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An Analysis of Criminal Liability of Company under the Public Liability Insurance Act, 1991

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ABSTRACT

Resource utilisation by industry plays a significant role in the development of industrial society. Simultaneously, industrial development resulted in economic prosperity and socio-economic offence. Degradation of the environment is imperative in the industrial development process. Unethical business conduct by the hazardous industries resulted in the explosion and death of people from it. In a welfare state like ours, the affected person must get legal protection and recognition and the company conducting hazardous business unethically must be held accountable. Imposition of criminal liability on the company is a method to make them accountable. In this article, the authors have critically examined the concept of corporate criminal liability of a company under the Public Liability Insurance Act, 1991.

Keywords: *Accountable, Criminal liability, Hazardous, Insurance and Industrial-Society.*

I. INTRODUCTION

The progress of human society across the world is primarily based on the knowledge and application of that knowledge to utilize natural resources for human welfare. In the early age of industrious people applied their skills and knowledge and converted natural resources into finished goods for human needs and welfare. Gradually, with time, the growing demand for goods and services to meet the welfare of human trade and commerce becomes an integral part of society. This integral part of society after the invention of the steam engine resulted in the Industrial Revolution in Europe and laid down the foundation of industrial society, which spread across the world and it is no exception to India.

The landscape of law considers the company as a separate legal entity that carries its operation through human agencies. The Latin maxim “actus reus non facit reum nisi mens sit rea”, which means crime can’t be committed without the guilty mind. Therefore, the attribution of criminal liability to the company is a very contentious issue. However, the Company Act, 2013, Income-

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tax Act, 1961, and the Public Liability Insurance Act, 1991 attribute corporate criminal liability to the company if such company infringes any provisions under the above-mentioned act.

II. CONCEPT OF CORPORATE CRIMINAL LIABILITY

As stated earlier, the attribution of criminal liability to the corporation or company is contentious. After the Industrial Revolution and the growth of industrial society, legal systems across the globe started to strike a balance between societal/public interest and regulatory framework for a suitable environment for trade and commerce. Initially for public nuisance criminal liability was attributed to the quasi-corporation in England and the USA. Then the growth of hazardous business enterprises and their adverse impact on human health and the natural environment resulted in the dilution of the contention involved in imposing criminal liability on the company. This happened in India more rigorously due to the Bhopal gas leak incident and the subsequent pronouncement of the Apex court to protect human life and the environment. Below are the two models of corporate criminal liability.

a) Derivative Model

The individual is the center point of this model. The liability is attributed to the company due to the connection of the individual with the company and the individual carries out the day-to-day affairs of the company³. This model is further divided into two categories. This subdivision provides a better understanding of this model.

The first category is the Vicarious Liability. The genesis of this category can be traced to the Latin maxims '*first, qui facit per alium facit per se*' and '*respondeat superior*'. *The meaning of the first maxim is that who acts through another shall deemed to have acted on his own and the meaning of the second is that let the master answer.* Lord Chelmsford LC in *Bartonshill Coal Co. v. McGuire* held that '*every act which is done by an employee in the course of his duty is regarded as done by his employer's orders, and consequently is the same as if it were his employer's own act.*'⁴

*The second category is the Identification doctrine. This is an English law doctrine.; applied to ascertain certain key personnel of the company who act on its behalf, and whose conduct and state of mind may be attributed to the company. In the famous case of Salomon v. Saloman & Co., the House of Lords held that a corporate entity is separate from the persons who act on its behalf.*⁵

³ Baudh, S. (1998). Corporate criminal liability, *The Student Advocate*, Vol. 10, 45-46.

⁴ *Bartonshill Coal Co. v. McGuire*, (1853) 3 Macq 300.

⁵ *Salomon v. Saloman & Co.*, 1897 AC 22: (1895-99) All ER Rep 9 (HL).

The identification doctrine is narrower in scope than the vicarious liability doctrine, instead of holding a company liable for the act of any employee, the identification doctrine narrows it down to certain persons.

b) Organizational Model

This model is opposite to the first model. Under this model, the individual is replaced with the organization for attributing criminal liability to the company. If an offence is committed while conducting the operation of the organization, then the organization is attributed with criminal liability. The offence is constituted when an action happens (*Actus reus*) along with a mental state (*Mens rea*), but the company is a juristic person and the mental state is completely missing still the criminal liability is attributed to it.

Both models are complementary and supplementary to each other for the attribution of criminal liability to the juristic person. Human misconduct in the company that resulted in certain offence under a law attribute criminal liability to the company. The Six Law Commission of India in its 47th report⁶ suggests that when an offender is a juristic person and the punishment for the offence is punishable with imprisonment only or with imprisonment and fine, then the court shall punish the offender only with the fine.

III. CRIMINAL LIABILITY UNDER THE PUBLIC LIABILITY INSURANCE ACT, 1991

Indian Parliament in the 42nd year of the Republic of India enacted the Public Liability Insurance Act, 1991. The object and reasoning for making this act is to provide immediate relief to the affected person of an industrial accident resulting from hazardous substances⁷. In brief, this act provides a legal right to the affected person of the industrial accident to seek compensation from the company⁸. Similarly, a legal obligation is made on the hazardous substances handling company to insure the liability occurring from the exposure of hazardous materials⁹.

The infringement of compulsory legal obligation for the company constitutes an offence under the act. The hazardous substances handling company is legally obligated to take an insurance policy. It is a prerequisite element for a company to handle hazardous substances, but if the company is handling hazardous substances before the enactment of the act, in such case the

⁶ Six Law Commission (1971-1974), Report No.47, Retrieved on 14-10-2024 at 7:00 pm., Available at <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080816-1.pdf>

⁷ The Public Liability Insurance Act. (1991). Act No. 6 of 1991.

⁸ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 6.

⁹ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 4.

company has to take an insurance policy within one year from the date of effect of the act¹⁰. The amount of insurance policy taken by the company is not less than the amount of paid-up share capital of the company or more than 50 crores rupees. This insurance policy has to be renewed each year. Apart from this, the company has to pay an amount equal to the premium amount of the insurance policy to a corpus fund called the Environmental Relief Fund each year¹¹.

The infringement of the above-mentioned things attributed to a punishment for a minimum of one and half years extended up to six years with or without a fine not less than one lakh rupees. If the infringement happens for the second time by the same offender, then the amount of punishment of imprisonment is increased, i.e. minimum imprisonment of two years which is extended up to seven years with a fine or without a fine of one lakh rupees¹².

The Union Government is empowered under the act to authorise any person to seek information from the business owner handling hazardous for ascertaining adherence to the act by such business owner for conducting hazardous business¹³. Similarly, any person can be authorised by the central government to enter and inspect the premises of a hazardous substances handling business to ascertain whether the provisions of the act are implemented in the company or not¹⁴. The failure to comply with the above-mentioned matters attracts a punishment of imprisonment up to three months with a fine or without a fine of ten thousand rupees¹⁵. Further, sec.16 of the act states that if any offence under this has been committed then the company and the person associated with the company directly or indirectly are held responsible and punished according to the provisions of the act¹⁶.

IV. CONCLUSION

Attribution of criminal liability on the juristic person is a new dimension in criminal jurisprudence. The growth of industrial society not only brought economic prosperity but also resulted in a new form of crime. Socio-economic offences are an example of this. Degradation of the environment due to the proliferation of hazardous business units and amplification of Art. 21 by the Apex court in our country resulted in the development of environmental protection laws and their principles. The Bhopal Gas leak incident brings a drastic change in

¹⁰ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 4 (1).

¹¹ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 7A.

¹² The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 14.

¹³ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 9.

¹⁴ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 10.

¹⁵ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 15.

¹⁶ The Public Liability Insurance Act. (1991). Act No. 6 of 1991. § 16.

the environmental law. Thereafter the attribution of criminal liability to the corporation is inserted in the statute law to punish the offender company and its functionaries for the infringement of provisions under the law. One such attribution of criminal liability to the company handling hazardous substances is made under the Public Liability Insurance Act, 1991.
