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THE DEVELOPMENT OF CORPORATE CRIMINAL LIABILITY IN THE COMMON LAW- AN OVERVIEW

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"A company may in many ways be likened to a human body. It has a " brain and nerve centre which controls what it does. It also has hands" which hold the tools and act in accordance with directions from the centre[2]."

This paper seeks to understand the historical development of the concept of corporate-criminal liability in common law jurisdictions such as England, the United States and India. Based on that, it identifies the basic doctrines that are used to impose liability on corporations and questions the rationale behind them as well as the critiques. It then proceeds to provide recommendations.

1. DEVELOPMENT IN THE COMMON LAW

a) Development of Corporate Criminal Liability in England

Corporate Criminal Liability as a concept was absent in Britain before the advent of industrialization. The rationale behind the same was based on the traditional understanding of criminal law, where a person was convicted if he had a guilty mind(*mens rea*)[3] and the concept of victimization. Thus, if corporations didn't have a soul, they couldn't be outlawed since outlawry is the act of summoning someone to court and a corporation was not a person who could be compelled to due the same[4]. Similarly, they could not be sued for treason since treason was the offense of

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[2]Tesco Supermarkets v. Nattrass, [1971] 2 E.R. 127 at 4 (Citing Lord Denning In Bolton (Engineering) Co. v. Graham [1957] 1 Q.B. 159 at 172).
[3] Markus D. Dubber, The Comparative History And Theory Of Corporate Criminal Liability, Vol. 16, Number 2 At 203–240, New Criminal Law Review.
[4]*See, E.G.*, R.v. Birmingham And Gloucester Railway Co., 3 Q.B. 223, 114 E.R. 492(1842); Cf. Evans & Co. Ltd.v. London County Council, 3 K.B. 315 (1914)

disloyalty, which sprang from the violation of the oath of fealty[5]. Since corporations cannot take oaths, they cannot commit treason[6]. Proof of this may be seen in Coke's 1612 report of the *Sutton's Hospital* case[7]. Thus, the settled approach was to subject the corporation to liability only for crimes of nonfeasance, such as the failure to make necessary repairs, but to render it immune from crimes requiring misfeasance[8].

It must be noted that this traditional concept of the lack of corporate criminal liability was influenced by Canon law[9]. The Church had insisted that as a corporation (*universitas*), it was distinct from the individual persons constituting it—who might commit wrongs, and sins. At the same time, it was itself a merely fictional entity, a persona *ficta*—incapable of wrong and sin[10]. The roots of the so-called *mens rea* requirement in English criminal law have often been traced back to canonical origins[11]that explainthe lack of corporate criminal liability. At this juncture, it must be noted that traditionally, a corporation was understood as an entity that served to manage church property[12]. It was only in the 16th and 17th centuries that the scope was expanded to include hospitals, universities etc[13].

However, this stress on the requirement of *mens rea* reduced considerably with the advent of the industrial revolution[14]. The development of strict liability offenses did away with the concept of a guilty intent altogether (e.g., bigamy[15]) and *mens rea* became a tool of statutory interpretation[16] rather than a mandatory requirement[17]. An explanation of this change may be sought from the socio-economic conditions of the time. With an unprecedented rise in corporations, there was little respect for the required standard of care, making it only prudent to issue strict liability standards to

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[5] William Blackstone, Commentaries On The Laws Of England, Vol. 1 at 464 (1765)
[6] Frederick Pollock & Frederic William Maitland, The History OfEnglish Law Before The Time Of Edward I, Vol. 1 at 502-04 (2d Ed. 1898)
[7] 77 E.R. 960, 973 (1612), 10 Co. at 32b.
[8] Kathleen F. Brickey, Corporate Criminal Accountability: A Brief History And An Observation, 60 Wash. U. L.Q. 393 (1982)
[9] *supra*note2at 221.
[10] *supra*note5 at 494.
[11] *See* Francis Bowes Sayre, Mens Rea, 45 Harv. L.Rev. 974 (1932); See Also Albert Levitt, The Origin Of The Doctrine Of Mens Rea, 17 Ill. L.Rev. 117 (1922-1923).
[12] W. Holdsworth, A History Of English Law 478-9 (1923); Chayes, The Modem Corporation And The Rule Of Law, In The Corporation In Modern Society 25, 33 (E. Mason Ed. 1961).
[13] Holdsworth, English Corporation Law In The 16th And 17th Centuries, 31 Yale L.J. 382, 382 (1922).
[14] Frederic P. Lee, Corporate Criminal Liability, 28 Colum. L.Rev. 1, 4 (1928).
[15] *supra*note4at 163.
[16] Markus D. Dubber, Policing Possession: The Waron Crime And The End Of Criminal Law, 91 J. Crim. L. & Criminology 829, 915–16 (2002).
[17] James Fitzjames Stephen Has Expressed The Same View In Rv. Tolson, 16 Cox C.C. 629 at 644 (1889).

protect human health and deter corporations from getting away with any crime committed[18]. Put differently, modern society was on of a cohesive society, of corporations, and not individuals. It was measured in affirmative duties, rather than prohibitions. In the pursuit of the great aim of public welfare, it had no room for rigid adherence to under motivated metaphysical ties like ‘‘vitious will[19].”

The 19th Century saw a gradual shift in the rules applicable to corporate criminal liability[20]. The Courts finally held corporations liable for the actions of their agents, acknowledging that doing otherwise would lead to “incongruous” results[21]. Thus, the concept of vicarious liability was borrowed from tort law to justify the same[22]. However, there were still limitations. English courts repeatedly rejected the idea that *respondeat superior* should apply as a blanket rule to criminal acts[23]. Thus, Corporations could still not be held liable for “moral” crimes such as rape and murder owing to the restricted personification of a company[24].

b) Development of Corporate Criminal Liability in the United States

The theory of corporate criminal liability developed on a slightly different tangent in the United States. Unlike England, the Courts did not make a distinction between misfeasance and nonfeasance crimes[25]. They imposed liability on corporations by enforcing a policy rationale, finding it easier to hold the organization liable as opposed to individuals who may have been responsible for specific actions[26]. However, similar to 19th Century England, they limited the scope of liability to non-moral crimes based on the principle that corporations did not have a soul and thus, could not commit crimes that relied heavily on a “wicked intent”[27]. Secondly, certain

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[18] *supra* note2 at 225.
[19] Francis Bowes Sayre, Public Welfare Offenses, 33 Colum. L. Rev. 55 (1933); *supra* note2 at 230.
[20] John C. Coffee, Jr., Making The Punishment Fit The Corporation: The Problems Of Finding An Optimal Corporation Criminal Sanction, 1 N. Ill. U. L. Rev. 3, 3 (1980).
[21] James R. Elkins, Corporations And The Criminal Law: An Uneasy Alliance, 65 Ky. L.J. 73, 91–92 (1976).
[22] The Queen v. Great North Of England Railway, 115 Eng. Rep. 1294 (Q.B. 1846).
[23] *supra* note7 At 417, Regina v. Saunders, 75 Eng. Rep. 706 (K.B. 1575)
[24] Patricia B. Rodella, Corporate Criminal Liability For Homicide: Has The Fiction Been Extended Too Far?, 4 J.L. & Com. 95, 105–09 (1984); John M. Hickey, Comment, Corporate Criminal Liability For Homicide: The Controversy Flames Anew, 17 Cal. W. L. Rev. 465, 466–67 (1981).
[25] Commonwealth v. Proprietors Of New Bedford Bridge, 68 Mass. 339 (1854); State v. Morris & Essex R.R., 23 N.J.L. 360 (1852).
[26] Weissmann, A. (2007), Rethinking Criminal Corporate Liability. Indiana Law Journal, 82(2).
[27] State v. First Nat’l Bank, 2 S.D. 568, 571 (1892)

activities were not within the scope of the legal duties and actions of a corporation and charging them of the same would be unjust[28].

Although nuisance was defined as an offense against the King's subjects or his peace, or by neglecting to do a thing, which the common good requires in England, as early as 1834, the neglect prong of the definition was applied to American corporations[29]. Strict liability was imposed on companies for not adhering to a standard of care by keeping the public nature of harm in consideration[30].

The jurisprudence with respect to corporate criminal liability has developed a long way- from the position that a corporation can not possibly incur criminal liability because it isn't a natural person, and hence, it can not (1) have a *mens rea,* (2) neitherbe indicted nor tried in person (3) be punished corporally[31], and therefore, criminal acts of a corporation would be ultra vires and thus void[32] to now- the law has rapidly moved to the stand that a corporation can be guilty of most, if not all, crimes[33]. For example, we have now moved to a time where a corporation can be held criminally liable for manslaughter since it has been recognized, that in certain cases, this is the most effective way of attaining economic success[34].

The problem in the earlier non-liability may be due to the characterization of penal provisions for such crimes like imprisonment etc. that corporations couldn't undergo. However, the development of the times has led to the implementation of the model code and several other statutes that have recognized effective means of holding corporations liable[35]. Interestingly, the civil law systems such as Germany never faced this problem. They always regarded the systems of punishment for both corporations and individuals to be distinct[36] due to which corporations were always held criminally

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[28]New York Central & Hudson River Railroad v. United States, 212 U.S. 481 (1909).
[29]People v. Corporation of Albany, 11 Wend. 539, 543 (N.Y. Sup. Ct. 1834).
[30] State v. Ohio Oil Co., 150 Ind. 21, 49 N.E. 809 (1898); State v. Paggett, 8 Wash. 579, 36 P. 487 (1894); State v. Morris & Essex R.R., 23 NJ.L. 360, 370 (1852).
[31]*See* 1 Blackstone, Commentaries 476, And Citations At 1 Burdick, Law Of Crimes 223 (1946).
[32]Pollock, First Book On Jurisprudence 126 (6th Ed. 1929).
[33]Edgerton, Corporate Criminal Responsibility, 36 Yale L.J. 827, 842 (1927).
[34]*See* State v. Lehigh Valley Ry. Co., 90 N.J.L. 372 (1917); 94 N.J.L. 171, 111 AtI. 257 (1920); People v. Rochester Ry. & Light Co., 195 N.Y. 102,88 N.E. 22, 16 Ann. Cas.837 (1909); Commonwealth v. Illinois Cent.R.R., 152 Ky. 320, 153 S.W. 459, 21 L.R.A. (N.S.) 998 (1913); Rexv. Cory Bros., 136 L.T.R. 735 (1927).
[35] Hall, Criminal Law And Procedure 594 (1949).
[36] Markus D.Dubber, Theories of Crime and Punishment in German Criminal Law, 53 AM. J.COMP. L. 679 (2005).

liable till the advent of the industrial revolution[37], which is when the principles of corporate criminal liability in the common law developed[38].

In status quo, the provisions for corporate criminal liability in the United States are fairly wide[39]. The mode of attributing liability on a corporation is if the employee of the company had the criminal intent to commit an illegal act[40]. This intent can also be determined through a collective *mens rea* of the employees[41]. The company will be liable for the actions of an employee, irrespective of rank[42]. However, it must further be proved that the employee committed the illegal act within the scope of employment[43]. Finally, the agent should have intended to benefit the corporation through this illegal act[44]. There are only two situations in which corporate criminal liability cannot be imposed: when crimes cannot be punished by fines—since fines are the principle means for punishing a corporation—and when the crime, by its nature cannot be committed by a corporation (*e.g*, rape)[45].

The Model Penal Code has been enacted and adopted by the United States to limit the scope of corporate criminal liability through Section 2.07[46].The section limits liability to the corporation if high managerial personnel gave orders to an agent. Further, a corporation can be held liable for collusion but the liability is saved in case it may be proved that the managerial personnel acted with due diligence to prevent the crime. In strict liability cases, the intent of the agent becomes irrelevant[47]. However, post the Enron scandal, the standards have been redefined through the Sarbanes–Oxley Act of

[37] Frederic William Maitland, Moral Personality And Legal Personality, 3 The Collected Papersof Frederic William Maitland 304, 307 (H.A.L. Fishered., 1911).
[38] Morton J. Horwitz, Santa Clara Revisited: The Development of Corporate Theory, 88 W. VA. L.REV. 173 (1986).
[39]Vikramaditya S. Khanna, Corporate criminal liability: what purpose does it serve?, Harvard Law Review (1996): 1477-1534.
[40]*See* Developments In The Law-Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions, 92 Harv. L. Rev. 1227, 1231 (1979)
[41]*Id.* at 1248
[42]*See* New York Cent. & Hudson River R.R. v. United States, 2I2 U.S. 48, 494-95 (1909);
[43] Alan 0. Sykes, The Boundaries Of Vicarious Liability: An Economic Analysis Of The Scope Of Employment Rule And Related Legal Doctrines, 101 Harv. L. Rev. 563, 581-93 (I988).
[44] United States v. American Radiator & Standard Sanitary Corp., 433 F.2d I74, 204 (3d Cir. I970).
[45]*See* Bernd Schünemann, Unternehmenskriminalität und Strafrecht 194 (1979).
[46] Section 2.07, ModelPenalCode, 1956
[47] Richard D Hartley, Corporate Crime: A Reference Handbook, ABC-CLIO, 2008.

2002[48] that provides for a harsher punishment in cases of fraud and other corporate crimes[49].

c) Development of Corporate Criminal Liability in India

The Indian Legal System, being a colonial offshoot of the Common Law, did not recognize corporate criminal liability, till recently. There was a great emphasis on the requirement of *mens rea* and imprisonment to enforce liability for crimes due to which corporations couldn't be criminalized[50]. This position was reflected in A.K. Khosla v. T.S. Venkatesan[51]. Two companies charged with fraud under the Indian Penal Code escaped liability on this two-fold narrow understanding of criminal law. In KalpanathRai v. State[52], the Supreme Court held that a company could not be charged under Section 3(4) of the Terrorists and Disruptive Activities Prevention Act since there was an implicit *mens rea* requirement, which remained unfulfilled in the case of a corporation. The Court, relying on precedent, determined that the establishment of *mens rea* is imperative to hold any person liable for an offense unless the requirement explicitly excluded. Thus, the threshold to determine liability implicitly excluded companies from criminal convictions. The same adjudication could be witnessed in Zee Tele films Ltd. v. Sahara India Co. Corp. Ltd.[53]where a company was discharged of any liability for the offense of defamation since *mens rea* remained unsatisfied and was an implicit requirement under the law.Similarly, the Bombay High Court's judgment in Motorola Inc. v. UOI[54] barred the former from being charged under Section 420 of the Indian Penal Code for cheating. An example of a company being withheld from criminal liability due to the legislation's inbuilt mandatory imprisonment requirement is Velliappa Textiles[55].

However, this position proved to be insufficient with the rise in corporate crimes, much like the case in Britain. Thus, in 2005, in Standard Chartered Bank and Ors v.

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[48] Sarbanes, Sarbanes-oxley act of 2002, The Public Company Accounting Reform and Investor Protection Act, Washington DC: US Congress. 2002.
[49] *Id., supra* note *46*
[50] ManjeetSahu, Criminal Liability of Corporation: An Indian Perspective, Available at SSRN 2192308 (2012).
[51] (1992) Cr.L.J. 1448.
[52] (1997) 8 S.C.C 732
[53] (2001) 3 Recent Criminal Reports 292.
[54] (2004) Cri.L.J. 1576.
[55] (2004) 1 Comp. L.J. 21.

Directorate of Enforcement[56], the Supreme Court held that corporations could be held guilty of crimes committed and would be punished with fines instead of imprisonment. They analyzed U.S. law[57] on the same subject matter and Law Commission reports[58] to hold that the legislature did not intend for corporations to be alienated or shielded from crimes committed and thus, their suffering can be attained by fining them.

More recently, in *Iridium* v. *Motorola*[59], the Supreme Court of India held that a company could be held liable for statutory as well as common law offenses, including those requiring *mens rea*. Thus, the company was held liable for cheating and criminal conspiracy on the basis of alleged false representations made by its officers or 'alter ego'. The Court justified its stance based on a contextual analysis by understanding the needs of current times and keeping in lieu, the development of the law in the U.K. and U.S. among other common law nations.

2. DOCTRINESAND RATIONALE BEHIND CORPORATE CRIMINAL LIABILITY

a) Doctrines

Thus, the pattern of development of corporate criminal liability in the common law generates the view that in *status quo* corporations are being held liable, even for crimes that mandate imprisonment and the *mens rea* requirement, even in India, has taken a backseat to become a method of interpretation only. This section seeks to channel these theories that are used commonly to impose liability on companies.

The theory of vicarious liability, or *respondeat superior*, is one of the common modes of attributing liability.Followed largely in U.S. federal criminal law and in South Africa, the offences of individual employees or 'agents' are attributed to the corporation if the offence was committed in the course of employment, and intended at least in part to benefit the corporation[60].

[56]A.I.R. 2005 S.C. 2622.
[57]United States v. Union Supply, 215 U.S. 50 (1909).
[58]Law Commission of India. 47th Report: Trial and Punishment of Socio Economic Offences, para 8.1.
[59] A.I.R. 2011 S.C. 20
[60]Allens Arthur Robinson, Corporate Culture as a Basis for the Criminal Liability of Corporations, Prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business (2008).

Another commonly applied theory is that of 'identification' found in the United Kingdom and other British Commonwealth nations. Under this type, the offences of senior officers are imputed to the corporation on the grounds that the *mens rea* of these senior officers (and/or their knowledge, intention, recklessness or other culpable mindset) is that of the corporation. In other words, they are the company and the company is identified through their actions[61].

In addition to the above, there also exists an expanded identification approach. Found in continental Europe, this model applies the principle of regarding the actions of high-level officers as that of the company. However, it incorporates a duty of supervision as well[62].

Recently, the Australian 'organizational liability[63]' model has been commended to be the most efficient in holding corporations liable for criminal acts. Under this system, a corporation will be held liable if its 'culture', policies, practices, management or other working conditions and ethics encouraged or permitted the commission of offences rather than the corporation being held liable for the negligence or connivance of an officer[64].

b) Rationale and Policy

Imposing criminalliability on corporationsthrough these various means has been justified through several theories. Firstly, it is contended that a corporation is not a juristic or artificial entity. It has duties, rights and obligations just like citizens, especially in the modern technological world[65]. However, the only way for it to act is through human beings that control its operations i.e., their organs. Thus, it is only fair to hold companies liable for acts done on these humans that act on its behalf and exercise the rights and obligations imposed on it[66].

Secondly, a policy based argument states that liability for corporate offenses is either on the company or none at all. In the latter circumstance, if no company is held liable

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[61] Eric Colvin, Corporate personality and criminal liability, Criminal law forum, Vol. 6. No. 1. Springer Netherlands, 1995.
[62] *supra*note *59*
[63] Part 2.5, Australian Commonwealth Criminal Code, 1899; Article 102(2), Swiss Penal Code, 1937.
[64] Jennifer G. Hill, Corporate criminal liability in Australia: an evolving corporate governance technique?, J. Bus. L. (2003): 1.
[65] M. Kremnitzer and H. Genaim, The Criminal Liability of a Corporation, in A. Barak (ed.) ShamgarBook,Vol B (Tel Aviv: Israel Bar Association, 2003) 33-113, at 54-57.
[66] *supra*note *1*, *Id.* at 74.

for *mens rea* offenses etc., then a large number of individuals who may have been victims of that crime will not be allowed to avail of any financial compensation and will not get any retribution for their loss[67]. Thus, it is only fair to impose liability on them (companies) for acts done to benefit their goals versus no liability at all.

Thirdly, corporate liability enables a collective accountability for an accumulation of the corporation's criminal activity conducted by different individuals. This accountability is of essential consideration in today's time and age where corporations are capable of being party to crimes against humanity such as genocide or war crimes that require a large number of people to be involved in the commission of such crimes. Thus, holding a corporation accountable, as a collective will ensure a certain level of deterrence against involvement in such crimes[68].

Fourthly, a marginal benefit of this move aims to ensure that shareholders and employees take a major interest in the governing of the corporation. If liability is imposed on the corporation for crimes committed by the Board of Directors or senior officers, there will be an automatic backlash on the shareholders in the form of monetary losses and the employees in the form of lost jobs. Thus, there is some incentive to elect management wisely and engage with the overall functioning of the corporation[69].

3. A FEW CRITIQUES AND RECOMMENDATIONS

A point of critique in imposing corporate criminal liability is awareness to the possibility that individual deterrence to commit crimes may reduce. If a corporation is the only one being held liable for criminal acts of organs (except in special circumstances where the doctrine of piercing the corporate veil follows), individuals will not be brought to justice. This, in a way defeats the purpose of the criminal justice system[70].

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[67] R. Slye, Corporations, Veils and International Criminal Liability, 33 Brooklyn Journal of International Law (2008) 955-974, at 961

[68] *Id.*;Mordechai Kremnitzer, A Possible Case For Imposing Criminal Liability On Corporations In International Criminal Law, Journal of International Criminal Justice 8.3 (2010) at 909-918.

[69] *Id.* A Possible Case For Imposing Criminal Liability On Corporations In International Criminal Law at 914.

[70] International Commission of Jurists (ICJ) Expert Legal Panel on Corporate Complicity in International Crimes, Corporate Complicity & Legal Accountability, Vol. 2: Criminal Law and International Crimes (2008) at 57-59.

Khanna [71] raises another concern that defeats the purpose of reformation and repentance in criminal justice theory. A corporation being a juristic person will not 'feel' any moral guilt by committing the illegal act. This Kantian argument assumes that the wrongdoer will be reformed once he realizes his moral wrong and loss of dignity. This significantly undermines the theory of corporate criminal liability[72].

Thus, in 1999, the Uniform Law Conference of Canada, in its discussion paper on corporate criminal liability[73], charted certain modified systems that could be followed and made several recommendations to modify the doctrine. The paper traced existing modifications made in common law systems with regard to the doctrine. The Draft Criminal Code of the U.K. codifies the *Tesco*[74]decision and limits the definition of the controlling officer in Section 30(2)[75] to only high-ranked officials. The U.S. Model Penal Code limits the imposition of vicarious liability and uses the identification theory only to import liability in *mens rea* offences[76]. Similarly, the Canadian Law Reform Commission, in 1976, introduced standards of limiting liability similar to the U.K. and U.S.A[77]. The Australian model imposing liability on corporations is considered to be the most effective since extends liability in situations where the corporation could have prevented the crime but instead, contributed to it[78].

However, more recently, it has been recommended that criminal liability be imposed on corporations based on various considerations such as a previous record of criminal acts, the nature and seriousness of the offense, the possibility of collateral damage, efforts at remediation etc. An example of this is the Thompson Memorandum of 2003[79]. It categorically lists modes of implementation through which companies can comply with the law and effectively reduce the commission of crimes.

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[71] *supra*note38; reiterated in: Daniel R. Fischel& Alan 0. Sykes, Corporate Crime, 25 J. LEGAL STUD. 319, 320 (1996).
[72] Immanuel Kant, Foundations Of The Metaphysics Of Morals 53 (LewisW. Beck trans., Liberal Arts Press 1959) (1797).
[73] 1999 Winnipeg MB Annual Meeting, Corporate Criminal Liability Discussion Paper 1999
[74] *supra*note1.
[75] Law Commission, A Criminal Code for England and Wales, Report 177 (London: HMSO, 1989).
[76] American Law Institute, Model Penal Code (Philadelphia, 1962).
[77] Law Reform Commission of Canada, Recodifying Criminal Law, Report 31 (Ottawa, 1986).
[78] *supra*note63.
[79] Memorandum from Larry D. Thompson, Deputy Attorney Gen. to Heads of Dep't Components, U.S. Attorneys, Principles of Fed. Prosecution of Bus. Orgs. 8–9 (Jan. 20, 2003), available at http://www.usdoj.gov/dag/cftf/business_organizations.pdf; *supra* note25 at 442.

Similarly, the United States Sentencing Commission guidelines, in chapter eight, provide for effective compliance guidelines that reduce the scope of punishment for the corporation if it mitigates the damage caused[80].

4. CONCLUSION

The development of corporate criminal liability in the common law could be imagined in the form of a line graph. From not imposing liability on corporations to imposing liability on a large scale to recently, limiting this liability to specific situations, the theory has seen major shifts. As pointed above, the more recent trend in the imposition of corporate criminal liability is involving corporations in mitigating damages and complying with effective programs to reduce these crimes.

Thus, corporate criminal liability in the common law has evolved through an organic process of change, based on situational and contextual demands of various regions. The growth of the doctrine may not be uniform in all common law systems, but they seem to follow a similar pattern of imposition of liability as the doctrine evolves.

The laws regarding corporate criminal liability allow a great scope for modification, to clarify situations in which this liability will be absolute or imposed to avoid the gaps in the existing law. However, the doctrine does serve the purpose of ensuring liability and providing some form of retribution to the victims of corporate crimes.

[80] Scott N. Carlson & Paula J. Desio, Chapter Eight of the U.S. Federal Sentencing Guidelines and the OECD Standards of Corporate Conduct: The Next Harmonic Convergence?, in Advanced Corporate Compliance Workshop 2005, at 24, 31 (PLI Corp. L. & Practice, Course Handbook Series No. 6607, 2005)