
WHETHER MENS REA
NECESSARY FOR CRIMES BY
CORPORATE HOUSES

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Mens Rea means “Guilty Mind”, can a Company, which is an artificial person, have a guilty mind? Can corporate houses claim immunity from criminal prosecution because they cannot be physically jailed? I had written this short article to provide relevant answers to the above questions with help of the Supreme Court decisions.

The Hon’ble Supreme Court in *Iridium India Telecom Ltd V Motorola Incorporated & Ors.*, had held that, the Companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offenses.

The Hon’ble Court held that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons.

Mens rea is attributed to corporations on the principle of ‘alter ego’ of the company.

The Hon’ble Supreme court observed that a company/corporation cannot escape liability for a criminal offence, merely because the punishment prescribed is that of imprisonment and fine.

Iridium India Telecom Ltd. had filed criminal complaint alleging an offence of cheating against the Motorola Incorporation & others. The Judicial Magistrate first class, Khadki #151, 8th Main Road, 2nd Cross, 4th Block, Nandhinilayout, Bangalore ☐ 96. Web: www.hemanthassociates.com; M: +91 9844085056; T: +91 080-23191210

Court, Pune issued process against the respondents for offences under section 420 read with section 120 IPC. Aggrieved by the order respondents filed petition seeking quashing of the order issuing the process, the Bombay High Court allowed the petition and quashed the order issuing process. Aggrieved by the said judgment Iridium India Telecom Ltd preferred the appeal before the Supreme Court.

The constitutional bench of the Hon'ble Supreme court in the case of *Standard Chartered Bank V Directorate of Enforcement* had observed that “there is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally 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 indictment or other criminal process, although the criminal act is committed through its agents.”