

Seminar on "Criminal Law" at Dharwar  
(December 17-22, 1978)

CRIMINAL LIABILITY OF CORPORATIONS

By

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Before I embark upon the discussion of the subject 'Criminal Liability of Corporations' I would like to analyse both the concepts i.e. 'Corporations' and 'Criminal Liability'. What is corporation? In order to understand this concept we have to look to various definitions given by many prominent jurists.

In the words of Salmond, "a corporation is a group or series of persons which by a legal fiction is regarded and treated as itself a person".<sup>1</sup>

Gray has defined corporation in the following words:

"A corporation is an organised body of men to which the state has given powers to protect its interests, and the wills which put their power in motion are the wills of certain men determined according to the organisation of corporation"?

Thus it appears from these definitions that corporation is a juristic person to which law attributes personality. Corporation is a usual form of juristic person. On further analysis of corporation we find that firstly, corporation is a body of human beings writing for the purpose of forwarding certain of their interests; secondly, this body must have organs through which it acts. So, in brief it must be an organised body of men whose interests must be protected by men. In order to grant this protection, it is essential that legal rights must be created and the organisation must get the State recognition. Corporation are of two kinds: (a) Corporation aggregate and (b) Corporation sole.

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1. Salmond : Jurisprudence, (11th edn.) P. 358.

2. Paton : Jurisprudence P. 554.

Joint Stock Company is an illustration of the corporation aggregate as it is an incorporated group of coexisting persons and corporation sole is the incorporated series of successive persons i.e. the Post Master General.

Corporation aggregate has several members at a time while the latter or corporation sole has only one member at a time and which is founded only in the words of Salmond, when the successive holders of some public office are incorporated so as to continue a single permanent legal person.

Jurisprudence has developed a theory that corporation in law is a legal entity entirely different from its members who form the corporation.

Thus the property of corporation is not in law the property of its members. A corporation cannot act except, through the agency of some of its representatives. The shareholders of a Company are not merely the persons for whose benefit it exists; they are those by whom it acts. Hence the representative and the beneficiaries of a corporation should not be confounded with its members.

The corporation may be created by an act, custom or agreement of members and it can be brought into extinction by dissolution i.e. the serving of legal bond by which all the members were united.

The corporation personality is called 'new bride' of new jurisprudence and many new ideas are creeping in the field of jurisprudence through the laws relating to corporation. Barley and Means extensive and significant research on 'Modern Corporations' has carried the view that "corporations have ceased to be legal devices". Their new concept of the corporations can be learnt from the following observation:

"The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern State. You further may see the economic organism, now typified by the corporation, not only an equal plane with the State, but possibly even superseding it as the dominant social organisation. The law of corporation, accordingly, might be considered as a potential constitutional law for the new economic State".

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3. Solomon Vs. Solomon and Co., 1897 AC; 22 H.L.  
Chiranjit Lal Chowdhary Vs. Union of India, A.I.R. 1951 S.C. 41 quoted by Dr. B.3.Sinha in his text book of Jurisprudence.

Liability of Corporations :

Corporations are legal persons. It means that they have rights and liabilities. So far as rights are concerned no difficulty is there in their enforcement; but the liabilities of corporation present very many complicated problems. The question is how the liability of an entity which is treated as person only by a fiction of law is to be enforced against it? The liability of a corporation can be studied under the following three heads which are as under :

1. Liability of Corporation in Contract.
2. Liability of Corporation for torts.
3. Liability of Corporation for Criminal acts.

The scope of the present paper is confined only to the criminal liability of corporations.

Criminal Liability of Corporations :

The earlier view in this regard was that a corporation cannot be made liable for crime. There are theoretical as well as procedural difficulties. How mensrea can be attributed to a body corporate? and how it can be punished? These were the glaring questions which presented difficulty in holding corporations liable for criminal acts. Procedural difficulties have been removed in England by Statutes and theoretical difficulties have partly been overcome by Statutes and partly by court decisions on the point. But present view is that corporations have been held criminally liable (even in cases where mens-rea is involved) for the criminal acts done by the persons acting on behalf of the corporation.

The vicarious liability has generally been rejected in criminal jurisprudence unless it is shown that master aided and abetted the crime of the servant. In the following cases master has generally been held vicariously liable for the acts of his servants. They are (i) criminal libel; (ii) contempt of court where the master is liable for publication of the material and no mens-rea is required; (iii) public nuisance; and (iv) statutory offences, depending on the interpretation of the statutes and specially if the test of mens-rea is not required.<sup>4</sup> In any case there is no difficulty in holding them liable for the offences for which a fine is an alternative punishment.

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4. Burke Vs. Levison, 1950; 2 All E.R. 306; Gerguson Vs. Weaving, 1951. 1 All E.R. 412.

In D.P.P. Kent and Sussex Contractors Ltd.<sup>5</sup>, the manager of the Company had submitted false returns for the purpose of obtaining petrol coupons. In this case, the court held the Company liable and said that through its manager the Company committed the offence.

It is now well settled and has become a general rule that a corporation is criminally liable for wrongful acts to the same extent as a natural person. It may be sued for libel, malicious prosecution and deceit etc. but (i) there are said to be exceptions in the case of an offence e.g. perjury or bigamy which 'from its very nature', cannot be committed by a corporation; and (ii) for practical reasons there is an exception in the case of crimes e.g. murder, where the only punishment the court can impose is corporal.

A corporation is a permanent unity standing over against the multitudinous and variable body of share holders whose rights and property it holds in trust.<sup>6</sup> The most important use of corporation is that it helps individual trader to do trade with limited liability.

In law, a corporation is a separate person - quite distinct from its members. There can be no doubt that the members, like the servants of a corporation might be successfully prosecuted for criminal acts performed or authorised by them but the question with which we are concerned here is the extent to which the corporate body itself may be held criminally liable for the conduct of its members, servants and agents.

The law developed on this subject is comparatively of more recent origin on account of the growth of the activities of limited liability companies. In the days of Lord Holt, a corporation was not indictable at all<sup>7</sup> but later on in the first half of the 19th century, it was held and decided that a Railway company might be convicted of a public nuisance by obstructing the Highway<sup>8</sup>. Here we can see that this is an offence to which the doctrine of Mens-rea does not apply and thus the problem of how a guilty mind may be attributed to an artificial person did not arise.

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5. (1944) K.B. 146.

6. (1944) 2 All. E.R. 515.

7. Anon (1700), 12 Mod. 559.

8. R.Vs. Great North of England Rly. Co. (1846), 9 Q.B. 325.

It also does not arise where a corporation is held liable for the acts of its servants and agents, in cases in which the doctrine of vicarious liability for crime applies to an ordinary individual. In Moussell Brothers Vs. London and North Western Rly. Co.<sup>9</sup> the appellants were held to have been rightly convicted of having given a false account of goods consigned for carriage with intent to avoid payment of tolls, when one of the Company's servants having been found to have had this intent.

Atkin L.J., said "Once it is decided that this is one of those cases where a principal may be held liable criminally for the acts of his servant there is no difficulty in holding that a corporation may be the principal. No mens rea being necessary to make the principal liable, a corporation is in exactly the same position as a principal, who is not a corporation".

It follows from the said judgment that wherever vicarious liability for crime exists in case of natural persons, there may also be corporate liability for crime. It has, therefore, been held and decided that a company is indictable for libel<sup>10</sup>, as this is an offence for which an individual may be vicariously liable subject to the provisions of S-7 of the Libel Act, 1843.<sup>11</sup>

<sup>12</sup>  
In R Vs. I.C.R. Haulage Ltd., however a company was held liable for the offence of conspiracy to defraud. Its Managing Directors and some others had conspired to practice fraud upon another company. It is such a crime to which the principle of delegation could hardly be applied in the case of an individual. The theoretical basis of this type of extended liability appears to be the acts and states of mind of its responsible servants may be treated as those of corporation itself.<sup>13</sup> Unlike vicarious liability for crime, corporate liability does not depend upon the delegation of an absolute duty. In case of responsible

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9. (1917) 2 K.B. 836; C & J cases.

10. Triplex safety glass Co, Ltd. Vs. Lancegay Safety Glass (1934) Ltd. (1939) 2 K.B.395; (1939) 2 All E.R., 613; 55 LQR, 484.

11. Before 1843 anyone could be prosecuted for libels published by his servants without his authority, but he is now exempted from this liability in the absence of authorisation or negligence on his part by S-7 of the Libel Act, 1843.

12. (1944) K.B.551; (1944) 1 All E.R.691; C&J cases; In this connection Director of Public Prosecutions Vs. Kent and Sussex Contractors Ltd. (1944) K.B.146 case may also be referred.

13. Lennard's Carrying Co. Vs. Asiatic Petroleum Co. Ltd. (1915) A.C.705 at 713-14 per Lord Haldane.

servants who is acting in the affairs of the Company, it is impossible to generalise with regard to the position of the Company. In Moore Vs. Bresler Ltd.<sup>14</sup>, a Company was held guilty of infringement of purchase tax regulations committed by a Sales Manager with the object of defrauding it. It is a case to which the doctrine of vicarious liability could have been applied if he had been employed by an individual.

There cannot be common agreement about the desirability of extending the sphere of corporate liability for crime and full implications of the principle just referred above, because the same has not yet been worked out by courts.

In the I.C.R. V Haulage case, though it was said that corporation is prima facie criminally liable to the same extent as an ordinary individual, two exceptions to this general rule were mentioned and it was also accepted that there might be others also.

The first exception was in respect of cases where from their very "nature the offences could not have been committed by a corporation as for example the offence of Perjury cannot be vicariously committed or bigamy an offence which a limited company, not being a natural person cannot commit vicariously or otherwise". The corporation cannot be indicted for perjury, the reason being that as given by the court for the act of the corporate representative in swearing a false oath and his guilty knowledge could not be attributed to the corporation, but it has been suggested<sup>14</sup> that a company whose governing body authorised one of its member to swear a false affidavit could be convicted of perjury. In the case of perjury in judicial proceedings the false statement must be made by a person who had lawfully sworn and a corporation could hardly be so described. But if its governing body were to authorise the making of a false statement on oath in court, a corporation might be convicted of subornation. Similarly there is another case, if a marriage bureau was managed by a limited company, whose Board of Directors knowingly negotiated a bigamous union, it is difficult to see why the company should not be convicted as an accessory to the crime of bigamy for a natural person may be convicted as an accessory to the crime of felony which he could not commit himself as principal in the first degree.

Let us consider the second exception to the general rule of corporate liability which was referred to in R Vs. I.C.R. Haulage Ltd., arises from the fact that "the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentence can be made".<sup>15</sup>

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14. Stephen, Digest of criminal law, 9th edn. P. 4.

15. (1941) K.B.; at P.554; (1944) 1 All E.R. at 693.

This second exception comprises offences of which murder is an example, for which the only punishment the court can impose is corporal. Same is the position in respect of all felonies and crimes of violence upto the beginning of the 19th century; and it was said in several cases that a corporation could not be indicted for such a crime.<sup>16</sup>

These dicta were acted upon by Finlay J. in R Vs. Cory Brothers and Company,<sup>17</sup> when he held that a Company which had authorised the erection of an electric fence on its property against which some one had stubled and been killed, could not be indicted for man slaughter or for the misdemeanour of setting up an engine calculated to destroy life with intent to injure a trespasser.<sup>18</sup> However, the court of criminal appeal has since said that if the matter came before it today, the result might well be different.<sup>19</sup>

Under S-13 of the criminal justice act, 1948, any court has power to fine a person convicted on indictment of a felony for which the sentence is not fixed by law, in lieu of or in addition to dealing with him in some other manner where as section 2(2) of the Interpretation Act, 1889 provides that in any statute the word 'person' shall include a body corporate, in the absence of a contrary intention. Hence, it is very doubtful whether there is now any general exception to the rule that a corporation is prima-facie always criminally liable even for all felonies and crimes of violence. For particular reasons there seems to be no doubt about the validity of the second exception and the first exception represents the law for the time being.

The position in India is not sound in this regard uptil now.

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16. R Vs. Birmingham and Goucester Rly. Co. (1842) 3 Q.B. 223 at P.236..

17. (1927) 1. K.B. 810.

18. Offences against the Person Act, 1861, S-31 (5 Halsbury's Statutes (2nd edn.) 798).

19. R. Vs. I.C.R.Haulage, Ltd.; (1944) K.B.551 at P.556; (1944) 1 All E.R.691 at P.694; C and J cases.

20. These doubts have been expressed by Rupert Cross & Philip Asterley Jones in their book 'An Introduction to Criminal Law (Fifth Edn.) at P.101-102.

