

Parliament enacted the major and essential environmental laws. That is: Environment (Protection) Act, 1986, Water (Prevention and control of Pollution) Act 1981, The Air (Prevention and Control of Pollution) Act, 1974, Factories (Amendment) Act 1986 *etc.* Enacting the statutes is not sufficient, the laws must strictly be implemented.

Environmental Impact Assessment (EIA)

EIA means the assessment and analysis of the potential impact of various forms of human activities on the environment. Before undertaking major development project, the Governmental authorities and project persons study the ecological conditions

Constitution of site appraisal committees: According to Section 41A the State Government shall appoint a site appraisal committee. If the committee feels at necessary it may recommend the application or modify

or reject it in the interests of the people and environment.

Precautionary approaches:- The Stockholm Declaration, Nairobi Declaration, Rio Declaration, UNEP suggested that every Municipal Government should take precautionary steps to protect the environment at the time of granting permissions to the industries. The permission must be established in a non-habitation areas. *i.e.*, far away from the population.

Environmental Audit : Every country have already established Audit System for its income and expenditure. Comptroller and Auditor General is appointed by Central Government of India to audit the accounts of it. There must be an organized environmental Audit System for each State and Centre. It effectively regulates the pollution. It gathers data, statistics *etc.*, all over the State and country. It is an effective measurement to check the environmental pollution.

PENAL LIABILITY OF COMPANIES IN INDIA

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A company is a legal person distinct from its members and capable of entering into contracts on its own behalf, of owning property and being subject to liabilities.

The rule that a company is a separate legal entity from its members was firmly established in the case of *Salomon v. Salomon and Company Limited*, (1897) A.C. 22, in which case a sole trader, *Salomon*, formed a limited liability company and transferred his business to it. There were six other shareholders in the company, each of whom owned one share each. The sale price of the business was paid partly in cash and partly by the creation

of a debenture over the company's assets. The company subsequently went into liquidation and the liquidator brought an action for a declaration that, firstly that the debenture in favour of *Salomon* was void and, secondly, that the company was sham because it was formed in order to enable *Salomon* to avoid his legal obligations whilst allowing him to enjoy the profits of the company. *Salomon* was held not personally liable for the full debts of the company and moreover the debenture issued to him was held to be valid. Thus the Court will not look at the motive behind the formation of the company once it has been properly registered unless

fraud or an illegal purpose can be shown. The company is at law a distinct entity from its subscribers, who are only liable to the extent of any amounts outstanding on the nominal value of their shares. (1897) A.C. 22

In India like a private individual a company or a corporation is liable under the General Law of Crimes. The Indian Penal Code under Section 2 says:

“Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India”.

(i) DEFINITION OF THE TERM ‘PERSON’ IN THE INDIAN PENAL CODE.

The Indian Penal Code, 1860 defines the term ‘persons’ as following:

“The word ‘person’ includes any company or association of a body of persons whether incorporated or not”.

(ii) LIABILITY OF THE COMPANIES UNDER THE INDIAN COMPANIES ACT, 1956:

Though a company incorporated under the Companies Act, 1956 is a juridical person (as distinct from a natural person which is eligible to sue and be sued under a law) it has been the policy of the State to make the person in charge of the affairs of the company vicariously responsible along with the company for any illegal act or omission involving a penal liability in which *mens rea* or guilty mind or intention is an ingredient.

The Indian Companies Act, thus lays down punishment for the offences committed against the provisions of the Act by the Companies or its officers. Most of the offences committed by the companies are punishable with fine.

Following are some of the offences which are punishable under the Indian Companies Act.

(i) *Issuing a false prospectus*: - Section 59J of the Indian Companies Act provides penalties for issuing a false prospectus.

(ii) *Mis-statement in Prospectus*: - Section 63 of the Indian Companies Act, 1956 deals with criminal liability for mis-statement in prospectus.

(iii) *Fraudulently inducing persons to invest money*: - Section 68 of the Indian Companies Act provides penalty for fraudulently inducing persons to invest money.

(iv) *Failure to send a copy of memorandum*: - A Company and its officers are liable to punishment of fine in case there is any default in sending to a member within seven days from the date of demand by the member a copy of the memorandum of association or the articles of association. (Section 39(2)).

(v) *Failure to inform the Registrar about the change in the nature of company*: - A Company and every officer of the Company in default is liable to fine of Rs.500/- per day for default in informing the Registrar that a private company has become a public company. (Section 43A).

(iii) OFFENCES BY COMPANIES PUNISHABLE UNDER THE SPECIAL LAWS ON SOCIAL AND ECONOMIC OFFENCES:

While the liability of companies for contravention of the Companies Act add the Rules made thereunder is governed by the provisions of the Companies Act and the rules made thereunder. The liability for any other wrong affecting the social and economic interests of the society is governed by the special law which deals with that particular wrong. The various statutes on social and economic offences have prescribed penalties for offences by Companies. A study of the following Statutes explains the rule of criminal liability of companies for various social and economic offences.

(i) Offences by Companies under the Prevention of Food Adulteration Act, 1954:

Section 17 of the Prevention of Food Adulteration Act, 1954 deals with the liability of companies for offences under the Act.

(ii) Offences by Companies under the Essential Commodities Act, 1955:

Section 10 of the Essential Commodities Act, 1955 penalizes the companies for contravening the provisions of the Act.

(iii) Offences by Companies under the Foreign Exchange Regulation Act, 1973:

The Foreign Exchange Regulation Act, 1973 which is an Act to consolidate and amend the law relating to regulating certain payments, dealing in foreign exchange and securities transactions indirectly affecting foreign exchange and the import and export of currency and bullion for the conservation of foreign exchange resources of the country and the proper utilization of some interest and the economic development of the country penalizes the companies for certain offences committed by them.

A similar provision figures in the Customs Act, 1962.

(iv) Offences by the Companies under the Customs Act, 1962.

The Customs Act, 1962 which is an Act to consolidate the provisions relating to sea, land and air customs into a single comprehensive measure contains provisions regarding offences by companies.

(v) Offences by Companies under the Gold Control Act, 1968:

The Gold Control Act was passed by the Union Parliament in the year 1968 to provide in the economic and financial interest of the community for the control of the production, supply and distribution, use and possession of the business in the gold ornaments, and

articles of gold and for matters connected therewith or incidental thereto.

Section 93 of the Gold Control Act, 1968 provides for liability of the companies for offences under the Act.

(vi) Offences by Companies under the Andhra Pradesh State Lotteries Act:

The Andhra Pradesh State Lotteries Act exempts certain lotteries from the purview of the Indian Penal Code. An authority specified by the Government as Licensing Authority may permit any person to conduct the business of lottery in the State of Andhra Pradesh. The persons so authorized have to observe the conditions laid down in the licence granted to them for the purpose. If a thing is done by them contrary to the conditions of the licence, they are liable under the provisions of the Lotteries Act. Similarly if a lottery is run without a licence contrary to the provisions of the Act, the person so conducting the lottery is liable to punishment the Act imposes liability on a natural person as well as a body corporate.

(viii) Offences by Companies under the Civil Rights Protection Act, 1955:

The protection of Civil Right Act, 1955, prescribes punishment for the practising of untouchability, for the enforcement of any disability arising therefrom and for matters connected therewith. If a person enforces disabilities against another person on grounds of untouchability, access to any shop, public restaurant, hotel or place of entertainment, or the use of any utensils, *etc.*, or practice of any profession or carrying of any procession or commits any of the offences specified under the Act, he is liable to punishment under the provisions of the Act. The Act penalizes not only natural persons, but also a body corporate.

In almost all the statutes referred to above the provisions with regard to Offences by Companies run on more or less the same

lines. The phraseology used is the uniform and the extent and ambit of the concept of liability introduced is common. Here is an extract from Section 14 of the Civil Rights Protection Act, 1955 to serve the purpose of an example:

“Section 14: Offences by Companies:

1. If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of such an offence.

2. Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed with the consent of any Director or Manager, Secretary or other officer, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:—For the purpose of this section:

- (b) A company means, a body corporate, and includes a firm or other associations or individuals.
- (c) Director in relation to a firm, means a partner in the Firm.

(IV) JUDICIAL INTERPRETATION OF THE RULE OF PENAL LIABILITY OF COMPANIES

The Criminal responsibility of a corporation is based on the principle of

Respondent Superior. This doctrine has been developed in English Corporate Criminal Jurisprudence case after case, and has been approved in India, in many cases.

It was held by the Bombay High Court in the *State of Maharashtra v. Syndicate Transport Co.*, AIR 1964 Bom. 19, that despite generality of the definition of a person given in Section 11 of the Indian Penal Code, a Corporate Body or a company shall not be indictable for offences which can be committed only by a human individual like treason, murder, bigamy, perjury, rape, *etc.*, or offences which must be punished with *imprisonment*. The Court proceeded to observe, “barring the exceptions, a corporate body ought to be indictable for criminal acts or omission of its Directors or authorized agent or servant, whether they involve *Mens Rea* or not, provided they have acted or have purported to act under the Authority of a Corporate Body or in pursuance of the aim and objects of the Corporate Body”. The question whether a Corporate Body should or should not be liable for criminal act resulting from the acts of some individuals must depend on the nature of the offence, disclosed by allegation in the charge-sheet, the relative position of the officer or the agent, *vis-à-vis*, the Corporate Body and the other relevant facts and circumstances which could show that the Corporate Body as such intended to commit that act.

In *Ananth Bhandu v. Corporation of Calcutta*, AIR 1952 Madras 45, where the Court of appeal held that a limited company could not be committed for trial on an indictment on the ground that under the Interpretation Act of England, the expression “*committed for trial*” used in relation to any person shall unless the contrary intention appear means, “*committed to prison with a view to being tried before a Judge or the Jury*” Justice Chander said that this interpretation of “*committed for trial*” has not found a place in the Indian law and in the Indian Law “*committed for trial for being prosecuted*” does not mean being actually

detained in a prison. He held that where they may be fined alone, there is nothing to prevent the application of criminal sections to the case of a limited company in realizing fine.

In *State v. Gendalal*, AIR 1950 Madhya Bharat 89, it was held by a Division Bench of Madhya Bharat High Court that the prohibition under Paragraph 14 of the Indoor Cotton Cloth and Yarn Control Order is absolute and if time barred cloth is found in possession in one of the partners of the firm and other partners even though they did not know that the time barred cloth was kept or stored in the shop and had no guilty knowledge, would still be liable. The Court held that the element of *mens rea* was ruled out by necessary implication of the statutory provision. Case Law was discussed at length by the Court and it came to the conclusion that the contravention of Cotton Cloth and Yarn Cloth Control Order pertaining to the limited class of cases where a particular intent or state of mind is not of the essence of the offence and the acts or defaults of the servants or of the agents, may make the master or principal liable though he was not aware of such acts or defaults.

In *Ananthram v. State*, AIR 1953 Orissa 233, an agent of the dealers sold the cloth without their knowledge at excess profit in contravention of the notification issued under Orissa Cotton Cloth Control Order. The Court said "there is no evidence in this case to indicate that the Petitioner 5, the agent of Petitioners 1 to 4 acted solely on his own responsibility or in contravention of any direction issued by these firms asking him not to charge excess profits. On the other hand, there is abundant evidence to show that the member of the firm clearly known that such an act was prohibited and was contrary to law. If they had issued instructions to their agents, not to charge excess profits, there may be a case for absolving them of the charge of excess profits. But in the absence of any evidence pointing to such facts, the only inference that one could possibly make

is that they are responsible for the excess price collected by their agents. In this case, it is clear that the Court found the partner guilty really on a finding of *mens rea* in the partner.

As already stated the tendency of the Court is not to hold a person guilty vicariously for the act of the agent or servant unless the provisions of the Statute rule out *mens rea*. As held in *Govind Prasad v. Board of Revenue*, AIR 1955 Madhya Pradesh 66, the well-established rule is that unless a Statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, the defendant could not be held guilty of an offence under a criminal law unless he has a guilty mind.

In *Manibai v. State of Maharashtra*, AIR 1974 SC 434, the question involved was whether *Manibai* (the appellant), who is a licensee of the shop from which the sample of coconut oil was taken and which on analysis was found to be adulterated could be prosecuted under the Prevention of Food Adulteration Act, 1954.

The Supreme Court held that for the sale of adulterated coconut oil by the co-licensee of the shop, the licensee who was not in charge of nor actually conducting the business carried on at the shop could not be held liable merely because she was the licensee of the shop. Even in case the business is carried on in the name of a Board or an Association of Individuals and the accused is a partner of that firm, or a member of that Association of Individuals, the accused will be liable under Section 17(1) of the Act for the sale which was made by a co-licensee only if it is shown that the accused was in charge of and was responsible for the conduct of the business. In the absence of such evidence, no criminal liability for the sale of adulterated article by the co-licensee could be fastened on *Manibai* under the provisions of the Act.

In the case of *Public Prosecutors v. Bangarappa Pullaiah*, 1974 CrL LJ 155 (AP), the issue for determination before the High Court of

Andhra Pradesh was whether in case of a partnership firm, one of the partners present in the shop at the material time and managing the affairs of the firm could be prosecuted without acting being taken against the firm and its partners. To this the Court answered in the affirmative. The Court observed.

“Where an offence is committed by the Company, every person who at the time the offence was committed was in charge of or responsible to the company for conducting its business, is also guilty of the offences.”

Section 17 of the Prevention of Food Adulteration Act stipulates that where an offence under the Act has been committed by a company, every person, who at the time the offence was committed was in charge of or responsible to the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It is clear from the above provision that even where an offence is committed by a company, every person who at the time the offence was committed who was in charge of and was responsible to the company for its business, is also guilty of the offence.

According to the explanation given under Section 10 of the Essential Commodities Act, 1955 a company includes a firm. If an offence is committed by a firm, then the firm is certainly guilty of an offence under Section 10 of the Essential Commodities Act, but it does not necessarily follow that every partner is guilty of the offence.

The power to detain persons is conferred by the Prevention of Black Marketing Act on State Authorities, when they are satisfied that it is necessary to detain a person who acts in a manner prejudicial to the maintenance of supplies of commodities essential to the community. The expression is so far as relevant means, “committing or instigating

any person to commit an offence punishable under the Essential Commodities Act, 1955”.

In *Kishan Lal v. District Magistrate, Indoor*, Excise and Food Adulteration Reports, 1983 Page 569, the question was whether for the fault of one of the partners all the three partners of the firm can be detained under the Prevention of Black Marketing Act.

One of the contentions, raised by the petitioners before the High Court in their writ petitions was that there was no material to show that Petitioners 2 to 3 had committed any contravention of the Essential Commodities Act. The Court accepted the contention and ordered their release. It was observed by the Court that the explanation to Section 3 of the Essential Commodities Act, defines the expression “act in any manner prejudicial to the maintenance of supplies of commodities essential to the community”.

The expression insofar as it is relevant means “committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955. According to the ground of detention, the act of showing false sale of kerosene was in contravention of the Madhya Pradesh Kerosene Dealers Licence Order, 1979 and was punishable under the Essential Commodities Act. Section 10 of this Act deals with offences by companies. According to the explanation given in this section, a company includes a firm, if the offence is committed by a firm, then it does not necessarily follow that every person is guilty of the offence. A partner is guilty of the offence only when he was “in charge of and was responsible to the firm for the conduct of the business of the firm.” There is nothing in the grounds to show that the Petitioners 2 to 3 were in charge of and were responsible to the firm for the conduct of the business. It would not, therefore, be concluded that they had committed any offence under the Essential Commodities Act.