now known under the name of “identification theory.”

The United States initially followed the English example, but later developed differently and more rapidly due to the important role of corporations in the American economy and society. The foundation of most forms of political organization in the American colonies was the corporate charter, which perpetuated the corporate form of governance. Unlike the English and Indian courts, the American courts were much faster in holding corporations criminally liable. Initially, the American courts promoted similar arguments against corporate criminal liability. At the beginning of the 20th century, the concept of corporate criminal liability was widely accepted.

The Supreme Court of U.S concluded that criminal liability could be imputed to the corporation based on the benefit of it received because of the criminal acts of its agents. The case and its progeny have essentially imported the doctrine of respondent superior from tort law into the corporate criminal realm. A corporation may be

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3 *Tesco Supermarkets Ltd v. Natross* (1972) A.C 153
4 *Id.*
convicted for its agent's unlawful acts when the agent acted within the scope of his or her actual or apparent authority. Another theory of corporate criminal liability is the "collective knowledge doctrine." As knowledge of criminal activity is often the scantier element of a particular crime, the requisite knowledge can be imputed to the corporation based on the collective knowledge of the directors and officers.

Criminal liability is attached only to those acts in which there is violation of criminal law i.e., to say there cannot be liability without a criminal law which prohibits certain acts or omissions. The basic rule of criminal liability revolves around the basic Latin maxim “Actus non facit reum, nisi mens sit rea”. It means that to make one liable, it must be shown that act or omission has been done which was forbidden by law and has been done with guilty mind. This is the rule of criminal liability in technical sense but in general, the principle upon which responsibility is premised is autonomy of the individual, which states that the imposition of responsibility upon an individual flows naturally from the freedom to make rational choices about actions and behavior.

Although the general rule as stated above is applicable to all criminal cases but the criminal law jurisprudence has seen one exception to the above said concept in form of doctrine of strict liability in which one may be made liable in absence of any guilty state of mind. This happens in cases of mass destructions through pollution, gross negligence of the company resulting in widespread damages like in the Bhopal Gas tragedy Case. Hence, there can be no dispute in imposing criminal liability on corporate even when there is no mens rea.

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1.1.2. Development of the concept of Corporate Criminal Liability

1. Public Nuisance - Courts in England and the United States first imposed corporate criminal liability in cases involving non-feasance of quasi-public corporations such as municipalities that resulted in public nuisances.\textsuperscript{8}

2. Crimes not requiring criminal intent - As the presence and importance of Corporations grew, courts extended corporate criminal liability from public nuisance to all offences that did not require criminal intent. This development eventually encouraged courts to extend corporate criminal liability to all crimes not requiring intent.

3. Crimes of intent - Courts were slow to extend corporate criminal liability to crimes of intent\textsuperscript{9}. The motivating factor of this result was the need for effective enforcement of law against corporations. Creation of corporate personality had otherwise created too large a vacuum vis-à-vis application of criminal law to corporations.

4. Expansion of corporate criminal liability - Various historical developments in Western Europe as well as United States further contributed to the growth and expansion of corporate criminal liability. However, one of the most important factors favoring criminal liability over civil liability was that the public civil enforcers did not possess as much enforcement power as criminal enforcers did.

1.1.3. Definition of Corporate Criminal Liability

Corporate crime means crimes committed either by a corporation, or by an individual that may be identified with a corporation. A corporate crime is the act of its

\textsuperscript{8} The King v.Inhabitants of Lifton, 101 Eng Rep 280 (KB 1794).
\textsuperscript{9} New York Central & Hudson River Railroad v. U.S 212 U.S. 481 (1909).
personal and need not be authorized or ratified by its officials. It is sufficient if the officials were exercising customary powers on behalf of the corporation. Thus to substantial degree, the crime of the corporation is interwoven with the acts of its officials. Such criminal acts are reflective of the character of the persons who manage the corporation.

Now, criminal liabilities of corporations are taking its sweep. The term corporate crime describes these corporate activities, which are perused to involve some aspects of criminal law. Corporate crime is commonly used to denote bridges of regularity offences. Corporate crime also includes fraud and other illegal activities, which affects general laws.

In this research work, the researcher has argued first against endorsing positive rights as having the same status as negative rights, and then tried to demonstrate that, with the transportation of ‘rights talk’ into business ethics, the dangers of conflicting positive and negative rights are superimposed on the dangers of conflating the private and the political. The researcher has concluded by presenting the stance on the debate on what basic institutionally sanctioned rights are, and what the corresponding duties of multinational corporations really are. Increased participation of Multi National Companies (MNC’s) in socio-economic activities has imposed greater responsibilities on governments as this involves constitutional rights of people. Corporate social responsibility (CSR) has long been a hot topic globally\textsuperscript{10}. In most developed nations, corporate social responsibility (CSR) initiatives center on issues such as environmental sustainability, alternative energy, clean technology, and social welfare.

Driving these activities, more often than not, is a company’s desire to appeal to strong consumer sentiment. In the recent years multinational companies like Enron Lemon Brothers, Mayrlin Lyncy, American’s AIG, India’s Global Trust Bank, Satyam Company and some of the Indian banks involved in the IPO have made us to rethink of making criminal liability of corporates more deterrents, effective and enlarging its applications. In the modern day world, the impact of activities of corporations is tremendous on the society. In their day to day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the category of crimes. Thousands of scandals especially the white collar and organized crimes can come within the categories that require immediate concern. Despite so many disasters, the law was reluctant to impose criminal liability upon corporations for a long time. Indian Judiciary confronted the issue only in a few decades back.

A company cannot be indictable for offences like bigamy, perjury, rape which can only be committed by a human individual or for offences punishable with imprisonment or corporal punishment. Barring these exceptions, 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.

This developed jurisprudence does not find a place in the Indian statutes as they still make only the officials responsible for the act criminally liable and not the corporate itself. The various sections of the IPC that direct compulsory imprisonment does not take a corporate into account since such a sanction cannot work against the corporation. On the other hand, law has also developed to an extent with regard to
certain other statutes and their respective penal provisions wherein a fine has been imposed on the corporations when they are found to be guilty.\textsuperscript{11}

Now, it is well established that corporate can be held liable for criminal acts. There emerged specific statutes, rules, regulations and notifications which spelt out corporate criminal liability in clear terms. However, even in western countries, standards vary with each legal system applying a different model of corporate criminal liability. India too has attempted to include corporate criminal liability.

Various questions arise as to the definition of person under corporate criminal liability. Person includes corporate companies and registered societies\textsuperscript{12}. Therefore, there remains no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is within the purview of strict liability or under absolute liability. And whether a corporation could be attributed with requisite \textit{mens rea} to prove the guilt? The position now being, that corporation can be guilty of any offence except those, which require certain amount of intention on part of the accused\textsuperscript{13}. This would very often be true in cases of economic offences like the foreign exchange laws, Food Adulteration Act, etc. Section 305 of Criminal Procedure Code prescribes the procedure for dealing with the accused corporation, but then comes the difficult question of inflicting the punishment when the statute prescribes a minimum period of imprisonment as sentence.

The question then arises for consideration was “whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment? For this question the Supreme Court of


\textsuperscript{12} Section 11 of the \textit{Indian Penal Code 1860}.

India in *Velliappa textiles*\(^{14}\) case, by a majority decision held that the company cannot be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine. It was further held that where punishment provided is imprisonment and fine, the court cannot impose only a fine, the majority was of the view that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the statute and that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean in favor of the construction which exempts a citizen from penalty than the one which imposes the penalty.

The Courts have no doubt been efficient in evolving the concept of criminal liability of corporate and have imposed the same on the convicts but the only way of imposition that has been thought of is by way of fines. It is now for the legislature to evolve new forms of punishments and incorporate them in the criminal justice system of the land. Then other forms of punishments such as Economic sanctions and Social sanctions can also be imposed on them. Economic sanction may include winding up of the company, which is called corporate death, which is permanent in nature or can be temporary closure of the company or Rehabilitation of victims of crime. In such a form of punishment, the corporate would be ordered to rehabilitate the victims in a manner such as to erase any traces of the effect of the crime.

Then Social sanctions include Goodwill, which is heart and soul of a corporation. Once this is harmed, it would create a deep stigmatizing effect on the corporation since its business would come to a standstill with no customers. This can be done by asking the corporate to publish the crime widely, compulsorily, and fund

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\(^{14}\) Assistant Commissioner, Assessment-II, *Bangalore and Ors v. Velliappa Textiles Ltd and Ors*, AIR 2004 SC 86.
the publication as well. This will act as a strong deterrence for not to commit crimes and the shareholders also would come in an active role in stopping the active organizational structure from authorizing committal of such crimes.

1.2. OBJECTIVES OF THE STUDY

1. To investigate and identify laws regarding the corporate criminal liability.
2. To identify the different kinds of crimes that can be attributed to a company.
3. To assess the scope criminal liability of multinational companies and to identify the implications.
4. To examine the working of multinational companies within the four fold of Indian Constitutional frame work.
5. To evaluate the of international trade law regarding the criminal liability of multinational companies.
6. To know whether the attribution of artificial personality is vitiated if natural persons are held responsible for corporate crimes.
7. To ascertain the corporate criminal liability in the light of new economic order this has resulted due to LPG (Liberalization, Privatization and Globalization).
8. To examine the nature and types of punishment that could be imposed on company or on the concerned natural persons, if criminal liability is proved.

1.3. SIGNIFICANCE OF THE RESEARCH

Due to change in the business and trade, after the introduction of world trade organization policy, which we call as liberalization, privatization and globalization, there has been tremendous change in the structure of corporate. The responsibilities of these corporate entities have grown manifold. The acts have shown liberty in some
aspects, but also have imposed restrictions. A balance has to be maintained for the development of corporate.

In the wake of this and recent incidents like Satyam scandal, Global Trust Bank scandals, the criminal liability of the corporate have taken due importance. Legislators have woken up to have more stringent provision to curb these crimes. However, the hand of the law has not reached to control these crimes. This study has made suggestions after in depth study, which shall be of greater assistance to the policy makers, judiciary, advocates, academicians, investors, non-governmental organizations and the public in general.

1.4. RESEARCH QUESTIONS

The research work identified certain vital questions in connection with corporate criminal liability.

1. How far the corporate entity would be made criminally liable and what is the nature of that liability?

2. What is the distinction between liability for socio-economic offences and other offences in this regard?

3. What is the justification for expanding the corporate liability beyond the traditional categories of defamation, fraud, negligence, criminal breach of trust, misappropriation etc?

4. What are the rules of evidence in cases of corporate liability for crimes?

5. How far the existing rules regarding separate personality are applicable to multinational companies and how to address their frauds domestically?

6. What is the suitability of existing criminal procedure when company is an accused?
7. Is it reasonable to attract criminal law provisions when company is guilty of non-compliance with social responsibility?

1.5. HYPOTHESES:

1. The corporate entities are free from criminal liability as they are not natural persons, and cannot commit crime.

2. The company is not made criminally liable mainly on the ground that it cannot have the requisite mens rea.

3. Corporate crimes are due to the acts and deeds of one or the other human beings and they don’t directly result from the company itself.

4. Under the present legal and economic set up a special procedural mechanism is needed to deal with corporate criminal liability.

1.6. METHODOLOGY

The methodology adopted in this research is doctrinal. The word doctrine is derived from the Latin noun ‘doctrina’ which means instruction, knowledge or learning. Doctrinal Research is concerned with legal propositions and doctrines. Non Doctrinal Research is concerned with people, social values and social institution. Doctrinal research is founded upon the analytical and critical study of statutes, its inter-relationship and interpretation of statutes made by the Indian judiciary.

1.7. SOURCES OF DATA

This is a doctrinal research based upon the secondary data. The sources are Constitution, statutes, and the decision given by tribunals, Courts including Appellate Courts are extensively referred. Even the statutes and judicial precedents of other countries are also relied upon. The judicial interpretation of statute by the judiciary is also relied upon at suitable places. The secondary sources include books written by
various authors, articles written in the various national and international journals. Further, it includes commentary and opinion expressed by the experts in the seminar and workshop. Secondary sources are extended even to news published in the national and international newspaper and any discussion in the TV News Channel. Website and internet are backbone of e resources, which are also part of secondary resources used in this work. The Researcher has relied upon all types of secondary data for the purpose of research.

1.8. SCOPE OF THE STUDY

The present thesis covers the overview of corporate criminal liability under the Indian law. Corporate Crime is a white-collar crime; but is of a particular type. Corporate crime is an organizational crime occurring in the context of complex relationships and expectations of Board of Directors, Executives and Managers and on the other hand by its other employees. This type of corporate crime has developed gradually over the years. Collectives or aggregates of discrete individuals enact corporate crime.

Corporate crimes demonstrate that corporate lawbreakers cover a very wide range of misbehaviors, much of its serious: among these violations is accounting malpractice, false statement of corporate assets, unfair labour practice, dumping of waste materials and conventional crimes. The amount of loss to exchequer has been much bigger due to corporate crimes. The concept of Corporate Social Responsibility is new phenomena of the 21st century. Corporate Social Responsibility was earlier voluntary but now it has been made obligatory through the enactment of legislation. The Corporate sector has to spend certain amount of its profit on the cause of society. Obviously there is every possibility that corporate sector may commit fraud in
spending that amount or it may pretend to spend that amount. Therefore it is essential that legal research should focus even on the corporate social responsibility.

The corporate criminals are not handled by the criminal law even though they are large in number. There is dilemma as to which law to be applied and which crimes are recognized by the existing laws. Corporate responsibility in the context of a criminal indictment is best looked at in terms of direct and collateral consequences. The direct consequence is, of course, criminal liability. Everyone in the corporate hierarchy can be indicted for criminal activity, officers, directors, employees, even the corporation itself. The collateral consequences of a criminal prosecution can transcend the financial liability resulting from a criminal trial. Among these collateral consequences are loss of government contracts and shareholder lawsuits.

In India, certain statutes like the IPC talk about kinds of punishments that can be imposed upon the convict which include death sentence, life imprisonment, rigorous and simple imprisonment, forfeiture of property and fine. Courts in India have forgone the theory that mens rea is an important component when it comes to corporate criminal liability, and the Law Commission of India has given its 41st report, which mentioned that corporate should be made liable whenever a Section of IPC speaks of imprisonment and fine, in such circumstances fine should be imposed. Now, the scope of this has widened. There is cry that official of the company should be punished for the crimes they commit when they are employed and commit crime.
1.9. Review of literature

1.9.1 Books:


In this book the author stated that, a Corporation is a legal entity incorporated by law for preserving certain rights in perpetual succession. In other words a corporation is group of human beings, authorized by law to act as a legal unit, endowed with a legal personality and has a seal of its own. However a corporation owing to its peculiarity is not put on the same footing for its deeds with respect to criminal liability as a human being. In this book the author has made it clear that corporation is different from its members and it can exercise its rights further he says that, there should be difference between natural person and legal person while fixing criminal liability.


In this book the author discussed that, a Company being a body corporate, can sue and be sued in its own name. Criminal complaint can be filed by a company but it must be represented by a natural person. It is necessary that the complaint is liable to be dismissed because of the absence of the representative in the same way in which an individual complaint is liable to be dismissed for absence of the complainant.

In reality, however, the business of the legal person is always carried on by, and for the benefit of, some individuals. In the ultimate analysis, some human beings are the real beneficiaries of the corporate advantages, for while, by fiction of law, a corporation is a distinct entity yet reality it is an association of persons who are in fact the beneficial owners of all the corporate property.
The author in this book has rightly pointed out that, though the beneficiaries of the business of the company are the natural persons as a group, the company is distinct from its members as it has a right to file a suit against others and others can also file a suit against the company.


In this book the author focused on vicarious liability under environmental laws. Under the environment laws, if a company performs the illegal act, it is held liable for that work. Imposing liability on corporation is very important as the majority of environment crimes are committed by companies: merely prosecuting the corporate officers for such offences would not sufficiently deter the company. By application of the principle of respondent superior the company is held vicariously liable for the actions of its employees in the course of employment and for the benefit of the company. Such liability would be especially useful when it is difficult to pin liability on one particular official, as the environmental violations are the result of the actions of several different officers. Along similar lines of argument, holding companies may also be held liable for the criminal acts of their subsidiaries. The case of union carbide chemicals is an example. The author in this book has elaborately discussed the liability of directors of the company and company itself. He has discussed the vicarious liability principle on which company can be held liable for the acts of its agents.

In this book the author concentrated on the abetment as an offence, which can be committed by a company. A person who aids, abets, counsels or procures an offence is generally guilty as a secondary party and may be punished equally to the principal offender. Even where a person cannot in law be a principal offender, he or in the case of corporation it, may incur secondary liability. In this way a corporation cannot avoid liability for an offence to which it has been a party but in respect of which it could not be a principal offender. There is no doubt that a corporation can aid and abet criminal offences through the act of its servants in the course & operation of their employment. It is however, quite clear that when one is dealing with aiding and abetting, as has been often said, the master must know of the facts out of which the offences arise, albeit he dose not know that an offence is committed. There is no difference in principle between an individual or corporate employer and that in either case was the master to have delegated his responsibilities to the servant, he would be fixed with the knowledge of the servant. In this book the author applied the principle of contract of agency in which we will find the liability of the principal for the acts of his agents. The argument of the author is appreciable but he did not tell any where about the mode of punishment.


In this book the author argued about the appropriate basis for corporate criminal liability, where two distinct strands emerge. One line seeks to equate the corporate entity with the individual, to tease out those characteristics of corporations which can be correlated with the essence of individual responsibility. The other
exploits the dissimilarities between individuals and the group entry. Corporations are different from human beings, their activities are not merely on a gladder scale, their whole existence, function and formation marks them apart. The contours of their culpability should reflect those differences. Although either rout can lead to corporate liability, the second has more potential. Any argument which seeks to equip rate corporate with individual liability has to confront the group difference at some point: effort to bring out corporate intentionality from corporate policy need to face the complexities of group structures with their lines of authority and internal power distributions. The author of the book in his argument has tresses the different identity of the corporation with that of the individuals. And the liability would be fixed on the basis of the authority and power given to the individual.

1.9.2 Journals:


There can be no two opinions that corporations, Just like natural persons, Ought to be punished severally for grave and serious offences and ought not be permitted to escape punishments merely because they cannot be imprisoned, but when it remains within the realm, command and competence of the legislature, it would not stand to any reason that for the omissions of the legislature, the courts are there to step in and supply the same. Thus, in the humble view of this author, with due respects to their Lord Ships, It appears that the courts have overreached the issue in Standard Chartered Banks case in reading into the statutes, a discretion which is not legislatively made available to the courts. In this article the author has opened that corporation should be punished in accordance with the laws, which are in existence
and he has criticized the discretion of the court, which has not been permitted by the legislature.


A Corporation is a group of individuals deemed in law to be a single legal entity. It is legally distinct from all the individuals who compose it. It has legal personality in itself and can accordingly sue and be sued, hold property and transact, and incur liability. Here it is concerned with business corporations and their reception by the criminal justice system. Strong resistance within the legal system to the notion of corporations as criminal has resulted in an under developed jurisprudence of corporate liability for crime. Although corporations can be’ persons’ in certain legal context they cannot so easily be criminals. Recognitions of criminal liability for corporate entities have been slow in coming in the law. As the author of this article, pointed out that laws in India are slow to recognize the corporate entities as criminals is right but Judiciary in India has recognized the corporations as criminals.

**Dr. K.R.Chandratre, “Directors Vicarious Liability for offences by Companies”, Corporate Law Cases Vol.2, 2000 pp. 317-322.**

For defaults and contraventions committed under the companies Act 1956 in most cases, the persons liable for prosecution and punishment are the company itself and its officers in default. Thus the officer who are in default may be proceeded against and, if found guilty, punishment for the offences. According to the schemes of the act, punishments or penalties for offences are by way of fines in some cases, by way of imprisonment in other cases and in still other cases also by way of fine as well as imprisonment So far as fine is concerned, it is either a fixed amount or an amount
varying from day to day in the case of a Continuing default. The officers of the company who are in default are liable to be punished by way of imprisonment or with fine or with both. As the author pointed out that the officer in charge of the company affairs is to be punished with imprisonment if the corporation is held criminally liable is also supported by me.


Development of law in areas of corporate criminal liability is generally based upon indirectly holding a Corporation liable for its criminal wrongs. So it is come necessary to hold the corporations directly liable for their criminal acts. As a consequence, debate started regarding direct liability of corporations in the era of neo realism in which economy the prime might and giant MNC’s are the main players. Author in his article has argued that the corporation should be made directly liable for its act. Authors argument is appreciable.


When a company is incorporated all dealings are with the company and all persons behind the company are disregarded, however important they may be Thus a veil is drawn between the company and its members Normally the principle of corporate personality of a company is respected in most cases. The separate personality of the company is however a statutory privileged: it must be used for legal and legitimate business purposes only. Where a fraudulent, dishonest or improper use
is made of the legal entity the concerned individual will not be allowed to take shelter behind the corporate personality.


In this article the author has suggested that, the Indian parliament must be aware of the controversies surrounding the corporate criminal liability however even the modern legislations concerning economic offences do not contain specific provisions to facilitate the inflicting of penal liability on corporations and need immediate attention. There is no doubt that the concept of corporate criminal liability is how very well established in India, but even after the judgment of supreme court in Standard Charted Bank case, the debate an legislative function and judicial function seems to be far from over. So it is suggested that suitable amendments in the code of criminal of procedure should be brought in this regard. The author suggests amending the penal provisions to avoid the judicial interference in the legislative aspects. Mere amendment of provision of punishment in respect of corporate liability is not viable. Therefore, enactment of separate comprehensive corporate criminal legislation is solution that is more appropriate.


Since only a natural person is capable of forming intentions, a company cannot form any intention by itself and it would be doing violence to common sense even to suggest that a legal entity can form an intention.

The author in this article has discussed only about the mens rea and he argued that a corporation not having the mind cannot form the mens rea. His observation is wrong and if the same is accepted, crimes by the company will increase.

Not all corporate misconduct or harm should be criminalized: not all types of corporate wrong doing are appropriately sanctioned through the recourse to the criminal law. There are justifications for holding corporations responsible for their actions which lie beyond the traditional utilitarian theory of punishment.

The author in his elaborate discussion about the corporate criminal liability has assessed on the basis of its acts. Whether the act is done by the corporate or not has to be taken into consideration before assessment of the punishment.


The role of the corporate business has extended from beyond just producing goods and services, or creating jobs, or even promoting industrial growth. Industry’s role is fast changing from negative to positive in all areas of socio-economic Endeavour. They are now expected only not to further degrade the environment. They are to act positively towards improvement in the quality of environment.


Imposition of criminal liability on corporation is settled on the point that the corporations can commit crimes. But the statutes in India are not in pace with these developments and the judiciary will impose only fine. So amendments should be carried out by the legislature as soon as possible.
The author opines that judiciary should not impose fine in lieu of punishment as it has no discretion and hence amendment by legislature is necessary in this regard.


Legal Sanctions: In United States legislatures permit judges and administrative agencies to impose many sanctions in corporate criminal proceedings, including cash fines, probation, debarment, loss of license and other related penalties.

Social sanctions: Both society and the legal system impose sanctions; the most powerful sanction that society can impose on a corporation is loss of reputation or stigma.

In United States, legislation permits the court to punish the corporations for their wrongs not only with fine but also with some other punishments. The same is required in India also.


The development of the doctrine of corporate criminal liability has been the result almost exclusively of expediency rather than of empirical information. It has been our theme that the holistic perplexity that is corporate criminal liability has suffered from the failure to recognize and most importantly to use empirical utensils to shed light on the legal principle of corporate criminal liability.

In this article the author stressed the need of empirical survey about the acts of the corporations and its effects on the society.
1.10. CHAPTERIZATION

Chapter 1: Introduction

This chapter deals with brief introduction of the study. It focuses background, research questions, hypotheses, significance, meaning, scope objectives, methodology and review of literature of the research work.

Chapter 2: Origin and Evolution of the Modern Company Law

In this chapter a detailed analysis has been made about the evolution of company. Right from the era of industrial revolution, attempts to form business organizations are on the rise throughout the world. Corporate body is the creation of law, and under this chapter an analysis of how this company came into existence and how the modern company law evolved during the period is done.

Chapter 3: Historical Development of Corporate Criminal Liability

This chapter will deal with history of criminal law. A detailed study focuses on object of criminal law, and development of principles under different laws. In this chapter theories of corporate criminal liability which were agency theory or vicarious liability theory, identification theory and aggregation theory were discussed. Under this chapter analysis of these theories and its application in India is dealt.

Chapter 4: Comparative Study of Corporate Criminal Liability

In this chapter a comparative study of corporate criminal liability between UK, USA and India is made. This chapter deals with adoption of different theories in different countries. The pros and cons of the theories and its adoption has been discussed. In the second phase of the chapter, it covers crimes that can be imputed to corporate body, who brought under for the punishment of the crime. The forms of sanctions adopted in different countries for offence under the corporate criminal
liability on individuals and corporates. The same is compared with the law that is existing in India on the above topic is dealt.

**Chapter 5: Judicial Response to Corporate Criminal Liability in India**

In this chapter the researcher has dealt with the judicial response to corporate criminal liability in India. From 1950 to recent years our courts have been dealing with cases relating to corporate criminal liability in various angles. The attitude of the judiciary has changed over a period of time, and the same has been discussed elaborately in this chapter.

**Chapter 6: Corporate Social Responsibility**

This chapter deals with meaning of corporate social responsibility and its scope. Corporate social responsibility is a concept whereby organizations consider the interest of the society by taking responsibility for the impact of their activities on their customer, employees, shareholders, communities and the environment in all aspects of their operations. The corporate social responsibility is based on certain fundamental principles which are dealt under the chapter. The principles as enumerated in different international conventions and guidelines which India too is a signatory. Hence, these guidelines are incorporated in the Indian laws.

**Chapter 7: Conclusion and Suggestions**

This chapter deals with conclusions that have been arrived after dealing with various topics in above chapters. In this chapter the overall observation of laws relating to corporate criminal liability and judicial response on the topic is made. The researcher has recorded the broad observations and given humble suggestions to modify the existing laws and to enact new legislation relating to corporate criminal liability.