

# CORPORATIONS' LIABILITIES FOR COMMISSION OF CRIMES

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## INTRODUCTION

*“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.<sup>1</sup>

## What do we mean by a corporate body?

A body which is granted a charter, recognizing it as a separate legal entity having its own rights, privileges and liabilities distinct from those of its members.<sup>2</sup> A company has none of features that characterize a living person, a mind that can have knowledge or intention or be negligent.<sup>3</sup> But company, being a body corporate can sue and be sued in its own name.<sup>4</sup>

A major part of our daily lives are influenced by corporate activities. With growing privatization, companies provide us with the basic necessities of life—from the food that we eat to the water that we drink. These companies also form an important part of our economy by generating wealth and providing employment to the population. With such influence to the country, it is certain that their powers will increase further in future. Like the actions of a corporeal person, the conduct of a corporation has consequences, and so we believe the law should set similar limits on the behavior of each.<sup>5</sup>

Nonetheless, great power brings great responsibility. Companies owe a duty to society.

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<sup>1</sup> Celia Wells, *Corporations And Criminal Responsibility*, 1. (2001).

<sup>2</sup> <<http://www.answers.com/topic/corporation>> Last accessed 10 December 2009

<sup>3</sup> Lord Reid in *Tesco Supermarkets Ltd. v Natrass* [1971] All ER 127.

<sup>4</sup> Avtar Singh's *Company Law* (14th Edition, Eastern Book Company ) 10.

<sup>5</sup> Lawrence Friedman, *In Defense Of Corporate Criminal Liability*, 23 Harv. J.L. & Pub. Pol'y 833.

They should be responsible towards the society so as not to adulterate food, pollute our environment, to provide a safe workplace and not to kill or injure people with their commodities and services.

It was in the common law countries like England, United States, Canada and India that the first attempt to impose corporate criminal liability was made.

## The Doctrine of Direct Liability – Theory of Corporate Organs

The doctrine of direct liability has been expressly developed for the purpose of imposing liability on corporations. It imitates the obligation of criminal liability on human beings. It personifies the legal body. It recognizes actions and thought patterns of certain individuals within the corporation called corporate organs who act within the scope of their authority and on behalf of the corporate body, as the behaviour of the legal body itself.<sup>6</sup> Hence, the name of the doctrine: the theory of corporate organs or the alter ego doctrine<sup>7</sup> referring to these individuals as the embodiment of the legal body. Hence, corporations can be made criminally liable for committing offences, akin to the liability imposed on a human perpetrator, subject to the natural limitations that follow from the character of the corporations as a legal personality.

The English law has greatly influenced law relating to corporate criminal liability in India. Previously 'corporations' were viewed as an opportune shield to elude liability. However, in our present penal framework, both the corporation and its officer can be made liable for an offence by the corporation. The Supreme Court recognized the need for proper laws relating to corporate criminal liability in the following terms:

"In India, the need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and under-takings as well as by Transnational Corporations. Many of these industries are engaged in hazardous or inherently dangerous activities which pose potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though working of such factories and plants is regulated by a 614 number of laws of our country, there is no special legislation providing for compensation and damages to outsiders who may suffer on account of any industrial accident."<sup>8</sup>

<sup>6</sup> Kunal Mehta, National Law University, Jodhpur. <[http://www.legalserviceindia.com/articles/cor\\_dr.htm](http://www.legalserviceindia.com/articles/cor_dr.htm)> Last accessed 8 December 2009

<sup>7</sup> <<http://law.jrank.org/pages/4268/Alter-Ego.html>> Last accessed 10 December 2009

<sup>8</sup> Singh.K.N.J, in *Charan Lal Sahu v U.O.I*, AIR 1990 SC 1480.



## CORPORATE CRIMINAL LIABILITY

### In England

Initially in England, the criminal statutes were written in terms of proscribing a particular act by a 'person' who acted as an impediment in attributing an actus reus to a company.

Lord Denning in *Botton Engineering Company Ltd. v. Grahm and Sons*<sup>9</sup> observed that 'a company, in many cases is linked to a human body. It has a brain and a nerve center, which controls what it does. It has also hands, which hold the tools and act in accordance with directions from the Cenozoic. 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 or will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.

Chief Justice Marshal in *Trustees of Dartmouth College v. Wood Ward*<sup>10</sup>, observed that a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of the law, it possesses only those properties which the charter of creation confers on it. This observation of Justice Marshal led to the concept that a corporation is an entity distinct from its members and officers, and with rights and liabilities of its own.<sup>11</sup>

Regardless of an earlier reluctance to punish companies, the recognition of the concept of corporate-criminal liability had its inception in the case of *Birmingham & Gloucester Railway Co.*<sup>12</sup>, where fine was imposed on a company for failure of fulfilling statutory duty. The procedural problem of a company not being a person was resolved by the British Parliament in 1889 through the Interpretation Act which stated that "*In the construction of every enactment relating to an offence punishable on indictment or on summary conviction whether contained in an Act passed before or after the commencement of this Act, the expression 'person' shall, unless the contrary intention appears, include a body corporate.*"<sup>13</sup>

<sup>9</sup> (1957, 1 QB 15) 9 CA.

<sup>10</sup> (1819) 17 US (4 wheat) 518.

<sup>11</sup> V K Aggarwal, 'Corporate Criminal Liability—The Issue Revisited In The Context Of Recent Supreme Court Cases', <[www.icsi.edu/webmodules/.../CORP.CRIMINALLIABILITY.pdf](http://www.icsi.edu/webmodules/.../CORP.CRIMINALLIABILITY.pdf)> Last accessed 9 December 2009.

<sup>12</sup> (1842) 3 Q.B. 223.

<sup>13</sup> Sec. 2(1), Interpretation Act, 1889.

Similarly, the Criminal Justice Act of 1925 removed the technical difficulties in putting a company on criminal trial.<sup>14</sup>

## In India

Like in England, in India also initially it was thought by the jurists that a corporation cannot be guilty of a crime, because a corporation cannot have a guilty mind. There was also a difficulty that a punishment of imprisonment could not be enforced against a corporation.<sup>15</sup>

In the statutes defining crimes, the prohibition is frequently directed against any person who commits the prohibited act, in many statutes the term - person is defined.<sup>16</sup>

Section 11 of the Indian Penal Code 1860 defines "*Person shall include any company or association or body of individuals, whether incorporated or not.*"

It is usually construed to include a corporation so as to bring it within the prohibition of the statutes and subject it to punishment.<sup>17</sup>

Section 2 of the Indian Penal code, 1860 states that: "*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.*"

Various kinds of punishments are mentioned under various statutes. Section 53 of the Indian Penal Code, 1860 states the punishments to which offenders are liable under the provisions of the Code are *death, imprisonment of life, imprisonment, forfeiture of property and fine.*

Hence we understand by reading these provisions that corporate criminal liability has an ingrained and acknowledged existence in the Indian criminal jurisprudence.

Corporate criminal liability or corporate crime is very difficult to define because this phrase in present day scenario covers wide range of offences. It can be defined as illegal act of omission or commission, punishable by criminal sanction committed by individual

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<sup>14</sup> Kumar Askand Pandey, 'Corporate Criminal Liability in India: Some Reflections', 2008 CLC Journal/ VII.

<sup>15</sup> S. Huda, *The Principles of the Law of Crimes* (Tagore Law Lectures, 1902, Eastern Book Company, Lucknow) 20.

<sup>16</sup> K.J Balkrishanan J.in *Standard Chartered Bank v Directorate Of Enforcement*,2005 (5) SC 267.

<sup>17</sup> *Standard Chartered Bank v Directorate of Enforcement JT* 2005 (5) SC 267.



or group of individual in course of their occupation.<sup>18</sup>

India through The Company Act, 1956 has codified laws related to corporations. The definition of "Corporation" as given in the Act under Section 2 (7) includes a company. Hence, under Indian law the liability of the corporation is essentially liability of the company only. The court will break through the corporate shell and apply the principle of "Lifting of the corporate veil".<sup>19</sup> The benefit of separate legal entity will not be available and the court will presume the absence of such separate existence.<sup>20</sup> The Companies Act, 1956 contains certain provisions,<sup>21</sup> which sanction the courts to remove the veil to reach the persons who are in fact responsible for the erroneous act.

It has been observed by Dua J. in *Aligarh Municipal Board v Ekka Tonga Mazdoor Union*<sup>22</sup>, that a command to a corporation is a command to those who are officially responsible for the conduct of its affairs. If they commit an offence, they along with the corporation are both guilty of contempt of court and could be punished as such.

In the landmark judgment of *Kapila Hingorani v State of Bihar*,<sup>23</sup> the Supreme Court examined the rights and obligations of a company vis-à-vis the Fundamental Rights and Human Rights of the individuals. The Court observed:

"A company incorporated under the Companies Act is a juristic person and has a distinct and separate entity vis-à-vis its shareholders. The corporate veil, however, can in certain situations be pierced or lifted. Whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable thereof. The veil can indisputably be lifted when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest".

A corporation has also been deemed to be "State" within the meaning of Article 12 of the Constitution, acting as agency of the government, and would be subject to the same limitations in the field of Constitutional or Administrative law as the government itself,

<sup>18</sup> Williams, K.S, *Text Book on Criminology*, (Universal Law Publishing Pvt., New Delhi, 2001) 64.

<sup>19</sup> Geeta Narula, 'Corporate Criminal Liability in India: An Information Technology Perspective' <[http://www.naavi.org/geeta\\_narula/corporate\\_criminal\\_liability\\_nov12.html](http://www.naavi.org/geeta_narula/corporate_criminal_liability_nov12.html)> accessed 7 December 2009

<sup>20</sup> Dalal Praveen, 'Corporate Entity In Existing Legal System-Its Rights And Liabilities Under The Constitution And Other Enactments', (2004) 61 CLA 96 (Mag).

<sup>21</sup> Sections 45, 147, 212, 242, 247 of The Companies Act, 1956.

<sup>22</sup> AIR 1970 SC 1767.

<sup>23</sup> 2003 (4) SCALE 712.

though in the eyes of law they would be distinct and independent legal entities.<sup>24</sup>

## The Controversy

Judicial disagreement arises in the situation when statute prescribes mandatory imprisonment as punishment for an offence. There is no controversy when fine is the only punishment prescribed under any statute. There is also no controversy when statute entrusts the court with discretion to inflict fine or imprisonment, as in this case court shall inflict only fine on Company.<sup>25</sup>

In *Municipal Corporation of Delhi v J.B. Bottling Company (P) Ltd.*<sup>26</sup>, the court was confronted with the above mentioned controversial situation. Yogeshwar Dayal, J., after holding the company guilty of offence under the Prevention of Food Adulteration Act, 1954, declared that it could be punished with fine only.

In *State of Maharashtra v Syndicate Transport*<sup>27</sup> it was held that the company cannot be prosecuted for offences which necessarily involve penalty of a corporal punishment or imprisonment and to prosecute a company for such offences would only result in the court's failure by embarking on a trial in which the verdict of guilty is returned and no effective order by way of sentence can be made. A parallel view was taken by Calcutta High Court in *Kusum Products Limited v S.K. Sinha, ITO, Central Circle-X, Calcutta*<sup>28</sup> where it was stated that:

....a company being a juristic person cannot possibly be sent to prison and it is not open to court to impose a sentence of fine or allow to award 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 and usurping the legislative function.

Thus, where a provision contained the expression "*shall be punishable for imprisonment and also for fine*", the word 'shall' indicated that the Court is bound to award a punishment of imprisonment and cannot award a sentence of fine 'only'.<sup>29</sup>

<sup>24</sup> *R.D. Shetty v International Airport Authority*, AIR 1979 SC 1628.

<sup>25</sup> M. Vidhan, 'Company's Liability Where Imprisonment Is Mandatory Part Of Sentence', (2007) PL June 6, <[www.ebc-india.com/practicallawyer/index2.php?option=com](http://www.ebc-india.com/practicallawyer/index2.php?option=com)> Last accessed 8 December 2009.

<sup>26</sup> (1975) Cri LJ 1148 (Del) (FB).

<sup>27</sup> AIR 1965 Bom 195.

<sup>28</sup> 126 ITR 804 (1980).

<sup>29</sup> *State of Maharashtra v Jugminder Lal*, AIR 1966 SC 940.



The Law Commission in its 41<sup>st</sup> Report<sup>30</sup> suggested amending Section 62 of the Indian Penal Code by adding the following lines in order to solve the legal difficulty arising out of the above situation:

*In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.*

However, this recommendation obtained no response from the Parliament and hence again in its 47<sup>th</sup> Report<sup>31</sup>, the Law Commission in paragraph 8(3) made the following recommendation:

In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted 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:

1. 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.
2. 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.
3. In this section, corporation means an incorporated company or other body corporate, and includes a firm and other association of individuals.

The Law Commission's recommendations hence acknowledged the fact that the law as it existed, rendered it impossible to punish a corporation where the mandatory minimum punishment is both corporal as well as fine, even if the court returns a verdict of guilt. The legislative efforts to implement these recommendations lapsed and it did not become law.<sup>32</sup> Consequently, the same issues were agitated before the courts again and again.

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<sup>30</sup> Law Commission, 'The Code of Criminal Procedure, 1898 Vol-I' (Law Com No 41, 1969) <<http://lawcommissionofindia.nic.in/1-50/index1-50.htm>> accessed 8 December 2009

<sup>31</sup> Law Commission, 'The Trial and Punishment of Social and Economic Offences' (Law Com No 47, 1972) <<http://lawcommissionofindia.nic.in/1-50/index1-50.htm>> accessed 8 December 2009

<sup>32</sup> The proposed Indian Penal Code (Amendment) Bill, 1972, seeking to implement the recommendations of the Law Commission was never passed into law.

But the Bill prepared on the basis of the recommendations of the Law Commission. However few of these recommendations were accepted by the Parliament and by suitable amendment some of the provisions in the taxation statutes were amended.

By a majority decision in *Asstt. Commr. v Velliappa Textiles Ltd*,<sup>33</sup> it was held that the company cannot be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine.<sup>34</sup> Further it was held that where punishment provided is imprisonment and fine, the court cannot impose only a fine. The majority was of the view that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the Statute and that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean in favour of the construction which exempts a citizen from penalty than the one which imposes the penalty.<sup>35</sup>

However, the law has taken a matured position after the 2005 judgment of Supreme Court, i.e., *Standard Chartered Bank and Ors. etc. v Directorate of Enforcement and Ors. etc.*<sup>36</sup> with a 3:2 majority verdict. It has been specifically 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, since the sentence of imprisonment cannot be imposed on the company, the sentence of fine is to be imposed and the court has the judicial discretion to do so. If a natural person is so found guilty, both the sentence of imprisonment and fine are to be imposed on such person. Hence, the 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 accusation or other criminal process, although the criminal act is committed through its agents.

Under express statutory provisions of the Indian law, the liability prescribed is threefold for economic or strict liability offences committed by a company.<sup>37</sup>

1. The person who was in charge of and was responsible to the company for the conduct of its business is held liable, save if he can prove that the offence was committed devoid of his knowledge or despite his exercising due diligence to prevent the offence.

<sup>33</sup> (2003) 11 SCC 405.

<sup>34</sup> See *Business Standard*, September 18, 2003, New Delhi.

<sup>35</sup> Dharam Veer Singh, 'Corporate Criminal Liability: A Jurisprudential Approach', <[http://www.legalserviceindia.com/articles/cor\\_dr.htm](http://www.legalserviceindia.com/articles/cor_dr.htm)> Last accessed 7 December 2009

<sup>36</sup> (2005) 4 SCC 530.

<sup>37</sup> Prevention of Food Adulteration Act, No.37 of 1954, s.17, Foreign Exchange Regulation Act, No. 46 of 1973, s.68, Income Tax Act, No. 43 of 1961, s.278B.



2. If it is proved that an offence under such statutes has been committed "*with the consent or connivance of*", or is "*attributable to*" neglect on the part of a director, manager, secretary or "*other officer*" of the company, such individual shall also be held liable.
3. The company is held liable, irrespective whether any individual is pinned with liability too.

Liability for offences under the Indian Penal Code, 1860 will be based on different considerations in the dearth of express wording to that effect.

## In America

In the United States, corporations—as entities—can be criminally tried and convicted for crimes committed by individual directors, managers, and even low-level employees.<sup>38</sup> Vicarious liability is assigned to a corporation for the acts of its employees if the individual<sup>39</sup>:

- (i) Acted within the scope and nature of his employment—this is fulfilled if and only if the employee has actual or apparent authority to engage in the act in question, with the burden of proof to demonstrate the same lying with the prosecution. In quite a few cases, federal courts have held the corporation responsible for an employee's act regardless of explicit policies prohibiting such behaviour had been implemented by the former, although proof of such implementation may qualify as mitigating circumstances.<sup>40</sup>

The U.S. Model Penal Code<sup>41</sup> holds corporations liable for employee's behaviour if liability is imposed by statute (either expressly or impliedly through legislative intent) or if the commission of the offence has been authorized or abided by the directors or by a high-ranking agent acting on behalf of the corporation within the scope of his duties.<sup>42</sup>

<sup>38</sup>Edward B. Diskant, 'Comparative Corporate Criminal Liability: Exploring the uniquely American Doctrine through Comparative Criminal Procedure,' Yale Law Journal (October 1, 2001) <<http://www.accessmylibrary.com/article-1G1-188967325/comparative-corporate-criminal-liability.html>> Last accessed 7 December 2009

<sup>39</sup>Shouvik Kr. Guha & Abhyudaya Agarwal, 'Criminal Liability Of Corporations: Does The Old Order Need To Change?', 1 NUJS L. Rev. (2008), p.329.

<sup>40</sup>*United States v Potter*, 463 F.3d 9, 26 (1st Cir. 2006).

<sup>41</sup><[http://www1.law.umkc.edu/suni/CrimLaw/MPC\\_Provisions/model\\_penal\\_code\\_default\\_rules.htm](http://www1.law.umkc.edu/suni/CrimLaw/MPC_Provisions/model_penal_code_default_rules.htm)> Last accessed 7 December 2009

<sup>42</sup>Model Penal Code, 1962 Ss. 2.07(1)(a),(b) and (c).

- (ii) Operated, at least in part, to benefit the corporation—the employee’s mere intention to bequeath benefit to the corporation should be sufficient, with actions favourable to the corporate interest being viewed as manifestation of such intention.<sup>43</sup>

However, liability cannot longer be assigned to the company if the action under deliberation is expressly detrimental to the corporate interest or amounts to a breach of fiduciary duty to the corporation.<sup>44</sup>

- (iii) The act and intent can be imputed to the corporation.<sup>45</sup>

A corporation may be held liable for a conspiracy to commit a criminal act by its employees, whether among themselves or in union with outsiders.<sup>46</sup>

Sometimes, even after a corporation has been duly dissolved under the laws of the state of its incorporation, it may subsequently be subjected to criminal prosecution under a dissolution provision of the state authorizing any action, suit or proceeding against the corporation within a specified period after the dissolution and the words action and proceeding as used in a statute continuing corporate existence include criminal proceedings.<sup>47</sup>

Corporations can be held criminally accountable for a wide variety of crimes like contempt in disobeying decrees and other court orders, conspiracy, bribery, illegal practice of medicine, public nuisance; violations of licensing and regulatory statutes, violations of consumer protection laws, antitrust law, liquor law violations, larceny; extortion, assuming that it was authorized, requested or commanded by a managerial agent, having supervisory responsibility; obtaining money by false pretenses, selling or exhibiting obscene matter and statutory federal crimes such as violations of the Occupational Safety and Health Act.

In the United States of America corporations are either punished by fine or seizure of its property which is levied by an execution issued by the court. However, when the prosecution for a criminal offence is only punishable by death or imprisonment, the

<sup>43</sup>*Cox v Adm’r U.S. Steel and Carnegie*, 17 F.3d 1386, 1404 (11th Cir. 1994)

<sup>44</sup>*Standard Oil Co. v United States*, 307 F.2d 120, 129 (5th Cir. 1962)

<sup>45</sup> *United States v One Parcel of Land*, 965 F.2d 311, 316 (7th Cir. 1992); *Baena v KPMG LLP*, 453 F.3d 1, 7 (1st Cir. 2006) ;*Corporate Criminal Liability*, 44 A M. CRIM. L. REV. 337(2007).

<sup>46</sup>In *United States v Holmes*, 406 F.3d 337, 351 (5th Cir. 2005), the judiciary defined conspiracy, as per 18 U.S.C. § 371 (2000), as conduct by two or more persons who agree to commit an offense, with one or more of them taking affirmative action to further the goals of the conspiracy.

<sup>47</sup>Dharam Veer Singh, ‘Corporate Criminal Liability: A Jurisprudential Approach’, <[http://www.legalserviceindia.com/articles/cor\\_dr.htm](http://www.legalserviceindia.com/articles/cor_dr.htm)> Last accessed 8 December 2009



corporation cannot be imprisoned. Nevertheless, if a statute provides that the penalty for a particular crime is imprisonment, it may be read in conjunction with a general statute allowing the imposition of a fine, and the fine may be imposed on the corporation in lieu of imprisonment.

## CONCLUSIONS – SOME SUGGESTIONS

The Indian Parliament is aware of the controversies surrounding the corporate criminal liability. However, immediate attention is required by the legislators to contain specific provisions to aid in inflicting penal liability on corporations concerning economic offences.<sup>48</sup> The concept of corporate criminal liability is now very well established in India,<sup>49</sup> but even after the judgment of the Supreme Court in Standard Chartered Bank case, the debate on 'legislative function' and 'judicial function' seems to be far from over.<sup>50</sup>

There are many other liabilities apart from imposition of fines awaiting examination, like dissolution of corporation through compulsory winding up, actions like probation, unfavorable publicity, direct compensation orders and appointment of independent directors for the purpose of scrutinizing corporate behavior. The punishments imposed should be in consonance with the crime committed.

Fisse opined, "*These approaches are promising because they increase the variety of deterrent, retributive, and rehabilitative measures available against corporations and in doing so circumvent some of the major limitations of monetary sanctions...*"<sup>51</sup>

Both the Indian and American legislatures have approved the use of adverse or unfavourable publicity as a corporate sanction.<sup>52</sup>

The arbitrary application of vicarious corporate criminal liability to a corporation will be harmful. It shall result in a corporation being held liable for agents irrespective of

<sup>48</sup>Sections 3,4 & 70 of The Punishment of Money-Laundering Act, 2002.

<sup>49</sup>*Aneeta Hada v Godfather Travels and Tours Pvt.Ltd.*, (decided on 08-05-2008). Available at <<http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=31456>> Last accessed on 8 December 2009

<sup>50</sup> M Vidhan, 'Company's Liability Where Imprisonment is Mandatory Part of Sentence?' (2007) PL 6. [www.ebc-india.com/practicallawyer/index2.php?option=com](http://www.ebc-india.com/practicallawyer/index2.php?option=com) > Last accessed on 7 December 2009

<sup>51</sup> Brent Fisse, 'Sentencing Options Against Corporations,' 1 CRIM. L. FORUM 211 (1990). <<http://www.springerlink.com/content/h716823781158567/>> accessed 8 December 2009

<sup>52</sup>Essential Commodities Act, No.10 of 1955, s.10 (b); Drugs and Cosmetics Act, No. 23 of 1940, s.25.

their position in the corporate chain of command and regardless of corporation's efforts to discourage such conduct.<sup>53</sup> The effects that the punishment could have on innocent parties have to be borne in mind while deciding the apt standard of punishment appropriate for a company. The liability should be restricted to those cases where it has been established that the corporation is guilty of *not taking all reasonable precaution* to detect and prevent the crime by its employees.

It is suggested that the Parliament should specifically declare through legislation suitable punishments for the various crimes committed by corporations. Appropriate amendments in the Code of Criminal Procedure, 1973 also has to be brought about in this regard.

The collective effect of these efforts will definitely be a step forward.

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<sup>53</sup> Shouvik Kr. Guha & Abhyudaya Agarwal, 'Criminal Liability Of Corporations: Does The Old Order Need To Change?', 1 NUJS L. Rev. (2008), p.329.