

CRIMINAL LIABILITY OF AUTOMOBILE MANUFACTURERS WITH SPECIAL REFERENCE TO VEHICLE RECALLS IN INDIA

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Introduction

One of the many reasons that the Courts have given, for not imposing criminal liability on corporations is that, even if a corporation is found guilty, who is to serve the punishment? As a result, the Courts only impose fines on companies, which merges criminal liability with that of the civil one. The recent amendment of the Companies Act² also needs to be looked into which will create complex legal issues and further complicate the matter of corporate criminal liability. The 2013 Act introduces the concept of One Person Company³, thereby opening the possibility of companies serving punishment of imprisonment. Here, some might argue that, an individual who commits an offence, does so in his personal capacity and there is no express need to involve a company in it. Then again, the counter argument will be raised, what if the person committed the act with a motive to protect, preserve or advance his business interests? Both the schools of thought are right in their own place. Also even if OPCs are brought under the ambit of criminal law, they will plead the defence of equality - why criminal law is invoked against OPCs only and not the other types of companies. Thus, to sum up, it would not be wrong to say that

OPC has stirred the hornet's nest as far as corporate criminal liability is concerned. Legal provisions do exist in the Indian Penal Code for punishing companies, where many offences use the word '*person*'⁴ but, for that to happen, the statute would have to be interpreted liberally, whereas Penal statutes are to be interpreted strictly.

Till 2014, millions of vehicles have been recalled⁵ be it for engine problems, faulty brake pads, faulty ignition switches, defective air bags etc. Every month we read in the newspapers that company has recalled thousands of cars, has paid millions in compensation to the victims or to settle a criminal probe against it. Recalls have become so common that, they are virtually meaningless to an automaker's image. According to NHTSA⁶, in 2013, the auto-industry recalled close to a third more vehicles in the U.S. (22 million) than it sold (just over 15 million). Even exotic makes like Lamborghini, Lotus, Toyota, General Motors, Volkswagen, Ford, Audi, BMW and Mercedes-Benz aren't immune to the occasional recall. Back home even Suzuki, Hyundai, Tata, Mahindra & Mahindra have recalled millions of cars in India. One joke that's doing the rounds is, automakers conduct some recalls as a positive PR exercise, hoping to score some brown points and be in good books of the Government. The recalls might also be done by the companies thinking that if they initiate it voluntarily and in a timely manner, it will create a positive impression in the minds of the people. People will think that the company is dead serious when it comes to safety of customer's lives and their vehicles. Whatever the reason or situation be, it does not change the fact that every year lakhs of lives are lost in motor related highway accidents in India. To what extent the fault of the automakers is, in these accidents, cannot be determined accurately. The best example that every person will instantly associate with is that of Tata Nano, dubbed as the world's cheapest car- costing approximately Rs.1 lakh. Initially the car received exceptional response by the public but, later on when incidents of the car catching fire due to engine over heating were reported, the vehicle's fortunes changed overnight. Mr. Ratan Tata immediately ordered a detailed inquiry into the matter by appointing foreign automobile engineers.

The findings of the inquiry were never reported. Whatever the situation was; ultimately, the car underwent a design change. Luckily, no deaths were reported, related to or tied with this problem. What would have been the liability of Tata Motors, had people lost their lives or for that matter, the injuries they suffered? In other words, what is the liability of auto-manufacturers for the deaths caused by their negligence? Whether they are to be tried under civil law or criminal law? What is the liability, if the auto- manufacturer, despite knowing the defect present in the car does not come forward? The company may be reluctant to do so fearing backlash, legal complexities, possible hefty fines that it will be required to pay and so on and so forth.

The Statutory Inadequacy

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.

(a) Sections 45, 63, 68, 70(5), 203 of the Companies Act⁷ wherein only the officials of the company are held liable and not the company itself.

(b) 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. Some examples are –

01. Balaji Trading Company v. Kejriwal Paper Ltd. and Anr.⁸ (under s.141 of the Negotiable Instruments Act, 1862)

02. State of M.P. v. N. Singh⁹ (under s,7 of the Essential Commodities Act)

03. M.V. Javali v. Mahajan Borewell & Co. (under s.276 B of the Income Tax Act)

The law need to be amended soon to include corporate criminal liability and not merely restrict criminal liability to its personnel.

*The International Position*¹⁰

Such legislative changes have already taken place in Australia, France¹¹, Netherlands¹² and Belgium¹³.

*The Ford Pinto Case*¹⁴

Background - In 1968, Ford built a sub-compact car - The Pinto, on a 2*2*2 plan i.e. a car weighing less than 2000 pounds in weight, manufactured in less than 2 years and priced less than \$2000. In the pre-launch Vehicle Safety Test, conducted by the company itself, 8 out of 11 cars failed. In these 8 cars, after collision, the fuel tank ruptured causing the vehicle to catch fire. The 3 cars which did not catch fire had undergone a change in the position of their fuel tank, prior to the test. After detailed investigation it was found that the main reason why the vehicles caught fire, after collision, was because of the faulty design. The engine was placed, in front of the rear axle of the vehicle. There were no rules or regulations made by the Government at that point of time, which directed the companies to place the engine at a specific place. The industry practice (among other sub-compact cars) was to place the engine above the rear axle. In spite of this knowledge, Ford went ahead with the commercial production of the car as \$200 million worth of investment was already waiting on the assembly line. The car came into existence in a record time of 22 months against an average time period of nearly 44 months, required for other cars. Meanwhile, Ford appointed a team of expert engineers to deal with

this problem. The experts came up with a solution that would have required Ford to cover the fuel tank with an insulating material like rubber. The entire process would have cost Ford approximately \$11 per vehicle. Ford did nothing to this effect.

The car went on to become a major hit however, soon incidents of Pintos catching fire started coming in which declared the Pinto to be an unsafe car. Many people suffered serious burns and hundreds of victims lost their lives. The company had to drop the tag line from its marketing ads, "Pinto leaves you with *that warm feeling*". Many victims dragged Ford to the court over this¹⁵, claiming millions of dollars in compensation while some demanded criminal action against the company officials. After learning about the whole incident and possible future legal complications that might arise due to absence of any rules or regulations regarding the same, on the directions of the then US Government¹⁶, National Highway Traffic Safety Authority¹⁷ came up with a Vehicle Safety Policy. Under it, strict liability and harsh punishments were to be imposed on automobile companies if they were found negligent. However Ford, other auto-manufacturers and the whole auto-industry lobbied with the Government in delaying the implementation of the Vehicle Safety Policy. Had this policy been implemented, Ford would have been required to pay hefty penalties and be subjected to stringent regulations (including possible blacklisting for a certain period of time). It took the US Government more than 8 years to implement the policy. Meanwhile, Ford nipped the problem in its bud (relocating the engine to a new strategic and safe place). Now, every Pinto manufactured was declared to be a safe car.

After this, Ford voluntarily approached the NHTSA explaining them the whole issue in detail. Bowing to public anger Ford halted the production of Pinto. It redesigned the vehicle and now the engine was relocated. The vehicles which were already manufactured, but still were not sold underwent a safety upgrade and were now declared to be safe. The main problem Ford and the NHTSA faced was, what was the future course of action that was needed to be taken? What about the remaining vehicles those had been sold and are being driven on roads but have not yet met with an accident? Even if Ford is found guilty and punished, what about Ford's liability in cases that will be brought up subsequent to this case (civil as well as criminal liability)? In such a scenario could Ford plead the defense of *nemo debet bis vexari*¹⁸ and most importantly would be right to compensate only three victims¹⁹ and not the possible future victims. At the same time compensation also was needed to be awarded to people who suffered a loss prior to this case.

To overcome this dilemma the NHTSA asked Ford to do a *Risk/Benefit Analysis*²⁰. Based on this analysis, the NHTSA left the decision to Ford as to whether to recall and repair the defect in all the remaining vehicles or to compensate the victims monetarily as and when they approach the Court.

Risk/Benefit Analysis - According to this concept, the defendant is excused from severe liability if the monetary costs of making a 'production change' are greater than the 'social welfare' of that change.

This analysis is commonly resorted to by the automobile industry, where such instances are not uncommon. According to NHTSA,

Compensation for loss of 1 human life - \$200,000

Compensation for serious injuries - \$67,000

Amount for repairing each damaged vehicle which met with an accident - \$700

Total number of cars sold by Ford - 11.5 million

Cost required for repairing one vehicle - \$11

$$\begin{aligned} \text{Social Welfare} &= (\text{No. of deaths} * \text{Compensation for every death}) + (\text{No. of serious injuries} * \text{Compensation for serious injury}) + (\text{No. of vehicles damaged} * \text{Amount for repairing the damaged vehicle}) \\ &= (180 * 200000) + (180 * 67000) + (2100 * 700) \\ &= 36000000 + 12060000 + 1470000 \\ &= 49530000 \end{aligned}$$

Thus, Ford would have had to pay nearly \$50 million dollars to compensate the victims who met with an accident.

$$\begin{aligned} \text{Production Change} &= \text{Total no. of cars sold} * \text{Cost of repair per car} \\ &= 12.5 \text{ million} * 11 \\ &= \$137.5 \text{ million} \end{aligned}$$

Thus, if Ford would have recalled & repaired every faulty vehicle, it would have cost the company \$137.5 million. On the other hand, if Ford would have decided to compensate the victim monetarily, it would have incurred a comparatively less cost of \$50 million. Ford also chose the latter option.

The case - On August 10, 1978 an accident claimed the lives of 3 people. The vehicle was a 1973 year model Pinto, hit by a truck, from the rear side, at a speed of 50 mph and came to rest after colliding with another car. After collision, the fuel tank ruptured and fuel started leaking out. The vehicle immediately caught fire and the victims were burned to death. Subsequently, criminal homicide charges were slapped against Ford, the first ever against a corporation. Ultimately, Ford was held, not guilty of homicide charges.

Vehicle Recall Policy in India

Unfortunately, unlike USA, in India there are absolutely no laws which govern vehicle recalls. Currently, vehicles are recalled voluntarily by the automanufacturer itself- SIAM's²¹ Voluntary Recall Policy²². SIAM is not a government agency, so any rule or guideline laid down by it is nothing more than an agreement between automobile companies, who have set their shops in India, to voluntarily come forward if there are any manufacturing or safety related defects. The cost of repairs is borne by the company itself. However, what if the defect is not a substantial one and the company does not come clean with it (to cut costs)? Here the customer is at a loss because he has paid full price and yet he receives a defective product.

Conclusion

We have seen as to how OPCs are going to complicate the concept of corporate criminal liability. How the Courts have modified the strict liability doctrine into absolutely liability doctrine²³. This time, it is the Parliament's turn to act as a guardian of people's rights and come up with an effective legislation.

Suggestions

The Government should make recalling of vehicles a Regulatory Offence and impose criminal liability on the company officials and all those people who are involved in the manufacturing of the car. The factory workers should be exempted from liability because they merely assemble the car parts. Car designers, software engineers, vehicle safety officers who are responsible for the safety of the

car should not be exempted from liability. Also, the Board of Directors should also be brought under the ambit of criminal liability because, it may happen that, they might knowingly conceal, ignore any complaints or findings related to the safety of the car to cut expenses.

(Endnotes)

- 1 * Assistant Professor, P.E.S. Modern Law College , Pune
- 2 Companies Act, 2013
- 3 Section 3 of Companies Act, 2013
- 4 Section 11 of Indian Penal Code, 1860 defines person as person includes any Company or Association or body of persons, whether incorporated or not
- 5 Forbes Magazine Date of Issue 3/26/2014
- 6 National Highway Traffic Safety Administration
- 7 Companies Act, 2013
- 8 2005 Cri. L J 3805
- 9 AIR 1989 SC 1789
- 10 International Journal of Criminal Justice Sciences Volume 1 Issue.2 July 2006
- 11 Penal Code of 1392
- 12 The Economic Offences Act, 1950 and Article 51 of Criminal Code
- 13 in 1934, Cour de Cassation recognized the punishment of a corporate body by making it a subject of Belgian Criminal Statute
- 14 State of Indiana v. Ford Motor Company Case No. 11-431, 1980
- 15 Faulty design
- 16 In 1972
- 17 Official US Government Agency which deals with Vehicle and Road safety
- 18 Well-established maxim of English Common Law meaning a person cannot be put twice in peril for the same offence
- 19 Victims in the present case
- 20 Also called as Risk/Benefit Analysis; discussed in detail later on
- 21 Society of Indian Automobiles Manufacturers
- 22 To be implemented in the 2nd half of 2017
- 23 Oleum Gas Leak case