Corporate criminal liability - Evolution of the concept

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Aside from governments and governmental agencies, it is corporations that are more and more effective agents of action in our society. It is increasingly they — and indeed, an increasingly small number of them — who are our most evident producers, distributors, land managers, tax payers, polluters, investors, investments, service producers, and now even, in the form of 'agricorporations' farmers.¹

Corporations, as we understand today, have not been same in the past. The multitude of roles the corporations play in the present day human life have been necessitated by the demands of society, as it kept on 'developing'. The development of society, at various points of time, has had a direct influence on the structure and functions of the corporations. This has led to an ever increasing demand for the law to recognise the change and suit its applications, accordingly.

Origin of corporations

The modern corporation could be said to have come into existence around the fifteenth century. But, if its origin is sought, it could be the twelfth century or perhaps the Roman law where,
juristic person was said to have been recognised. Sir Henry Maine suggested that a sort of corporate (as opposed to individual) responsibility was at the very heart of the primitive legal system. Society was not what it is assumed to be at present, a collection of *individuals*. In fact, and in view of the men who comprised it, it was an aggregation of families. The law recognised this system of small independent corporations.

As time went on, the law started recognising individuals, more than his groups, and attention was bestowed upon his acts. The interest in groups, and how to organise society through controlling them, never budded as it might have. The concept of punishment and the kinds of penalties, the change in standards of liability (from strict liability to conceptions like average reasonable man) and the underlying theories, ensured that increased attention was paid to the individual and less to the group.

Associations of different forms were existing in the medieval law period and as regards some of them, incorporation was recognised. However, incorporation, in its beginning, seems to have been used only in connection with ecclesiastical and public bodies, namely, chapters, monasteries and boroughs. On which corporate personality was conferred by a charter from the Crown or were deemed by prescription to have received such a grant. This even led to the ambiguity as to the theoretical base of conferring personality, whether it was in fact by 'fiction theory', as generally accepted, or was it that the 'concession theory' is more accurate. Apart from these, there were also public bodies

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5. *Id.*, pp. 9-10.
like municipalities, guilds and universities. At that time law was just in its formative stages. And, then, it was individual identifiable persons, operating outside the complex institutional framework, who trespassed, created nuisance, engaged in consumer frauds, killed and maimed and the law responded upon the contemporary notion about individuals — about what motivated, what steered, what was just towards them. It had very little occasion to consider whether the rules it was fashioning to control people might be inappropriate as applied to corporations.  

Recognition of the corporation as a person provided the premise for establishing corporate legal accountability. De facto determination of liability of corporations, however, became the responsibility of the courts. In large part it has been the judiciary, not the legislature, that has created the law with regard to corporate behaviour.

The oft quoted statement of Chief Justice Holt, 'a corporation is not indictable, but the particular members of it are', is considered explaining the position of law at that point of time. This is in spite of the observation that Holt's authorship of the statement is dubious in the light of cases adjudicated by him holding corporations liable for dereliction of duty. The later judicial sentiment seemed to agree that if a corporations act looked like a crime it was a crime, and whatever principles have allowed courts to establish the liability of corporations for tort could be applied in establishing their criminal liability. This should explain, as we see moving further, why most of the concepts of holding corporations liable under tort law have been extended while imputing criminal liability to them. This change has been slow as the early corporations (called proto corporations by Stone)

7. Supra n.1, pp. 1-2.
9. 12 Mod. 5 (1600).
10. Supra n.8, P. 75.
had social functions not of a sort that would bring them law's attention. Their functions were confined to hold property and some privileges. The changes that occurred in early seventeenth century, in the companies being regulated as the capitalism added with incipient managerialism, demanded more from the law. This happened so because the capitals being invested till then by individuals, were felt insufficient to run companies or corporations of the day. The trading was conducted in the name of these corporations. The Industrial Revolution, and perhaps improved transportation in particular, brought about previously unanticipated changes for corporations — changes in the function corporation played in society, in their size, incidence, and structure. And the law had to confront the social realities. It did not stop with the change in function, but their structure itself was completely changed, like the ones which dealt with rail-roads. This brought in a new 'administrative structure'. As organisations became more complex, the position and functions of individuals started becoming bleak. It was also the period when limited liability of the shareholders, once the exception, became the rule. And parallel with this development, the earlier 'metaphysical' on corporations being liable for various classes of wrongs were peeled back one by one.

Master/servant liability, municipal liability in public nuisance, and the specific statutory origin of the early railway companies, all played an early role in the development of liability, followed by particular judicial response to new forms of statutory liability, dubbed 'public welfare' offences. The large majority of earlier indictments against corporations involved cases of public nuisance. Criminal intent, which was a necessary element in

11. Supra n. 1, P. 11.
12. In 1612, the East India Company resolved that thereafter the trading should be only by the corporation.
imputing criminal liability, was held not to be an element necessary to the success of these criminal actions. Some critics attempt to distinguish the nuisance cases on the ground that the indictment of the nuisance is merely a civil liability enforced by the forms of criminal law, or at the most a quasi-criminal action.¹⁶

**British inheritance**

The concept of liability of corporations can be said to have developed, simultaneously, in Great Britain and United States. But the concept could also be said to have been inherited by United States from Great Britain, where the doctrine of liability was expressly adjudicated in *Queen v. The Birmingham and Gloucester Railway Company*, in 1842.¹⁷ The corporation was convicted for failing to fulfil a statutory duty, a case of nonfeasance. Four years later, liability was extended in the case of a misfeasance, in *Queen v. The Great North of England Railway Company*.¹⁸ The case involved a railroad company that had unlawfully destroyed a highway in the construction of its own bridge. Lord Denman stated that the individuals who concurred in the vote to erect the bridge, and those who laboured to put it up, might both be subject to criminal indictment. But he held:

"The public knows nothing of the former and the latter, if they can be indentified, are commonly persons of the lowest rank, wholly incompetent to make any reparation for the injury. There can be no effectual means for deterring from an oppressive exercise of power for the purpose of gain, except the remedy by an indictment against those who truly commit it, that is, in the corporation, acting by its majority".¹⁹

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¹⁷. [1842] 3 Q.B. 223.
¹⁹. Id., p. 1298.
However, he continued by holding that corporation could not be guilty of treason, felony, perjury or offenses against persons.

The Interpretation Act 1889, defined 'person' to include 'a body of persons corporate or incorporate', unless the contrary appears. The fact that the offence requires *mens rea* does not reveal a contrary intention for the state of mind of the corporation's controlling officers, as well as their acts, may be attributed to the corporation. This was made clear with the help of three decisions in 1944. These decisions are considered revolutionary as they seemed to be inconsistent with two of the fundamental principles of English criminal law—requirement of *mens rea* and that a principal or master is not criminally liable, save in certain exceptional cases, for offences committed by his agents or servants in the course of their employment. The other obstacles, the procedural rule that a limited company could not be committed for trial on an indictment as criminal courts expected the prisoner to stand at the bar and did not permit appearances by attorney, was already removed by the Criminal Justice Act of 1925. Section 33 provided that a corporation may, on arraignment, enter in writing, by its representative, a plea of guilty or not guilty. In the first case, *DPP v. Kent and Sussex Contractors Ltd. and Another*, a limited company and an officer thereof were charged for furnishing false particulars in fuel returns, signed by the transport manager (Officer). The respondents contended that the offences charged required for their commission an act of will or state of mind which a body corporate

23. [1944] 1 All E.R. 119.
could not have. This contention was turned down and company was held liable. Viscount Caldecote, L.C.J. observed:

"... although the directors or general manager of a company are its agents, a company is incapable of acting or speaking or thinking except in so far as its secretary or general manager or directors and so on have either spoken, acted or thought".\(^{24}\)

and in the same tone Managhten J. observed:

"A body corporate is a 'person' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention".\(^{25}\)

In the second case, *R v. ICR Haulage, Ltd.*\(^{26}\) the appellant company, its managing director and nine other persons were charged with conspiracy to defraud. The appellant contended that a company, not being a natural person, could not have a mind and, therefore, an indictment against the company for an office involving, as an essential ingredient, *mens rea* in the restricted sense of a dishonest or criminal mind, must be bad. But, it was held by the court that company was liable after laying that whether the criminal act of an agent, including his state of mind, intention, knowledge or belief, is the act of the company employing him depends on the nature of the charge, the relative position of the officer or agent to the company and other relevant facts and circumstances.\(^{27}\) Here the act, fraud, of the managing director was held to be that of the company. Criminal conspiracy commonly includes intent as an element of the crime,

\(^{24}\) *Id.* p. 123.

\(^{25}\) *Id.*, p. 124.

\(^{26}\) [1944] 1 All E.R. 691.

\(^{27}\) *Id.*, p. 695.
yet corporations are held guilty as conspirators. This result was achieved by *imputing* the intent of the officers to the corporation.\(^{28}\)

The third case, *Moore v. I. Bresler Ltd.*\(^{29}\) involved the secretary of the respondent company who was also the general manager and sales manager of a branch, who sold certain company's goods with the object of defrauding the company and made certain false tax returns with an intent to deceive. The company was convicted but on appeal to Quarter Sessions the conviction were discharged on the ground that the sales were not made by the officers of the company as the agents of or with the authority of the company but in fraud of the company. But on appeal, it was held that the officers were acting within the scope of their employment in making the sales and the returns and the fact that these were made with intent to defraud the company did not render the officers any less the agents of the company acting within authority.

The change that these three cases brought were drastic on the outlook towards criminal liability of corporations. Obviously, it had to face criticisms. One goes to say that by these three cases a situation was brought around by which a corporation may be held liable for acts of its employees which would certainly *not* render liable a natural person in the same situation.\(^{30}\) Earlier to these also corporations were held liable but those were instances where *mens rea* was not required to have been proved. One important case of this period was *Mousell Brothers Ltd. v. London and North-Western Railway Company.*\(^{31}\) In this case it was held that owners of goods may, without *a mens rea*, be guilty of giving a false account with intent to avoid

\(^{28}\) *Supra* n.16, at p. 9.

\(^{29}\) [1944] 2 All E.R. 515.

\(^{30}\) *Supra* n.20 at p. 180.

\(^{31}\) [1917] 2 K.B. 836.
payment of tolls, and that if their manager actually gives the false account with intent to avoid the payment, the owners, though a limited company, are liable. No mens rea being necessary to make the principal liable, a corporation is exactly in the same position as a principal who is not a corporation. Another case involved an indictment at assizes charging a limited company with manslaughter under section 31 of the Offenses Against the Persons Act, 1861. It was held that indictment must be quashed as an indictment will not lie against a corporation for a felony or for a misdemeanor involving personal violence.

After the 1944 cases, the position was that in the cases of most common law offences the general principle remained that 'the law does not regard the master as having any such connection with acts done by his servant as will involve him in any criminal liability for them unless he has himself authorized them or aided or abetted them'. To this general rule, three main groups of exceptions were recognised — Public Nuisance, Criminal Libel and Statutory Offences. The doctrine of vicarious liability enabled to hold a corporation criminally liable for the acts of any of its servant, provided that they fell into one of these three categories. It is also considered as a new form of liability, distinct from vicarious liability, based on the idea of the company itself being identified with the acts of senior officers, rather than being accountable for the transgression of its employees. At the same time, the now familiar division between vicarious liability for strict liability offences on the one hand and the alter ego theory for mens rea offences, on the other, was forged. R v. ICR Haulage named, specifically, two classes of offences for which a corporation can still not be indicated — crimes which are not punishable with the infliction of fine and

33. Supra n.22 at p. 348.
34. Supra n.15 at p. 559.
35. Supra n.26 at p. 691
cases in which, 'from its very nature', the offence cannot be committed by a corporation.

The position as to the corporation's liability for crimes was, thus, accepted by the law. But it raised another question, as to whether all the employees' acts would be considered as the acts of the corporation or only of those few who, in fact, controlled such acts. In one of the later cases a limited company with shops in various localities, was convicted of being in possession, for sale, on two occasions, of certain pre-packed articles of food not made up in one of the quantities specified in section 4(2) of the Sale of food (Weight and Measures) Act, 1926. The appellants preferred informations against the manager of the shop alleging that he was the actual offender and that he had committed the offences without any consent, connivance or wilful default on their part. Lord Goddard, C.J. said:

"A company can only sell by the hand of its servant and can only possess goods by their being in the possession of those employed to obtain and keep them".37

The conviction of the appellants was held to stand though, they were exempted from penalties and the manager was convicted and penalties imposed upon him. On the same line of argument, in R v. Mc Donnel, a single person responsible for the acts of a limited company, was held, could not be charged of conspiracy with the company, for there were not two minds concerned. The knowledge of the serious risk of harm to other road users arising from the use of a heavily laden lorry with a defective tyre, of the managing director, was held to be that of the company, in another case, and the company was held guilty of counselling and procuring the offence.39

37. Id., p. 452.
The ambiguity as to the imputability of mens rea of employees to the corporation could be said to have been partially cleared in Tesco's case, where, it was held that, normally, the acts of Board of Directors, the Managing Director and perhaps other superior officers of the company could be held to be that of the company. And where their functions have been delegated, the acts of such agents, to whom it is delegated, could be considered as the acts of the company.

Throughout this development, the corporations had been exempt from liability of committing strictly personal crimes like murder, rape and perjury. But, in Pand O Ferries Case, it was technically held that a company could be held liable for manslaughter even though on evidentiary lack the company was not held so in the said case. In a recent case, however, it was held that when a personal duty was imposed on an officer of the corporation, the corporation could not be held liable if the officer had himself taken all reasonable steps to avoid the criminal act.

The theory

Corporate criminal liability, as we have seen, has come a long way to reach its present form. The journey of the concept, however, has not been very smooth, to say the least. Conferment of juristic personality and the resulting position of civil and tort law was easy in the beginning. The separate identity of corporations, as recognised in Salomon v. Salomon, created occasions for the courts to consider extension of liability on a step by step basis. The first of these involved the ascertainment of rights and liabilities under contract and tort laws. Criminal law, with its dogmas, as it deal with individual basically, was less yielding.

43. [1897] A.C. 22.
Procedural

The conceptual difficulties faced by courts in deciding corporate criminal liabilities has been categorised by Glanville Williams as procedural and substantive. Among the procedural difficulties, the first one was that, on trial on indictment at assizes or sessions, the party charged had to be personally present, an impossibility for a juristic person. It could therefore be tried on indictment, if at all, on the King's Bench only, where appearance could be by attorney. The Magistrate Courts Act, 1952, removed this infirmity by providing option to be represented by attorney. The other form of procedural hindrance was in respect of punishment, as a corporation could not be subject to bodily punishment. This could not be changed and fine remains the only kind of punishment till day apart from any statutory disqualification or forfeiture.

Substantive

The first among the substantive difficulties was that a corporation, being a 'person' in fiction, could not act expect through the human beings whoever its agents/servants. It could not act personally, it could only be a master or principal and nothing but that and therefore, its responsibility was necessarily vicarious. But at common law there was no place for vicarious liability as far as crimes were concerned, and the consequent non-applicability of such liability on corporations. This was, but evaded in most cases and where it was raised, qualified in three ways. In cases of non-feasance, there was no question of mens

46. *Supra* n.44 at p. 854.
rea and it was easy to hold a corporation responsible. Secondly, it was possible to hold a corporation responsible in nuisance, vicariously, as it was a common law crime.\textsuperscript{47} A statutory offence could be created as far as corporation is concerned. Strict responsibility could be imposed by a statute upon a corporation and act could be defined by the statute, where the act of a corporation came within the definition, it could be held responsible.\textsuperscript{48} The third qualification was as a result of the developments in the law of tort, with respect to corporate liability. It was being held that the corporation could be said to have acted personally in cases where it was carried out by superior servants. Where a tort was committed by an inferior servant, the responsibility of the corporation was still vicarious. The extension of this position into criminal law took place in \textit{R v. ICR Haulage, Ltd.}\textsuperscript{49}

The second substantial difficulty was the principle that a corporation having no mind at all could not have a guilty mind. So wherever an element of intention, knowledge or deceit was a must in a crime, corporation could not commit. This limitation was also surmounted in the same way as above.\textsuperscript{50} A corporation could be easily held liable where crime concerned an absolute prohibition and in other cases requiring \textit{mens rea}, vicarious responsibility was imputed. The laying down of \textit{alter ego} doctrine in three cases in 1944, was a step which put the liability on corporations direct. Related to the above objections were the arguments that a corporation had no body and therefore cannot act in \textit{pro pria persona}, punishing it would violate the fundamental principle that punishment must be imposed only on the actual offender, the regime of penalties did not contemplate possible corporate offenders and procedures such as instruction (rehabilitation) are not well adapted toward dealing with

\textsuperscript{47} \textit{Great North of England Rly.}, [1846] 9 Q.B. 315.
\textsuperscript{48} \textit{Peaks, Gunston and Tee Ltd. v. Ward.} [1902] 2 K.B. 1.
\textsuperscript{49} \textit{[1944]} 1 All E.R. 691.
\textsuperscript{50} \textit{Supra n.44} at p. 856.
corporate crime. The responsibility of the corporation has been termed as vicarious as was observed by Lord Reid thus:

"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 persons. 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 a servant, representative, agent or delegate. He is an embodiment of the company, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a 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 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".


53. Supra n. 40.
Laski, as back as in 1916, had pointed out the necessity of enlargement of the doctrine when he wrote" just as we have been compelled by stern exigencies of events to recognize that the corporation is distinct from its members, so, too, we have to recognize that its mind is distinct from their mind.... By admitting the existence of the corporate mind, that mind can be a guilty mind if it can be punished by way of fines; and if it be mulcted with sufficient heaviness, we may be certain that it will not offend again. What is the alternative? To attack some miserable agent who has been acting in the interest of a mindless principal; an agent, as Maitland said, who is the 'servant of an unknowable somewhat'.

What was laid down in the three cases of 1944 was called the *alter ego doctrine*, where the guilty mind of some of the servants or agents of the company is considered to be that of the company itself. But there has always been a doubt as to which servants' mind constituted the alter ego. A corporation is more than the representatives whom it outlasts, but at any specific moment it is roughly identifiable with them. In their corporate capacity they are the substance upon which the abstraction rests. The usage of the term 'alter' in some cases after 1994 has been considered misleading in *Tesco* as the person who speaks or acts as the company is not the alter but the company itself. The ambiguity created by the alter ego doctrine was attempted to be settled in the *Tesco* case. In the words of Lord Diplock.

"A corporation incorporated under the Companies Act, 1948, owes its corporate personality and its powers to its constitution, the memorandum and articles of association..... In my view, therefore, the question : what natural persons are to be treated in

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56. *Supra* n. 40, *per* Lord Reid at p. 132.
law as being the company for the purpose of acts done in the course of business, including the taking of precautions and the exercise of due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in the general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company".57

This is apart from the situations where the company is directly or vicariously liable by statute, but it is restricted to crimes committed by a director, officer or senior manager of the company. It is not status per se which matters, but the critical point is that the persons in question have the authority to determine and direct company policy. The liability is not technically vicarious. Rather, the designated officials are thought to be so identified with the company that they embody its mind and will, they are the company.58 But it is not sufficient to direct (to the jury) that the company is liable for its 'responsible agents' or 'high executives', for such persons are not necessarily the company.59

Identification model and aggregation model of liability

The identification model of fault, laid down by the House of Lords in Tesco, has been criticised for the narrowness of its implications and for its failure to capture the complexities of modern company, where a crime occurs as a result of a breakdown in more than one sphere of company's operation. Policies may be misguided in conception, inadequately supervised, and

57. Supra n. 40, at p. 155.
incompletely carried out.\textsuperscript{60} To capture the full extent of the company's wrongdoing would require an aggregation of these failures. An aggregation model allows the acts and mental states of more than one individual within a company to be combined to satisfy the elements of a crime. Similar to the questions raised against the above mentioned doctrines, there is a question directed to this model also and that is, should the acts and mental states, which are to be aggregated, be confined to those of persons who constitute the 'brains' of the company or extend to all company personnel regardless of status. It must be noted that none of the officers whose conduct in aggregated, would be responsible individually. Only in sum would the elements of crime be constituted. And there comes the point raised by Devlin J.:

"You cannot add an innocent state of mind to an innocent state of mind and get as a result a dishon-est state of mind".\textsuperscript{61}

There is a strong objection to fulfilling requirements of criminal law in this manner and the doctrine, therefore, is said to have no application in offences requiring knowledge, intention or recklessness. At the most it could be allowed a place only in cases of offences of negligence.\textsuperscript{62} A series of minor failures by officers of the company might add up to a gross breach by the company of its duty of care. The question of aggregation of mental states was raised in the \textit{P and O case}\textsuperscript{63} but was not answered clearly. This case, however, held that a corporation

\textsuperscript{60} \textit{Supra} n. 58 at p. 723; With regard to the culpability (or mens rea) requirement for more serious crimes, a company through its corporate policies and procedures can exhibit its own culpability, Clarkson, C.M.V. "Kicking Corporate Bodies and Damning Their Souls", 59 M.L.R. 555 (1996).

\textsuperscript{61} \textit{Armstrong v. Strain}, (1952) 1 All E.R. 139.

\textsuperscript{62} \textit{Supra} n. 20 at p. 184.

could be indicted for manslaughter, which was considered not possible till then.

**Doctrine of ultra vires**

The other important obstacle, as far as imposing responsibility on corporation was concerned, was doctrine of *Ultra Vires*. This was systematically rejected in tort and criminal law. It is sometimes argued that a crime cannot be a corporate act unless it is authorised or ratified by the directors or the stockholders. Such action, even if it occurred, may be difficult to prove, it is not likely to be set out in the minutes. It might as well be argued that, as neither directors nor stockholders can legally authorize the commission of a crime, a crime can never be a corporate act, which is as much to say that all crime, corporate or non-corporate, is impossible, since no one can commit crime legally. To accept the argument that corporation can only do what the charter authorizes, would be to negate any concept of liability, since no charter expressly authorized a positive wrong, civil or criminal. The doctrine has since been confined to law of contract and property.

**Penal objectives**

The other important aspect that has held to hands of legislators; while making laws relating to corporate liability, and the judges, while dealing with such laws, is the fact that punishment would more or less fall on the innocent shareholders who, in the present day form of corporations, have little say in the management. Fines imposed, which is incidentally the only punishment ever possible against a corporation, will deprecate

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66. *Supra* n. 20 at p. 179.
the pecuniary interest of the stock-holders in the corporate assets. Practically, every case in which the corporation is subjected to criminal liability involves, in effect, the liability not of the director, employee or officer who had such evil intent, but of shareholders who are innocent of any direct moral fault. There is always the question of fairness of such punishment. But buying stock is always a risk and so it is fair that the shareholders should lose money due to managerial misconduct. To the extent that criminal fines reduce profit, they are not different from managerial mismanagement, which may reduce profits through civil damage judgements. If shareholders are injured by the levy of fines, they may be more likely to exercise their ability to elect accountable and responsible corporate officers and directors. Moreover, the innocent members of the offending corporations are not in fact subjected to such penalties in their personal but only in their corporate capacity. No single individual pays the fine imposed but it is borne distributively, in the same proportion as the fruits of the illegitimate enterprise have, or might have, been enjoyed. Nor does the penalty fall any harder on the shareholders than on the innocent families of convicts who are not corporators. The general interest also requires that the burden of torts and industrial accidents should fall upon the stockholders rather than the casual victims and it requires, similarly, that corporate representatives be deterred, so far as corporate responsibility can deter them, from conducting the business in criminal ways. The social interest involved may not be identical in these two cases, it consists of compensation in one case and prevention in the other, but the social interest in

70. Supra n.55 at p. 412.
but whose responsibility will serve the deterrent purpose (without disproportionate sacrifice of other social interests).\textsuperscript{75}

Economists and utilitarians, generally, agree that an actor who contemplates committing a crime will be deterred only if the 'expected punishment cost' of a proscribed action exceeds the expected gain. This concept of the expected punishment cost involves more than simply the amount of penalty. Rather, the expected penalty must be discounted by the likelihood of apprehension and conviction in order to yield the expected punishment cost. Stigmatization of a criminal conviction constitutes an additional and severe penalty for an ordinary criminal.\textsuperscript{76} But this loss of social status is a less significant consideration for the corporate entity, and we are thus forced to rely largely on monetary sanction to serve the necessary deterrence purpose. Those who participate in a corporate enterprise generally have a spirit of loyalty to the enterprise, at least if they occupy responsible positions. This feeling may cause them to alter their conduct when the enterprise is adversely affected by the sentence of a criminal court. Either the wrongdoer himself may mend his ways, or those who are placed over him may control or dismiss him in order to prevent a repetition. These effects might perhaps not be produced if the sentence of the court were a mere condemnation in words, not accompanied by the pecuniary punishment that is generally thought appropriate to the offences of the type.\textsuperscript{77}

\textit{Deterrence}

But still the argument continues that deterrence would be more effective only when responsibility is imputed on individu-
by an officer or employee would not be reasonably related to the execution of the phase of management entrusted to such officer or employee. Moreover, a corporation could always be responsible as an accessory or accomplice to such offence.

When it comes to punishment, there are a lot of questions. First of all, the harm caused by the corporations are not brought under the conventional definition of a crime (murder, manslaughter and so on). The question of mens rea is the impediment in recognising corporate acts as conventional crimes. The analysis of crime into an 'act' and a 'state of mind' immediately marginalises corporate behaviour, which is typically much more diverse in its activities and more diffuse in its chain of decision making. They do not fit the socially constructed image of criminal behaviour. Therefore, it becomes necessary that before injurious activities of corporations can be recognised as conventional crime, the social harms produced by those activities must be recognised as conventional harm. Further, another basic theoretical problem regarding use of criminal sanctions for corporate illegality is that there is no clear correlation between what is commercially acceptable and what is legally acceptable. Till Sutherland brought to light the offences committed by corporations and termed it white collar crimes, proving the seriousness of such act, the traditional thought was that, (including that of general public) corporate crime, are morally neutral because potential resentment of such illegality was relatively unorganized.

The major problem while holding a corporation liable is that a fine imposed on a corporation may harm innocent parties who do not 'deserve' punishment, because they are not culpable.