

Imposing Criminal Liability to Corporate Bodies

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Abstract: Corporate bodies' dominance over various aspects of human's social life, specifically along with the growth of privatization process in the late 20th century is irrefutable and undeniable. Inefficiency of civil and administrative sanctions in preventing the corporate bodies from dangerous activities has made many legal systems to recognize the corporate criminal liability based on the reasons including criminology reality, similar bases for civil and criminal liabilities, higher precision in selection of managers among members and shareholders and difficulty in specifying the faulty corporate bodies.

However, liability acceptance is accompanied by the essential questions about criterion for imposing a crime to corporate body; i.e. how can we impose the fault to an authoritative existent? Can physical and mental elements of crime be attributed directly to corporate body or it must be attributed indirectly- vicariously? Do a corporate body's criminal intent and behavior lower to the related members' criminal intent and behavior? Or can we achieve an intent and behavior liability model to prosecute criminal intent and behavior in the corporate body itself as well as its structure without emphasizing on recognition of the guilty person? The law doctrine does not believe in a unique model concerning the crime attribution to a corporate body. Some models including vicarious liability model rely on agency principle and assume the corporate body as indirect liable. On the other hand, some models including Alter Ego Doctrine, Aggregation Doctrine and Corporate Body Policy consider the individual as direct liable. In this paper, we are going to study various approaches to corporate bodies' criminal liability; and it is assumed that appropriate model is one that does not restrict to legal person, but searches for liability in corporate body structure and transfers it from legal person to corporate body.

Keywords: Corporate body, Crime, Intent and will, Indirect liability, Indirect liability.

I. INTRODUCTION

The modern Criminal Literature asserts that criminal intent is developed through knowledge and cognition of the subject and rule along with willing to put the counter-law thought in action and realize it as well as realization of criminal result and behavior. Criminal capacity which in fact refers to the required mental factors for criminal behavior attribution to actor is just based on knowledge¹ and will².

Criminal capacity is prerequisite for criminal liability i.e. individual's commitment to bear his or her criminal behavior consequences.

Therefore criminal Liability will not be realized without realization of criminal capacity.

Now the question is that "Is crime occurrence just possible from an individual? Are human will and feeling institutionalized inside a legal identity or corporate bodies can be assumed as liable for crimes too, based on which their liability to be understood? Doubtlessly, the problem of Liability or not being Liable is among the most vague and complicated legal problems. The criminal liability at the very beginning relates to legal identities that possess body, blood and soul. Whether lack of these characteristics among the corporate bodies is accompanied by denying criminal

¹- According to Logic scientists, awareness is conscionable and sensual qualities which can be understood inside the human being. Hence one knows what the awareness is as he or she knows pleasure, pain, hunger and thirst. That is why it has been claimed that awareness is the apparent meaning of the object inferred by the mind and nous (11)

²- Will is the force leads to a behavior and expression. It is obvious that will is condition of criminal liability realization which is generally rooted in healthy intellectual power in the awareness framework (7).

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liability, is a question with various responses (17).

Specificity principle³ (8), violation of penalties personal aspect, not realization of penalties purposes, impossibility of many penalties, lack of power to commit the crime such as adultery, polygamy, false testimony and procedural problems are among traditional reasons for opposing criminal liability for corporate bodies; however the most important reason for rejecting the corporate bodies criminal liability is lack of possibility to impose them the fault (20). They believed that guilt acceptance ability-imposing ability-which is based on the criminals' independent will and mind (16), has been restricted to human rather than corporate bodies. On the other hand, proponents of the corporate bodies' criminal liability believe that mentality and mind are different among corporate bodies and legal persons, and they point to different criteria for imposing crime. They believe that the Penal Law is unable to justify liability for corporate bodies, using the same criterion as for legal persons (21). Corporate bodies as modern powers possess many tools and resources which endanger the society. In this way, they hurt the society's resources widely. Hence, their responsibility has been based on distinct criteria and at the same time on more widespread criterion than that of legal persons. Collective spirit of the corporates' policies rooted in activity's organizational procedure and bureaucratic policies model require concentration on goals, intents and knowledge of the corporate bodies. They must not be reduced to organization members. Concerning the crime commitment, no one claims that corporate bodies are able to commit all crimes. Obviously, the crimes proportionate to legal person's nature may not committed by corporate bodies. However, concerning the great number of the crimes compatible to corporate bodies, their criminal liability would be understandable with regard to penalties we may point to those compatible to the corporate bodies structures including break up or temporary closure or those applicable for both legal persons and corporate bodies, such as fines and sanctions reparation⁴. Finally, the criminology realities and satisfying the society's expedients have encouraged national and trans national legal systems to accept criminal liability of the corporate bodies more than ever; so that countries as England, United States, Canada, Germany and Netherland have gradually attempted to accept and develop this liability since the second half of 20th century.

The European council established the specialized committee in 1983 and presented its own strategic principles to the member countries in 1988.

After understanding the criminal liability of the corporate bodies, we have to answer the basic questions of "how can attribute and impose them the crime pillars? Do they derive the crimes material and mental elements from their employees-vicarious liability-? Or are they able to endure responsibility directly? Generally, what are models for criminal liability of the corporate bodies? Which model of liability is more comprehensive? And what is the position of the Islamic Penal law (ratified in 2013 in Iran)? This paper answers the questions with this presumption that we must believe in a liability model based on which one may transfer criminal liability from the corporate body's members and at the same time it can be searched for in policy and organizational culture of the corporate bodies. The answers would be based on the seven theories on the above mentioned bodies liability.

II. VICARIOUS LIABILITY DOCTRINE

As it was stated earlier, the criminal Law relied on the approach that the corporate bodies may not be liable before law for many reasons and the most important reason is lack of independent intent and will therefore, the basis is liability of the legal persons and non-liability of the corporate bodies. The Industrial Revolution and its following developments in various areas specifically in transportation paved the way for gradual transition from the traditional thoughts through accepting their criminal liability before crimes, based on absolute responsibility in which liability without fault is assumed.

It worth to note that they were described as unable to commit positive action; on this basis their criminal liability concerning the miscasance was assumed as unrealizable (2)⁵

However practical problems and numerous companies violations to achieve more benefit and income as well as

³- According to this principle, the corporate bodies validity and their existence are limited to the confine approved by Law maker. Since crime commitment is beyond that limitation, persons existence would be non sense and as a result there is no personality.

⁴- Reparation-sanction is based on the criminal's commitment to compensate in a specific period and based on the predetermined methods specified by the French courts; i.e. when the court verdicts the reparation-sanction, the prison period may not exceed 6month or the fine may not exceed 15000

⁵- In Birmingham and Gloucester Railway case the company was sentenced on this basis. The company was liable to destroy the bridge because he has refrained from the court decision implementation.

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distancing from the theory of assuming the corporate bodies not real entities led to recognition of their liability for positive activities. It was gradually assumed that the corporate bodies may be sentenced for not overcoming barriers as well as for creating barriers. A corporate may be sentenced for not presenting annual reports. Also, it may be sentenced because of presenting spurious report (19).⁶

Development of insecurity out of the harmful and dangerous activities of the corporate bodies reveals that non-criminal sanctions applied in various law systems are not effective instruments in controlling and preventing the corporate from power abuse. That is why we are in urgent need to pay attention to such instruments under the shadow of criminal liability and applying criminal law arsenal.

Concerning the bases of crime imposing to corporate bodies in precedent and doctrine, it must be explained that firstly the vicarious liability has been used which in turn is based on the agency principle.

Accordingly, if the corporate bodies' employees commit a crime during their services or by their services, the corporate would be liable. Of course, agency theory did not believe in anything other than imposing the crime to the corporate body through restrict responsibility, at the very beginning of its establishment; because the prevalent approach of the time was that a non-human body lacks independent will and mind and as a result is not able to commit the crimes which require mental element.

Hence, the agency theory seems to be restricted in one hand and widespread on the other hand. By restricted we mean that it is limited to those crimes do not require mental element; and that if the employees committed a crime during their due jobs without the company permission, the company will be liable even if the crime is not important (5).

Therefore, agency theory believes that the corporate body acquires the material element of the crime from its employees and makes itself liable in this way.

It is obvious that accepting the corporate bodies' criminal liability concerning the crimes with absolute responsibility has been an appropriate movement at the first step; but it was not enough to prevent huge volume of the crimes requiring mental element including ones committed by the corporate' managers and agents in various subjects such as forging, fraudulent, tax fraud and unintentional murder.

As a result, some theorists tended to develop the agency theory and assume that a corporate body takes the mental and material elements of a crime from its employees. They assumed that as the agents' activities in civil affairs-at the agency level lead to liability for corporate body the case must be extended to the criminal domain in which the crimes require mental element. The employees satisfy the requirement and make it possible for the law to accept corporate' absolute liability. It must be explained that the corporate bodies' intent and will may lead to both commercial and legal contracts, and crimes requiring mental element (18). The London Railway v. North West case (1917) is a sample of vicarious liability theory development and extending it to a crime requiring mental element (Bill forging by the manager aiming at not paying tolls) (21).

England miners' strike in 1926 which led to death of one miner made the court ignore the barrier of agency liability and develop it and sentenced the corporate to unintentional murder. The precedent showed that there is not any inseparable correlation between corporate bodies' vicarious and absolute liabilities. However, in England the corporate criminal liability grew slowly before 1940c, because of the restrictions dominated over the vicarious liability and attention to crimes with absolute liability (9).

At the end of the discussion, it worth to note two points: first, vicarious liability of the corporate bodies which is based on the agency principle does not deny the personal criminal liability. In other words, it has not been and is not a subrogation liability and do not exonerate the criminal employees from their liability second, according to the model the corporate body's liability relies in personal criminal liability assumption-behavior of employees in employment procedure or domain⁷ (12). It means that in many cases which personal liability is not certain and at the same time the corporate body's guilt dependence on the company's policy, organizational structure and dominant procedures is not

⁶- In Gt North of England Railway case the court sentenced the company based on this approach. The case contents revealed that the company has destroyed a highway in order to construct a bridge, without any legitimate or legal justification judge Lord man explained the problem of criminal capacity of the company and its consequent liabilities: to the same extend that sentencing the company based on ignorance to overcoming the street barriers (omission) is logic, sentencing it based on creating a barriers in a street or in a highway-positive activity-is defensible (15).

⁷- The malcontent miners striked in 1926.The Cory Bros company's managers connected electricity cables to the walls of administrative building and central power house in order to prevent the strikers to rob and loot coal store then, one miners feet contacted the wall and died by the electricity (21).

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refutable, the case would end in the corporate exoneration.

This unjust result of the vicarious liability became the basis for establishing policy and procedure doctrine which would be discussed at the end of the paper.

III. AFTER EGO DOCTRINE

ACCORDING TO THIS THEORY THE HIGH RANKING AND TOP MANAGERS OF A CORPORATION ARE THE BRAINS OF THE CORPORATE BODY WHOSE BEHAVIOR AND INTENT IS THE BEHAVIOR AND INTENT OF THE CORPORATION. THE THEORY WAS INTRODUCED AND DEVELOPED IN COUNTRIES AS CANADA IN 1920C AND ENGLAND IN 1940C (15).

IN THE EARLIER TOPIC IT WAS STATED THAT THE CORPORATE BODY'S CRIMINAL LIABILITY WAS CONSIDERED AS VICARIOUS AND PROSECUTABLE BASED ON THE EMPLOYEES AND MANAGERS ACTIVITIES; THE LIABILITY WAS RESTRICTED TO THOSE CRIMES WHICH DID NOT REQUIRE MENTAL ELEMENT. HOWEVER, INCREASE OF THE CHALLENGING CASES RELATED TO THE GREAT CRIMES WHICH WERE NOT PROSECUTABLE BASED ON THE VICARIOUS LIABILITY AND THE NEED FOR MENTAL ELEMENT, THERE APPEARED THE AFTER EGO THEORY OUT OF THE CIVIL LAW, TO OVERCOME THE PROBLEM. ACCORDING TO THE AFTER EGO THEORY THE PEOPLE IN A CORPORATE BODY REPRESENT THE CORPORATE PERSONALITY AND THEIR ACTIVITIES AND SPIRITUAL MANNERS ARE CONSIDERED AS THOSE OF THE CORPORATE.⁸ IN THIS CASE, THE CORPORATE BODY IS LIABLE FOR THE INTENT AND BEHAVIOR RATHER THAN FOR ITS MANAGERS AND EMPLOYEES INTENTS AND BEHAVIORS. SO, THE CORPORATE LIABILITY CHANGES FROM INDIRECT VICARIOUS TO DIRECT LIABILITY (14).

BASED ON THE THEORY, DESPITE OF COURTS' OPINION ON REJECTING THE FRAUDULENT BY THE KENT COMPANY'S TRANSPORTATION MANAGER, THE APPEAL COURT ACCEPTED THE ACCUSATION BASED ON THE AFTER EGO DOCTRINE (21).

WITH REGARD TO THE DESCRIPTION, THE THEORY OF ALTER EGO IS MORE WIDESPREAD THAN VICARIOUS LIABILITY, AND IS MORE RESTRICTED THAN VICARIOUS LIABILITY SINCE IT IMPOSES THE CORPORATE BODIES JUST THE POSITIVE ACTIVITIES AND OMISSION FROM THE AUTHORITIES. IN ENGLAND TRIBUNALS A QUESTION HAS BEEN ASKED FOR A LONG TIME:

WHICH BODIES ARE ATTRIBUTABLE TO CORPORATE BODIES? THE SUPPORTERS OF THE RESTRICTING ALTER EGO INTRODUCE THE AUTHORITIES AND MANAGERS AS THE MAIN PERSONALITIES ATTRIBUTABLE TO THE CORPORATE BODIES AND THEIR GUILT AND ACTIONS AS CORPORATE GUILT AND ACTIONS. ON THIS BASIS, ENGLAND HOUSE OF LORDS CONCERNING THE TESCO COMPANY CASE (1971) REJECTED THE COURT VERDICT ON SENTENCING THE COMPANY FOR SUPPLYING PRODUCTS WITH HIGHER PRICES THAN LAWFUL PRICES SINCE A MANAGER AMONG 800 STARES OF THE COMPANY IS NOT OF SO IMPORTANT POSITION TO BE CONSIDERED AS THE COMPANY'S DIRECTING MIND.

THEREFORE, THE HOUSE OF LORDS APPROACH IS BASED ON THIS POINT THAT EACH COMPANY HAS A COMMANDING CENTER CONTROLLED BY THE ORGANIZATION AND THE CORPORATE RESPONSIBILITY IS DERIVED FROM THE OFFENCES OF THE CENTER MEMBERS (9).

⁸- It worth to note that there are four theories on explaining the legal nature of the relation between managers and the corporate body: 1-Proxy theory: according to the theory the relation of manager with the corporate is the same as the relation between the attorney and client, with this difference that some consider the manager as attorney of the partners and some attorney of the company. Of course the theory has some weak points; as an instance proxy is accompanied by the wills of the attorney and client while concerning the corporate bodies there is no will except for the managers' decisions. 2-Legal agency theory: based on this theory the managers are legal representatives of the corporate and there is no need that he or she to be noble and possess healthy will and authority. The problem with this theory relates to selection of the legal representative i.e. the agent is selected neither by the attorney nor by the court while the corporate and manager of an organization is a personality. Moreover, the legal agent may not be dismissed by the noble and keeps his or her position as long as he or she keeps the legal conditions, but the corporate bodies' managers may be dismissed. 3- The theory of managers as corporate bodies' brokers: according to the theory, managers are assumed as the corporate employees and brokers and the corporate is employer. Therefore, the corporate body's liability before the managers activities out of their restricted authority is justifiable. Some jurists criticize the theory and claim that the employer may be exonerated from liabilities through proving that he or she has observed all necessary precautions while the corporate may not be exempted from liability against the third parties by no means. 4- Theory of managers as pillars: according to this theory, managers' activities, behavior and mental situations as the corporate body's pillars are assumed as the corporate activities, behavior and mental situation. Since the proxy and legal agent do not justify the criminal liability against the managers activities out of their authority; and since managers are not employers of the corporate bodies, it seems that the theory of managers as corporate pillars is the most comprehensive approach; because it considers managers as part of the corporate (13).

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THE SAME INTERPRETATION HAS BEEN BASIS FOR ALTER EGO THEORY RELIANCE IN CANADA, SO THAT THE CORPORATE BODIES ARE ASSUMED LIABLE JUST CONCERNING THE AUTHORITIES' THOUGHTS AND POLICIES (15).

THE THEORY'S EFFICIENCY IS IRREFUTABLE CONCERNING THE SMALL AND RESTRICTED CORPORATE WHICH ARE ADMINISTERED BY CONCENTRATED MANAGEMENT. HOWEVER, THE MODEL IS IN EFFICIENT AND LEADS TO NON-PROSECUTION OF THE CASE IN LARGE AND NON CENTRALIZED COMPANIES WHO HAVE DELEGATED THEIR DUTIES TO DIFFERENT SECTION; SO THAT MANY VITAL AND IMPORTANT DECISIONS ARE TAKEN BY THE MIDDLE MANAGERS. THEY ARE NOT EFFECTIVE AND DO NOT LEAD TO CRIMINAL PROSECUTION IN SUCH CORPORATIONS. IN ORDER TO OVERCOME THE DEADLOCK, SOME COMMON LAW COUNTRIES SUCH AS THE UNITED STATES HAVE REPLACED THE ALTER EGO DOCTRINE BY THE SUPERIOR RESPONDEAT DOCTRINE.

ACCORDING TO THIS THEORY WHICH WOULD BE EXPLAINED AT THE NEXT SECTIONS, A CORPORATE BODY WOULD BE LIABLE FOR ACTIONS OF THE AGENTS PROVIDED THAT THE AGENT HAS COMMITTED THE CRIME IN THE FRAMEWORK OF THE EMPLOYMENT DUTIES.

BUT THE ENGLAND AND CANADIAN TRIBUNALS HAVE BEEN FAMILIAR WITH THE PROBLEM AND DEVELOPED THE ALTER EGO DOCTRINE WITHOUT REPLACING IT. IN

REGARD, THEY APPLIED RESPONSIBLE OFFICER RULE INSTEAD OF TOP MANAGEMENT CRITERION. HENCE, IF AN EMPLOYEE POSSESSES EFFICIENT MANAGERIAL POWER IN THE FRAMEWORK OF THE JOB DUTIES, HIS OR HER ACTIVITIES AND MENTAL MANNERS ARE OF REQUIRED POTENTIALS TO REALIZE CORPORATE BODY'S CRIMINAL LIABILITY; FOR INSTANCE MANGER OF A COMPANY'S BRANCH IS EFFECTIVE WITH REGARD TO HIS OR HER AUTHORITIES⁹ (13).

IV. SUPERIOR RESPONDEAT

THE THEORY HAS BEEN INTRODUCED IN THE UNITED STATES BASED ON WHICH THE CORPORATE IS LIABLE FOR ITS EMPLOYEES PROVIDED THAT THEY COMMITTED THE CRIME IN THE FRAMEWORK OF JOB DUTY AND AIMING AT CORPORATE BENEFITING.¹⁰

REGARDLESS OF THE CORPORATE AGREEMENT OR PERMISSION FOR THE REPRESENTATIVE'S CRIME AS A BASIC CONDITION, THERE ARE SERIOUS DIFFERENCES AMONG THE DOCTRINES AND JUDICIARY PROCEDURES ARE NOT SO WILLING TO ACCEPT THE CONDITION. IF A MANAGER OF THE CORPORATE COMMITTEES A CRIME DESPITE OF THE GENERAL RECIPE OF PREVENTING ANY CRIMINAL BEHAVIOR, THE CORPORATE BODY'S CRIMINAL LIABILITY IS NOT LOOSED UNLESS THE CORPORATE PROVES THAT IT HAS PERFORMED ALL NECESSARY ACTIONS AND ATTEMPTED TO PREVENT THE CRIME. OTHERWISE, ANY CORPORATE MAY FLINCH FROM THE CRIMINAL LIABILITY OF THE EMPLOYEES, JUST THROUGH ISSUING A RCIPE (4).

THE AUSTRALIAN TRIBUNALS DID NOT CONCENTRATE ON PROVING THAT MANAGERS HAVE ALLOWED THE EMPLOYEES TO COMMIT THE CRIME; HOWEVER THE MODERN PROCEDURE HAS CLOSED TO THE BELIEF THAT UNDER SOME CONDITIONS IT IS LOGICAL TO PROVE MANAGERS' AUTHORITY AND PERMISSION IN REALIZATION OF THE LIABILITY (7).

ACCORDING TO THE AUTHOR, THE LATTER APPROACH IS CLOSER TO CRIMINAL JUSTICE; OTHERWISE, THERE ARE ALWAYS MEMBERS IN LARGE CORPORATES WHO COMMIT THE CRIMINAL BEHAVIOR BY THEMSELVES AND WITHOUT THE EMPLOYER PERMISSION AND MAKE THE COMPANY ENCOUNTER THE CRIMINAL LIABILITY.

WITH REGARD TO THE DESCRIPTION OF THE SUPERIOR RESPONDEAT THEORY, ONE MAY CLAIM THAT THE THEORY IS AS VICARIOUS LIABILITY BASED ON THE AGENCY PRINCIPLE; THE DIFFERENCE IS THAT THE THEORY COVERS THE STRICT CRIMES-WITH OR WITHOUT MENTAL ELEMENT-BUT THE VICARIOUS LIABILITY COVERS JUST MATERIAL CRIMES AND HAS NO NEED TO PROVE MENTAL ELEMENT.

AS WE MENTIONED IN ABOVE PARAGRAPH, SUSTAINING THE CORPORATE BODY'S CRIMINAL LIABILITY ON THE BASIS OF THE AGENCY PRINCIPLE IS CRIMINAL BEHAVIOR-DEPENDENT WHICH RELIES ON TWO CONDITIONS: COMMITTING THE CRIMINAL BEHAVIOR IN THE FRAMEWORK OF EMPLOYMENT DUTIES AND INTENT OF BENEFITING THE CORPORATE BODY. THE RESULTS OF THE CONDITIONS ARE:

1) THE RANK AND POSITION OF THE AGENT IS NOT IMPORTANT;

⁹ - In *Reyina v. st Lawrence corp.* case in Canada judge Schroeder stated that: if the corporation represent active's position is so that the court assumes him or her as an efficient and vital member, and assumes him or her as efficient as an top manager in his or her job domain, and his or her behavior assumes as corporate behavior and intent, then the representative would be liable (Leigh, 1997, P.254).

¹⁰ - In *Fegan company* case the company was assumed liable because of behavior and activities of the employees in the framework of their employment duties and benefiting the company (Ibid, 266).

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2) ACTIVITIES IN THE FRAMEWORK OF THE EMPLOYMENT DUTIES DO NOT CREATE LIABILITY UNTIL THE INTENT TO BE BENEFITING THE CORPORATE BODY;

3) IT IS NOT NECESSARY FOR THE CORPORATE BODY TO BE BENEFICIARY IN PRACTICE, AND THE INTENT IS ENOUGH FOR LIABILITY. HENCE, THE CORPORATE'S LEGAL ORGANS AND SECTIONS ARE AWARE OF THEIR EMPLOYEES' ILLEGAL ACTIVITIES AND DO NOT PREVENT OR REPORT THEM.

IT ALSO WORTH TO NOTE THAT THE SUPERIOR RESPONDEAT THEORY ASSUMES THE CORPORATE BODY'S CRIMINAL LIABILITY DEPENDENT ON THE BODY(S) GUILT; WHILE THE LIABILITY IS NOT REALIZED DIRECTLY FROM A SPECIFIC INDIVIDUAL, RATHER FROM AGGREGATE GUILT THE CORPORATES' EMPLOYEES. INABILITY OF THE THEORIES T RESPOND THE PROBLEM LED TO APPEARANCE OF THE AGGREGATION GUILT THEORY.

V. AGGREGATION DOCTRINE

THIS DOCTRINE STATES THAT IF AN EMPLOYEE'S BEHAVIOR OR GUILT DOES NOT SATISFY THE COURT FOR THE CORPORATE BODY'S LIABILITY, THE JURIES MAY RESORT TO THE REQUIRED MENTAL AND MATERIAL ELEMENTS AND COLLECT THE ENTIRE EMPLOYEES' GUILT AND BEHAVIOR TO ASSUME THE CORPORATE AS LIABLE.

DIFFICULTY IN DETECTING AND DETERMINING THE GUILTY PERSON HAVING BOTH MATERIAL AND MENTAL ELEMENTS HAVE LED T LACK OF PROSECUTION OF MANY GREAT AND NON-CENTRALIZED CORPORATE BODIES WHO HAVE DISTRIBUTED THEIR RESPONSIBILITIES IN MANY REGIONS AND BRANCHES. SO, THE AGGREGATION THEORY IS COMPLEMENT OF THE ABOVE MENTIONED THEORIES. THEREFORE, WHEN THE JUDICIARY PROSECUTOR REALIZES THAT THE COLLECTIVE INFORMATION, ACTIVITIES AND AWARENESS OF MANAGERS AND EMPLOYEES SATISFY THE CRIME ELEMENTS BASED ON WHICH THE CORPORATE BODY MAY BE SENTENCED; BECAUSE THE COMPLEX STRUCTURE OF MANY HUGE AND NON-CENTRALIZED CORPORATES IS SO THAT THE JUDICIARY PROSECUTOR CAN'T SEARCH ALL REQUIRED AWARENESS IN ONE PERSON (5).

ACCORDING TO THE AGGREGATE DOCTRINE, THE APPEAL COURT CONFIRMED THE GUILT OF A U.S. BANK (1987) WHO WAS ACCUSED TO IGNORANCE IN REGISTERING AND REPORTING THE CUSTOMERS' DEALING OVER 10000 DOLLARS. THE COURT STATED THAT: COLLECTIVE AWARENESS IS ENOUGH TO REALIZE LIABILITY; BECAUSE THE CORPORATE (BANK) HAS DIVIDED ITS AWARENESS THROUGH DIVIDING RESPONSIBILITIES AND DUTIES AMONG THE BRANCHES (11).

THEREFORE, WE MAY CONCLUDE THAT CONCERNING THOSE CORPORATE BODIES THAT HAVE DIVIDED AND DISTRIBUTED THEIR ACTIVITIES AND DUTIES AMONG THE BRANCHES, IT IS NOT IMPORTANT ANYMORE THAT AN EMPLOYEE IN CHARGE OF A BRANCH OR ACTIVITIES TO BE AWARE OF OTHER BRANCHES' ACTIVITIES, BUT THE IMPORTANT POINT IS THE COLLECTIVE INFORMATION AND AGGREGATED AWARENESS OF THE CORPORATE BRANCHES¹¹. IN OTHER WORDS, IN CASES WHERE THE CORPORATE BODY'S STRUCTURE AND ORGANIZATION PLAY ROLE IN ACQUIRING A CRIMINAL APPROACH, THE MEMBERS AS AN ORCHESTRA ARE LIABLE. IN THIS CASE, IMPOSING CRIMINAL LIABILITY TO THE CORPORATE BODY REQUIRES A NEW METHOD WHICH MAY BE ROOTED IN AGGREGATE DOCTRINE. AS A RESULT OF THIS THEORY, THE RULE OF IMPOSING CRIMINAL INTENT TO THE CORPORATE BODY IS PERFECTLY EXTENDED, SO THAT IT ENDS TO THE INTENT ERADICATION THE INDIVIDUAL AND CORPORATE BODY'S INTENTS. GENERALLY, THIS THEORY PROVIDES A FRAMEWORK FOR ASSUMING CRIMINAL INTENT IN WHICH THE CORPORATE AND MEMBERS MUST BE CLOSELY CONSIDERED.

IT SEEMS THAT A MORE APPROPRIATE STRATEGY IS REFERRING TO THE CORPORATE AND ITS STRUCTURE AND TO ASSUME LIABILITIES ACCORDING T THE CORPORATE'S POLICY. HENCE, INSTEAD OF STUDY THE INDIVIDUALS TO TRANSFER GUILT TO CORPORATE BODY, THE CORPORATE'S PROGRAMS AND THE RELATED STRUCTURES ARE STUDIES. THIS APPROACH CONTAINS SOME DETAILS WHICH WOULD BE STUDIED IN THE FOLLOWING SECTIONS.

VI. POLICY-BASED LIABILITY DOCTRINE

FOLLOWING THE AGGREGATE DOCTRINE THEORY WHICH WAS A COMPLEMENT FOR EARLIER THEORIES, THE LAW POLICY AND PROCEDURE THEORY WAS INTRODUCED TO COMPLETE THE AGGREGATE DOCTRINE. ON THIS BASIS, A CORPORATE BODY'S CULTURE AND STRUCTURE WHILE PROPER EXPANSION IS THE BEST CRITERION FOR IMPOSING LIABILITY. OF COURSE, THE APPROACH DOES NOT MEAN DENYING THE GUILTY COPORATE'S LIABILITY; WHEN THE BEHAVIOR POSSESSES

¹¹- On this basis, the court in charge of the Short Accounting Company affirmed the accusation of providing fraudulent and false reports on the tax base income. The court rejecting the defend of the company's attorney who claimed that one of the employees committed the crime unknowingly, asserted that concerning the crime imposing criterion, the important point is realization of collective intent in testimony and endorsing the income report; and unawareness of one employee and intention of another one is not important, otherwise all corporate bodies who have issued such fraudulent reports may resort to unawareness of some employees and easily prevent the criminal justice execution (6).

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THE REQUIRED MENTAL ELEMENT AND GUILT, THE CORPORATE WOULD BE SENTENCED BY THE COURTS. THEREFORE, THE CORPORATE AND LEGAL PERSONS' LIABILITIES MAY REALIZE IN PARALLEL WITHOUT BEING EACH OTHERS PREREQUISITES¹² (6).

THEREFORE, THE ORGANIZATIONAL LIABILITY MODEL IS AGAINST THE DERIVATIVE LIABILITY MODEL WHICH TRANSFERS LIABILITY FROM A LEGAL PERSON TO A CORPORATE BODY. THE DERIVATIVE LIABILITY IS NOT ABLE TO REFLECT CORPORATE BODIES' GUILT WHICH IS COMPLEX AND NON-CENTRALIZED, SINCE IT IS HARD TO FIND A PERSON WITH PERFECT RESPONSIBILITY FOR THE CORPORATE BEHAVIOR. THIS DEFECT LEADS TO CORPORATES ESCAPE FROM CRIMINAL LIABILITY. THAT IS WHY; THE ORGANIZATIONS LIABILITY MODEL WHICH PUTS AN INDIVIDUAL'S AUTONOMY AT THE CENTER OF ATTENTIONS IS MORE COMPATIBLE WITH THE CORPORATE'S CONTINUUM STRUCTURE. THIS MODE WOULD BE ABLE TO INFER EMPLOYEES AND MEMBER'S OFFENCES BASED ON THE ARTICLE OF ASSOCIATION, CONVENTIONS AND GENERALLY FROM THE POLICY CONTENT; IT ALSO CAN DETERMINE THE REQUIRED PUNISHMENT.

ACCORDINGLY, THE CRIMINAL CODE ACT 1995 PASSED THE DOMINANT TRADITIONAL METHODS DOMINATED OVER THE CRIMINAL LAW AND ACCEPTED THE CORPORATE BODIES' CRIMINAL LIABILITY; AND IN THIS WAY ATTEMPTED TO ADOPT A REALISTIC APPROACH AIMING AT ASSUMING THEM IN DEPENDENT FROM THEIR MANAGERS AND EMPLOYEES AND SO LIABLE TO BE JUDGED BASED ON THE PREVALENT CULTURE (1).

CRIMINAL CODE 2002 (ACT), 550 OF AUSTRALIA EMPHASIZED ON THE ROLE OF THE CORPORATE CULTURE AND MAKES THE PROOF OF COMPANY'S GUILT CONCERNING THE CRIME PERMISSION DEPENDANT ON THE AUGMENT OF COMPANY'S IGNORANCE OR ENCOURAGEMENT TO VIOLENCE. THIS CULTURE IS THE RESULT OF THE IDEOLOGY, POLICIES AND ACTIVITIES OF THE CORPORATE. THE INNOVATION OF THE CODE ACT IN PREDICTION OF A LOGIC AND EFFICIENT MODEL IS OF GREAT IMPORTANCE. THAT IS ORGANIZATIONAL RESPONSIBILITY AND ASSUMING A CORPORATE BODY AS AN INDEPENDENT ENTITY RATHER THAN A COMBINATION OF LEGAL PERSONS WHICH HAS CRIMINAL LIABILITY BY ITSELF. THE APPROACH IS MORE COMPATIBLE TO THE MODERN CORPORATE BODIES' STRUCTURE IN WHICH DECISIONS ARE TAKEN DURING A COMPLICATED PROCESS (22).

UNINTENTIONAL MURDER AND MURDERING ACT OF 2003 IN BRITAIN WITH REGARD TO THIS APPROACH MAKES CORPORATE BODIES REFRAIN FROM PROVIDING THE EMPLOYEES WITH HEALTH THREAT, EVEN THOSE WHO ARE INDIRECTLY RELATED TO THE JOB. ACCORDING TO THIS LAW, IF A CORPORATE BODY'S IGNORANCE IN MEETING THE WORK ATMOSPHERE SECURITY AND PREDICTING THE SECURITY SYSTEM AS THE PREVALENT CULTURE AND POLICY IS CLEAR, ITS CRIMINAL LIABILITY WILL NOT BE RELIED ON ANY SPECIFIC PERSON IN THE CORPORATE. FOR INSTANCE, LACK OF SECURITY SYSTEMS OR USING NON-STANDARD SECURITY SYSTEMS IN A BUILDING'S GAS PIPELINES AS A CORPORATE POLICY TO REDUCE THE COSTS WOULD PROVIDE THE CORPORATE WITH LIABILITY AGAINST THE PROBABLE EXPLOSIONS. OR A DEADLY ACCIDENT OF A CORPORATE'S TRUCK MAKES THE CORPORATE LIABLE PROVIDED THAT THE DRIVER HAD BEEN OBLIGED TO DRIVE FOR A LONG TIME AIMING AT ACQUIRING MORE BENEFITS (16).

THE QUESTION IS THAT "HOW CAN WE FIND OUT THE CORPORATE CULTURE AND POLICY?" IT WORTH TO NOTE THAT REFERRING TO THE ORGANIZATIONAL PROCESS MODEL WHICH CONCENTRATES ON THE PRACTICAL WAYS OF PERFORMING DUTIES. RESPONSIBILITIES AND OBLIGATIONS IN VARIOUS SECTIONS AND UNITES OF THE CORPORATE BODY WOULD BE APPROPRIATE. THE COMPANIES WITH THE RELATED SECTIONS AND UNITES AND DIVISION OF DUTIES FORM THE ORGANIZATIONAL CULTURE THROUGH COMBINATION OF THE SECTIONS AND UNITES.

MOREOVER, REFERRING TO THE DOCUMENTS, NEGOTIATIONS AND DECISION MAKING METHOD AND COLLECTING VARIOUS OPINIONS, BUREAUCRATIC POLICY MODEL ARE PROPER STRATEGIES TO UNDERSTAND THE CORPORATE'S POLICIES. OF COURSE, IF THE TWO POLICIES ARE CONTRADICTORY, THE ONE WHICH IS PRACTICALLY IN USE MUST BE ASSUMED AS THE CORPORATE'S POLICY.

THE POINT TO BE CONSIDERED BY THE COURTS IS THAT THE CORPORATE POLICY IS NOT SOMETIMES ADVERSATIVE TO LAW, BUT IT ENCOURAGES THE EMPLOYEES IMPLICITLY TO VIOLATE THE LAW. THEREFORE, IF COURTS CAN NOT FIND OUT THE CLEAR POLICY OF THE CORPORATE, THEY MAY EMPHASIZE ON THOSE IMPLIED POLICIES WHICH PROPEL THE MEMBERS TOWARD VIOLATION; OTHERWISE, MANY CORPORATE BODIES WILL EASILY FLINCH THEIR CRIMINAL LIABILITIES.¹³

¹²- Compiling the Europe Council guide (1988) the same belief has been emphasized: a- The corporates liabilities must be determined regardless of possibility that any guilty corporate can be specified or not; b- Companies and corporates' liability must be regarded in addition to the individuals' managerial-administrative liability.

¹³- In T.I.M.E-D.C. Inc case the institution violated the Interstate Commerce Art acutely. The law bans explicitly driving for a sick person. The institution did not violated the Law clearly, but with the aim of preventing drivers from unnecessary absences, it adopted policies which implicitly violated the law. The absent drivers were asked to present immediately medical certificate, otherwise they

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MOREOVER, THERE IS A THIRD CASE WHERE A CORPORATE BODY ENCOURAGES THE MEMBERS TO VIOLATE THE LAW WITHOUT ANY EXPLICIT POLICY FOR VIOLATION AND WITHOUT ADOPTING THE ANY IMPLICIT POLICY. THE CORPORATE ANNOUNCES ITS AGREEMENT WITH THE VIOLATIONS THROUGH ADOPTING REACTIONARY POSITION.

THEREFORE, IT IS SUITABLE TO ASSUME LACK OF VIOLATION AS A REASON FOR IMPOSING LIABILITY TO A CORPORATE BODY, IN ORDER TO PREVENT THE CORPORATES FROM LIABILITY FLINCH. THIS APPROACH PAVES THE WAY FOR ANOTHER DOCTRINE CALLED REACTIVE FAULT DOCTRINE.

VII. REACTIVE FAULT DOCTRINE

THIS THEORY REFLECTS THE SOCIETY'S SEVERE HATE OF IGNORANCE AND NEGLIGENT OF THE CORPORATE BODIES CONCERNING THEIR EMPLOYEES VIOLENCE AND DANGEROUS ACTIVITIES. BASED ON THIS THEORY, SINCE IT IS UNLIKELY THAT THE WHITE-COLLAR TO MAKE CRIMINAL POLICIES AS THE CORPORATE BODIES, BEFORE OR CONCURRENT WITH THE MATERIAL ELEMENT CRIME COMMITMENT, COURTS MUST EMPHASIZE ON THE CORPORATE NEGLIGENCE IN REACTING TO VIOLENCE AND ADOPTING PREVENTIVE POLICIES TO PREVENT CRIME REPETITION AND IGNORANCE IN COMPENSATION OF HURTS AGAINST THE SOCIETY INSTEAD OF ATTEMPTING TO ASSUME BEFORE OR DURING COMMITMENT. THIS REQUIRES EXPANSION OF TIME LIMIT FOR FAULT OR GUILT IMPOSING. SO, THE CORPORATE NEGLIGENCE IN REACTION TO VIOLENCE AND ADOPTING CRIME PREVENTING STEPS AS WELL AS IGNORANCE TO COMPENSATE THE DAMAGES EXERTED TO SOCIETY MAY BE ASSUMED AS BASIS FOR CRIME IMPOSING.

SOME BELIEVE THAT THE MOST APPROPRIATE SANCTIONS MAY BE ADOPTED THROUGH RELIANCE ON THE GUILT CONCEPT; SO THAT AT FIRST STEP CIVIL SANCTIONS AND AT THE SECOND STEP CRIMINAL SANCTIONS ARE EXECUTED. WHEN THE CORPORATE VIOLATION BECOMES CERTAIN FOR A COURT, E.G. ENVIRONMENT POLLUTION, THE CORPORATE WAS OBLIGED TO FIX THE DEFECTS IN A DEADLINE. IF THE CORPORATE REFRAIN FROM THIS COMMITMENT, THE COURT MAY PROSECUTE THE SUBJECT ACCORDING TO THE GUILT CONCEPT; THE PROCESS ENDS WITH THE CRIMINAL SANCTIONS (10).

THE GUILT CONCEPT REFERS TO UNREASONABLE FAULT AND REACTIONARY STEPS IN ADOPTING PREVENTIVE AND COMPENSATING ACTIONS FOR THE RESPECTIVE EMPLOYEES' CRIMES.¹⁴ ACCORDING THE THEORY, EVEN IF NO INDIVIDUAL IN THE CORPORATE CAN BE ASSUMED AS GUILTY PERSON, OR IF THE ASSUMED GUILTY PERSON IS NOT AMONG THE CORPORATE'S HIGH RANKING AUTHORITIES AND HIS OR HER BEHAVIORS ARE NOT ATTRIBUTABLE TO THE CORPORATE, THE CORPORATE LIABILITY WILL NOT BE DIMINISHED. THEREFORE, REACTIVE FAULT DOCTRINE GOES BEYOND THE PRIOR TO CRIME FAULT AND ATTEMPTS TO SIMPLIFY THE CRIMINAL PROCEDURES AND TO FACILITATE CRIME DETECTION AND CRIMINAL LIABILITY ASSUMPTION, BUT THE WEAK POINTS SHOULD NOT BE IGNORED. THE CRITICS BELIEVE THAT GOING BEYOND THE REACTIVE FAULT DOCTRINE LEADS TO DEVIATION FROM CRIMINAL JUSTICE. THE CRITICISMS HAVE PREVENTED THE DOCTRINE FROM BEING POSITIONED AND WELCOME. POST-CRIME REACTION BOTH FROM CORPORATE AND LEGAL PERSONS IS AN ELEMENT SEPARATE FROM THEIR MENTALITY. JUST AS THE CRIMINAL'S COMPUNCTION AFTER THE CRIME COMMITMENT DOES NOT DENY THE IMPORTANCE OF THE MENTAL ELEMENT, EXCEPT FOR COMMUTATION, THE NEGLIGENCE TO REACTION AGAINST CRIMES AND COMPENSATION OF DAMAGES MAY NOT BY ITSELF REALIZE THE MENTAL ELEMENT. IN FACT, WE MAY NOT RESORT T PROCEDURE SIMPLIFYING JUST FOR DIFFICULTY OF CORPORATE FAULT PROOF. IT DOES NOT MEAN THAT THE CORPORATE'S NEGLIGENCE TO REACT AGAINST VIOLATIONS AND OFFENCES LACKS GENERALLY POSITIVE VALUE, BUT IT MEANS THAT THE NEGLIGENCE MAY NOT BE A DECISIVE REASON FOR CORPORATE BODY'S CRIMINAL LIABILITY. BY THE WAY, IT MAY BE PROSECUTED AS CUE TO FAULT. THE CUE ALONG WITH OTHER REASONS WOULD BE ABLE T PROVE CORPORATE'S FAULT.

VIII. POWER AND ACCEPTANCE DOCTRINE

AS WE MENTIONED EARLIER, THE ALTER EGO AND SUPERIOR RESPONDEAT THEORIES LEAD TO RESTRICTION AND EXPANSION OF THE CORPORATE BODIES' CRIMINAL LIABILITY DOMAIN, RESPECTIVELY. RESTRICTION OF LIABILITY IN ALTER EGO THEORY IS ROOTED IN RESTRICTING THE LIABILITIES TO THE TOP MANAGERS OR HIGH RANKING EMPLOYEES' BEHAVIOR AND MENTAL POSITION; ON THE OTHER HAND EXPANSION OF LIABILITIES IN SUPERIOR RESPONDEAT IS ROOTED IN THIS APPROACH THAT THE INDIVIDUAL'S CRIME WOULD BE ATTRIBUTED TO THE CORPORATE PROVIDED THAT THE CRIME HAS BEEN COMMITTED TO SATISFY EMPLOYMENT DOMINANT AND TO MEET CORPORATE'S BENEFITS; MEAN WHILE

were assumed as unauthorized absent. Therefore, they preferred to be present while sick because they feared to be dismissed. In fact the institute made the drivers to drive while they were sick based on adopting a vague and ambiguous policy (11).

¹⁴. The Australian Fire Stone company case is an example of reaction negligence. The company was accused t dangerous and non-standard tires supply. The company's policy has been apparently sound and there has been any violation at first glance. Also, investigations did not reveal that any manager emphasized on supplying unsafe tires. However, the criminal liability may be realized concerning the negligence and ignorance to damages compensation (10).

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THE CORPORATES BENEFITING FROM THE CRIME FROM THE EMPLOYEES CRIME DOES NOT NECESSARILY MEAN CORPORATES SATISFACTION. THE POWER AND ACCEPTANCE DOCTRINE HAS BEEN INTRODUCED IN ORDER TO INCREASE THE ALTER EGO THEORY DOMAIN AND REDUCTION OF THE SUPERIOR RESPONDEAT RESTRICTION. ACCORDING TO THIS THEORY WHICH HAS BEEN INTRODUCED IN NETHER LANDS' JUDICIARY SYSTEM EMPLOYEES OFFICIAL DISTINCTION FROM THE VIEW POINTS OF BEING A HIGH RANKING ONE OR NOT, IS OVERCOME IN ONE HAND, AND THE EMPLOYEES' CRIMINAL BEHAVIOR WOULD BE ATTRIBUTABLE TO THE CORPORATE BODIES PROVIDED THAT THE CORPORATE HAS NOT CONDUCTED ANY PREVENTIVE ACTION. THE THEORY ASSUMES THE EMPLOYEES ACTIVITIES AS THE CORPORATES LIABILITY WHEN THE CORPORATE IS ABLE TO DETECT THE CRIME AND PREVENT IT; AND CORPORATE ACCEPTS THE EMPLOYEE'S ACTIVITY. THEREFORE, WHEN A CORPORATE ASSUMES THE EMPLOYEES OFFENCES AS THE ORGANIZATIONS CURRENT AND USUAL ACTIVITIES, IT HAS ACCEPTED THE CASE (9).

IN THE KABELJAUW COMPANY CASE, 1981; THE COURT TENDENCY TO THE POWER AND ACCEPTANCE DOCTRINE WAS OBVIOUS. THE COMPANY WAS ACCUSED TO ILLEGAL FISHING. IT HAS MANY FISHING SHIPS AMONG WHICH ONE VIOLATED THE RULES AND REGULATIONS. THE COMPANY PROVED THAT IT WAS UNAWARE OF THE VIOLATION AND THE SHIP WAS EQUIPPED FOR ALLOWED FISHING AND THE COURT REJECTED THE ACCUSATION. THE APPEAL COURT CONFIRMED THE COURTS' ROTE BASED ON THE FACT THAT THE COMPANY HAD NO POWER TO DETECT AND PREVENT THE SHIPS OFFENCE (IBID, 164).

MERE COMPANY'S BENEFITING FROM THE SHIP VIOLATION DID NOT CONVINCED THE COURT TO SENTENCE THE COMPANY; BECAUSE IT DID NOT HAVE OTHER SENTENCING CONDITIONS.

IT WORTH TO NOTE THAT LACK OF POWER TO PREVENT THE EVENT AND OFFENCE BECAUSE OF HAVING NO INFORMATION, WOULD BE ACCEPTED WHEN THE CORPORATE ATTEMPTED TO CONTROL EMPLOYEES AND MERE LACK OF AWARENESS DOES NOT DENY LIABILITY.¹⁵

ON THE OTHER HAND, EVEN IF THERE ARE CONVINCING REASONS FOR BEING AWARE OF THE EMPLOYEES' VIOLATION AND AT THE SAME TIME THERE ARE ACCEPTABLE REASONS FOR LACK OF POWER FOR PREVENTING THE CRIME, THE CORPORATE BODY MAY NOT BE CONSIDERED AS LIABLE AND SENTENCED.

IT MUST BE NOTED THAT CONCLUSION OF THE CORPORATE DEFENSE WOULD NOT BE EASY, SINCE IT NEEDS CONSIDERABLE REASONS TO REVEAL THAT THE VIOLATION HAS BEEN CONTRARY TO THE CORPORATE POLICY; AND THE CORPORATE DID NOT IGNORE THE CRIME. IN OTHER WORDS, THE CORPORATE MUST PROVE THAT HAS ATTEMPTED TO CONDUCT ALL POSSIBLE ACTIVITIES TO PREVENT ILLEGAL EVENTS.

AUSTRALIAN FEDERAL CRIMINAL CODE 1995, ALSO ASSUMES THAT PROVING THE CORPORATES ATTEMPT TO PREVENT ILLEGAL BEHAVIOR OF THE RESPECTIVE AGENTS IS NECESSARY TO DENY LIABILITY (3).

IN ENGLAND, DURING TESCO PROCEEDING, THE COURT STRESSED THAT THE COMPANY'S CLAIM CONCERNING THE REQUIRED ATTEMPTS IS ACCEPTABLE WHEN IT PROVES CONDUCTING ALL NECESSARY ATTEMPTS.¹⁶

IN FACT THE LEGAL OR CORPORATE EMPLOYERS MUST BALANCE THE RISKS PROVIDED BY THEIR ACTIVITIES AND BALANCE THE REQUIRED AND USUAL COSTS TO PREVENT PROBABLE RISKS AND PROVE IT FOR THE COURT, OTHERWISE THEY WOULD BE LIABLE (16).

THIS THEORY CONFIRMS THE CONCURRENT OR PRIOR TO CRIME FAULT AND IN THIS CONCERN IT DOES NOT FOLLOW SIMPLIFYING THE PROSECUTION AND PROCEEDINGS; HOWEVER, SINCE IT ATTEMPTS TO PROVIDE A TYPICAL RATHER THAN TO DESCRIBE THE PERSONAL SITUATION; THEREFORE, IT FOLLOWS SPECIFIC SIMPLIFIED PROCEEDINGS. HENCE THE JUDICIARY OFFICIAL ATTEMPTS TO FIND OUT THE CORPORATE WHETHER THE CORPORATE HAD POWER OF AWARENESS OF THE ACTIVITIES TYPE INSTEAD OF VERIFYING THE MANAGERS' AWARENESS OF THE EMPLOYEES' DANGEROUS ACTIVITIES. OBVIOUSLY THE ANSWER TO THE FIRST QUESTION IS EASIER.

IX. CONCLUSION

ALTHOUGH THE CORPORATE BODY IDEA HAS SUSTAINED ITS POSITION IN CIVIL LAW, COMMERCE LAW AND ADMINISTRATION LAW, AND IT HAS BECOME A COMMON CONCEPT, APPLYING IT IN CRIMINAL DOMAIN FACED MANY

¹⁵- On this basis, in the case of hospital event in 1976, the court investigated the hospital management concerning unawareness on the hospital's daily activities and concluded that the manager had to be aware of it and plan to be informed. Accordingly the court confirmed the accusation of negligent homicide. The reason for this deadly event was application of a device worn out anesthesia which did not alarmed when the patients' body canals were transplanted in wrong way (Ibid, 165).

¹⁶- As we mentioned earlier, the Tesco Company possessed 800 super-markets among which just one sold the goods with the prices over the legitimate prices and finally the court confirmed the company's fault and rejected its defense which claimed the branch has increased the prices by itself and without coordination (8).

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DIFFICULTIES. IMPOSING CRIMINAL BEHAVIOR TO CORPORATE WITH MENTAL MANNERS BASED ON THE MIND IS NOT EASY, SINCE CORPORATES ARE NON-HUMAN CREATURES WHICH ARE MADE BY HUMAN BEINGS. INDUSTRIAL REVOLUTION MADE THE CORPORATE BODIES TO DEVELOP THEIR ACTIVITIES IN SOCIAL ARENA IN A CONSIDERABLE WAY; IN ADDITION THEY PROVIDE HUMAN WITH VALUABLE SERVICES AND CONTROL MANY DANGER SOURCES. DEVASTATIVE AND DISASTROUS EVENTS SPECIFICALLY THOSE OF 1980C LED TO DEATH OF MANY PEOPLE, SACRIFICED ENVIRONMENT, HURT TRANSPORTATION AND MADE THE JUDICIARY SYSTEMS RESORT TO CRIMINAL LAW TO CONTROL AND PREVENT CORPORATES FROM SUCH ACTIVITIES; SINCE CIVIL LAW AND ADMINISTRATION LAW CAN NOT COPE IT.

IT IS OBVIOUS THAT IMPOSING CRIMINAL LIABILITY TO CORPORATE BODIES REQUIRES A REALISTIC APPROACH TO THESE CREATURES' NATURE AND GETTING AWAY FROM TRADITIONAL APPROACH OF CONSIDERING THEM AS AN ASSUMPTIVE NATURE.

WE MUST ACCEPT THAT CORPORATES POSSESS INDIVIDUAL AUTONOMY AND CONSIST OF HUMAN MEMBERS AND INDEPENDENT WILL, NO NEED TO DENY THE CORPORATE AND LEGAL PERSONS' DIFFERENCES. THE WILL MAKES THEM CAPABLE OF COMMERCE AND CIVIL CONTRACTS AND MAKES CORPORATES LIABLE AGAINST THE COMMITMENTS AND MAKES THEM ABLE TO COMMIT THE CRIMES; THEREFORE, WE MAY NOT ADOPT CONTRADICTORY POSITIONS CONCERNING THE CORPORATES SO THAT THEIR INTENT TO BE CONFIRMED IN CONTRACTS AND DENY IT CONCERNING THE CRIMINAL LAW AND CRIME COMMITMENT CORPORATE BODIES MAY OR MAY NOT HAVE INTENT AND WILL.

IF THEY HAVE, THEY MAY ALSO HAVE BOTH CRIMINAL INTENT AND CONTRACT; OTHERWISE, THEY DO NOT.

THEREFORE, NECESSITY OF DEFENDING SOCIETY AND CRIME SACRIFICES REQUIRES THAT THEIR DANGEROUS ACTIVITIES TO BE PUNISHED IN THE LIGHT OF INVESTIGATIONS AND PREDICTING PENALTIES. ACCEPTING THE NECESSITY OF CORPORATE BODIES' CRIMINAL LIABILITY, THE BASIC QUESTIONS BEFORE EXPERTS WOULD BE "HOW AND WHICH METHOD CAN BE USED TO IMPOSE CRIME AND FAULT TO THE CORPORATES? SHOULD IT BE REALIZED THROUGH TRANSFERRING FAULT FROM LEGAL PERSON TO CORPORATE BODY? OR DO WE SEARCH FOR FAULT ELEMENT AND CONSEQUENTLY CRIME REALIZATION INSIDE THE CORPORATE BODY AND ORGANIZATION? IN OTHER WORDS, SHOULD WE ACT DIRECTLY OR INDIRECTLY TO IMPOSE CRIME TO THE CORPORATES?" THE ANSWERS ARE DIFFERENT DEPENDING ON THE BELIEF OR DISBELIEF IN WILL AND MIND IN CORPORATE BODIES. WHEN THE CORPORATES WERE CONSIDERED AS ABSTRACT AND ASSUMED CREATURES RATHER THAN A INDEPENDENT WILL AND MIND, THE ALTER EGO THEORY APPEARED TO IMPOSE STRICT CRIMES TO CORPORATES.

IT WAS REALIZE SINCE THE STRICT CRIMES DO NOT REQUIRE MENTAL ELEMENT AND MAY BE IMPOSED THROUGH EMPLOYEES' BEHAVIOR AND IN AN INDIRECT WAY.

THE THEORY WAS USEFUL BUT INSUFFICIENT. CONCERNING THE GREAT NUMBER OF CRIMES WITH THE NEED FOR MENTAL ELEMENT INCLUDING TAX FRAUD, DOCUMENT FRAUD AND INTENTIONAL MURDER THE THEORY WAS NOT RESPONSIVE. IN THE PASSAGE OF THE TIME, MORE EFFECTIVE INSTANCES OF THE CORPORATES ACTIVITIES IN VARIOUS ASPECTS OF THE SOCIAL LIFE APPEARED AND THEIR ROLE IN INDUSTRIAL, ECONOMICAL, POLITICAL AND CULTURAL DEVELOPMENTS BECOME MORE OBVIOUS THAN EVER. IN THIS WAY, THE THEORY OF BEING ASSUMPTIVE ENTITIES REPLACED BY MORE MODERN THEORIES TO IMPOSE CRIMES AND CRIMINAL LIABILITIES TO THE CORPORATES DIRECTLY WITH REGARD TO THE MATERIAL AND MENTAL ASPECTS IN CORPORATE CULTURE. ACCORDING TO VICARIOUS LIABILITY, THE CORPORATE ENDURES LIABILITY OF THE RESPECTIVE EMPLOYEES, BUT DIRECT LIABILITY THE CRIMINAL INDIVIDUAL WOULD BE LIABLE. IN THIS REGARD, THE AGENCY DOCTRINE WAS INTRODUCED IN ENGLAND TO INTERPRET MENTALITY OF MANAGERS AND HIGH RANKING EMPLOYEES AS CORPORATE BODIES' ACTIVITIES AND MENTAL MANNER, AIMING AT IMPOSING LIABILITY. ACCORDINGLY, THE CORPORATE BODY WOULD BE LIABLE FOR CRIMES WHICH REQUIRE MENTAL ELEMENT.

BELIEVING IN CORPORATES ABILITY TO COMMIT A CRIME, THE THEORY EXPANDED THE RANGE OF CORPORATES' CRIMINAL LIABILITY IN ONE HAND, BUT IT NEEDS RESTRICTIVE MENTAL ELEMENT SINCE IT ACCOUNTS JUST ON HIGH RANKING EMPLOYEES AND MANAGERS. THEREFORE, IT IS NOT EFFICIENT IN TREATING THE GREAT CORPORATIONS WITH NUMEROUS BRANCHES AND SECTIONS, BECAUSE THEY DIVIDE DUTIES AND THE MIDDLE MANAGERS AND NON-TOP MANAGERS ARE ALSO AUTHORIZED TO DECIDE, WHILE THEY HAVE BEEN IGNORED BY THE THEORY.

ANOTHER APPROACH TO INTERPRET CORPORATE BODIES CRIMINAL LIABILITY IS AGGREGATE THEORY, BASED ON WHICH IT IS NOT NECESSARY TO ASSUME A CRIMINAL INDIVIDUAL TO IMPOSE THE FAULT TO THE CORPORATE, AND VARIOUS INDIVIDUALS' BEHAVIOR AND MENTAL SITUATIONS MAY CAUSE TO CORPORATE TO BE ASSUMED AS LIABLE. AGAIN THE CRIME CAN BE IMPOSED TO DIRECTLY TO THE CORPORATE BODY. AMONG THE STRENGTHS OF THE THEORY, ONE MAY POINT TO IMPOSING CRIMINAL LIABILITY TO THOSE GREAT COMPANIES WHICH DISTRIBUTE DUTIES AND AUTHORITIES TO DIFFERENT SECTIONS AND BRANCHES.

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THE NEXT THEORY IS THE SUPERIOR RESPONDEAT WHICH IS BASED ON AGENCY DOCTRINE AS IN VICARIOUS THEORY. THIS THEORY IMPOSES BOTH THE MATERIAL CRIMES AND THE CRIMES REQUIRED MENTAL ELEMENT TO CORPORATES AND EXTENDS THEIR LIABILITIES, WHILE THE VICARIOUS LIABILITY AT THE PRIMARY STAGE IMPOSED JUST MATERIAL CRIMES TO THE CORPORATES. AT THE SAME TIME, THIS THEORY ASSUMES SOME CONDITIONS FOR IMPOSING LIABILITY TO CORPORATE BODIES INCLUDING: THE CRIME OF THE AGENT HAS BEEN COMMITTED IN THE FRAMEWORK OF THE EMPLOYMENT DUTIES AND BEING BENEFICIAL FOR THE CORPORATE; THIS MAKES THE LIABILITY DOMAIN MORE EXTENDED THAN IN VICARIOUS THEORY. ALTHOUGH THIS THEORY SEEMS TO BE MORE COMPREHENSIVE THAN VICARIOUS LIABILITY, ITS MAIN WEAK POINT IS BEING RESTRICTED TO THE TWO CONDITIONS AND THAT IT DOES NOT POINT TO CRITERION OF AWARENESS AND LACK OF POWER TO PREVENT THE CRIME. AS A RESULT, ANOTHER THEORY OF POWER AND ACCEPTANCE WAS INTRODUCED. ACCORDING TO THE THEORY, THE VIOLENCE OF THE EMPLOYEE OR THE AGENT OF THE CORPORATE BODY MAKES IT LIABLE WHEN THE CORPORATE IS ABLE TO BE AWARE OF THE OFFENCE OR PREVENT IT. AS WE MENTIONED, THE THEORY IS MORE LOGICAL AND PERFECT THAN THE SUPERIOR RESPONDEAT THEORY.

FINALLY, ANOTHER FORM OF DIRECT LIABILITY HAS BEEN CONSIDERED BY SOME JUDICIARY SYSTEMS WHICH ASSUMES THE CORPORATE BODY'S LIABILITY BASED ON THE CORPORATES POLICY. OTHER THEORIES BELIEVE IN TRANSFERRING THE MEMBERS' FAULT TO THE CORPORATE, BUT THE POLICY-BASED LIABILITY SEARCHES FOR FAULT INSIDE THE CORPORATE AND THE RELATED STRUCTURE.

THIS THEORY ASSUMES THE CORPORATE LIABLE IF PROGRAMS, PLANS AND ORGANIZATIONAL CULTURE EXPOSE THE CORPORATE AT CRIME RISK, WHILE THEY ARE RESPONSIBLE FOR LONG TERM PLANS AND DECISION MAKING.

ADOPTING A REALISTIC APPROACH IS ONE THAT ALLOWS TRANSFERRING LIABILITY FROM MEMBERS TO CORPORATE AND SEARCHES LIABILITY INSIDE THE CORPORATE BODY AS AN INTENT ELEMENT. THEREFORE, THE FIRST MODEL IS MORE APPROPRIATE TO IMPOSE LIABILITY IT IS POSSIBLE TO TRANSFER THE CRIMINAL INTENT AND BEHAVIOR OF THE CORPORATE TO THE RESPECTIVE MEMBERS, AND THE SECOND MODEL FOR THE CASES WITH DIFFICULTY OR IMPOSSIBILITY OF DETECTING THE GUILTY INDIVIDUALS.

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