
ALGORITHMIC DECISION-MAKING AND CORPORATE CRIMINAL LIABILITY IN INDIA: RE-EXAMINING FAULT ATTRIBUTION IN THE AI ERA

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ABSTRACT

Rapid adoption of algorithmic decision-making is transforming how Indian corporations price products, screen borrowers, trade securities and manage supply chains. Yet when an autonomous system causes social harm through biased lending, errant trading or unsafe recommendations India's century-old fault attribution doctrines strain to respond. This article offers the first systematic re-examination of corporate criminal liability in India through the lens of artificial intelligence (AI). Part II maps four orthodox theories: vicarious liability, identification, aggregate knowledge and the corporate-fault model and demonstrates why each rests on human agency assumptions that algorithmic autonomy disrupts. Part III isolates three doctrinal pressure points unique to AI: the evidentiary collapse of mens rea, the tension between strict-liability offences and opacity-by-design, and the fragility of causal chains in self-learning systems. In Part IV, the analysis turns to India's positive law through close reading of the Companies Act 2013, the Information Technology Act, and a cross-section of sector-specific regimes, which shows the inadequacy of present penal provisions to address AI harms. Statutes typically hinge liability on "persons in charge of, and responsible to, the company," a formulation ill-suited where no natural person can reasonably foresee or control machine-generated outputs. Judicial glosses provide limited relief and risk inconsistent outcomes. Synthesizing these doctrinal and statutory gaps, the article advances a reform blueprint. Key recommendations include: statutory duties of algorithmic governance (explainability, audit trails, bias testing) as predicates for compliance-based defences; a risk-tiered strict-liability matrix for high-impact deployments; calibrated reversal of the burden of proof on organisational due diligence; and safe-harbour incentives for open-source transparency. By recalibrating fault attribution around organisational risk management rather than elusive human intent, India can preserve criminal law's deterrent force without stifling innovation in the AI era.

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I. INTRODUCTION

From banking to healthcare to transportation to human resources, artificial intelligence (AI) and algorithmic decision-making have drastically changed contemporary corporate operations.² From financial risk assessments and algorithmic trading to recruitment procedures and autonomous car operations, businesses are using AI systems to automate important choices more and more.³ Corporate choices once taken by human managers and executives are increasingly being carried out either semi-autonomously or independently by AI-driven algorithms. Multinational companies such as Amazon, for example, greatly increase their operational efficiency and profitability by using AI-driven solutions for inventory management, shipping optimization, and tailored marketing.⁴ Likewise, banking behemoths like JPMorgan Chase rely mostly on artificial intelligence algorithms for credit evaluations, algorithmic trading, and fraud detection, hence transforming conventional paradigms controlled by human judgment.⁵

² See M. Abbas Khan et al., *Impact of Artificial Intelligence on the Global Economy and Technology Advancements*, 147, 147–180 In: S. EL HAJJAMI ET AL., (EDS) *ARTIFICIAL GENERAL INTELLIGENCE (AGI) SECURITY. ADVANCED TECHNOLOGIES AND SOCIETAL CHANGE* (Springer, Singapore)(2025); I. T Ayorinde & P. N. Idyorough, *Exploring the frontiers of artificial intelligence: a comprehensive analysis*, *INNOVATION IN SCIENCE AND TECHNOLOGY*, 35, 35-49 3.4 (2024); J. Bughin, *Artificial Intelligence, Its Corporate Use and How It Will Affect the Future of Work*, 239, 239-260 In: L. PAGANETTO, (EDS), *CAPITALISM, GLOBAL CHANGE AND SUSTAINABLE DEVELOPMENT* (Springer, Cham)(2020).

³ See Noura Metawa et al., *Artificial Intelligence and Big Data for Financial Risk Management* (Routledge) (2022); *Bogojevic Arsic Vesna, Challenges of financial risk management: AI applications*, *MANAGEMENT: JOURNAL OF SUSTAINABLE BUSINESS AND MANAGEMENT SOLUTIONS IN EMERGING ECONOMIES* 26.3, 27, 27-34 (2021); Feichin Ted Tschang & Esteve Almirall, *Artificial intelligence as augmenting automation: Implications for employment*, *Academy of Management Perspectives* 35.4, 642, 642-659(2021); Gil Cohen, *Algorithmic trading and financial forecasting using advanced artificial intelligence methodologies*, *MATHEMATICS* 10.18, 3302 (2022); Iris H-Y. Chiu & Ernest WK Lim, *Managing Corporations' Risk in Adopting Artificial Intelligence: A Corporate Responsibility Paradigm*, *WASH. U. GLOBAL STUD. L. REV.* 20, 347 (2021).

⁴ See Alex Kantrowitz, *How Amazon Uses AI To Automate Work In Its Corporate Headquarters*, *MEDIUM* (Dec. 24, 2022)(<https://kantrowitz.medium.com/how-amazon-uses-ai-to-automate-work-in-its-corporate-headquarters-bbbc48e89769>)(Last accessed Mar. 23, 2025); *How Amazon Uses Artificial Intelligence?*, *SEASIA A CMMI LEVEL 5 COMPANY* (Jan 03, 2023) (<https://www.seasiainfotech.com/blog/how-amazon-uses-artificial-intelligence/>)(Last accessed Mar. 23, 2025); Amazon Staff, *8 ways Amazon is using generative AI to make life easier, from a more conversational Alexa to a better reviews experience*, *AMAZON* (Dec. 19, 2023) (<https://www.aboutamazon.com/news/innovation-at-amazon/how-amazon-uses-generative-ai>) (Last accessed Mar. 23, 2025).

⁵ See K Tulsi et al., *Transforming Financial Services: The Impact of AI on JP Morgan Chase's Operational Efficiency and Decision-Making*, *International Journal of Scientific Research & Engineering Trends* Volume 10 Issue 1, 207 (2024); J.P Morgan, *How AI will make payments more efficient and reduce fraud*, *J.P. MORGAN* (Nov. 20, 2023) (<https://www.jpmorgan.com/insights/payments/payments-optimization/ai-payments-efficiency-fraud-reduction>)(Last accessed Mar. 23, 2025); Jeyadev Needhi, *How AI Transformed Financial Fraud Detection: A Case Study of JP Morgan Chase* (Jul. 8, 2024) (https://medium.com/@jeyadev_needhi/how-ai-transformed-financial-fraud-detection-a-case-study-of-jp-morgan-chase-f92bbb0707bb) (Last accessed Mar. 23, 2025).

Unquestionably efficient, cost-effective, and data-processing capable, AI-driven business decision-making also presents significant difficulties for assigning culpability, particularly in cases when algorithmic activities result in negative or criminal consequences. Originally meant to simplify recruiting by rapidly selecting the best candidates based on past hiring statistics, Amazon's AI system unintentionally acquired and spread current prejudices against women because of the previous majority of male employees in technological positions.⁶ Resumes with signs of feminine identification so routinely scored worse, highlighting a discriminating result clearly connected to automated decision-making.⁷ Uber's 2018 self-driving car disaster in Arizona, United States, claimed a pedestrian's life and spurred global discussions on corporate criminal responsibility in cases involving AI-driven mishaps.⁸ Uber's criminal liability for negligent homicide was solely assigned to Rafaela Vasquez, the human vehicle operator, so absolving Uber from all criminal responsibility notwithstanding clear evidence showing Uber's faulty algorithmic technology, negligent operational policies, inadequate oversight mechanisms, and a poor safety culture.⁹ Furthermore, Boeing's AI-driven automated control systems linked to disastrous Boeing 737 MAX disasters draw attention to serious issues regarding corporate responsibility when AI directly causes deaths.¹⁰ These events underscore the hasty use of AI systems by organizations, emphasizing management decisions as primary catalysts for disastrous results.

Existing research has primarily focused on traditional human agency in corporate criminality, with limited attention given to the implications of AI-driven decisions within corporations.¹¹

⁶ See Gustavo Silveira Borges & Mauricio Da Cunha Savino Filo, *Artificial Intelligence, Gender, and Human Rights: The Case of Amazon*, 35 REV. JUST. DIREITO 218 (2021).

⁷ See *id.*

⁸ See Troy Griggs and Daisuke Wakabayashi, *How a Self-Driving Uber Killed a Pedestrian in Arizona*, THE NEW YORK TIMES (Mar. 21, 2018) (<https://www.nytimes.com/interactive/2018/03/20/us/self-driving-uber-pedestrian-killed.html>) (Last accessed Mar. 27, 2025).

⁹ See Helen Stamp, *The Reckless Tolerance of Unsafe Autonomous Vehicle Testing: Uber's Culpability for the Criminal Offense of Negligent Homicide*, Case W. Res. J.L. Tech. & Internet 15, 37 (2024).

¹⁰ See William Langewiesche, *What Really Brought Down the Boeing 737 Max?*, THE NEW YORK TIMES (Jul. 2, 2021) (<https://www.nytimes.com/2019/09/18/magazine/boeing-737-max-crashes.html>) (Last accessed Mar. 27, 2025).

¹¹ See Soubhagya Ranjan Panda & Anita Sable, *The Criminal Liability of Corporate Industries in India with Reference to USA & UK*, Part 2 Indian J. Integrated Rsch. L. 2, 1 (2022); Titiksha Chhabra, *Corporate Crime and the Criminal Liability of Corporate Entities with Regard to India: A Comparative Study*, Part 2 Indian J. Integrated Rsch. L. 2, 1 (2022); Pratik Bharat Kashid, *Corporate Criminal Liability*, Part 2 Indian J. Integrated Rsch. L. 2, 1 (2022); Ramasayi Gummadi, *Corporate Criminal Liability in India-A Theoretical Analysis*, Nyayashastra L. Rev. 2, 1 (2021); Rukmani Sachdeva, *An Analytical Study on Corporate Criminal Liability: Comparative Study of India and USA*, Issue 1 Int'l J.L. Mgmt. & Human. 5, 2577(2022); Mihailis E. Diamantis, *The Extended Corporate Mind: When Corporations Use AI to Break the Law*, 98 N.C. L. REV. 893 (2020); Mihailis E. Diamantis, *Employed algorithms: a labor model of corporate liability for AI*, Duke LJ 72, 797(2022).

This research aims to explore the complexities of corporate criminal liability in the context of AI integration within Indian corporations. Using a doctrinal legal approach, this paper examines legal doctrines, legislation and court rulings, to ascertain:

1. How do traditional theories of corporate criminal liability apply to offenses arising from AI-driven decisions in Indian corporations?
2. To what extent does the current Indian legal framework address the accountability of corporations for crimes involving AI technologies?
3. What legal reforms or policy measures could effectively bridge any gaps identified in the existing framework to ensure robust corporate accountability for AI-induced offenses?

It is contended that premature AI deployment, defined as the introduction of AI into operational settings prior to sufficient testing or risk mitigation, is not only a technological oversight but a significant managerial decision with far-reaching societal, ethical, and legal implications. Further, in India, corporate criminal responsibility is mostly regulated by judicial concepts, notably the “*Doctrine of Identification*,” which assumes the intent and direct involvement of a human actor.¹² Indian criminal jurisprudence has always prioritized *mens rea* (guilty thinking) and *actus reus* (guilty deed) of identifiable individuals. This conventional position becomes intricate when harm results from algorithmic systems lacking express human intent or direct human oversight. Consequently, they seem inadequately prepared to manage liabilities arising from business acts autonomously performed by algorithms.

The research article is structured into five key parts to systematically explore the complexities of corporate criminal liability in the context of AI-driven decision-making. Part II delves into the theoretical underpinnings of corporate criminal liability, reviewing traditional doctrines such as vicarious liability, the identification doctrine, and corporate fault theory. Part III critically examines how AI integration into corporate operations challenges the application of these traditional liability frameworks, highlighting issues such as the opacity of algorithmic decisions, the lack of human intent, and difficulties in establishing *mens rea*. Part IV analyzes existing Indian legal provisions, including statutory clauses in sector-specific laws and relevant

¹² See *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74 (India).

judicial interpretations. Part V suggests necessary changes, offering concrete recommendations for adapting corporate criminal liability frameworks to the realities of AI-driven corporate conduct in India.

II. Theories of Corporate Criminal Liability

Corporate immunity was the dominant view in early criminal law. This distrust originated from intellectual and legal issues.¹³ *First*, corporations, being legal entities without a body, cannot be imprisoned, which are customary criminal sanctions.¹⁴ *Second*, early legal philosophy held that criminal responsibility needed mens rea, which a corporation, as a non-sentient entity, cannot possess.¹⁵ The argument was that companies cannot be held accountable for the criminal activities of their agents or employees due to the lack of vicarious liability in criminal law.¹⁶ *Third*, the notion of ultra vires, which limited corporations to actions specifically approved by their constitutional texts, supported the idea that businesses could not commit crimes because crimes were never authorized corporate acts.¹⁷ Thus, only individual corporate members with criminal intent could be charged. The idea that a corporation might act willfully was deemed a legal fiction.¹⁸ This viewpoint persisted throughout the 19th century and hindered corporate criminal jurisprudence. However, as corporate entities gained power and influence and began to have widespread social effects, particularly in public health, environmental damage, and financial fraud, courts and legislators eventually overcame these constraints.¹⁹ This shift marked the birth of modern theories of corporate criminal liability, which sought to adapt the principles of criminal responsibility to the realities of organizational conduct and complexity.

¹³ See Kathleen F. Brickey, *Corporate Criminal Accountability: A Brief History and an Observation*, 60 WASH. U. L.Q. 393, 396 (1981).

¹⁴ See Celia K. Wells, *Corporate criminal liability: A ten year review*, CRIM. LR12, 849, 849-878 (2014).

¹⁵ See John C. Coffee, "No soul to damn: no body to kick": *An unsandalized inquiry into the problem of corporate punishment*, MICHIGAN LAW REVIEW 79.3, 386, 386-459 (1981); John C. Coffee Jr, *Crime and the corporation: making the punishment fit the corporation*, J. CORP. L. 47, 963(2021).

¹⁶ See James Gobert, *Corporate criminality: four models of fault*, LEGAL STUDIES 14.3, 393, 393-410 (1994).

¹⁷ See L.H. LEIGH, THE CRIMINAL LIABILITY OF CORPORATIONS IN ENGLISH LAW, 8-9 (Littlehampton Book Services Ltd) (1969); Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).

¹⁸ See Mihailis E. Diamantis, *Corporate criminal minds*, NOTRE DAME L. REV. 91, 2049(2015); State v. Great Works Milling & Manufacturing Co., 20 Me. 41 (1841).

¹⁹ See WILLIAM S. LAUFER, CORPORATE BODIES AND GUILTY MINDS: THE FAILURE OF CORPORATE CRIMINAL LIABILITY, 9 (University of Chicago Press)(2006).

a. *Vicarious Liability (Respondeat Superior) theory*

The first cases wherein corporations were held criminally liable involved public nuisance and offences.²⁰ Later it was extended to crimes that didn't require *mens rea*.²¹ Over time, the distinct legal personality of corporations, established in the civil sphere by cases such as *Salomon v. Salomon*, compelled jurists to ingeniously reconcile the disparity between human actions and corporate culpability.²² By the early 20th century, courts started to apply principles from tort and agency law to criminal law, permitting the indictment of corporations. The U.S. Supreme Court's ruling in *New York Central & Hudson River R.R. Co. v. United States* explicitly broadened the tort doctrine of *respondeat superior* to encompass criminal cases, rendering corporations accountable for offenses perpetrated by employees during the course of their employment and partially for the company's benefit.²³ Under the theory of vicarious liability (*Respondeat Superior*), a corporation is liable for the actions of its agents or employees, akin to a master bearing responsibility for the activities of a servant.²⁴ Its appeal is pragmatic, a company who gains from an employee's misconduct or fails to stop it can fairly be fined, introducing a due diligence defence i.e., the corporation shows it took reasonable steps to prevent the offence, could help to offset this unfairness. The United States embraced this concept to a large degree, allowing businesses to be accountable for most crimes carried out under their purview.²⁵ Still, vicarious liability became popular particularly for regulatory violations i.e., so-called strict liability or “no-fault” crimes.²⁶

This theory necessitates that *firstly*, a corporate agent (irrespective of their rank within the organisation) must first engage in an unlawful conduct (the actus reus) accompanied by the necessary mental condition (the mens rea).²⁷ Mens rea may be established through the ‘collective awareness’ of the employees as a collective entity, despite no one employee having

²⁰ See *R. v. Birmingham & Gloucester Ry. Co.*, (1842) 3 Q.B. 223 (Eng.).

²¹ See *R. v. Great N. of Eng. Ry. Co.*, (1846) 9 Q.B. 315 (Eng.).

²² See *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22 (H.L.) (U.K.).

²³ See *New York Cent. & H.R.R. Co. v. United States*, 212 U.S. 481 (1909).

²⁴ See R.S. Welsh, *The Criminal Liability of Corporations*, LQ Rev.62, 345(1946).

²⁵ See James R. Elkins, *Corporations and the Criminal Law: An Un-easy Alliance*, 65 Ky. LJ. 73, 87-88 (1976).

²⁶ See Claire McIvor, *The use and abuse of the doctrine of vicarious liability*, COMMON LAW WORLD REVIEW 35.4,268, 268-296 (2006); James Jr, Fleming, *Vicarious Liability*, TUL. L. REV. 28,161 (1953).

²⁷ See S. Sowthara Barani, *Comparative Analysis of Corporate Criminal Liability*, Issue 1 Indian JL & Legal Rsch. 5, 1(2023); James Gobert, *The evolving legal test of corporate criminal liability*, 61, 61-80 LEONARD MINKES & JOHN MINKES, CORPORATE AND WHITE COLLAR CRIME (Sage Publications) (2008).

adequate information to recognise that a crime was occurring.²⁸ *Secondly*, the agent must have behaved within the scope of employment encompasses any action that transpired while the offending employee was engaged in a job-related activity.²⁹ *Thirdly*, the agent must have sought to advantage the corporation wherein the employee is not required to behave only for the advantage of the organisation, nor is the corporation obligated to obtain any actual profit.³⁰

Historically, numerous crimes emerged during the early industrial period, when the law was hesitant to place constraints on burgeoning enterprises.³¹ As organisations have evolved in complexity and stability, this hesitance has diminished, leading to the expansion of vicarious liability frameworks.³² Nonetheless, the conflict between practicality and principle endures. It is virtually unfeasible for senior executives to monitor every move of each employee. Conversely, public policy necessitates that firms implement stringent supervision and proactive governance in the face of anticipated risks of harm.³³ Judicial decisions show that even where the *actus reus* is satisfied through vicarious attribution, courts often hesitate to impute *mens rea*, limiting vicarious liability to strict liability offences or cases where the employee is specifically entrusted with statutory duties.³⁴

Although successful in implicating companies in legal actions, vicarious liability frequently faces criticism for its excessive scope and moral randomness. A corporation with an exemplary compliance record may still bear criminal liability for the actions of a rogue employee acting independently against corporate policy.³⁵ Critics contend that this represents

²⁸ See Anthony Ragozino, *Replacing the collective knowledge doctrine with a better theory for establishing corporate mens rea: The duty stratification approach*, SW. UL REV. 24, 423(1994).

²⁹ See Alan O. Sykes, *The boundaries of vicarious liability: An economic analysis of the scope of employment rule and related legal doctrines*, HARVARD LAW REVIEW 101.3, 563, 563-609(1988).

³⁰ See Harold J. Laski, *Basis of vicarious liability*, YALE LJ 26, 105 (1916); Doug Cassel, *Corporate aiding and abetting of human rights violations: Confusion in the courts*, NW. UJ INT'L HUM. RTS. 6, 304 (2007).

³¹ See David Philips, *Crime, law and punishment in the Industrial Revolution*, In: PATRICK O'BRIEN & ROLAND QUINAULT (EDS.), *THE INDUSTRIAL REVOLUTION AND BRITISH SOCIETY*, 156, 156-83 (Cambridge University Press)(1993).

³² See *id.*

³³ See Steven P. Croley, *Vicarious liability in tort: On the sources and limits of employee reasonableness*, S. CAL. L. REV. 69, 1705(1995); William S. Laufer, & Alan Strudler, *Corporate intentionality, desert, and variants of vicarious liability*, AM. CRIM. L. REV. 37 1285 (2000).

³⁴ See *Seaboard Offshore Ltd. v. Sec'y of State for Transp.*, [1993] 1 W.L.R. 1025 (U.K.); *Nat'l Rivers Auth. (S. Region) v. Alfred McAlpine Homes E. Ltd.*, [1994] EWHC J0126-9 (U.K.); *Alphacell Ltd. v. Woodward*, [1972] A.C. 824 (H.L.) (U.K.).

³⁵ See Evan Tuttle, *Reexamining the Vicarious Criminal Liability of Corporations for the Willful Crimes of Their Employees*, CLEV. ST. L. REV. 70, 121 (2021); Robert Luskin, *Caring about Corporate 'Due Care': Why Criminal Respondeat Superior Liability Outreaches Its Justification*, AM. CRIM. L. REV. 57, 303(2020); Preet Bharara, *Corporations cry uncle and their employees cry foul: rethinking prosecutorial pressure on corporate defendants*, AM. CRIM. L. REV. 44, 53 (2007); Albert W. Alschuler, *Two ways to think about the punishment of corporations*, AM. CRIM. L. REV. 46, 1359 (2009).

strict liability disguised as criminal law, imposing penalties without genuine culpability. The counter-argument contends that corporations face no possibility of imprisonment, only financial penalties, rendering vicarious liability an essential economic deterrent that incentivises companies to enhance employee supervision and training.³⁶ To strike a balance, many commentators advocate for a due diligence defence, allowing corporations to avoid liability by demonstrating that they took all reasonable steps to prevent the offence.³⁷

b. The Identification (Alter Ego) Theory

The identification (Alter ego) theory posits that a corporation is directly accountable solely for the actions and intentions of senior officials who embody the company's "*mind*".³⁸ This concept begins by identifying a real person, usually a director or senior executive, who perpetrated the crime, and subsequently assesses whether that individual possesses sufficient stature to be considered the corporation's alter ego.³⁹ In such cases, the individual's *mens rea* and actions are considered as those of the organisation.⁴⁰ In *Lennard's Carrying Co.* it was observed that

*"A corporation is an abstract. It has no mind of its own any more than it has a body of its own, its acting and directing will must consequently be sought in the person of somebody ... who is really the directing mind or will of the corporation, the very ego and centre of personality of the corporation."*⁴¹

In *H.L. Bolton (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd.*,⁴² Denning LJ compared a corporation to a human with a brain and limbs wherein workers, servants, and agents are simply tools for a corporation (the limbs), whereas directors and managers are the decision-makers and steer the company (brain). The decision implies that a corporation can be held guilty of

³⁶ See Albert W. Alschuler, *Two ways to think about the punishment of corporations*, AM. CRIM. L. REV. 46, 1359 (2009).

³⁷ See Roni A. Elias, *The virtues of the due diligence defense for corporations in criminal cases: solving the problems of a corporation's vicarious liability for the crimes of its agents and employees*, GEO. J.L. & PUB. POL'Y 13, 423 (2015).

³⁸ See Antoinette Sedillo Lopez, *The Alter Ego Doctrine: Alternative Challenges to the Corporate Form*, UCLA L. REV. 30, 129(1982); Elizabeth A. Evans & Daniel G. Lentz, *Alter Ego*, In: ROMAN L. WEIL ET AL. (EDS), LITIGATION SERVICES HANDBOOK: THE ROLE OF THE FINANCIAL EXPERT, 1, 1-21(2017).

³⁹ See *id.*

⁴⁰ See *R. v. I.C.R. Haulage Ltd.*, [1944] K.B. 551 (C.C.A.) (U.K.); *Tesco Supermarkets Ltd. v. Natrass*, [1972] A.C. 153 (H.L.) (U.K.).

⁴¹ *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* 1915 AC 705, 715 (HL).

⁴² See *HL Bolton (Eng'g) Co. v. T.J. Graham & Sons Ltd.*, [1957] 1 Q.B. 159 (U.K.).

offences requiring a guilty mind if the person or group in command of the company's affairs at the time of the offence can be identified. This notion became known as the “*identification principle*”.⁴³ It was observed that:

*“A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. 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 and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp.713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty.”*⁴⁴

Explaining the same MacNaghten, J. in *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.*⁴⁵ observed:

“A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention - indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body

⁴³ See John Mugambwa et al., *Corporate Liability*, In: COMMERCIAL AND BUSINESS ORGANIZATIONS LAW IN PAPUA NEW GUINEA, 429, 429-523 (Routledge-Cavendish)(2007); Davide Ravasi & Johan Van Rekom, *Key issues in organizational identity and identification theory*, CORPORATE REPUTATION REVIEW 6, 118, 118-132(2003); Tesco Stores Ltd v. Brent London Borough Council Citation: [1993] 1 WLR 1037 (House of Lords)

⁴⁴ See *id* at AC p. 172.

⁴⁵ See *Dir. of Pub. Prosecutions v. Kent & Sussex Contractors Ltd.*, [1944] K.B. 146 (U.K.).

corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and' intention must be imputed to the body corporate."⁴⁶

Highlighting the difference from vicarious liability the House of Lords in *Tesco E Supermarkets Ltd. v. Natrass*⁴⁷ observed:

*"...A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the com~any can only be a statutory or vicarious liability."*⁴⁸

The House of Lords also determined that a company can only be held accountable for the actions of its senior executives, directors or officers, whose judgements effectively embody the firm. In *Tesco*, the mispricing blunder of a branch manager was not attributed to the company, as he was considered too low in the hierarchy to be regarded as its governing mind.⁴⁹ Identification thereby establishes a "*limited subset*" of individuals whose actions may implicate the organisation. This method prevents holding organisations accountable for minor incidents, however it has faced criticism for allowing major corporations to evade culpability through decentralised decision-making.⁵⁰ In intricate organisations, culpability for corporate

⁴⁶ See *id* at AC p. 156.

⁴⁷ See *Tesco Supermarkets Ltd. v. Natrass*, [1972] A.C. 153 (H.L.) (U.K.).

⁴⁸ See *id* at AC p. 170 E-G.

⁴⁹ See *id*.

⁵⁰ See All Answers ltd, *Corporate Manslaughter and Corporate Homicide Act*, LAWTEACHER.NET (April 2025)(<https://www.lawteacher.net/free-law-essays/criminal-law/corporate-manslaughter-and-corporate-homicide-act.php?vref=1>)(Last accessed Apr. 13, 2025)

crime is never attributable to one individual; rather, it may be disseminated across a vice-president, committees, middle managers, supervisors, and online employees, rendering it difficult to assign blame to one specific person.⁵¹

Conversely, it is over-inclusive where directors or officers commit crimes contrary to company policy, yet their status alone is enough to implicate the company. In *Moore v. Bresler*, the courts affirmed corporate liability for fraudulent tax returns filed by top executives, despite the activities being intended to obscure personal wrongdoing rather than to advantage the corporation.⁵² The court indicated that formal roles might supersede intent in assessing corporate accountability under this framework.

In *R v P&O Ferries*⁵³, a roll-on/roll-off ferry owned by Townsend Thoresen crashed shortly after departure from Zeebrugge on March 6, 1987, killing 193 people. The ferry left the harbour with its bow doors open, flooding the vehicle deck and causing it to capsize. The assistant boatswain who locked the doors slept in his cabin. Insufficient communication, lack of door closure rules, and pervasive safety culture issues plagued the business. The prosecution found no senior director or equivalent with mens rea in the Herald of Free Enterprise case. Despite extensive corporate irresponsibility, no top official could be legally named the company's "mind" for gross negligence homicide.

Similarly, the Ladbroke Grove train incident also known as the Paddington rail crash which occurred on 5 October 1999 demonstrated the inadequacy of the identification concept in assigning criminal liability to companies for homicide; wherein a Thames train operator ignored a red signal and hit a high-speed train head-on, killing 31 and injuring over 400.⁵⁴ Investigations uncovered numerous systematic deficiencies in training, signal visibility, risk management, and corporate safety protocols across various entities, including Thames Trains, Railtrack (the infrastructure operator), and contractors; yet no directing mind with mens rea existed.

⁵¹ See Ephraim N. Ngwafor, *Re-Visitation of the Alter Ego Doctrine in Corporate Criminal Liability*, KINGSTON L. REV. 13, 3 (1983); , Kineisha Salma Syakira et al., *The Existence of Individual Companies As Legal Entities In Micro and Small Enterprises In Indonesia: A Review of The Problems of The Alter Ego Doctrine*, JURNAL ILMU HUKUM TAMBUN BUNGA 9.1, 450, 450-461 (2024).

⁵² See *Moore v. Bresler*, [1944] 2 All E.R. 515 (U.K.).

⁵³ See *R. v. P&O Ferries*, [1991] 93 Cr. App. R. 72 (U.K.).

⁵⁴ See Paul Clifton, *Lessons from Ladbroke Grove crash 25 years on*, BBC (Oct. 4, 2024) (<https://www.bbc.com/news/articles/cje3kd8y1j0o>) (Last accessed Apr. 13, 2024)

Thus, the doctrine promotes fragmented management structures, delegating operational control while narrowly defining legal responsibility. Consequently, criminal liability frequently does not arise, even when organisational culture or policy indirectly promotes unlawful behaviour. To address this gap, the UK enacted the Corporate Manslaughter and Corporate Homicide Act 2007, under which for the first time, a corporation could be convicted of corporate manslaughter or corporate homicide based on “*management failures*” that amount to a gross breach of a duty of care, causing death. Another modern development in UK law is the creation of “*failure to prevent*” offences, which impose liability on companies for failing to stop certain crimes by their associates.⁵⁵ The UK Bribery Act 2010 introduced a strict liability offence for companies that fail to prevent bribery by persons associated with the business and a company can avoid conviction only by proving it had “*adequate procedures*” in place to prevent bribery.⁵⁶ Similarly, the Criminal Finances Act 2017 holds companies liable for failing to prevent facilitation of tax evasion.⁵⁷ These offences mark a shift towards an organizational duty to prevent wrongdoing; effectively penalizing a form of corporate omission or negligence in oversight.

c. Aggregate theory

To resolve the aforementioned issue, certain courts and pundits have suggested aggregation, a process by which the knowledge and conduct of multiple individuals are amalgamated to assign accountability to the business i.e., the corporation's “*mens rea*” could be established by consolidating information possessed by several agents.⁵⁸ For example, one employee's awareness of a safety issue combined with another employee's inaction may collectively constitute the corporation's intentional infraction.⁵⁹ U.S. courts have intermittently utilised a variant of the “*collective knowledge*” theory, as exemplified in *US v. Bank of New England*, where a bank's knowledge was considered the aggregate of its workers' knowledge.⁶⁰ Many jurisdictions, however, have approached this theory with caution; English courts predominantly rejected aggregation as a foundation for criminal liability, particularly in *R. v. HM Coroner for*

⁵⁵ Corporate Manslaughter and Corporate Homicide Act, 2007, No. 19, Act of Parliament, 2007 (UK).

⁵⁶ Bribery Act, 2010, No. 23, Act of Parliament, 2010 (UK).

⁵⁷ Criminal Finances Act, 2017, No. 22, Act of Parliament, 2017 (UK).

⁵⁸ See Virginia Harper Ho, *Theories of corporate groups: corporate identity reconceived*, SETON HALL L. REV. 42, 879(2012); David Millon, *Theories of the Corporation*, DUKE LJ, 201, 210-213 (1990).

⁵⁹ See *id.*

⁶⁰ See *United States of America v. Bank of New England* 821 F.2d 844 (1st Cir. 1987).

East Kent, ex parte Spooner.⁶¹ The concern is that it can be too easy to hold a company liable under this doctrine.

The aggregation model illustrates its effectiveness in incidents such as the Clapham rail crash.⁶² Individual lapses, including a technician's wiring error and managerial oversight failures, collectively resulted in tragedy. Within an aggregate framework, corporate liability does not hinge on pinpointing a specific employee responsible for both *actus reus* and *mens rea*; rather, it focuses on whether British Rail, as an institution, possessed adequate knowledge and capability to avert the harm.

However, aggregation is not without criticism. It raises fairness concerns, as individuals whose actions are collectively attributed to the corporation may lack the requisite culpability for personal liability. The risk lies in constructing corporate liability from discrete, non-blameworthy acts, thereby potentially inflating criminal penalties. Aggregating knowledge or conduct can be useful in addressing complex offences, such as frauds involving multiple actors, but it invites the question: how much aggregation is too much? Should a firm be held liable if four separate employees each negligently overlooked a red flag, even though none individually acted with gross negligence? This may undermine due process, as a corporation could be convicted where all individuals would be acquitted if tried separately. Moreover, successful prosecution under a cultural fault model demands that enforcement agencies possess the resources and expertise to prove systemic deficiencies, a task far more difficult than demonstrating individual *mens rea*.

d. Corporate Fault Model

As previously discussed, determining how a company can be “*at fault*” has long posed challenges for criminal jurisprudence. Traditional doctrines such as identification and vicarious liability attempt to bridge this conceptual gap by attributing individual acts and mental states to the corporation. Yet these approaches often fall short, particularly in complex or AI-mediated contexts, because they rely on individual culpability even when the misconduct arises from systemic organizational failures.

⁶¹ See *R. v. HM Coroner for E. Kent ex parte Spooner*, (1989) 88 Cr. App. R. 10 (U.K.).

⁶² See GREG MORSE, *THE CLAPHAM TRAIN ACCIDENT: CAUSES, CONTEXT AND THE CORPORATE MEMORY CHALLENGE* (Pen and Sword Transport)(2023).

The concept of corporate fault offers a more pragmatic and philosophically grounded alternative. Corporate policy rarely originates with a single individual; it develops through committees, internal deliberation, managerial endorsement, and board approval. This process generates a synthesized institutional will that is distinct from any single employee and properly attributable to the firm itself. Moving beyond derivative liability, whether traced to one individual or dispersed among many, the organizational fault model contends that a company may be culpable by virtue of its deficient culture or policies.⁶³ In this context, responsibility is not contingent upon identifying any specific culpable individual; the emphasis is on whether the corporation's structures, practices, or culture facilitated or condoned the offence.⁶⁴ James Gobert articulates this as identifying the blameworthiness that underpins criminal liability within the corporation itself rather than attributing it to any one agent.⁶⁵ A corporation that consistently neglects safety regulations or implicitly endorses unethical financial practices may be perceived as possessing an organisational *mens rea*.⁶⁶ This comprehensive approach regards the corporation as an autonomous entity with distinct objectives and characteristics.⁶⁷ It corresponds with the intuitive concept that Ford or IBM can possess a distinct identity independent of any individual employee. Organisational theory underpins contemporary notions such as corporate culture as indicators of deficiencies and has impacted legislative reforms in certain nations.⁶⁸ It also encompasses offences of omission (neglecting to avert misconduct).⁶⁹ This paradigm does not supplant individual culpability; instead, both the corporation and responsible individuals may be prosecuted, illustrating that corporate crime frequently entails a confluence of corporate ethos and human acts.

This theory is especially relevant in instances of dispersed omissions, where damage arises from numerous little failures instead of a singular, identifiable action. The Bhopal Gas Tragedy of December 1984 exemplifies corporate negligence, predating the formal adoption

⁶³ See Neil Cavanagh, *Corporate criminal liability: an assessment of the models of fault*, The Journal of Criminal Law 75.5, 414, 414-440(2011); Richard Mays, *Towards corporate fault as the basis of criminal liability of corporations*, Mountbatten Journal of Legal Studies 2.2, 31, 31-67 (1998); Brent Fisse, *Reconstructing corporate criminal law: Deterrence, retribution, fault, and sanctions*, S. CAL. L. REV. 56, 1141(1982).

⁶⁴ See *id.*

⁶⁵ See James Gobert, *Corporate criminality: four models of fault*, LEGAL STUDIES 14.3, 393, 407-408 (1994).

⁶⁶ See Vikramaditya S. Khanna, *Is the notion of corporate fault a faulty notion: The case of corporate mens rea*, BUL REV. 79, 355(1999).

⁶⁷ See *id.*

⁶⁸ See TOM CHRISTENSEN ET AL., ORGANIZATION THEORY AND THE PUBLIC SECTOR: INSTRUMENT, CULTURE AND MYTH (Routledge) (2020).

⁶⁹ See Robert Sullivan, *Conduct and Complicity: Liability Based on Omission and Risk*, CAMBRIAN L. REV. 39, 60 (2008); Otto Kirchheimer, *Criminal omissions*, HARV. L. REV. 55, 615(1941); Arthur Leavens, *A Causation Approach to Criminal Omissions*, CALIF. L. REV. 76, 547(1988).

of the phrase in criminal law.⁷⁰ The emission of methyl isocyanate (MIC) gas from the Union Carbide India Ltd (UCIL) facility, a subsidiary of the U.S.-based Union Carbide Corporation (UCC), resulted in the fatalities of over 10,000 individuals within days and inflicted enduring health issues and environmental destruction that continues to this day. Investigations disclosed that UCC had been cognisant, as early as 1982, of the plant's significant safety deficiencies and the anticipated possibility of an uncontrolled response.⁷¹ Notwithstanding this, safety measures were disregarded, suggested repairs were deferred, and essential systems remained nonfunctional; decisions motivated by financial constraints and administrative indifference.⁷² These findings illustrate that the harm originated not from individual recklessness, but from a systematic failure in organisational governance and risk management. However, criminal liability was disproportionately borne by Indian officials of UCIL, while UCC's American leadership, including CEO Warren Anderson, escaped punishment.⁷³ The global framework of UCC enabled it to capitalise on jurisdictional voids, illustrating the risks associated with "legal distance" in transnational corporate activities. This tragedy highlights the inadequacy of conventional doctrines such as identification or vicarious culpability, which rely on attributing guilt to particular individuals. Rather, it robustly endorses the transition to a corporate fault model, wherein the legal emphasis is on whether a corporation, as a decision-making body, neglected to establish sufficient compliance procedures, disregarded known risks, and permitted practices likely to cause harm. In a modern setting when AI systems operate with unclear reasoning and dispersed oversight, Bhopal gas tragedy stands as a cautionary example highlighting that complexity and decentralisation must not exempt businesses from accountability when avoidable damages transpire under their supervision.

Having examined the four principal theories of corporate criminal liability, vicarious liability, identification theory, aggregation, and corporate fault, it becomes evident that each is grounded

⁷⁰ See Usha Ramanathan, *The Bhopal case: retrospect and prospect*, In: 138, 138-145, PHILIPPE CULLET & SUJITH KOONAN (Eds), *RESEARCH HANDBOOK ON LAW, ENVIRONMENT AND THE GLOBAL SOUTH* (Edward Elgar Publishing) (2019); Roli Varma & Daya R. Varma, *The Bhopal disaster of 1984*, *Bulletin of Science, Technology & Society* 25.1, 37, 37-45(2005).

⁷¹ See Tim Covell, *Bhopal Disaster Litigation: It's Not over Yet*, *THE NCJ INT'L L. & COM. REG.* 16, 279 (1991); Trotter, R. Clayton et al., *Bhopal, India and union carbide: The second tragedy*, *Journal of Business Ethics* 8, 439, 439-454 (1989); Sudhir K. Chopra, *Multinational Corporations in the Aftermath of Bhopal: The Need for a New Comprehensive Global Regime for Transnational Corporate Activity*, *VAL. UL REV.* 29, 235(1994).

⁷² See *id.*

⁷³ See Tim Edwards, *Criminal failure and "the chilling effect": a short history of the Bhopal criminal prosecutions*, *Social Justice* 41.½ (135-136), 53, 53-79 (2014); G. S. Bajpai & Bir Pal Singh, *The Bhopal Gas Disaster and Corporate Criminal Negligence*, In: MANGAI NATARAJAN, *INTERNATIONAL CRIME AND JUSTICE*, 200 (Cambridge University Press) (2011).

in foundational assumptions about human agency, intent, and control within corporate structures. These doctrines emerged in an era when harmful corporate conduct could generally be traced to decisions made by identifiable individuals operating within a clear hierarchy. Today, however, the corporate environment is undergoing a profound transformation with the integration of AI systems into decision-making processes. Part II explores the complex challenges introduced by AI, particularly with respect to intent, causation, autonomy, and opacity, and critically evaluates how traditional theories of corporate criminality either struggle or adapt when applied to algorithmic actors

III. AI and the Doctrinal Disruption

a. Problem of Mens rea

A fundamental component of the majority of criminal acts is the necessity of a guilty mind (*mens rea*). AI systems at the current stage of technological development, especially those employing machine learning, deep learning, or neural networks; lack consciousness, emotions, or intentions as understood in a human context.⁷⁴ The criminal law requires various forms of *mens rea* i.e., *actus reus* was performed intentionally (“*To Intend is to have in mind a fixed purpose to reach a desired objective...denote(s) the state of mind of a man who not only foresees but also desires the possible consequences of his conduct*”),⁷⁵ with knowledge (“...signify a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive”),⁷⁶ dishonestly (“*means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person*”),⁷⁷ fraudulently (“*means doing anything with the intention to defraud but not otherwise*”),⁷⁸ voluntarily (... “*whereby he intended to cause it, or by means which, at the time*

⁷⁴ Sadia Tariq et al., *Examining Some Serious Challenges and Possibility of AI Emulating Human Emotions, Consciousness, Understanding and ‘Self’*, Journal of NeuroPhilosophy 1.1, 53, 53-72 (2022); Zhenhua Zhou, *Emotional thinking as the foundation of consciousness in artificial intelligence*, Cultures of Science 4.3, 112, 112-123 (2021);

⁷⁵ See *Jai Prakash v. State (Delhi Admin.)*, (1991) 2 SCC 32 (India); Bharatiya Nyaya Sanhita, 2023, § 324, No. 45, Acts of Parliament, 2023 (India).

⁷⁶ See *id*; *Imtiaz Yusufbhai Shaikh v. State of Gujarat*, R/CR.MA/14919/2015 (Guj. HC) (India).

⁷⁷ See Bharatiya Nyaya Sanhita, 2023, § 2 (7) No. 45, Acts of Parliament, 2023 (India); Bharatiya Nyaya Sanhita, 2023, § 316; § 318–319, No. 45, Acts of Parliament, 2023 (India); *Queen Empress v. Agha Muhammad Yusuf* 1895 SCC Online All 87; *Queen Empress V. Churn Chunga* 1895 SCC Online Cal 13; *Budhan Singh v. State* 1960 SCC Online Pat 66.

⁷⁸ See Bharatiya Nyaya Sanhita, 2023, § 2 (9), 320–322, No. 45 Acts of Parliament, 2023 (India); *S. Dutt v. State of U.P.*, AIR 1966 SC 523 (India); *Queen Empress v. Soshi Bhushan*, 1893 SCC OnLine All 25 (India); *Vimla v. Delhi Admin.*, AIR 1963 SC 1572 (India); *In re London & Globe Fin. Corp. Ltd.*, [1903] 1 Ch. 728 (U.K.).

of employing those means, he knew or had reason to believe to be likely to cause it.”).⁷⁹ Therefore, the legal doctrines of *intent* and *causation*, foundational to attributing criminal liability in common law systems, are based on human behavior and mental states.⁸⁰ So, even if AI advances to the stage of independent intent or thoughts, the current law would not interpret it as capable of having *mens rea*. So, the thought of imputing *mens rea* to AI isn’t feasible.

So the next logical question is can the human developing the AI be imputed to the *mens rea* of AI? However, the doctrine encounters substantial limitations when applied to fully autonomous or machine-learning-based AI systems that make decisions independent of direct human input. This is especially problematic when AI-generated conduct arises from unanticipated algorithmic behavior; a scenario commonly referred to as the “*black box*” problem.⁸¹ AI systems, particularly those utilising deep neural networks, function as opaque entities, even to their developers.⁸² Their internal logic cannot be readily reverse-engineered, elucidated, or comprehended retrospectively.⁸³

The philosophical analysis of action and responsibility further exposes the doctrinal inadequacy of attributing traditional *mens rea* to AI systems. Intent necessitates volition or, at a minimum, the anticipation of harm. As Robert Audi emphasizes, true human agency requires not only the presence of intentions but also volitions; momentary acts of will that causally structure bodily movements and decisions.⁸⁴ Audi distinguishes between mere outcomes and actions that are mentally authored through volitional processes, arguing that volition is a necessary component for grounding moral and legal responsibility.⁸⁵ In contrast, AI systems, particularly those

⁷⁹ See Bharatiya Nyaya Sanhita, 2023, §2(33), No. 45 Acts of Parliament, 2023 (India); *Meeru Bhatia Prasad v. State*, 2001 SCC OnLine Del 1101 (India); *Queen Empress v. Raghunath Rai*, 1892 SCC OnLine All 59 (India).

⁸⁰ See Yavar Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, 31 HARV. J. L. & TECH 889 (Spring 2018).

⁸¹ See Warren J. Von Eschenbach, *Transparency and the black box problem: Why we do not trust AI*, Philosophy & Technology 34.4, 1607, 1607-1622 (2021); Carlos Zednik, *Solving the black box problem: A normative framework for explainable artificial intelligence*, Philosophy & technology 34.2, 265, 265-288 (2021); Charlotte A. Tschider, *Beyond the “Black Box”*, DENV. L. REV. 98, 683 (2020); Vladislav V. Fomin & Paulius Astromskis, *The Black Box Problem* In: JOHN-STEWART GORDON (ED), FUTURE LAW, ETHICS, AND SMART TECHNOLOGIES, 112, 112-125 (Brill) (2023).

⁸² See Amina Adadi & Mohammed Berrada, *Peeking inside the black-box: a survey on explainable artificial intelligence (XAI)*, IEEE access 6, 52138, 52138-52160(2018); Jean-Christophe Bélisle-Pipon et al., *Artificial intelligence ethics has a black box problem*, AI & SOCIETY, 1, 1-16 (2023); Yavar Bathaee, *The artificial intelligence black box and the failure of intent and causation*, HARV. J. L. & TECH. 31, 889 (2017); Warren J. Von Eschenbach, *Transparency and the black box problem: Why we do not trust AI*, Philosophy & Technology 34.4, 1607, 1607-1622 (2021).

⁸³ See Carlos Zednik, *Solving the black box problem: A normative framework for explainable artificial intelligence*, PHILOSOPHY & TECHNOLOGY 34.2, 265 (2021)

⁸⁴ See Robert Audi, *Volition, Intention, and Responsibility*, U. PA. L. REV. 142, 1675(1993).

⁸⁵ See *id* at 1676-1677.

operating as autonomous black boxes, lack both intentions in the dispositional sense and volitions in the immediate causal sense. They process data and optimize outputs algorithmically, without the internal mental-causal experience of willing or choosing. Moreover, Audi's discussion of deviant causal chains i.e., outcomes occurring independently of proper volitional control provides a powerful analogy for AI behavior: even when an AI's conduct produces an outcome that matches a corporation's goal, the internal process is often non-transparent, stochastic, and causally deviant relative to traditional conceptions of agency. Therefore, attempts to apply human-centered concepts of intent, knowledge, or will to AI actors risk conceptual distortion. This supports the argument that corporate criminal liability for AI-driven harm must shift focus away from imputing intent to machine agents and instead assess systemic governance failures, compliance structures, and corporate fault at the organizational level.

Ohlin's comparative analysis shows that conceptions of intent differ substantially across legal systems.⁸⁶ Ohlin distinguishes between direct intent (*dolus directus*), knowledge-based intent (*dolus indirectus*), and risk-based or eventual intent (*dolus eventualis*).⁸⁷ Particularly, *dolus eventualis*, where an agent foresees the possibility of harm but proceeds regardless, has gained prominence in many civil law jurisdictions and increasingly influences common law thinking in fields such as international criminal law.⁸⁸ For example, if a corporation releases an AI-driven trading algorithm that autonomously manipulates financial markets in ways unintended by human developers, but where some degree of risk was foreseeable, the corporation's culpability could be analogized to *dolus eventualis*. Thus, the framework for evaluating intent might not require an AI or its operators to have directed a specific outcome purposefully; rather, knowledge of foreseeable risk coupled with indifference may suffice to ground criminal liability under an expanded intent model. This poses an additional challenge to the regulation of AI-related corporate crimes at a global level. Jurisdictions embracing broader notions of intent (e.g., Germany, France) may be more willing to impose criminal liability for AI-induced harms, whereas stricter *mens rea* jurisdictions (e.g., United States, United Kingdom) may resist unless clear proof of knowledge or purpose is demonstrated.⁸⁹ Harmonization of standards thus requires an acknowledgment that the mental element in AI liability is not universally

⁸⁶ See Jens D. Ohlin, *Targeting and the Concept of Intent*, 35 MICH. J. INT'L L. 79 (2013)

⁸⁷ See *id* at 86–87.

⁸⁸ See *id* at 88–100.

⁸⁹ See *id* at 87–91.

understood, and any international or cross-border regulatory framework must address these cultural divergences.

Recent empirical research challenges the assumption that *mens rea* must be rooted in natural persons. Stuart and Kneer's study reveals that people readily attribute inculpatory mental states; such as knowledge and intention to AI systems, and often assign moral blame on par with or even exceeding that of human agents or corporations.⁹⁰ These findings problematize traditional identification and vicarious liability models, which presuppose a natural human '*mind and will*'. Instead, they support a shift towards corporate fault and systems-based models of liability that can accommodate emergent, distributed, and autonomous decision-making by AI agents. Notably, their identification of an "*inverse outcome effect*" whereby AI systems are blamed less when harm occurs; illustrates the public's intuitive awareness of responsibility gaps and the need for a legal framework that does not misallocate blame or excuse culpable developers and corporations.⁹¹ Any legal attribution of *mens rea* to AI must be carefully structured to avoid undermining human accountability.

b. Problem of strict liability and transparency mandates

One of the leading responses to the difficulties AI introduces into corporate criminal liability, particularly the collapse of traditional *mens rea* frameworks, is the proposal to impose strict liability regimes and mandate transparency obligations.⁹² Scholars argue that if intentionality, knowledge, or foreseeability cannot be reliably attributed to corporations operating AI systems, it becomes necessary to shift away from subjective fault models and focus instead on objective outcome-based responsibility.⁹³

⁹⁰ See Michael T. Stuart & Markus Kneer, *Guilty artificial minds: Folk attributions of mens rea and culpability to artificially intelligent agents*, PROCEEDINGS OF THE ACM ON HUMAN-COMPUTER INTERACTION 5 CSCW2, 1, 1-27 (2021).

⁹¹ See *id.* at 12.

⁹² See Yavar Bathaee, *The artificial intelligence black box and the failure of intent and causation*, HARV. JL & TECH 31, 889, 928-931 (2017).

⁹³ See Nora Osmani, *The complexity of criminal liability of AI systems*, MASARYK UNIVERSITY JOURNAL OF LAW AND TECHNOLOGY 14.1, 53, 53-82 (2020); Christiane Wendehorst, *Strict liability for AI and other emerging technologies*, JOURNAL OF EUROPEAN TORT LAW 11.2, 150, 150-180 (2020); Sadaf Fahim & G. S. Bajpai, *AI and Criminal Liability*, INDIAN J. ARTIFICIAL INTEL. & L 1, 64 (2020).

Strict liability frameworks eliminate the requirement of proving mental elements such as intent or recklessness.⁹⁴ Instead, liability attaches solely upon the occurrence of a prohibited outcome, provided the defendant engaged in the proscribed act or omission.⁹⁵ Under such an approach, corporations deploying autonomous or semi-autonomous AI systems could be held criminally liable for harms caused by those systems without needing to demonstrate specific human intentionality behind each action.

Simultaneously, scholars and policymakers advocate for transparency mandates, particularly when corporations use opaque “black-box” AI systems.⁹⁶ These mandates would require companies to maintain sufficient documentation of AI design, training data, decision-making parameters, and post-deployment monitoring mechanisms. Transparency obligations serve two purposes: first, they impose proactive governance duties that encourage safe system deployment; and second, they reduce information asymmetries that obstruct enforcement agencies and courts from scrutinizing harmful AI behavior.⁹⁷

c.Problem of causation

However, even if strict liability and transparency mandates address the *mens rea* problem, a second fundamental difficulty remains: establishing causation (*actus reus*).⁹⁸ Criminal liability requires not merely proof that harm occurred but also that the defendant's conduct was voluntary⁹⁹ and caused the harm in a legally relevant way.¹⁰⁰ There is a need to establish factual

⁹⁴ See Richard A. Wasserstrom, *Strict liability in the criminal law*, STAN. L. REV.12, 731 (1959); David Prendergast, *The Constitutionality of Strict Liability in Criminal Law*, DUBLIN ULJ 33, 285 (2011); Kenneth W. Simons, *When is strict criminal liability just*, J. CRIM. L. & CRIMINOLOGY 87, 1075 (1996).

⁹⁵ See *id.*

⁹⁶ See Yavar Bathace, *The artificial intelligence black box and the failure of intent and causation*, HARV. JL & TECH 31, 889, 928-931 (2017).

⁹⁷ See Heike Felzmann et al., *Transparency you can trust: Transparency requirements for artificial intelligence between legal norms and contextual concerns*, BIG DATA & SOCIETY 6.1 (2019); H.Felzmann, et al., *Towards Transparency by Design for Artificial Intelligence*, SCI ENG ETHICS 26, 3333, 3333–3361 (2020); Stefan Larsson & Fredrik Heintz, *Transparency in artificial intelligence*, INTERNET POLICY REVIEW 9.2, 1, 1-16. (2020); Thomas Wischmeyer, *Artificial intelligence and transparency: opening the black box*, In: T. WISCHMEYER & T.RADEMACHER(EDS), *REGULATING ARTIFICIAL INTELLIGENCE*, 75, 75-101 (Springer International Publishing)(2019).

⁹⁸ See Arshdeep Ghuman, *Elements of crime*, INT'L JL Mgmt. & Human. 1, 70 (2018); N. Cross, *Criminal justice, actus reus and mens rea*, In: KAREN CORTEEN ET AL. (EDS), *FORENSIC PSYCHOLOGY, CRIME AND POLICING*, 108, 108–113 Bristol university online (2023); A. P. Simester, *Causation in (criminal) law*, Law Quarterly Review 113, 416, 416-441 (2017); John E. Stannard, *Stretching out the actus reus*, IRISH JURIST 1966 28, 200, 200-220 (1993).

⁹⁹ See *R. v. Bourne*, [1952] 36 Cr. App. R. 1251 (U.K.); *R. v. Quick*, [1973] Q.B. 910 (U.K.); *R. v. Parks*, [1992] 2 S.C.R. 871 (Can.).

¹⁰⁰ See Paul K. Ryu, *Causation in criminal law*, U. PA. L. REV.106, 773 (1957); Marcelo Ferrante, *Causation in Criminal Responsibility*, NEW CRIMINAL LAW REVIEW 11.3, 470, 470-497 (2008); Zvonimir Tomic, *About Causation in Criminal Law*, YBL FAC. SARAJEVO 49, 459 (2006); Igor Martinovic, *The Problem of Causation in Criminal Law*, CROATIAN ANN. CRIM. L. & PRAC. 19, 75 (2012).

causation and legal causation. Factual causation is to be established via “*But for*” test i.e., Would the result have occurred but for the accused’s conduct?¹⁰¹ While legal causation asks if the defendant’s act is the substantial, operative, and foreseeable cause of the result?¹⁰²

Nevertheless, the black box problem renders it exceedingly challenging to ascertain whether the harm would not have transpired “*but for*” any particular corporate action, such as deployment decisions, training data selections, or system configurations, due to the obscurity of the AI’s internal mechanisms that lead to harmful decisions. AI systems, especially those utilising machine learning, can adapt, self-optimize, and change in unforeseen manners throughout their design or deployment phases. In such instances, although a company’s choice to implement the system may be seen as a but-for cause in a general sense, identifying individual business actions that factually resulted in the outcome is precarious. In AI-driven organisations, various stakeholders i.e., engineers, developers, trainers, and executives provide distinct contributions to the final system. No individual human decision may meet the “but for” criterion when evaluated in isolation, and courts may be reluctant to combine disparate actions from several persons without explicit doctrinal justification. The autonomous functioning of an AI system may be regarded as an intervening act (*novus actus interveniens*), disrupting the causal connection between the actions of the corporate defendant and the resultant harm. If the AI modifies its behaviour post-deployment in ways that the business could not have precisely anticipated or regulated, courts may determine that the AI’s autonomous decision-making represents a novel, independent cause. Legal causation conventionally necessitates that the harm be a predictable result of the defendant’s actions. In the context of AI, detrimental effects may arise from intricate interactions among the AI’s training data, real-world inputs, and operational context. Anticipating all potential harms arising from an AI’s operation is frequently unfeasible, engendering significant uncertainty over the foreseeability of such harm at the time of implementation. Consequently, while strict liability and transparency mandates offer promising pathways to sidestep the mental element dilemma, they cannot, by themselves, resolve the deeper difficulty of proving causal links.

¹⁰¹ See B. P. Karnaukh, *Causation in Tort Law: Review of the but for Test*, PROBS. LEGALITY 147, 75 (2019); Pratik Tayal, *A New World of Causation in Safeguards: Application of the ‘But for’ Test*, Global Trade and Customs Journal 10.10 (2015).

¹⁰² See Antje du Bois-Pedain, *Novus actus and beyond: attributing causal responsibility in the criminal courts*, The Cambridge Law Journal 80.S1, S61-S90(2021); Grant Firkins, *Rethinking causation in english criminal law*, THE JOURNAL OF CRIMINAL LAW 87.1, 18, 18-38 (2023); *R. v. White*, (1910) 2 K.B. 124 (U.K.); *R. v. Smith*, (1959) 2 Q.B. 35 (U.K.); *R. v. Jordan*, (1956) 40 Cr. App. R. 152 (U.K.); *R. v. Michael*, (1840) 9 C. & P. 356 (U.K.); *R. v. Pagett*, (1983) 76 Cr. App. R. 279 (U.K.); *R. v. Kennedy (No. 2)*, [2007] UKHL 38 (U.K.).

d. Mapping Inadequacy: Vicarious, Identification, Aggregate & Culture Models

Put simply: when AI performs the act, the human-agent hooks of vicarious and identification liability come loose; when we pivot to systems, aggregate and culture models can sweep too broadly without firm limiting principles or AI-specific benchmarks. The table that follows tracks these shortcomings doctrine by doctrine.

Theory	How it attributes fault	AI-related shortcomings (why it misfits)	Net risk
Vicarious liability (<i>respondeat superior</i>)	Imputes employee/agent's crime within scope & for corporate benefit	No " <i>human agent</i> " at the decision point; emergent model behavior strains scope/benefit tests; vendor/outsourced models blur agency; risks turning deployment of AI into constructive agency.	Over-inclusion (de facto strict liability) or under-inclusion (no agent to impute) depending on framing
Identification (alter ego)	Attributes mens rea of the " <i>directing mind/senior manager</i> " to the company	Hard to locate a single culpable human mind when harm flows from system design, training data, or drift; AI outputs lack human mens rea; decisions are diffuse across teams/providers.	Under-inclusion (no senior mind to pin)
Aggregate (collective knowledge)	Sums employees' fragmented knowledge to form corporate " <i>knowledge</i> "	Treats patterns latent in model weights as " <i>knowledge</i> " no human holds; collapses knowledge element into mere model possession; fair-notice/due-process concerns.	Over-inclusion (knowledge without awareness)

Corporate fault / culture model	Fault inferred from policies, incentives, control systems	Black-box opacity frustrates assessing “reasonable” controls; static programs vs. dynamic models (retraining/drift); weak leverage over third-party/vended AI; vague benchmarks invite paper compliance.	Ambiguous (can be vacuous or overly elastic)
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IV. Evaluating Indian Legal Frameworks for Corporate Liability

Section 1 (26) of Bhartiya Nyaya Sanhita 2023¹⁰³ (previously section 11 Indian Penal Code, 1860)¹⁰⁴ defines “*person*” includes any company or association or body of persons, whether incorporated or not. The word ‘*person*’ has also been defined in general clauses act under section 3(42) which is similar to that of Bhartiya Nyaya Sanhita 2023.¹⁰⁵ At first, it was believed that a corporation could be held accountable for just those actions for which no *mens rea* was needed and merely a fine may be assessed.¹⁰⁶ Therefore, a company could not be charged with crimes for which only incarceration is a punishment. In *MCD vs. J. B. Bottling Co. (P) Ltd.*, a case involving punishment of imprisonment and fine, the court held that the company did not enjoy impunity from prosecution and will be punished with fine only.¹⁰⁷ While in *Assistant commr. Assessment vs. Velliappa Textiles Ltd.*,¹⁰⁸ the Supreme Court of India held that offences which prescribe a mandatory sentence of imprisonment as punishment, punishing a corporation with fine only, would not be possible without making legislative changes.

In the case of *Standard Chartered Bank v. Directorate of Enforcement*¹⁰⁹ a Constitution Bench held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. However it was observed that,

¹⁰³ See Bharatiya Nyaya Sanhita, 2023, § 1 (22) No. 45, Acts of Parliament, 2023 (India);

¹⁰⁴ See Indian Penal Code, 1860, § No. 45, Acts of Parliament, 1860 (India).

¹⁰⁵ See *Satish Jayantilal Shah v. Pankaj Mashruwala*, (1997) BC 320; I (1997) CCR 603; 1996 Cri. L.J. 3099 (India).

¹⁰⁶ See *Punjab Nat’l Bank v. A.R. Gonsalves*, 1921 SCC OnLine Sind JC 31 (India); *Ananth Bandu v. Corp. of Calcutta*, 1952 SCC OnLine Cal 122 (India).

¹⁰⁷ See *MCD v. J.B. Bottling Co. (P) Ltd.*, 1975 SCC OnLine Del 47 (India).

¹⁰⁸ See *Asst. Comm’r of Assessment v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405 (India).

¹⁰⁹ See *Standard Chartered Bank v. Directorate of Enf’t*, (2005) Supp. (1) S.C.R. 49 (India).

“8. It is only in a case requiring *mens rea*, a question arises whether a corporation could be attributed with requisite *mens rea* to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue.”

The Supreme Court in *Iridium India Telecom Ltd. v. Motorola Inc.*¹¹⁰ addressed whether a corporation can be held criminally liable for offences requiring *mens rea*. Drawing from English and American jurisprudence, the Court affirmed that corporations, though artificial entities, can possess a culpable mental state through the doctrine of attribution.¹¹¹ This doctrine imputes the mental state of those who constitute the “*directing mind and will*”—typically directors and top management to the corporation itself. The Court cited *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.*¹¹² and *Bolton (Engineering) Co. Ltd. v. T.J. Graham & Sons Ltd.*,¹¹³ where it was held that companies act through their controlling individuals, and their intentions can be treated as the company’s own. Similarly, in *Tesco Supermarkets Ltd. v. Natrass*,¹¹⁴ it was clarified that when such individuals act within their sphere of authority, their guilty mind is attributed to the company, not vicariously but as the company’s own *mens rea*. Consequently, the Court concluded that corporations are liable for both statutory and common law offences involving mental fault, provided those directing the company’s affairs possess the requisite *mens rea* at the time of the offence.

While *Iridium India Telecom Ltd. v. Motorola Inc.*¹¹⁵ affirmed that a corporation can be held criminally liable for offences involving *mens rea* through the doctrine of identification/alter ego, imputing the intent of the directing mind to the company, it did not settle the question of automatically extending such liability to individual directors.

This distinction was clarified in *Sunil Bharti Mittal vs. Central Bureau of Investigation*¹¹⁶, wherein the Supreme Court reiterated that individual liability cannot be presumed merely from one’s position in the corporate hierarchy. In paras 37 to 39 of the judgment, the Court underscored the cardinal principle of criminal law that vicarious liability must be explicitly

¹¹⁰ See *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74 (India).

¹¹¹ See *id* at Paragraph 59-61.

¹¹² See *Dir. of Pub. Prosecutions v. Kent & Sussex Contractors Ltd. & Bolton (Eng’g) Co. Ltd.*, [1944] K.B. 146 (U.K.)

¹¹³ See *Bolton (Eng’g) Co. v. T.J. Graham & Sons Ltd.*, [1957] 1 Q.B. 159 (U.K.).

¹¹⁴ See *Tesco Supermarkets Ltd. v. Natrass*, [1971] 2 All E.R. 127 (H.L.) (U.K.).

¹¹⁵ See *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74 (India).

¹¹⁶ See *Sunil Bharti Mittal v. Cent. Bureau of Investigation*, (2015) 1 S.C.R. 377 (India).

provided by statute. Thus, an individual may only be held liable if (i) there is clear evidence of their active role coupled with criminal intent, or (ii) a statute specifically incorporates a vicarious liability clause, such as Section 141 of the Negotiable Instruments Act, 1881. Consequently, the jurisprudence draws a clear line between corporate fault and personal culpability, requiring distinct thresholds for attributing liability to natural and juristic persons.

In *Shiv Kumar Jatia v. State (NCT of Delhi)*, the Supreme Court reaffirmed the principle that in the absence of statutory vicarious liability, individual directors of a company can only be held criminally liable if there is clear evidence of their active role coupled with criminal intent.¹¹⁷ The Court quashed the criminal proceedings against the managing director (MD) of Asian Hotels (North) Ltd., operator of Hotel Hyatt Regency, New Delhi, where a guest fell from an unsecured terrace. While negligence was alleged against hotel staff, the MD was charged merely due to his position and signature on official documents, without any direct attribution of culpable intent. The Court relied on its earlier ruling in *Sunil Bharti Mittal v. CBI*,¹¹⁸ where it had held that criminal liability of directors requires more than mere designation; it must be supported by substantive material showing personal involvement and *mens rea*. The Court also referred to *Maksud Saiyed v. State of Gujarat*,¹¹⁹ emphasizing that the Indian Penal Code (IPC) does not provide for vicarious liability, and any imposition of liability must meet the threshold of specific allegations indicating individual culpability. Vague or generalized assertions, as in the present case, were deemed insufficient. Accordingly, the Court quashed the proceedings against the MD but allowed trial to continue against the general manager, noting that his role in the day-to-day operations warranted factual inquiry at trial, regardless of his claimed absence from the premises on the date of the incident.

Similarly, in *S.M.S. Pharmaceuticals Ltd vs Neeta Bhalla And Anr.*,¹²⁰ observed that,

“8 There is no universal rule that a Director of a company is in charge of its everyday affairs. We have discussed about the position of a Director in a company in order to illustrate the point that there is no magic as such in a particular word, be it Director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A company may have managers or secretaries for different departments,

¹¹⁷ See *Shiv Kumar Jatia v. State (NCT of Delhi)*, AIR 2019 SC 4463 (India).

¹¹⁸ See *Sunil Bharti Mittal v. Cent. Bureau of Investigation*, (2015) 1 S.C.R. 377 (India).

¹¹⁹ See *Maksud Saiyed v. State of Gujarat*, AIR 2007 SC 332 (India).

¹²⁰ See *S.M.S. Pharms. Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 (India).

which means it may have more than one manager or secretary."This judgment reinforces settled jurisprudence that individual liability under the IPC, absent statutory vicarious provisions, arises only upon proof of personal actus reus and mens rea. Directors cannot be held criminally liable solely based on their official designation or participation in board meetings."

While in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*¹²¹ 5 (2012), it was observed:

"32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification."

In *S.K. Alagh v. State of U.P.*¹²² also it was observed that

"19....In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself."

These judgments reinforce the settled jurisprudence that individual liability under the IPC/BNS, absent statutory vicarious provisions, arises only upon proof of personal *actus reus* and *mens rea*. Anyone cannot be held criminally liable solely based on their official designation.

Broadly, two categories of liability emerge under Indian law:

1. Personal criminal liability: Where no vicarious liability clause exists, liability can only be imposed upon proof of direct involvement in the offence with requisite intent.

¹²¹ See *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 (India).

¹²² See *S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 (India).

2. Statutory vicarious liability: Various statutes such as the Companies Act, 2013, impose vicarious liability on designated persons, including “*officers in default*,” directors responsible for particular functions, and those acting with consent or connivance.

a. Analysing penal provisions of Companies Act, 2013

In light of the Supreme Court’s consistent emphasis on the necessity of express statutory provisions for attributing vicarious criminal liability, the framework under the Companies Act, 2013 becomes especially significant. Unlike the Indian Penal Code (now *Bhartiya Nyaya Sanhita*), which lacks a general doctrine of vicarious liability, the Companies Act adopts a more structured approach by statutorily identifying individuals. The Companies Act, 2013 serves as a fundamental framework for corporate regulation in India.¹²³ It establishes a thorough compliance framework for corporate entities and their officials to safeguard the rights and interests of shareholders and investors.¹²⁴ The incremental decriminalisation of procedural defaults under the Act, as advised by the Injeti Srinivas Committee, underscores the legislative purpose to reconcile severe enforcement with the necessity of fostering a business-friendly regulatory framework.¹²⁵ The Act includes an internal adjudication process, as specified in Section 454 of the Act in conjunction with the Companies (Adjudication of Penalties) Rules, 2014.¹²⁶ The MCA, by its notification of March 24, 2015, designated the RoC of the respective jurisdictions to serve as adjudicating officers.¹²⁷ This internal adjudication system, however, is applicable solely to those non-compliances or violations under the Act that incur only civil liability, specifically a monetary penalty.

¹²³ See Sarah Alvy, *India's Companies Act of 2013: A Governance Shift into the Sunlight*, *INDON. J. INT'L & COMP. L.* 2, 187 (2015); Harshit Chowdhary, *Corporate Governance Practices in India: A Theoretical Aspect*, *LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH.* 2, 173 (2024); ARUNACHALA RAMAIA, *GUIDE TO THE COMPANIES ACT* (LexisNexis)(2021).

¹²⁴ See Uma Rani, *Shareholder Rights and Corporate Governance: An Analysis of Recent Developments in India*, *Issue 5 INT'L JL MGMT. & HUMAN.* 7, 1452 (2024); Mihir Naniwadekar & Umakanth Varottil, *The stakeholder approach towards directors' duties under Indian Company Law: a comparative analysis* In: MAHENDRA PAL SINGH, *THE INDIAN YEARBOOK OF COMPARATIVE LAW*, 95-120 (Oxford University Press)(2017); Neeti Shikha, *Corporate governance in India-the paradigm shift*, *INTERNATIONAL JOURNAL OF CORPORATE GOVERNANCE* 8.2, 81, 81-105 (2017); Devarshi Mukhopadhyay & Rudresh Mandal. *The end of shareholder primacy in Indian corporate governance? Says who?*, *COMMONWEALTH LAW BULLETIN* 46.4, 595, 595-610 (2020).

¹²⁵ See Injeti Srinivas et al., *Report of the committee to review offences under companies act, 2013*, *MINISTRY OF CORPORATE AFFAIRS* (Aug. 2018) (https://www.mca.gov.in/Ministry/pdf/ReportCommittee_28082018.pdf) (Last accessed on May. 5, 2025)

¹²⁶ See Companies Act, 2013, No. 18 of 2013, § 454, Act of Parliament (India); MCA, *Companies (Adjudication of Penalties) Rules, 2014*, New Delhi, G.S.R. 254 (E), Mar. 31, 2014 (<https://ibclaw.in/the-companies-adjudication-of-penalties-rules-2014/>) (last accessed May 4, 2025).

¹²⁷ See *id* Rule 3.

The *Companies Act, 2013* also permits compounding of certain offences, those not punishable with imprisonment only or with imprisonment and fine by allowing companies and their officers to admit non-compliance and pay a prescribed fee as determined by the Regional Director or NCLT.¹²⁸ This mechanism, governed by Section 441, enables rectification of defaults without prolonged litigation. While no express preconditions exist, defaults must typically be remedied before applying. Companies and officers may file joint applications, even for repeated offences over multiple years. The adjudicating authority enjoys broad discretion in determining the compounding amount, considering factors such as intent, repetition, public interest, and financial condition. However, the procedure faces challenges, including absence of statutory timelines, interpretational inconsistencies, and a rigid bar on compounding repeat offences within three years, which may unfairly penalize companies despite genuine efforts to comply. The analysis of penal provisions of Companies act, 2013 reveals that:

(i) Certain provisions target only specific individual roles, like managing directors, whole-time directors, CFOs, or any specifically designated individuals wherein certain duty is imposed on these personnel and they contravene such duty. For instance, Section 128(6),¹²⁹ 129(7),¹³⁰ 166(7),¹³¹ and others. These reflect a strict liability approach.

¹²⁸ See Companies Act, 2013, No. 18 of 2013, § 441, Act of Parliament (India);

¹²⁹ See Companies Act, 2013, No. 18 of 2013, § 128(6), Act of Parliament (India). [*§128 (6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial Officer or such other person of the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees*]

¹³⁰ See Companies Act, 2013, No. 18 of 2013, § 129(7), Act of Parliament (India). [*§129(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both*]

¹³¹ See Companies Act, 2013, No. 18 of 2013, § 166(7), Act of Parliament (India). [*§166(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.*]

(ii) A few provisions sections 57,¹³² 58(6),¹³³ 118(12),¹³⁴ 336(2)¹³⁵ etc., broadly impose liabilities on “any person” who directly violates the law, regardless of their position.

(iii) While most of these provisions typically carry fines or monetary penalties and do not explicitly state intent, knowledge, or willfulness. Some explicitly require elements of *mens rea* such as section 26(9)(knowledge),¹³⁶ 57(deceit),¹³⁷ 127(knowledge),¹³⁸

¹³² See Companies Act, 2013, No. 18 of 2013, § 57, Act of Parliament (India). [§ 57. *Punishment for personation of shareholder.—If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees*]

¹³³ See Companies Act, 2013, No. 18 of 2013, § 58(6), Act of Parliament (India). [§ 58(6) *If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees*]

¹³⁴ See Companies Act, 2013, No. 18 of 2013, § 118(12), Act of Parliament (India). [§ 118 (12) *If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.*

¹³⁵ See Companies Act, 2013, No. 18 of 2013, § 336(2), Act of Parliament (India). [§ 336 (2) *Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.*

¹³⁶ See Companies Act, 2013, No. 18 of 2013, § 26(9), Act of Parliament (India). [§26 (9) *If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable 4*** with fine which shall not be less than fifty thousand rupees but which may extend to 5 [three lakh rupees].*

¹³⁷ See Companies Act, 2013, No. 18 of 2013, § 57, Act of Parliament (India). [§ 57. *Punishment for personation of shareholder.—If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees*]

¹³⁸ See Companies Act, 2013, No. 18 of 2013, § 127, Act of Parliament (India). [§127. *Punishment for failure to distribute dividends.—Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:]*

243(2)(knowledge),¹³⁹ 247(3)(knowledge),¹⁴⁰ 118(12) (tampering with intent),¹⁴¹ 206 (4)(Fraud),¹⁴² 337 (intent to defraud),¹⁴³ 447(fraud),¹⁴⁴ etc.

¹³⁹ See Companies Act, 2013, No. 18 of 2013, § 127, Act of Parliament (India). [*§ 243 (2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) 4 [or sub-section (1A)], and every other director of the company who is knowingly a party to such contravention, shall be punishable 5*** with fine which may extend to 6 [five lakh rupees].*]

¹⁴⁰ See Companies Act, 2013, No. 18 of 2013, § 247(3), Act of Parliament (India). [*§ 247 (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be 3 [liable to a penalty of fifty thousand rupees]: Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees]*]

¹⁴¹ See Companies Act, 2013, No. 18 of 2013, § 118(12), Act of Parliament (India). [*§ 118 (12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.*]

¹⁴² See Companies Act, 2013, No. 18 of 2013, § 206(4), Act of Parliament (India). [*§206(4) Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.*]

¹⁴³ See Companies Act, 2013, No. 18 of 2013, §337, Act of Parliament (India). [*§ 337. Penalty for frauds by officers.—If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal 1 [under this Act]— (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; (b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.*]

¹⁴⁴ See Companies Act, 2013, No. 18 of 2013, §447, Act of Parliament (India). [*§ 447. Punishment for fraud.—Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, 1 [involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. 2 [Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to 3 [fifty lakh rupees] or with both.] Explanation.—For the purposes of this section— (i) “fraud”, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss; (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled; (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.]*]

(iv) most of the penal provisions provided such as section 8(11),¹⁴⁵ section 40(5),¹⁴⁶ section 46(5),¹⁴⁷ section 67(5),¹⁴⁸ section 68(11),¹⁴⁹ section 74(3),¹⁵⁰ section 76A,¹⁵¹ section

¹⁴⁵ See Companies Act, 2013, No. 18 of 2013, § 8 (11) Act of Parliament (India) [§8(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable 2*** with fine which shall not be less than twenty-five thousand rupees but which may extend to 3 [twenty-five lakh rupees]]

¹⁴⁶ See Companies Act, 2013, No. 18 of 2013, § 40(5), Act of Parliament (India) [§ 40(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable 1*** or with fine which shall not be less than fifty thousand rupees but which may extend to 2 [three lakh rupees].]

¹⁴⁷ See Companies Act, 2013, No. 18 of 2013, § 46(5), Act of Parliament (India) [§ 46(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.]

¹⁴⁸ See Companies Act, 2013, No. 18 of 2013, § 67(5), Act of Parliament (India) [§ 67(5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.]

¹⁴⁹ See Companies Act, 2013, No. 18 of 2013, § 68(11), Act of Parliament (India) [§68(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable 1*** with fine which shall not be less than one lakh rupees but which may extend to 2 [three lakh rupees].]

¹⁵⁰ See Companies Act, 2013, No. 18 of 2013, § 74(3), Act of Parliament (India) [§ 74 (3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.]

¹⁵¹ See Companies Act, 2013, No. 18 of 2013, § 76A, Act of Parliament (India) [§76A. Punishment for contravention of section 73 or section 76.—Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,— (a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than 2 [one crore rupees or twice the amount of deposit accepted by the company, whichever is lower] but which may extend to ten crore rupees; and (b) every officer of the company who is in default shall be punishable with imprisonment which may extend to 3 [seven years and with fine] which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, 4***. Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.]

99,¹⁵² section 147,¹⁵³ section 127,¹⁵⁴ section 147(8),¹⁵⁵ section 178(8),¹⁵⁶ section 182(4),¹⁵⁷ section 185(4),¹⁵⁸ section 186(13),¹⁵⁹ section 206(7),¹⁶⁰ section 221(2),¹⁶¹ section 222(2),¹⁶²

¹⁵² See Companies Act, 2013, No. 18 of 2013, §99, Act of Parliament (India) [§ 99. Punishment for default in complying with provisions of sections 96 to 98.—If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.]

¹⁵³ See Companies Act, 2013, No. 18 of 2013, §147, Act of Parliament (India) [§147. Punishment for contravention.—(1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable 1*** with fine which shall not be less than ten thousand rupees but which may extend to 2 [one lakh rupees].

¹⁵⁴ See Companies Act, 2013, No. 18 of 2013, §127, Act of Parliament (India) [§127. Punishment for failure to distribute dividends.—Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:]

¹⁵⁵ See Companies Act, 2013, No. 18 of 2013, §147, Act of Parliament (India) [§147 (8) If any default is made in complying with the provisions of this section,— (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;

¹⁵⁶ See Companies Act, 2013, No. 18 of 2013, §178(8), Act of Parliament (India) [§178 (8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be 3 [liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees]: Provided that 4 [inability to resolve or consider any grievance] by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section. Explanation.—The expression “senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.]

¹⁵⁷ See Companies Act, 2013, No. 18 of 2013, §182(4), Act of Parliament (India) [§182 (4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed. Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).]

¹⁵⁸ See Companies Act, 2013, No. 18 of 2013, §185(4), Act of Parliament (India) [§185 (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.]

¹⁵⁹ See Companies Act, 2013, No. 18 of 2013, §186, Act of Parliament (India). [§186 (13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. Explanation.—For the purposes of this section,— (a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities 2 [and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if

section 245(7),¹⁶³ section 378ZS(6),¹⁶⁴ section 392¹⁶⁵ etc., not just make the company liable for fine but also the officer in default liable which can be punishable with imprisonment or fine or both. But whether this “*officer in default*” is liable strictly or only if the *mens rea* is established? And who would be these “*officer in default*”.

It seems that the Companies Act, 2013 distinctly separates offences based on their gravity and presence of *mens rea*, imposing stricter penalties for intentional and fraudulent acts compared to merely technical breaches. The Companies Act, 2013 does not follow a single theory, but rather adopts a hybrid framework, drawing on: Identification theory for intentional acts by top management,¹⁶⁶ vicarious liability for routine compliance breaches,¹⁶⁷ and strict

its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.]; (b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.]

¹⁶⁰ See Companies Act, 2013, No. 18 of 2013, §206(7), Act of Parliament (India). [§206 (7) *If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for everyday after the first during which the failure continues.*]

¹⁶¹ See Companies Act, 2013, No. 18 of 2013, §221(2), Act of Parliament (India). [§221(2) *Freezing of assets of company on inquiry and investigation: (2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.*]

¹⁶² See Companies Act, 2013, No. 18 of 2013, §222(2), Act of Parliament (India). [§ 222(2) *Imposition of restrictions upon securities.— (2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.*]

¹⁶³ See Companies Act, 2013, No. 18 of 2013, §245(7), Act of Parliament (India). [245 (7) *Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees]*

¹⁶⁴ See Companies Act, 2013, No. 18 of 2013, §378ZS, Act of Parliament (India) [§ 378ZS. *Re-conversion of Producer Company to inter-State co-operative society.— (6) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees, for each copy in respect of which default is made.*]

¹⁶⁵ See Companies Act, 2013, No. 18 of 2013, §392, Act of Parliament (India). [§392. *Punishment for contravention.—Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable 2*** with fine which shall not be less than twenty-five thousand rupees but which may extend to 3 [five lakh rupees].*

¹⁶⁶ See Companies Act, 2013, No. 18 of 2013, §166(7), 129(7), 447, and 336–338, Act of Parliament (India).

¹⁶⁷ See Companies Act, 2013, No. 18 of 2013, § 92(6), 117(2), 123(4), 134(8), Act of Parliament (India).

liability for technical violations.¹⁶⁸ The concept of holding “*officers in default*” jointly liable with the corporate entity ensures accountability of both decision-makers and the company.

Historically, corporate liability in India was imposed on officers generally, but the Companies Act, 1956 introduced the term “*officer in default*,” shifting the focus to those directly responsible for specific contraventions.¹⁶⁹ Section 2(60) of the 2013 Act defines the term expansively to include a range of functionaries—from whole-time directors and key managerial personnel (KMPs) to those issuing directions under whose instructions the board acts, excluding those acting in a professional capacity.¹⁷⁰ Section 2(59) further defines “*officer*” to encompass directors, managers, KMPs, and other influential persons.¹⁷¹ Importantly, liability under Section 2(60) is not automatic. Judicial and administrative decisions clarify that responsibility must align with statutory duty. The scope of liability is determined not solely by position but by the obligation imposed by the breached provision. For example, in *Smith N Smith Chemicals Ltd.* (ROC Delhi, 2023), the failure to spend and disclose CSR funds led the ROC to hold all directors liable, as Section 135 of the Act imposes responsibility on the board as a whole.¹⁷² Conversely, in *M/s Madras Fertilizers Ltd.* (RD

¹⁶⁸ See Companies Act, 2013, No. 18 of 2013, § 8(11), 99, and 147, Act of Parliament (India).

¹⁶⁹ See Companies Act, 1956, No. 1 of 1956, § 73 & 115, Act of Parliament (India).

¹⁷⁰ See Companies Act, 2013, No. 18 of 2013, § 2(60), Act of Parliament (India).[§2(60) “*officer who is in default*”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;]

¹⁷¹ See Companies Act, 2013, No. 18 of 2013, § 2(59), Act of Parliament (India).[§2 (59) “*officer*” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;]

¹⁷² See Office of Registrar of Companies NCT of Delhi & Haryana, *Order of Penalty Pursuant to Section 135 of the Companies Act, 2013 in the Matter of Adjudication of Smith N Smith Chemicals Limited (CIN:*

Southern Region, 2022), penalty imposed on the managing and whole-time directors was set aside since Section 205 made the company secretary primarily responsible for secretarial standard compliance.¹⁷³

Relief mechanisms also exist for officers unfairly targeted. Section 463(1) permits courts to grant *ex post facto* relief where the officer acted honestly and reasonably. Section 463(2) provides for anticipatory relief where litigation is anticipated. Independent and non-executive directors enjoy additional protection under Section 149(12), limiting liability to actions taken with their knowledge, consent, or due to negligence. This safe harbour has been reinforced by MCA's Circular dated 2 March 2020, which advises against initiating proceedings absent evidence of their direct involvement. The NCLT has applied this guidance to waive penalties against non-executive directors in appropriate cases.

From the analysis of recent adjudication orders, it is evident that determining the “*officer in default*” is a contextual exercise. If the Act assigns specific responsibility for compliance to a functionary (e.g., board, company secretary), liability should be limited to that individual or group. Where no such specification exists, the inclusive definition under Section 2(60) applies. Notably, companies may proactively designate responsibility for compliance, which, if duly notified, can guide enforcement authorities and limit undue prosecution.

b. Analysing corporate crimes under special legislations

Corporate crimes employing AI can occur in many different fields and might draw criminal responsibility under several Indian laws. For example, under the Securities and Exchange Board of India (SEBI) Act, 1992¹⁷⁴ and the Prevention of Money Laundering Act,

U24100DL2013PLC252186) Order No. ROC/D/Adj Order/Section 135/Smith/3452-3457, TAXGURU(Sept. 5, /2023)(<https://taxguru.in/company-law/csr-section-1355-violation-mca-imposes-rs-16-48-penalty.html>) (last accessed May. 7, 2025)

¹⁷³ See Regional Director (South Region), *In the matter of M/s. Madras Fertilisers Limited*, MCA.GOV.IN (Nov. 2, 2022) (<https://www.mca.gov.in/bin/dms/getdocument?mds=Y34xVleFYjycmNUxrXa3kA%253D%253D&type=open>) (last accessed May. 7, 2025)

¹⁷⁴ The Securities and Exchange Board of India Act, 1992, §27, No. 15, Act of Parliament, 1992 (India) [“*Offences by companies*”. 27. (1) *Where an offence under this Act has been committed by 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, 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: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.* (2) *Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable*

2002¹⁷⁵ Financial crimes like insider trading or AI-driven market manipulation are offenses.¹⁷⁶ In the banking and financial services sector, the Aadhaar Act of 2016¹⁷⁷ and the Credit Information Companies Act of 2005¹⁷⁸ impose rigorous confidentiality and data protection standards, directly affecting the operation of AI algorithms managing biometric and financial data.. Employment discrimination by means of biased recruitment algorithms, such as Amazon's AI recruitment bias case, violates provisions under the Equal Remuneration Act, 1976,¹⁷⁹ the Rights of Persons with Disabilities Act, 2016,¹⁸⁰ or can attract constitutional

to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Explanation : For the purposes of this section,— 36 (a) —company\ means any body corporate and includes a firm or other association of individuals; and (b) —director\, in relation to a firm, means a partner in the firm.”]

¹⁷⁵ The Prevention of Money-Laundering Act, 2002, §70, No. 15, Act of Parliament, 2002 (India).[“70. Offences by Companies.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director", in relation to a firm, means a partner in the firm.”]

¹⁷⁶ See M.H. Al-Ahmad & I.S Al-Khazraji, *Criminal Liability for Artificial Intelligence Crimes*. In: A.HANNOON & MAHMOOD, A. (EDS), INTELLIGENCE-DRIVEN CIRCULAR ECONOMY. STUDIES IN COMPUTATIONAL INTELLIGENCE, VOL 1174, 575, 575–587 (Springer)(2025).

¹⁷⁷ See The Aadhaar (Targeted delivery of financial and other subsidies, benefits and services) Act, 2016, No. 18, Act of Parliament, 2016 (India).[“43. Offences by companies.—(1) Where an offence under this Act has been committed by 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, 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: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section—(a) “company” means any body corporate and includes a firm or other association of individuals and (b) “director”, in relation to a firm, means a partner in the firm.”]

¹⁷⁸ See The Credit Information Companies (Regulation) Act, 2005, No. 30, Act of Parliament, 2005 (India).

¹⁷⁹ See The Equal Remuneration Act, 1976, No. 25, Act of Parliament, 1976 (India).

¹⁸⁰ The Rights of Persons with Disabilities Act, 2016, No. 49, Act of Parliament, 2016 (India).

protections under Articles 14-16 (Right to Equality)¹⁸¹ and pertinent sections of the Bharatiya Nyaya Sanhita.¹⁸²

There are many offences described in the Information Technology Act, 2000 which may be committed by companies using AI.¹⁸³ Algorithmic collusion or anti-competitive acts motivated by artificial intelligence could breach clauses under the Competition Act, 2002, most especially Section 3 and 4, which forbid anti-competitive agreements and misuse of dominant position.¹⁸⁴ Therefore, as artificial intelligence technology permeates corporate activities, it greatly increases the possible terrain for corporate criminal responsibility under current Indian legislation.

So, outside the Bharatiya Nyaya Sanhita 2023 and Company Act 2013, the special legislations that contain corporate crime provisions reflect striking similarities. A comparative analysis of the statutory provisions such as section 90 of The Rights of Persons with Disabilities

¹⁸¹ INDIA CONST. Art. 14-16.

¹⁸² Bhartiya Nyaya Sanhita, 2023, No. 45, Act of Parliament, 2023 (India).

¹⁸³ See The Information Technology Act, 2000, §85, No. 21, Act of Parliament, 2000 (India). [85. *Offences by companies.*—(1) *Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (i) —company means any body corporate and includes a firm or other association of individuals; and (ii) —director, in relation to a firm, means a partner in the firm.]

¹⁸⁴ See Basu Chandola, *Algorithms and Collusion: Has the CCI got it wrong?*, KLUWER COMPETITION LAW BLOG (Feb. 28, 2019) (<https://competitionlawblog.kluwercompetitionlaw.com/2019/02/28/algorithms-and-collusion-has-the-cci-got-it-wrong>) (Last accessed May.12, 2025); Soumya Hariharan et al., *Antitrust Implications of Algorithmic Collusion*, NATIONAL LAW SCHOOL BUSINESS LAW REVIEW (Oct. 19, 2020) (<https://www.nlsblr.com/post/antitrust-implications-of-algorithmic-collusion>) (Last accessed May. 12, 2025).

Act 2016,¹⁸⁵ section 70 of The Prevention of Money-Laundering Act 2003,¹⁸⁶ section 11 of the Equal Remuneration Act 1976,¹⁸⁷ section 66 of The Copyright Act¹⁸⁸, section 114 of the

¹⁸⁵ See The Rights of Persons with Disabilities Act, No. 49 of 2016, § 90, Acts of Parliament, 2016 (India). [“90. Offences by companies.—(1) Where an offence under this Act has been committed by 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, 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: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm”]

¹⁸⁶ See The Prevention of Money-Laundering Act, No. 15 of 2003, § 70, Acts of Parliament, 2003 (India). [“70. Offences by companies. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Explanation 1. For the purposes of this section,

(i) company means any body corporate and includes a firm or other association of individuals; and

(ii) director, in relation to a firm, means a partner in the firm.

[Explanation 2. - For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.] [Inserted by Act No. 2 OF 2013”]

¹⁸⁷ See Equal Remuneration Act, No. 25 of 1976, § 11, amended by Act No. 49 of 1987, Acts of Parliament, 1976 (India). [“11. Offences by companies. -- (1) Where an offence under this Act has been committed by 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, 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:

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 had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, 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 purposes of this section, -

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm”]

¹⁸⁸ See The Copyright Act, No. 14 of 1957, §69, Acts of Parliament, 1957 (India) [69. Offences by companies.— (1) Where any offence under this Act has been committed by 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, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Trademark Act,¹⁸⁹ section 124 of the Patent Act,¹⁹⁰ and many others across diverse Indian legislations reveals a consistent legislative approach towards corporate criminal liability. These provisions uniformly stipulate that when offences are committed by companies, liability extends simultaneously to the corporate entity itself and to individuals responsible for managing the company's affairs at the relevant time. Importantly, these sections provide a due diligence defence, enabling officers to escape liability if they establish that the offence occurred without their knowledge or despite having exercised appropriate preventive measures. Moreover, a secondary tier of liability is articulated in cases where offences have been committed with the explicit consent, connivance, or negligence of directors, managers, secretaries, or other designated officers, thus extending individual culpability beyond mere positional responsibility. Each statute similarly employs broad definitions for terms such as

Provided that nothing contained in this sub-section shall render any 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 offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of persons; and

(b) “director”, in relation to a firm means a partner in the firm]

¹⁸⁹ See The Trademark Act, No. 47 of 1999, §114, Acts of Parliament, 1999 (India). [114. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence 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 offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section— (a) —company means any body corporate and includes a firm or other association of individuals; and (b) —director, in relation to a firm, means a partner in the firm.]

¹⁹⁰ See The Patent Act, No. 39 of 1970, § 124, Act of Parliament, 1970 (India) [124. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence 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 offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.]

“*company*,” encompassing not only formal corporate bodies but also firms and associations of individuals, and “*director*,” including partners in the context of firms. This legislative uniformity underscores India’s consistent regulatory strategy that balances collective and individual accountability.

V. Conclusion & Reform Roadmap: Recalibrating Fault Attribution in the AI Era

In sum, the analysis above shows that humans involved may escape liability for corporate crimes by hiding behind AI systems and the central defect of applying person-centred corporate criminal doctrines to algorithmic systems is attribution without agency: AI operationalizes risk while intention, knowledge, and control are distributed across data, design, deployment, and vendors. India’s path should therefore pivot from searching for a “directing mind” to testing whether the corporation exercised controllability, foreseeability, and auditable prevention over the AI lifecycle.

So, there is a need of new legislation amending all the corporate liability provisions that will:

01. attribute fault where the corporation had practical capacity to prevent or mitigate AI risks across the lifecycle (design, procurement, deployment, monitoring)
02. calibrate culpability to demonstrably foreseeable harms and to the quality of documented risk assessment, testing, and response.
03. scale duties and sanctions with risk, autonomy level, and social stakes (e.g., safety-critical vs. low-impact uses).
04. ensure auditability i.e., maintains logs, data lineage, and model cards enabling post-hoc reconstruction of decisions without demanding full “*explainability*.”
05. ensure external models/services should not dissolve responsibility; require contractual levers (audit rights, disclosures, incident duties).
06. encourage prevention by recognizing robust, evidence-based compliance as a mitigating or exculpatory factor.
07. amend corporate attribution rules (by statute or interpretive clarification) to treat culpable mental states of “*senior managerial agents*” responsible for AI design,

procurement, deployment, or oversight as the company's own, even if not board-level.

08. create a “*failure to prevent*” offence where a company is liable if (i) a predicate offence is committed by an associated person or AI-mediated process for the company's benefit, and (ii) the company lacked “reasonable procedures” to prevent such misconduct.

- Due-diligence defense: It is a defense to prove reasonable procedures proportionate to risk. Supreme Court in *Chander Kanta Bansal vs Rajinder Singh Anand*¹⁹¹ observed that “‘*Due diligence*’ in law means doing everything reasonable, not everything possible. ‘*Due diligence*’ means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs”.¹⁹² Also, ‘*Due diligence*’ is “the diligence reasonably exercised by a person who seeks to satisfy a legal requirement or to discharge and obligation.”¹⁹³

- Guidance duty: Require the Central Government to publish sector-specific guidance on “reasonable procedures”. Regard must be had to:

- the nature and scale of the company's operations;
- the foreseeability of the offence or contravention concerned;
- the adequacy and effectiveness of the company's policies, procedures, training programs, and monitoring mechanisms to ensure compliance with statutory obligations;
- the promptness and effectiveness of corrective action taken upon becoming aware of any contravention or risk thereof.

09. categorize AI uses by impact (e.g., safety-critical, rights-impacting, financial-market integrity, ordinary).

10. mandate dataset documentation, bias/quality checks, and retention of lineage for

¹⁹¹ See *Chander Kanta Bansal v. Rajinder Singh Anand* (2008) 5 SCC 117 (India).

¹⁹² See *id* at para 16.

¹⁹³ See *id*.

training and fine-tuning.

11. require model validation for accuracy, robustness, and discriminatory impact appropriate to risk class; keep test artefacts.
12. require continuous monitoring with thresholds that trigger human review, rollback, or kill-switch procedures.
13. require time-bound notification to regulators for material harms or material risk exceedances.
14. ensure meaningful human review with authority and context to override for high-impact decisions.
15. require immutable logs linking inputs, model versions, prompts/policies, and decisions for a defined retention period.
16. statutorily recognize logs, model/version manifests, and validation reports as business records; set reliability criteria rather than demanding full interpretability.
17. create a rebuttable presumption of negligence where required governance artefacts are missing or falsified for specified high-risk domains.
18. provide for reduced penalties or no prosecution where independent audits show mature AI governance and prompt remediation.
19. provide for enhanced penalties for ignoring known AI risks, suppressing adverse test results, or disabling safeguards.
20. provides for provisions relating to algorithmic impact audits, data correction plans, independent monitorships, and disgorgement tied to algorithmically driven gains.
21. designate a central nodal ministry for cross-cutting guidance; empower sector regulators (e.g., financial, health, infrastructure) to issue binding AI-use rules aligned to the baseline.
22. incorporate BIS/ISO/IEEE standards by reference; encourage accredited self-regulatory

bodies to develop playbooks and certification schemes.

23. maintains only monetary fines as the principal sentencing methods.
24. introduces mandatory disclosure norms for anti-AI misuse policies and fraud prevention could improve corporate transparency, making it easier to hold corporations accountable for AI-induced offences.
25. requires establishment of internal ethics or compliance committees with independent oversight.
26. establish whistleblower policies, grievance redressal systems, and prompt investigative mechanisms(including notice and take down mechanisms).
27. imposes standards for continuous training sessions to enhance employee understanding of legal obligations.
28. ensure a dedicated official position tasked explicitly with ensuring AI systems operate lawfully and ethically, thereby mitigating corporate criminal liability arising from AI-related offences. Such a position could mirror existing compliance roles like those under The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which mandate the appointment of a Chief Compliance Officer (CCO) by significant social media intermediaries (SSMIs).¹⁹⁴ The European Union's AI Act contemplates clear roles for accountability within organizations deploying high-risk AI systems.¹⁹⁵ While ensuring accountability, the framework must protect corporate officers, especially independent directors, from unjust prosecution. Limit personal liability of directors only to cases of demonstrable intent, consent, or gross neglect, rather than automatic or strict liability, aligning with corporate governance best practices.
29. India should establish or assign a regulatory body solely charged with supervising corporate usage of artificial intelligence. This regulator would enforce due diligence

¹⁹⁴ See Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, pt. II, sec. 3(i), Feb. 25, 2021.

¹⁹⁵ See Johann Laux et al., *Trustworthy artificial intelligence and the European Union AI act: On the conflation of trustworthiness and acceptability of risk*, Regulation & Governance 18.1, 3, 3-32. (2024).

rules and compliance with requirements particular to artificial intelligence. It would help companies with technical support and clarifications, therefore facilitating centralised reporting, monitoring, and auditing procedures. It would also provide a forum for addressing complaints about damages caused by AI, therefore guaranteeing quick response systems.

Taken together, these measures aim to deter harm without freezing innovation: they convert opaque model risk into verifiable organizational duties, align sanctions with preventable failures, and create incentives for continuous testing, documentation, and vendor accountability. Implementation should be phased and data-driven, with periodic guidance updates, capacity building for investigators and courts, and independent audits to avoid “*paper compliance*.” Harmonisation with adjacent regimes; data protection, sectoral safety law, and competition policy; is essential, as is attention to cross-border vendors and procurement leverage in the public sector. Above all, the statute should be reviewed on an evidence cycle, allowing Parliament and regulators to iterate as empirical experience with high-impact AI accumulates.