



Judicial Approach Towards Corporate Criminal Liability

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ABSTRACT

Corporation has a separate legal entity being the artificial person. Enjoying all rights, privileges and liabilities distinct from those of its members, it is not subject to criminal law like natural person. But the criminal liability of a corporation arises when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. From the various judicial it is inferred that a corporation cannot be prosecuted for such an offense as it cannot possess mens rea, an element of an offence, but can be prosecuted with fine.)

KEYWORDS

Corporation is a separate legal entity having its own rights, privileges and liabilities distinct from those of its members. With the advent of the new trade regime globally, national laws are being changed to empower corporations with the right to hire and fire at will, there by claiming first right over natural and community resources. At the same time, the Corporation is also criminally liable for any act committed by an employee as long as that act is committed within the scope of employment. Corporate bodies are more dishonest and deceitful than individuals because they know their vulnerability towards punishment is limited. The classical approach was that the corporate acts through its directors and officers should not attract criminal liability. Major hurdles that faced the attribution of criminal liability on corporate were factors such as artificial juristic personality and absence of *mens rea* on the part of the corporate. "Corporate bodies are more corrupt and profligate than individuals, because they have more power to do mischief, and are less amenable to disgrace or punishment. They neither feel shame, remorse, gratitude nor goodwill" – Hazlitt.

The term *person* has been defined in Section 11, I.P.C., and the same is *in pari materia* with Section 3(42) of the General Clause Act, 1897. Obviously, the definition is inclusive. As per the definition, the word *person* includes any company or association or body of persons, whether incorporated or not. While interpreting these provisions, the Courts have held that the State and its instrumentalities are juristic persons. The legal position with respect to corporate criminal liability, in England and the United States has now crystallized to leave no manner of doubt that a corporation would be liable for crimes of intent.

International scenario: - Large multinational corporations have come to dominate the national and global economic scene. While analysing the corporate criminal liability, it is pertinent to highlight the judicial approach towards this in other countries. In the year 1909, the United States Supreme Court in *New York Central & Hudson River Railroad Co. v. United States* stated the principle thus:-

"It is true that there are some crimes which, in their nature, cannot be committed by corporations. But there is a large class of offences, of which rebating under the federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. If it were not so, many offences might go unpunished and acts be committed in violation of law where, as in the present case, the statute requires all persons, corporate or private, to refrain

from certain practices, forbidden in the interest of public policy. xxx.....".

The aforementioned legal analogy was reiterated by Lord Holt and opined that 'a corporation is not indictable, but the particular members of it are'. This rule applies as well to acts of misfeasance as to those of nonfeasance, and it is immaterial that the Act constituting the offence was *ultra vires*. It has been held that a *de facto* corporation may be held criminally liable'. In case of torts, corporations are liable, civilly or criminally, only for the acts of their agents who are authorized to act for them in the particular matter.

"A corporation may be criminally liable for crimes which involve a specific element of intent as well for those which do not, and, although some crimes require such a personal, malicious intent, that a corporation is considered incapable of committing them, nevertheless, under the proper circumstances the criminal intent of its agent may be imputed to it so as to render it liable, the requisites of such imputation being essentially the same as those required to impute malice to corporations in civil actions."

The Courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company / body corporate, i.e., the person or group of person that guide the business of the company, would be imputed to the corporation.

The principle has been reiterated by Lord Denning in the case of *H.L.Bolton (Engg.) Co. Ltd. v. T.J.Graham & Sons* in the following words:-

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company..... That is made clear in Lord Haldane's speech in *Lennard's Carrying Co. Ltd. Vs. Asiatic Petroleum Co. Ltd.* So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty." The aforesaid

principle has been firmly established in England since the decision of House of Lords in *Tesco Supermarkets Ltd. v. Nattrass*

From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. *Mens rea* is attributed to corporations on the principle of 'alter ego' of the company.

Indian approach:- So far as Indian judicial approach towards the culpability of the artificial legal entity is concerned, the Hon'ble Supreme Court in *Kalpanath Rai v. State*, a company, charged under the Terrorists and Disruptive Activities Prevention ("TADA") Act, was alleged to have harboured terrorists. The trial court convicted the company of the offense punishable under section 3(4) of the TADA. On appeal, the Indian Supreme Court referred to the definition of the word "harbour" as provided in Section 52A of the IPC and pointed out that there was nothing in TADA, either express or implied, to indicate that the *mens rea* element had been excluded from the offense under Section 3(4) of TADA. The Indian Supreme Court referred to its earlier decisions in *State of Maharashtra v. Mayer Hans Georg* and *Nathulal v. State of M.P.* and observed that there was a plethora of decisions by Indian courts which had settled the legal proposition that unless the statute clearly excludes *mens rea* in the commission of an offense, the same must be treated as an essential ingredient of the act in order for the act to be punishable with imprisonment and/or fine.

Subsequently, a Constitution Bench of the Hon'ble Supreme Court in *Standard Chartered Bank v. Directorate of Enforcement* had to consider whether a body Corporate can be prosecuted and punished for criminal offences. In the said case the Apex Court held that "there is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.

The Constitution Bench further rejected the argument that a company can avoid criminal prosecution in cases where custodial sentence is mandatory. The Constitution Bench further held that "In the case of Penal Code offences, for example under Section 420 of the Indian Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants plea is accepted then for the offence under Section 417 IPC, which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted

ed as there is a mandatory sentence of imprisonment..."

Rejecting the ratio of *Velliappa Textiles* case the Apex Court observed: "As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person.... We do not think that there is any blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment".

It is clear that Indian courts were of the opinion that if *mens rea* is an element of an offense, a corporation cannot be prosecuted for such an offense as it cannot possess *mens rea*. The 41st Law Commission gave a report suggesting amendment in the penal provisions and providing for substitution of imprisonment with fine in case of offender being a body corporate. But till date, no such changes have been made. However, instances of Criminal liability of Corporations can be found in Sections 14, 86, 127, 147, 172, 392, 450, 451 etc of the Indian Companies Act, 2013 wherein only the officials of the company are held liable and not the company itself. The various sections of the IPC provide that direct compulsory imprisonment does not take a corporate into account since such a sanction cannot work against the corporation.

Conclusion:- To conclude, it may be said that corporate criminal liability has been an important issue on a legal agenda for a long time. Since the corporation is not a natural person, it cannot be subject to imprisonment like natural person. But it is now a settled principle that corporations are liable for criminal offenses and can be prosecuted and punished, at least with fines.

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