

" CRIMINAL LIABILITY OF CORPORATIONS"

BY

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I: INTRODUCTION

The evolution of corporate responsibility is a striking instance of judicial change in the law. At first it was thought that a corporation was not at all indictable and lay quite outside criminal law. It was believed that if a crime was committed by the order of corporation, action was taken against that person in his personal capacity and not against the corporation as itself a guilty person. This rule has slowly been eroded and replaced by a wide measure of responsibility.

The reasons for the ~~xx~~ original rule were both substantive and procedural.

II: EARLY LAW

A: SUBSTANTIVE

B: PROCEDURAL

A: Substantive:

It was considered that a corporation having no muscles could not act except through human beings. And such human beings were thought to be only servants of its master corporation. So the responsibility of the corporation could not be other than vicarious. But at common law there was generally no vicarious responsibility in crime.

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It was urged, observes Kenny ' that a corporation as it had no actual existence, could have no will, and

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1. Outlines of Criminal Law.

therefore could have no guilty will. It was further urged that even if legal fiction which gives to a Corporation an imaginary existence may be stretched so far as to give it also an imaginary will, yet the only activities that could be ascribed to the fictitious will thus created ~~must be such as~~ are connected with the purposes which it was created to accomplish. If so, it could not cover a crime, for any crime would be ultra vires. Moreover, a corporation is devoid not only of mind, but also of body, and therefore incapable of the usual criminal punishment.'

B: PROCEDURAL :

On a trial, on indictment, the party charged had to be personally present. This was impossible for corporation.

Another form of procedural difficulty was in respect of punishment. A corporation could not be subjected to bodily punishment. "what" said counsel in the Quo warranto case (1682 8 St.Tr.) "must they hang up the common seal"?

III : C H A N G E S

A: SUBSTANTIVE :

B: PROCEDURAL :

A: SUBSTANTIVE

The substantive difficulties have been gradually removed to some extent. It was held in the case of BIRMINGHAM & GLOBULSTER KY; (1842) 3 Q.B.231, that there is no difficulty in holding a corporation responsible. It was observed that if a statutory duty is imposed upon a corporation, and not performed the corporation can be convicted of a statutory misdemeanor. This argument is supported by the consideration that where the duty is imposed solely on the corporation, there can, in general, be no other remedy than indictment of the corporation, for no individual person would be in breach of legal duty.<sup>2</sup>

It is also said that when corporations have become so numerous that to leave them without criminal liability will amount to expose great danger to society.

It was further held in R.V.G.N. of England Rly (1846) 9 Q.B.315, that an incorporated company could be indicted for misfeasance, just as in cutting through and obstructing a highway, it could not be indicted for treason or felony or offences against the person. Therefore it is quite clear that in the ordinary case of a duty imposed by a statute of the breach of the statute is a disobedience to the law punishable in the case of a private person by indictment, the offending corporation can not escape from the consequences which would follow in the case of an individual by showing that they are corporation. That seems to be common-sense and good law. Lord Blackburn said in the case of Pharmaceutical Society v. London Provincial Supply Association, 4 Q.B.413, "but I may also say now, in order to avoid coming back to it that I do not feel the least difficulty arising from what seems to have troubled some of the learned judges in the court below. If this word person does include a corporation-I quite agree that a corporation can not, in one sense commit a crime-a corporation can not be imprisoned, if imprisonment be the sentence for the crime a corporation can not be hanged or put to death if that be the punishment for the crime, and so in those senses a corporation can not commit a crime. But a corporation may be fined and a corporation may pay damages, and therefore I must totally dissent, notwithstanding that Bramwell, L.J. said or is reported to have said, upon the supposition that a body corporate or a corporation that incorporated itself for the purposes of publishing a news paper could not be tried or fined or an action for damages brought against it for libel or that a corporation which commit a nuisance could not be convicted of the nuisance or the like....." However, this opinion was later accepted by the court of appeal in the case of Triplox Safety Glass Co. v. Lancegay Safety Glass Co. Ltd. (1939) 2 Q.B. 395.

### IMPACT OF LAW OF TORT

The law of Tort of that time has also influenced the theory of criminal liability of Corporations. The reason is that an important development in the theory of corporate liability had been taking place in the law of tort. The original view that a corporation could not act personally, but only through servants was abandoned in the law of Tort through a legal fiction.<sup>3</sup> This involved distinguishing between

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3. Glanville Williams - Criminal Law.

inferior and superior servants of a corporation. It means where a tort was committed by an inferior servant, the liability of the corporation was still vicarious. But where it was committed by a director or other member of the governing body, the liability of the corporation was regarded as personal. In other words the same as the liability of a human being for his own act.

#### ALTER EGO DOCTRINE

The acts of the "organs"<sup>4</sup> of the corporation were attributed to the corporation and treated for legal purposes as though they were the acts of the corporation itself. Viscount Macdougall L.J. expressed the doctrine in the leading case *Lennard's Tarring Co., Ltd. v. Asiatic Petroleum Co. Ltd.* (1915) A.C. 713, "A Corporation is an abstraction. It has no mind of its own any more than it has a body of its own, its acting and directing will must consequently be sought in the person of some body who for some purposes may be called an agent, but who is really the directing mind and will of the corporations, the very ego and centre of the personality of the corporation. That person may under the directions of the share holders in general meeting; that person may be the board of directors itself or it may be and in some companies it is so, that, that person has an authority-co-ordinate with the board of directors given to him under the articles of association and is appointed by the general meeting of the company and can only be removed by the general meeting of the company. And who is not a merely servant or agent for whom the company is liable upon the footing "respondeat superior", but some body for whom the company is liable because his action is the very action of the company itself". This principle had considerable effect upon criminal law. Although there is generally no vicarious liability in crime, people are responsible for their own act. By means of fiction a corporation could be accountable as for its own act, provided that the act was committed by an organ. This extension of the law took place in *L.C.R. Haulage, Ltd.*, (1944) A.C. 551. This case classified the doctrine of earlier decisions. It was held that a company could be included in an indictment for conspiracy (along with its managing director and others) the fraud of the directors being imputed to the company.

#### MLNS REA :

The other difficulty in the way of holding a corporation responsible in crime was that it had no mind and could therefore have no guilty mind. It could not be held accountable for any crime of intention knowledge or deceit.

4. The terms was used for the directors, managers, Secretary and so forth.... in *Daimler Co. Ltd. v. Continental Tyre Co. Ltd.* (1916) 2 A.C. 340.

But gradually these difficulties have also been surmounted. It was easily held in *Mousell Bros. v. L. & N. R.* (1917) 2 K.B. 863, that a corporation could be guilty of a crime of absolute prohibition and even of a crime requiring "mens rea" where the offence involved vicarious liability. Thereafter the "alter ego" doctrine enabled the state of mind of the "organ" to be regarded as the company's own. Therefore, now, the corporation may be convicted even of express statutory "mens rea" such as "willfully pretending" *Law Society v. United Service Bureau, Ltd.* (1934) 1 A.B. 348 or of an "intent to deceive", *D.P.P. v. Kent and Sussex Contractors, Ltd.* (1944) K.B. 146.

#### ULTRA VIRES:

The law of "ultra vires" also caused obstacles. According to Pollack a corporation could not commit a crime, for it can not authorise them. This reasoning is also now rejected. A corporation was convicted of disregarding an express statutory restriction as to the amount for which it could insure, *Harker v. Britannic Association Co. Ltd.* (1928) K.B. 766. But the general condition is that an act does not make the company liable unless it is done with the intention of advancing the company's business. Yet in *Moore v. Bressler Ltd.* (1944) 2 All E.R. 515; a company was convicted of making false tax returns with intent to deceive although its managers who actually made the returns intended to defraud not only the tax authorities but also the company. The facts were that the managers made certain sales of the company's stock and embezzled the proceeds, and then made the false return regarding purchase tax. The reason given was that the managers in making the returns were acting as officers of the company and within the scope of their authority, and that the company was therefore liable. This decision seems to be correct.

#### B: PROCEDURAL

#### PRESENCE :

The difficulty of the presence of the accused was removed by statute which allowed corporations to appear by agent.<sup>5</sup>

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5: (a) Criminal Justice Act, 1925.  
(b) Magistrates Courts Act, 1952.

PUNISHMENT :

No doubt, the corporation cannot be sentenced to death or imprisoned but it can be fined. In suitable cases statutes can provide for some disqualifications, for forfeitures and closures. Such punishments will certainly have deterrent effect upon the corporation which is convicted as well as others.

IV : CRIMES FOR WHICH A CORPORATION CAN BE CONVICTED.

Now, there is little restriction on the range of crimes for which a corporation may be convicted. The liability can be fixed for common law crimes as well as statutory crimes.

PERSON :

According to the Interpretation Act 1889, under section 2(1) and 19 the term "person" in statutes include a body corporate unless it appears otherwise. In the Indian Penal Code "person" has been defined in section 11 as follows:- "The word "person" includes any company or association, or body of persons, whether incorporated or not." At the same time section 2, I.P.C. provides that every person shall be liable to punishment under this code ..... It is quite clear that the criminal liability can be fixed upon corporations associations etc.

IN ENGLAND :

A company has been held liable as occupier in the case of *Evans & Co. Ltd. v. L.C.C.* (1914) 3 K.B.315. The liability has also been fixed for contempt of court 6 and libel. 7. However, the conviction and sentence can only be passed where the punishment is fine. The liability for conspiracy has also been fixed. 8. The company has been held responsible even where it was expressly provided that liability can only be fixed where there is "intent to deceive". 9. It was observed that the act of the managing director, were the act of the company and the fraud of that person was the fraud of the company.

IN INDIA :

The liability was fixed though being a corporation for infringing Krachi Port Trust by law 6 and 62, and it was

6. *Garnmond & Co. Ltd.* (1914) 2 A.B.866

7. *Triplex safety Glass Co. v. L.S. Glass Co.* (1939) 2 A.B.395

8. *A.C.K. Mulla & Co., Ltd.*

9. *D.P.P. v. Kent* (1944)

find with Rs.100/-. It was held that the act charged against the company should be one which is contemplated in the charter or articles of corporation as being capable of being performed by the corporation or must be intimately connected with its statutory and legal obligations. It was suggested that a corporation cannot commit offences relating to cruelty to animals. But if a statute directs that carriers should carry animals in a particular manner and that they should provide them with a proper amount of food and water etc., it would inflict a penalty in case the carriers fail to fulfil the obligation incurred. It was observed in Anath Bandhu v. Corporation of Calcutta, A.I.R. 1952 Calcutta 759, that there is nothing to prevent a court from inflicting a suitable fine. It was also laid down in State of Maharashtra v. Syndicate Transport Co. A.I.R. 1964 Bombay 195 that a corporate body ought to be indictable for criminal acts or omissions of its directors or authorised agents or servants whether they involve mens rea or not, provided they have acted or purported to act under authority of the corporate body or in pursuance of the aims or objects of the corporate body. The question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend upon the nature of the offence disclosed by the allegation, the relative position of the officer or agent with the corporation and other relevant facts and circumstances which could show that the corporation as such, meant or intended to commit that act.

Similarly the criminal liability can be fixed upon public corporations and even upon the state. Why the public corporation, should be treated differently? It goes against common sense. With the same view why the state should be exempted from criminal liability. No doubt there are certain technical difficulties but these problems can be overcome. The Supreme Court has decided in Director of Rationing and Distribution v. Corporation of Calcutta (A.I.R. 1960 S.C. 1355) that the State was not bound by a statute unless it was so provided in express terms or by necessary implication. But later on in State of West Bengal v. Corporation of Calcutta A.I.R. 1967 S.C. 997. The Supreme Court held that the State like any other individual is to be held criminally liable under a statute unless the statute either expressly or by necessary implication exempts the state from such liability.

#### 7: THE SOCIAL POLICY OF CORPORATE RESPONSIBILITY :

The basic principle of the criminal jurisprudence is that no crime should go unpunished. The purpose of punishment is twofold. Besides other things it exposes

the criminal also. Therefore since a corporation has a reputation, not only in law but in fact, it is proper that the judicial process should be able to bring to light any facts that are relevant to the reputation. The fact that the company is brought into the proceedings by name makes clear to the world that the higher levels of the company's organization are involved.

Moreover, the big officers who participate in the affairs of a corporate enterprise generally have a spirit of loyalty to the enterprise. This feeling may cause them to alter their conduct when the enterprise is adversely affected by the sentence of a criminal court. Either the wrong doer himself may mend his ways, or those who are placed over him may control or dismiss him in order to prevent a repetition. In this way it will have a preventive effect upon the corporations from committing the crimes and the society will be protected.

#### VI : SUGGESTIONS AND CONCLUSION

The fundamental doctrine of criminal jurisprudence is that no crime should go unpunished. So, it is altogether incomprehensible that when a crime is committed by an individual the liability is fixed and when the same crime is committed by a corporate body the liability may not be fixed. And that also because of some technical grounds. That is why revolutionary changes have been made in the legal philosophy in order to fix liability on corporations.

The society is fast in-aurially developing and so many businesses of every kind are carried on by the ordinary corporations, and public corporations. The state is also engaged in multifarious activities connected with the welfare of the society. If the criminal liability is not fixed upon them, those statutes which protect society will automatically be ineffective. On the other hand those will be encouragement for the disobedience of law.

In England now the liability is fixed for common law crimes as well as statutory crimes. In India as there is no common law as such the liability is fixed under General criminal law and special criminal law. But some times the difficulty arises where there is punishment of imprisonment only. In such cases suitable amendments should be made in the Indian Penal Code. In the state of Maharashtra v Syndicate Transport Company A.I.R. 1964 Bombay 195, it was held that in this case the company can not be convicted because cheating under section 420 I.P.C. the punishment is of imprisonment. There is no doubt that cheating can be committed by corporations therefore the punishment of fine should also be provided. Similar changes are necessary in many other provisions of the Indian Penal Code. For



example a corporation may be convicted for false evidence but it cannot be sentenced under section 193 I.P.C. as there is punishment of imprisonment and fine.

There is another submission in this regard. In certain establishments just as Cinema houses and hotels paid toughs are employed to safeguard their interests. And some times there are quarrels between these toughs and other persons with the result that hurts are caused by these toughs so if these establishments are corporations why the liability should not be fixed upon such corporations. There may be sentences of fine only. And out of such fine compensation may be paid to the parties injured. It has already been submitted that other sentences may also be imposed according to the facts and circumstances of the cases. Just as some disqualifications, forfeitures and closures. And for this suitable changes should be made in the substantive as well as procedural law. All these submissions are made with the view that no crime should go unpunished whether it is committed by a natural person or an artificial person.

