
CORPORATE CRIMINAL LIABILITY IN INDIA: THE CHALLENGE OF PUNISHING THE ARTIFICIAL PERSON

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ABSTRACT

The concept of corporate criminal liability acknowledges that companies, not being natural but legal entities, can nevertheless commit offences by the acts and omissions of their officers, directors, and employees. This paper delineates the development of corporate criminal liability in India, examines the statutory and judicial framework under the Companies Act of 2013, and evaluates the conceptual and functional Challenges of imposing criminal sentences upon a corporation. The findings of the study are based upon comparative perspectives from other jurisdictions and conclude with recommendations on codification, more stringent enforcement, and governance structures.

Introduction

The Indian corporations have become phenomenally powerful and influential in the twenty-first century. Economic liberalisation, technological innovation, and global connectivity today enable businesses to operate in a wide range of sectors, from manufacturing and banking to medicine, infrastructure, and digital services. Their activities affect consumers, investors, employees, the environment, and the economy as a whole. Greater levels of corporate involvement have been paralleled by an increase in the incidence of complex financial frauds, environmental disasters, human rights violations, and other regulatory transgressions. These facts have confronted the legal systems with a fundamental question: how can artificial legal entities be effectively regulated and punished by a criminal law that was originally designed to punish human wrongdoing?

In an attempt to address this problem, corporate criminal liability recognises that corporations can act through real people and be held accountable for criminal activity despite being artificial entities. In India, this field has changed from traditional common-law reluctance to modern

judicial approval. In the past, judges ruled that corporations could not be imprisoned, appear in person in criminal court, or have the required mens rea. These presumptions shielded businesses from harsh criminal prosecution, especially for intent-based offences. However, contemporary jurisprudence recognises the practical necessity of criminal culpability, given the magnitude of the harm that corporate misbehaviour can cause.

Landmark judgements, such as those in the cases of *Iridium India Telecom Ltd. v. Motorola Inc*¹. And *Standard Chartered Bank v. Directorate of Enforcement*², have firmly established the legal position that companies can be prosecuted both under strict liability and mens rea-based offences. But the question persists: how can the criminal justice administration punish a "person" devoid of a body and a mind, let alone an entity incapable of constraining human liberty?

The main contention of this paper is that, despite the conceptual acceptance of corporate criminal liability in Indian law, major gaps continue to remain in the area of mens rea attribution, sentencing, compliance procedures, investigation capabilities, and accountability of corporate officers. The discrepancies between legal theory and enforcement practice result in a rather weak accountability framework that often fails to deter wrongdoing. The focus of this research paper is thus to provide a comprehensive review of the legal regime, jurisprudential developments, conceptual basis, and emerging concerns related to corporate criminal liability in India, together with policy recommendations to strengthen the regime.

Evolution of Corporate Criminal Liability

A. Common Law Background

Because corporations had neither body nor mind, the early English view was to deny that they could be subject to criminal liability at all. But as corporations grew in influence, courts began to recognise that they act through human agents. In the leading case of *Tesco Supermarkets Ltd. v. Nattrass*³ The House of Lords held that the acts and intentions of the upper level of management may be attributed to the corporation.

¹ *Iridium India Telecom Ltd. V. Motorola Inc.* AIR 2005 S.C. 514

² *Standard Chartered Bank v. Directorate of Enforcement*, AIR 2006 S.C. 1301

³ *Tesco Supermarkets Ltd. V. Nattrass*, (1971) 2 All ER 127

This reasoning led directly to the Identification Doctrine, in which the "directing mind and will," or a few individuals, is considered the corporation's objective. Strict liability and vicarious guilt for statutory offences, especially those affecting public welfare, were also introduced into English law.

B. Early Indian Jurisprudence

India initially followed the limited perspective since it inherited the common law tradition. The first case in which the Bombay High Court accepted that a business could be held liable under the IPC was *State of Maharashtra v. Syndicate Transport Co. (P) Ltd.*⁴

The Supreme Court later held, in *Standard Chartered Bank v. Directorate of Enforcement*, that a corporation may be prosecuted for offences which are punishable with imprisonment compulsorily, even though the sentence intended to be imposed cannot be physically carried out.⁵

Finally, the Supreme Court emphatically supported the view that corporations could possess mens rea and be tried for crimes in *Iridium India Telecom Ltd. v. Motorola Inc.*⁶

Together, these cases laid the foundation for the recognition by Indian jurisprudence of corporate criminal liability.

Legal Framework

The legal framework governing corporate criminal liability in India is chiefly outlined in the *Companies Act, 2013*⁷, which serves as a thorough legislative attempt to tackle corporate wrongdoing and improve accountability. The Act includes numerous provisions that explicitly assign criminal liability to corporations and their executives.

Section 2(60) of the act clarifies the definition of "officer in default," broadening liability to encompass key managerial personnel (KMP), directors, managing directors, and any other individual with control over the company's operations. This clause ensures that individuals in authoritative roles cannot evade accountability by secluding themselves within the corporate

⁴ *State of Maharashtra v. Syndicate Transport Co. (P) Ltd.*, AIR (1964) BOM. 195

⁵ *Standard Chartered Bank v. Directorate of Enforcement*, AIR 2006 S.C. 1301

⁶ *Iridium India Telecom Ltd. V. Motorola Inc.* AIR 2005 S.C. 514

⁷ The Companies Act, Act 18 of 2013, Act of Parliament

structure.⁸ Section 447 of the Act criminalises corporate fraud, imposing stringent penalties that include imprisonment for up to ten years and fines that can reach three times the amount involved in the fraudulent activity.⁹ Sections 448 and 449 address the issues of making false statements and providing false evidence to regulatory or judicial bodies, thereby underscoring the necessity for accurate disclosures and compliance.¹⁰ Section 450 serves as an overarching provision, applying general penalties for any breaches not covered by specific punishments.¹¹

In addition to the Companies Act, corporate criminal liability is shaped by various other laws that address either specific sectors or general offences. The BNS applies to corporations in cases of cheating, criminal breach of trust, or conspiracy.¹² The Prevention of Corruption Act, 1988,¹³ makes bribery and corrupt practices by corporations in relation to public officials a criminal offence. The Foreign Exchange Management Act, 1999¹⁴ (FEMA) establishes liability for infractions related to international transactions and foreign investments, while the Securities and Exchange Board of India (SEBI) Act, 1992,¹⁵ oversees fraudulent and unfair trading practices in the securities markets. Collectively, these laws create a wide-ranging yet disjointed system for corporate criminal responsibility, reflecting the Indian legislature's objective to encourage responsible corporate behaviour across various sectors.

Judicial Interpretation and Case Law

The judiciary has been instrumental in shaping the concept of corporate criminal liability in India. The progression of judicial reasoning reflects an increasing acknowledgement of the ability of corporations to engage in criminal behaviour. This development began with the significant case of *Salmon v. Salmon & Co. Ltd.* (1897)¹⁶, which established the principle of separate legal identity, affirming that a corporation exists independently from its shareholders and directors.

The principle of corporate personality served as the foundation for subsequent courts to examine the scope of corporate liability. A significant turning point occurred in *Standard*

⁸ Section 2, clause 60, The Companies Act, 2013.

⁹ Section 447, The Companies Act, 2013.

¹⁰ Section 448, The Companies Act, 2013.

¹¹ Section 450, The Companies Act, 2013.

¹² *Bhartiya Nyaya Sanhita*, 2013, No. 45, Acts of Parliament 2023.

¹³ The Prevention of Corruption Act, 1988, No. 49, Acts of Parliament 1988.

¹⁴ The Foreign Exchange Management Act 1999, No. 42, Acts of Parliament 1999 (India).

¹⁵ Securities and Exchange Board of India (SEBI), No. 15, Act of Parliament, 1992, (India)

¹⁶ *Salmon v. Salmon Co. Ltd.* (1897) AC 22.

Chartered Bank v. Directorate of Enforcement (2005)¹⁷, where the Supreme Court determined that a corporation could face prosecution for offences necessitating mandatory imprisonment, notwithstanding the impossibility of actually imprisoning a corporate entity. The Court argued that since fines could be imposed as an alternative to imprisonment, corporations could not escape liability based on procedural arguments. This case represented a crucial affirmation of the notion that corporations are not exempt from prosecution.

Further, the ruling in *Iridium India Telecom Ltd. v. Motorola Inc.* (2011)¹⁸ Further solidified this position. The Supreme Court explicitly acknowledged that corporations can possess mens rea, as their intentions are conveyed through the actions of their officers and agents. This decision brought Indian legal principles in line with international standards and highlighted the responsibility of corporate management in criminal matters. Similarly, in *Sunil Bharti Mittal v. Central Bureau of Investigation* (2015)¹⁹ The Court clarified the individual liability of directors, asserting that corporate officers cannot be held accountable for company crimes unless there is evidence of direct involvement, consent, or negligence. This ruling protected individual directors from vicarious liability while ensuring that culpable officers were held responsible.

Together, these judgments illustrate a deliberate judicial effort to strike a balance between corporate accountability and fairness toward individual actors. Consequently, Indian courts have progressively cultivated a practical and balanced approach, recognising that although corporations may be considered artificial persons, they must still bear criminal responsibility for their wrongful actions.

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Challenges in Enforcement

Despite advancements in law and judicial rulings, corporate criminal liability in India faces

¹⁷ Standard Chartered Bank v. Directorate of Enforcement, AIR 2006 S.C. 1301.

¹⁸ Iridium India Telecom Ltd. V. Motorola Inc. AIR 2005 S.C. 514.

¹⁹ Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609.

various systemic obstacles.

A. Attribution of Mens Rea :

Mens Rea, also known as a guilty mind, refers to the mental state of a defendant at the time of committing the offence. It is crucial to prove, along with the actual acts, during the trial to secure a conviction. Determining the "directing mind" of a corporation is often challenging, especially within large organisations that have decentralised decision-making processes. The need to establish intent frequently prolongs legal proceedings and contributes to acquittals.

B. Punishment and Sentencing

Since corporate entities cannot be imprisoned, financial penalties are the primary means of punishment. However, for financially strong corporations, these fines frequently lack the intended deterrent effect. The lack of measures such as corporate probation or deferred prosecution agreements (DPAs) further undermines enforcement efforts.

C. Procedural Delays and Jurisdictional Overlap

Corporate crimes typically involve overlapping jurisdictions among the Serious Fraud Investigation Office (SFIO), SEBI, and various other regulatory bodies. This fragmentation results in procedural inefficiencies.

D. Influence and Compliance Culture

Large corporations possess considerable influence over political and administrative entities. Weak internal compliance systems and insufficient whistleblower protections obstruct the identification of offences.

E. Absence of a Unified Framework

Currently, India lacks a unified statute governing corporate criminal liability, resulting in inconsistencies in both prosecution and sentencing standards.

Comparative Perspectives

The development of corporate criminal liability varies across different jurisdictions, each

offering significant insights for India. In the United Kingdom, the Corporate Manslaughter and Corporate Homicide Act 2007 represents a landmark piece of legislation that holds companies directly accountable for fatalities arising from serious management failures. This law reflects a transition from individual liability to organisational accountability by tying liability to systemic negligence instead of isolated incidents.²⁰ By outlining how an organisation's actions contribute to wrongful fatalities and guaranteeing accountability for duty of care violations, it simplifies the prosecution process.²¹ The U.K. also encourages corporate compliance through Deferred Prosecution Agreements (DPAs), which incentivise companies to cooperate with regulators and acknowledge their misconduct. A DPA is a legal agreement between a prosecutor, such as the Department of Justice, and a company being accused of criminal activities. In a DPA, the government charges the business with a crime but agrees to “defer” or delay the prosecution. In exchange for this deferral, the corporation must fulfil certain terms usually outlined in the agreement. If the business fulfils these stated terms and conditions for a specific period, the charges are usually withdrawn and no criminal conviction takes place. The agreement, therefore, avoids the severe consequences that would result from a criminal charge while still carrying some accountability.²²

The United States and Canada, in addition to Britain, were some of the first countries to recognise and utilise the concept of organization criminal liability. These countries experienced the destruction of the Industrial Revolution, which implies that they were among the first to endure the financial consequences of business mistakes. Although the English courts transformed suddenly from those that initially penalised corporations, courts that adopted the notion of responsibility by means of criminal law had the capability of finding an organisation guilty of breach of an administrative duty, as in the case of 1842.²³

This judgment was further supported by the New York Central & Hudson River Railroad Company v. U.S.²⁴ A case in the US Supreme Court. At the turn of the century, the US Courts decided to broaden the definition of corporate criminal liability to include offences. A start for

²⁰ Corporate Manslaughter and Corporate Homicide Act 2007

²¹ LexisNexis, Corporate Manslaughter and Corporate Homicide Act 2007 (2007 c 19), (Nov. 20th, 16:23 pm), Corporate Manslaughter and Corporate Homicide Act 2007 | LexisNexis

²² <https://legalclarity.org/what-is-a-deferred-prosecution-agreement-dpa/>

²³ PAVNEET KAUR & DR. AJAYMEET SINGH, CORPORATE CRIMINAL LIABILITY IN INDIA, UK AND USA: A COMPARATIVE STUDY, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (4) OF 2024, PG. 262-266, APIS – 3920 – 0001 & ISSN - 2583-2344, (Nov., 21st, 18:14), <https://ijlr.iledu.in/wp-content/uploads/2024/11/V4I437.pdf>

²⁴ New York Central & Hudson River Railroad Company v. U.S 212, U.S.481,1909

the concept of diversified risk was provided by Congress through the Elkins Act, which stated that for the company, an officer's acts and omissions within the scope of his act are taken into account. A couple of decades later, the 4th Circuit Court ruled that "irrespective of whether such showings were against the corporate approach, the enterprise may be considered criminally committed for retaliatory infringement executed by its labourers if they are acting within the domain of their position or clear right and to serve the corporation." Despite the Supreme Court's previous ruling regarding statutory infringement, common law offences quickly joined the list courtesy of lower courts.²⁵

Recommendations

- a. Codification of Corporate Criminal Liability: Implement a comprehensive statute that combines various legal provisions and clearly outlines offences, penalties, and procedures.
- b. Enhanced Accountability of Directors: Revise Section 166 of the Companies Act to explicitly require directors to take steps to prevent criminal activities.
- c. Adoption of Deferred Prosecution Agreements: Permit companies to acknowledge misconduct, pay fines, and commit to improving compliance measures.
- d. Strengthening Whistleblower Protection: Provide strong protections for employees who report unethical practices.
- e. Integration with CSR and ESG Standards: Connect compliance and responsibility to metrics related to environmental, social, and governance (ESG) factors.
- f. Judicial and Administrative Reforms: Optimise investigative bodies and encourage the establishment of specialised corporate crime divisions within the National Company Law Tribunal (NCLT).

Conclusion

The concept of corporate criminal liability has become a crucial element of contemporary legal

²⁵ PAVNEET KAUR & DR. AJAYMEET SINGH, CORPORATE CRIMINAL LIABILITY IN INDIA, UK AND USA: A COMPARATIVE STUDY, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (4) OF 2024, PG. 262-266, APIS – 3920 – 0001 & ISSN - 2583-2344, (Nov., 21st, 18:14), <https://ijlr.iledu.in/wp-content/uploads/2024/11/V4I437.pdf>

frameworks, balancing business independence with societal responsibility. The evolution of India's legal precedents—from Syndicate Transport to Iridium—has progressively confirmed that corporations can be held criminally accountable. However, enforcement still faces challenges due to procedural and conceptual obstacles. The pathway forward for corporate criminal liability in India requires thorough codification, institutional reforms, and the establishment of preventative measures that promote ethical corporate conduct. Only through these means can the legal system guarantee that corporations, despite being artificial entities, remain accountable.