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## RESEARCH ARTICLE

### CRIMINAL LIABILITY OF THE CORPORATE ENTITY; ITS RIGHTS AND LIABILITIES UNDER THE INDIAN CONSTITUTION

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#### ABSTRACT

*“For a Corporation to be convicted of a crime, the prosecution must prove that one or more agents committed all elements of the crime. This is relatively easy to do if a crime has occurred in a small organization, but the structure of large organization can make prosecution difficult, particularly where mensrea is an element of the crime. Where evidence of multiple guilty agents exists, the defense can exploit this ambiguity to create reasonable doubt as to each agent”*

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#### INTRODUCTION

A company is the creation of law. It is not a human being but is an artificial person. On incorporation, the company acquires a separate legal entity distinct from and independent of its members. A shareholder can be the director, creditor of the company, office bearer of the Trade union etc. all at the same time. A shareholder can not be held personally liable for the acts of omission and commission of the company, even though he holds almost the entire share capital of the company. This principle of separate legal entity of the company was propounded by the House of Lords in the case of *Salomon v/s Salomon*.<sup>1</sup> The court held that the fact that all the members were from one single family had no bearing on the validity of the company, and hence a company has its own existence, separate and distinct from its members.

#### Concept of Corporate Criminal Liability

Criminal Liability is attached to only those acts in which there is violation of Criminal law. The basic rule of criminal liability revolves around the basic Latin maxim “*acts non facit ream, nisi mens sit rea*.”<sup>2</sup> Corporate crime refers criminal practices by individuals that have the legal authority to speak for a corporation or company. These can include presidents, managers, directors, and chairman, sales people, agents or any one within a company that has authority to act on behalf of them.<sup>3</sup> Corporations can be held criminally responsible for a

wide variety of crimes like Contempt in disobeying decrees and other court orders,

- ◆ Conspiracy,
- ◆ Maintaining public nuisance,
- ◆ Violation of consumer protection laws,
- ◆ Selling, exhibiting obscene matter,
- ◆ Frauds,
- ◆ Extortions,
- ◆ Anti trust violations etc.

Most of these crimes are economically motivated where the offence is commercial and motivated by a desire to enhance profits.<sup>4</sup> Corporate accountability refers to being accountable to the stakeholder of the organization; these stake holders may include shareholder, employees, customers, suppliers, the local community, and the country that the firm operates in.<sup>5</sup>

#### Corporate criminal liability in India

As early as 1984, in the case of *Kusum products Ltd v/s S.K. sinha*,<sup>6</sup> it was clearly stated that, “A company being a Juristic person can not possibly be sent to prison and it is not open to court to impose a sentence of fine or allow awarding any punishment if the court finds the company guilty, and if the court does it, it would be altering the very scheme of the act usurping the legislative function.” But with the passage of time the court started taking a positive approach towards this issue. In the case of *Standard chartered Bank and Org v/s*

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<sup>1</sup>. *Salomon v/s Salomon & Co.*(1897)AC.22

<sup>2</sup>. Meaning: To make one liable, it must be shown that act or omission has been done which was forbidden by law and has been done with guilty mind.

<sup>3</sup>. William s. Laufer, *Corporate bodies and guilty minds: The failure of corporate criminal liability*, The university of Chicago press, London and Chicago, P. 3.

<sup>4</sup>. Dharm Veer Singh “Corporate criminal liability; A Jurisprudential and comparative approach” accessed online at <http://www.legalserviceindia.com/artical/car.dr.htm>.

<sup>5</sup>. Supra hote 3

<sup>6</sup>. (1984)149 ITR 250(Cal)

*Directorate of Enforcement and others*,<sup>7</sup> the court did not go by the literal and strict interpretation rule required to be done for the penal statutes and went on to provide complete Justice there by imposing fine on the corporate. The court looked into the interpretation rule that all penal statutes are to be strictly construed in the sense that they must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. Simultaneously it also considered the legislative intent and held that all penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment. It was of the view that here the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted.

In the case of the *Asst. Commissioner, Assessment II, Bangalore v/s velliappa Textiles Ltd.*,<sup>8</sup> the court held that corporate criminal liability cannot be imposed without making corresponding legislative changes. The court was of the view that the company could be prosecuted for an offence involving rupees one lakh or less and be punished as the option is given to the court to impose a sentence of imprisonment or fine, where as in the case of an offence involving an amount or value exceeding rupees one lakh, the court is not given a discretion to impose imprisonment or fine and therefore, the company can not be prosecuted as custodial sentence can not be imposed on it. It was expressly stated in this case that the company is liable to be prosecuted even if the offence is punishable both with a term of imprisonment and fine. In case the company is found guilty the sentence of imprisonment can not be imposed on the company and than the sentence of fine is to be imposed and the court has got the Judicial discretion to do so. This course is open only in the case where the company is found guilty, both sentence of imprisonment and fine are to be imposed on such person. There is no dispute that a company is liable to be prosecuted and punished for criminal offences.

### Recommendations of the Law commission

The law commission of India in order to clear the controversy observed in its 41<sup>st</sup>; report; As it is impossible to imprison a corporation practically the only punishment which can be imposed on it for committing an offence is fine. If the penal law under which a corporation is to be prosecuted does not provide for a sentence of fine there will be difficulty. In order to get over this difficulty the commission recommend that a provision should be made in the India penal code e.g. as section 62, chapter 3<sup>rd</sup>.relating to punishment, on the following lines In every case in which the offence is only punishable with imprisonment & the offender is the company or other body corporate or an association of individuals, it should be competent to the court to sentence such offender to fine only”

### 47<sup>th</sup> report of Law commission of India

When there were no findings on the earlier report, the commission again in its 47<sup>th</sup> report observed that, “In many of the acts relating to economic offences, imprisonment is mandatory. Where the connected person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases it shall be competent to the court to impose a fine. This difficulty can arise under the penal code also but it is likely to arise more frequently in the case of economic laws. We therefore recommend that the following provision should be inserted in the penal code as say section 62.

- a) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.
- b) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation it shall be competent to the court to sentence such offender to fine.
- c) In this section, “corporation” means an incorporated company or other body corporate, and includes a firm and other association of individuals. The recommendations of the law commission focus on the gaps left by the legislature which renders it impossible for a court to convict a corporation where the statutes mandates a minimum term of imprisonment and fine. The recommendation seeks to empower the court with the discretion to sentence an offender to fine only, where the offence is punishable with imprisonment, or with imprisonment and fine. However due to in action on the part of legislatures, the bill prepared on the basis of the recommendation did not fructify into law and lapsed.

### Rights and Liabilities under the Indian Constitution

Although a company is a legal person, it is not a citizen either under the Constitution of India or the Citizenship Act, 1955. Thus a company has a nationality but no citizenship. This difference of status is important because certain fundamental rights are available to citizens only. In *State Trading Corporation of India v. CTO*,<sup>9</sup> the supreme court of India held that a corporation cannot claim the status of a citizen under the constitution of India. Thus, under the Constitution, a corporation has no fundamental rights which are expressly available to citizens only. It can, however, claim the protection of these fundamental rights which are available to all ‘persons’, whether citizen or not.<sup>10</sup> Besides certain fundamental rights which are available to all ‘persons’, including a corporate entity, a company also enjoys the protection of various constitutional rights as provided under the constitution. For instance, a company has a constitutional right to hold and enjoy its property. Article 300A of the constitution confers a right on all persons to hold and enjoy their properties. Thus a company cannot be deprived of its property save by authority of law. Any violation of this right of the company can be challenged in a court of law. In view of

<sup>7</sup>. (2005) 4 Comp LJ 464 (SC)

<sup>8</sup>. (2004) 1 Comp LJ 21 (SC): AIR 2004 SC 86 : 2004 cri:LJ 1221.

<sup>9</sup>. AIR 1963 SC 1811

<sup>10</sup>. Right to equality under article 14 of the constitution

the interpretation given to the word 'law' by the supreme court in *Maneka Gandhi v. UOI*,<sup>11</sup> a law depriving a company of its property must be fair, reasonable and just. An arbitrary and unreasonable law is vulnerable to attack under article 14 of the Constitution and is liable to be struck down. In *Bhavnagar University v Palitana Sugar Mills (P). Ltd.*<sup>12</sup> the Supreme Court held that an owner of a property, subject to reasonable restrictions, which may be imposed by the Legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode or manner laid down under the statute would not be presumed.

In *Dharam Dutt v. UOI*<sup>13</sup>, the Supreme Court held that the protection of article 300A is available to any person, including a legal or juristic person and is not confined only to a citizen. However, the same cannot be sought to be enforced by a petition under article 32 of the Constitution, since it is not a fundamental right but merely a constitutional right. Similarly, article 301 of the Constitution confers on a company a right to have a free trade, commerce and intercourse throughout the territory of India. This right, however, is subject to the provisions of article 302 to 305 of the constitution. Thus, so long a company is carrying on its business in accordance with the law, its business activities cannot be interfered with. A right without restrictions or/and limitations cannot be visualized.

Thus, by its very nature a right is non-absolute in nature and is subject to various well-defined parameters. In a civilized society one cannot imagine a situation where rights are conferred without limitations. This is so because law has to perform various social functions also which are directed towards the welfare of human beings at large. Thus, conferment of rights without limitations may create chaos within the legal system and may disrupt the normal functioning of the society. A company possessing various fundamental rights enjoys the same subject to their restrictions and limitations. Similarly the constitutional rights of a company are also subject to the express or/and implied restrictions contained therein. Thus, a company enjoys various rights subject to their restrictions and limitations. It must be noted that the corporations deemed to be 'state' within the meaning of Article 12 of the Constitution and acting as agency of the government, would be subject to the same limitations in the field of Constitutional law as the government itself, though in the eyes of law they would be distinct and independent legal entities.

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<sup>11</sup>. AIR 1978 SC 597

<sup>12</sup>. AIR 2003 SC 511

<sup>13</sup>. 2003(10) SCALE 141