



## **From Boardrooms to Courtrooms: Intersecting Paths of Corporate Misconduct and Legal Accountability in India**

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### **ABSTRACT**

The concept of corporate criminal liability has evolved significantly in India, marked by judicial caution. Courts demonstrated initial reluctance to prosecute firms for offenses necessitating mens rea and imprisonment. Landmark cases represent a shift - affirming corporations can face criminal liability based on imputation of intent from alter egos like directors. However, personal liability of officials requires substantiation. Punishing corporations, especially with prison terms, poses challenges given their intangible identity. Judicial interpretations lean towards fines as alternatives. Despite acknowledging criminal liability, India lacks sentencing guidelines for companies. The jurisprudential trajectory reveals strong foundations, but legislative gaps persist. Addressing these requires robust, deterrent fines, statutory diligence duties for directors, and policies balancing punishment with safeguarding stakeholder interests. Learning from global practices while crafting a uniquely Indian model is imperative. The analysis underscores the nuanced, evolving understanding of corporate criminal liability in India.

**Keywords:** Corporate Criminal Liability, mens rea, directors' liability, corporate sentencing, fines

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### **Introduction**

In the modern economic landscape, multinational corporations (MNCs) have become dominant forces, with extensive influence across borders. As these conglomerates continue to expand their reach into countless areas of daily life, concerns have arisen regarding their potential to undermine societal well-being if left unchecked. Unlike small businesses, the unique legal structure of MNCs as distinct entities, separate from any individual member, has historically complicated efforts to hold them accountable for misdeeds.<sup>1</sup>

Traditionally, crimes were associated solely with a guilty person's physical body and conscience. This left organizations effectively immune from facing legal consequences, as they lacked a tangible form. However, evolving perspectives on corporate responsibility have led to the realization that corporations can, in fact, perpetrate unlawful acts. Although organizations do not have a literal body or mind, they can still be found culpable of criminal conduct through the doctrine of corporate criminal liability.

By attributing the vital elements of both actus reus and mens rea to corporate entities, legal systems in many countries have developed mechanisms to address corporate criminality. The application of criminal liability to organizations has required thoughtful navigation by legal experts, given the lack of human attributes in companies. Courts have managed this complexity by connecting corporate culpability to the actions of culpable individuals within the company, such as executives, officers, and other employees. Under the principles of corporate criminal liability, a firm can face criminal charges and convictions for illegal activities perpetrated by agents acting within their actual or apparent scope of employment.

In contemporary society, corporate criminal liability has become an indispensable tool, as large conglomerates continue to introduce novel challenges that surpass the capabilities of individual liability. Holding companies accountable for criminal transgressions, rather than narrowly focusing on one employee's role, enables a broader perspective on unlawful activities facilitated by the organization's resources, policies, and culture. The extensive reach of modern multinational corporations underscores the need for criminal laws that reflect the complexities introduced by large enterprises.

This analysis explores the evolution of corporate criminal liability within the Indian legal framework, examining the seminal cases and developments that have shaped this critical concept. By analyzing key judicial pronouncements, we gain meaningful insights into the nuanced application of criminal liability to corporate entities in India. This illuminated the relevance of corporate criminal liability in addressing the potential threats posed by influential corporations to Indian societal values.

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<sup>1</sup> Kunal Kaushik Kally, "A Critical Study on Corporate Criminal Liability with Special Reference to US and Indian Laws", 7 *SSRNEJ* 98 (2020).

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## Concept of corporate criminal liability

At the heart of corporate liability laws worldwide is the recognition of companies as distinct legal persons. However, significant hurdles emerged in holding these fictional business entities criminally accountable for illicit actions. Attributing criminal intent (*mens rea*) to corporations and administering punishments like imprisonment posed complex conceptual and practical challenges for legal systems.<sup>2</sup>

The formulation of corporate criminal liability provided a pivotal legal framework to surmount these obstacles to imposing accountability on companies. Initially, for crimes not requiring explicit proof of intent, courts applied a modified form of vicarious liability to hold controlling company individuals culpable for criminal actions under the corporate banner.

As jurisprudence advanced, even company directors became susceptible to liability for offenses necessitating the establishment of criminal intent. This led to the emergence of the "identification" or "attribution" theory as a nuanced form of vicarious responsibility. Under this paradigm, for the purposes of criminal acts, the person governing the company's affairs and the corporation itself are treated as a single entity. The doctrine of attribution regards the "alter ego" - the individual or group directing corporate operations - and the company as legally indivisible. Consequently, the criminal intent of the controlling "alter ego" transfers to the corporation through this identification. By imputing the *mens rea* of its alter ego, the juridical person of the company is assigned criminal intent based on that individual's actions.

The complex evolution of corporate criminal liability doctrines reveals the sophisticated interplay between conceptual dilemmas and practical solutions in holding companies legally accountable for criminal conduct. Examining the nuances of identification principles exposes the depth of analysis required to equitably establish corporate culpability.

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## Significance of Studying Corporate Criminal Liability

Understanding and effectively addressing corporate misconduct is imperative for cultivating an ethical business landscape. The ramifications of corporate criminality extend far beyond monetary implications, negatively impacting employees, shareholders, and the wider economy. Examining corporate criminal liability creates a foundation for legal frameworks that deter wrongdoing and enable prompt, equitable accountability when transgressions occur.

In India, the Companies Act, 2013 serves as a pivotal pillar in the statutory architecture governing corporate conduct. Specifically, Section 447 of the Act delineates fraud, elucidating the liabilities for individuals complicit in fraudulent activities within a company. This provides a legal basis for prosecuting culpable parties. Additionally, the Prevention of Money Laundering Act, 2002 supplements these provisions by criminalizing money laundering, a common byproduct of corporate malfeasance.<sup>3</sup>

The Serious Fraud Investigation Office (SFIO), established under the Companies Act, 2013, plays a key role in corporate fraud oversight. The SFIO investigates major corporate wrongdoing based on government orders or complaints. By probing large-scale frauds that undermine investor confidence and threaten economic stability, the SFIO aims to systematically address the complex factors enabling corporate criminality.

Over time, Indian courts have substantiated corporate criminal liability through seminal judgments. *Iridium India Telecom v. Motorola Incorporated*<sup>4</sup> established that corporations can face criminal charges based on acts by employees and directors. Additionally, *Sunil Bharti Mittal v. CBI*<sup>5</sup> affirmed that corporate veil can be lifted to identify culpable individuals. Such precedents entrench accountability by negating the assumption that incorporation provides immunity from criminal prosecution.

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## Legal Framework for Corporate Criminal Liability in India

Corporate criminal liability has long sparked contentious debate, with its necessity questioned periodically. Universal consensus on whether corporations should face criminal culpability remains elusive, necessitating careful examination of each scenario before reaching conclusions. Opponents raise two main objections - the belief that only individuals commit crimes, and the concern that consumers and investors bear the brunt of corporate penalties as fines disproportionately affect them.

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## A Spectrum of Illicit Activities Under the Corporate Criminal Liability Umbrella

Corporate crimes, frequently deemed white-collar offenses, encompass diverse illicit activities. Crucially, corporate crimes diverge from vocational crimes; the former refers to unlawful acts by corporate managers benefitting the company, while the latter involves employees committing offenses

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<sup>2</sup> Corporate Frauds and Legal Mechanism in India-An Overview, *available at*: <https://journalijcar.org/issues/corporate-frauds-and-legal-mechanism-india-overview> (last visited November 10, 2023).

<sup>3</sup> Accountability in the Accounting Profession: Holding Chartered Accountants Responsible for their Actions, *available at*: [https://www.nishithdesai.com/fileadmin/user\\_upload/Html/Hotline/Yes\\_Governance\\_Matters\\_Hotline\\_June1523\\_M.htm](https://www.nishithdesai.com/fileadmin/user_upload/Html/Hotline/Yes_Governance_Matters_Hotline_June1523_M.htm) (last visited November 10, 2023).

<sup>4</sup> (2011) 1 SCC 74.

<sup>5</sup> (2015) 4 SCC 609.

against the company. Corporate criminality includes varied offenses like corruption, forgery, fraud, insider trading, blackmail, and more. Corporations can also be implicated in crimes causing bodily harm, such as industrial disasters, unsafe working conditions, and environmental degradation.<sup>6</sup>

Moreover, the advent of transnational corporate criminality introduces further intricacy. Corporations have been found to facilitate complex cross-border offenses including money laundering, cybercrimes, human trafficking, and drug smuggling. Corporations in hazardous industries may cause death or injury through health and safety violations. Despite regulations, environmental crimes like pollution driven by profit motives remain an ongoing concern highlighting the challenges in prosecuting corporate green offenses. Regulatory noncompliance and crimes occurring during regular business also muddy the waters of corporate criminal liability.

Various doctrines underpin corporate criminal liability. The doctrine of respondent superior attributes vicarious liability to corporations for employees' acts within the scope of duty. The doctrine of corporate ethos connects liability to companies' collective knowledge and policies. The doctrine of willful blindness imputes knowledge of criminal acts to corporations turning a blind eye. The identification theory imparts liability for directors' actions driven by corporate benefit.<sup>7</sup>

By exploring the myriad facets of corporate criminality, we gain a meaningful perspective on the suitability of criminal liability given each offense's unique circumstances and impacts. The nuances underlying different corporate crimes call for tailored approaches backed by doctrinal foundations. A thoughtful analysis of corporate criminal liability thus remains vital amid the complexity of attributing culpability to collective entities.

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### Establishing Corporate Blameworthiness

Several key prerequisites must exist to find a corporation criminally culpable for misconduct perpetrated by employees. Firstly, workers must perpetrate intentional illegal acts while operating in their professional capacity and job duties approved by company leadership. Additionally, these activities must intend to produce gains for the business itself, separate from solely personal benefit.

When employees engage in crimes targeting corporate advantage, courts may deem the entity itself complicit and accountable. However, attaching criminal liability to a company remains complex, leading to an evolution of differing standards aiming to determine organizational blameworthiness.<sup>8</sup>

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### Examining Pivotal Judicial Approaches

- *Identification Doctrine* - This test pioneered in England spotlights a corporation's domineering "directing mind" to assess liability for crimes furthering company interests. The foundational case of *Tesco Supermarkets Ltd v. Nattrass*<sup>9</sup> showcases this philosophy.
- *Aggregation Standard* - Under this view, widespread in Australia, the collective wrongful knowledge and actions of multiple employees can warrant holding the entity criminally culpable as a whole. However, English courts rejected aggregation in *United States v. Bank of New England*<sup>10</sup>.
- *Respondeat Superior* - This prevalent test upholds corporate criminal responsibility for employee activities under respondeat superior mandates of agency law if aiming to benefit the company. *United States v. A.P. Trucking Co.*<sup>11</sup> firmly endorses this Vicarious liability-rooted reasoning.

Corporate criminal liability analysis continues evolving worldwide, raising complex questions around properly balancing law enforcement, fairness, and incentivizing compliance.

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## PUNISHMENTS FOR CORPORATIONS FOR CRIMINAL ACTS IN INDIA

Convicting a company of a crime has ramifications beyond just the verdict itself. The conviction can damage corporate finances and reputation. However, sound criminal justice policy necessitates suitable additional penalties, not just collateral impacts. These demands examining rationales for sanctioning entities and evaluating sentencing philosophies underpinning corporate punishment.

Theoretical Frameworks for Penalizing Corporations

*Retributive, Deterrent, Preventive and Reformatory Perspectives*

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<sup>6</sup> Corporate Investigations in India, available at: <https://globallawexperts.com/corporate-investigations-in-india-general-context-key-principles-and-hot-topics/> (last visited November 11, 2023).

<sup>7</sup> Corporate Governance Recommendations for Voluntary Adoption Report of the CII Task Force on Corporate Governance, available at: [https://www.mca.gov.in/Ministry/latestnews/Draft\\_Report\\_NareshChandra\\_CII.pdf](https://www.mca.gov.in/Ministry/latestnews/Draft_Report_NareshChandra_CII.pdf) (last visited November 10, 2023).

<sup>8</sup> Corporate Governance and Directors' Duties in India: Overview, available at: [https://uk.practicallaw.thomsonreuters.com/0-506-6482?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-506-6482?transitionType=Default&contextData=(sc.Default)&firstPage=true) (last visited November 11, 2023).

<sup>9</sup> [1971] UKHL 1.

<sup>10</sup> 640 F. Supp. 36 (D. Mass. 1986).

<sup>11</sup> 358 U.S. 121 (1958).

Various schools of thought shape corporate penalty approaches, providing unique insights. Retributive theory prioritizes declaring moral truth through punishment, supporting sanctioning corporate criminality. Deterrence philosophy aims to dissuade future misdeeds but faces difficulties regarding deterring abstract entities lacking unified intent. Prevention theory focuses on incapacitating offenders, raising definitional obstacles regarding corporations. But preventing recidivism by fully dissolving criminal corporate structures has shown some promise. Lastly, rehabilitative theory stresses reform, with minimal applicability to reshaping organizational culture.<sup>12</sup>

#### *India's Current Corporate Punishment Landscape and Shortcomings*

In India, civil or administrative sanctions often apply to companies, reflecting disputes around corporate criminal liability. Despite legal recognition of such liability, structured corporate punishment procedures are absent. Courts have struggled enforcing corporate liability when penalties entail imprisonment, as in *Assistant Velliappa Textiles Ltd.* Recommended punitive measures like corporate fines lacked legislative adoption, leaving a policy void. This piecemeal approach fails to provide a comprehensive framework for deterrence or accountability.

#### *Challenges and Recommendations for Corporate Sentencing in India*

A core difficulty lies in companies' inability to serve jail terms, forcing reliance on fines lacking deterrent impact. Financially strong entities can readily pay penalties without meaningful consequences, undermining this approach's efficacy. Legislative attempts to introduce fines as imprisonment substitutes for companies have failed, leaving a policy void.

*Standard Chartered Bank v. Directorate of Enforcement*<sup>13</sup> marked a turning point, dispelling the notion fines were only applicable when imprisonment wasn't mandated. This increased judicial clarity on fining companies even for crimes warranting incarceration. However, comprehensive corporate sentencing strategies remain absent in India.

Experts like the Mali Math and Madhav Menon Committees have underscored implementing structured statutory sentencing guidelines akin to the US and UK. This globally-aligned approach is imperative to address rising corporate criminality. However, the government is yet to actualize these recommendations into a robust, deterrence-focused corporate punishment framework.

As corporate offenses grow more complex, India must expeditiously embrace sentencing strategies reflecting international standards. Learning from other nations, statutory frameworks effectively balancing punishment and deterrence are critically needed. Implementing well-designed corporate sentencing policies aligned with global best practices is vital for promoting accountability and rule of law.<sup>14</sup>

India's corporate criminal liability evolution, marked by judiciary's interpretative journey addressing entity prosecution challenges, underscores the necessity of reforms. Further examining key cases can provide insights into developing a rights-respecting, socially-conscious corporate punishment framework.

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## **JUDICIAL APPROACH TO CORPORATE CRIMINAL LIABILITY IN INDIA**

India's corporate criminal liability evolution features initial reluctance to prosecute companies for crimes necessitating mens rea and jail time. Early stances wrestled with attributing criminal intent to abstract entities and the impracticality of imprisoning corporations. Some argued prosecuting directors overseeing particular operations could spur individual liability.

In cases like *A.K. Khosla v. T.S. Venkatesan*<sup>15</sup> and *Zee Telefilms Ltd. v. Sahara India Co. Corp. Ltd.*<sup>16</sup>, Indian courts held that as juristic persons, companies could not face penalties for mens rea offenses or those requiring imprisonment. This approach posed obstacles to accountability.

The legal landscape began transforming with crucial rulings cementing that companies could be criminally liable. *Standard Chartered Bank v. Directorate of Enforcement*<sup>17</sup> emphasized no company is immune from prosecution for serious crimes, even if jail is likely. This underscored corporate compliance's societal importance.

*Iridium India Telecom Ltd. v. Motorola Inc.*<sup>18</sup> furthered corporate liability under the Indian Penal Code by attributing the controlling person's guilty mind to the entity. Embracing attribution and imputation principles marked an inflection point in recognizing corporate criminal liability.

Despite this evolution, imprisoning corporate offenders remained an intractable challenge. While the Indian Penal Code defines "person" to include companies in Section 11, Section 2 stipulates individuals alone face punishments. Cases like *M.V. Javali v. Mahajan Borewell*<sup>19</sup> highlight courts reconciling this conflict by imposing fines rather than unworkable jail terms.

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<sup>12</sup> Holding Corporations Accountable Depends on Our Legal System, available at: <https://www.promarket.org/2021/03/14/corporations-executives-accountability-wrongdoing-legal-system/> (last visited November 15, 2023).

<sup>13</sup> (2006) 4 SCC 278.

<sup>14</sup> Ravi Singh and Avnish Kumar Singh, "Accountability in Legal Profession and Crises in Existing Mechanisms", 7 *DLR* 01-11 (2020).

<sup>15</sup> (1992) 1 CALLT 77 HC.

<sup>16</sup> (2001) 1 CALLT 262 HC.

<sup>17</sup> (2006) 4 SCC 278.

<sup>18</sup> (2011) 1 SCC 74.

<sup>19</sup> (1997) 8 SCC 72.

The 47th Law Commission suggested amendments enabling fines instead of incarceration for corporations. Unfortunately, legislative action is lacking, though courts continue creatively combating corporate crime using measures like corporate veil piercing under the Companies Act. The complex trajectory underscores the need for ongoing legal adaptations to address prosecuting abstract entities.

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## Landmark Cases Shaping Corporate Criminal Liability in India

Velliappa Textiles Case<sup>20</sup>:

This landmark case ruled companies couldn't face penalties mandating both imprisonment and fines. The judgment prioritized adhering to statutory punishments over interpretative discretion. It favored acquittal over sanction when multiple readings of a penal law were possible, reinforcing corporate immunity from incarceration-requiring charges.

*State of Maharashtra v. Jugminder Lal*<sup>21</sup>

This case clarified "imprisonment and fine" implied cumulative sentencing requirements. Consequently, charges lacking express provisions for organizational defendants were dismissed, solidifying firms' protection from imprisonment-mandating penalties without specific statutory authorization.

*Kusum Products v. S.K. Sinha*<sup>22</sup>

This case unequivocally established the principle that corporations, as legal abstractions, cannot be incarcerated. Imposing fines or sanctions on culpable companies was deemed impermissible judicial overreach encroaching on legislative authority.

*The Assistant Commissioner v. M/S. Velliappa Textiles Ltd*<sup>23</sup>

In this Income Tax Act violation case, the court relied on strict statutory construction, holding that entities without tangible existence couldn't be jailed. It reinforced legislative intent to prevent deviations from compulsory sentences, favoring corporate exoneration.

*Standard Chartered Bank v. Directorate of Enforcement*<sup>24</sup>

This case asserted organizations weren't immune from charges requiring compulsory imprisonment. It underscored corporate accountability to criminal law for societal stability, marking a shift toward expanded liability.

Through meticulous examination of key cases, India's nuanced corporate criminal liability evolution emerges. The judiciary's interpretative journey wrestling with prosecuting abstract entities underscores the complex interplay between law, philosophy and pragmatism underpinning this ever-evolving jurisprudence.

*Sunil Bharti Mittal v. CBI*<sup>25</sup>

The intricate interplay between corporate and individual accountability has undergone judicial scrutiny in India. In this case, the Supreme Court clarified that criminally charging individuals alongside companies requires robust evidence of active engagement and intent. Mere vicarious liability based on position was deemed insufficient without specific statutory authorization. The Court underscored the need to demonstrate the individual was the corporate offender's 'alter ego,' exhibiting substantial identity between their directives and the company's actions.

It also elucidated that merely holding a designation like CEO does not automatically create criminal liability, particularly for mens rea offenses. Individual culpability hinges on manifesting the company's 'directing mind and will,' not just a title.

In *Shiv Kumar Jatia v. State (NCT of Delhi)*<sup>26</sup>, the Supreme Court maintained its cautious stance, denying proceedings solely based on the accused's position as managing director. The Court reiterated that vicarious IPC liability requires concrete proof of active participation and criminal intent.

Guided by prudent jurisprudence, Indian courts have refrained from unduly exposing officials to harassment for corporate misconduct. Barring statutory dictates, directors' criminal accountability relies on tangible evidence of culpable intent. As the legal landscape evolves, this delicate balance will continue shaping India's approach to white-collar crime.

These landmark cases collectively mould the jurisprudential tapestry surrounding corporate criminal liability in India. The judiciary's dynamic legal engagement and contextual approach underscores the need for continued balanced evolution upholding principles while imposing accountability. The rich jurisprudential history shapes the foundation for future corporate crime discourse as India navigates this intricate landscape.

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<sup>20</sup> The Assistant Commissioner v. M/S. Velliappa Textiles Ltd, 2004 Cri LJ 121.

<sup>21</sup> AIR 1966 SC 940.

<sup>22</sup> 1980 126 ITR 804 Cal.

<sup>23</sup> 2003(4) RCR (Cri) 695.

<sup>24</sup> (2006) 4 SCC 278.

<sup>25</sup> (2015) 4 SCC 609.

<sup>26</sup> (2019) 17 SCC 193.

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## Conclusion

India's complex corporate liability evolution reveals pivotal principles. First, corporations can face criminal liability for offenses by directors embodying the company's 'alter ego' and 'directing mind.' Mens rea is imputed from such individuals. Second, corporate culpability does not automatically extend to directors - clear proof linking them as the 'alter ego' is required.

Third, punishments, especially imprisonment, pose unique challenges demanding harmonious interpretations levying fines instead. Despite liability provisions, lacking sentencing guidelines has hindered enforcement.

The trajectory indicates progress but also gaps requiring legislative action. Comprehensive, deterrence-focused corporate sentencing policies are imperative. Statutorily-rooted fines must be structured to impact financially strong entities. Compliance monitoring mechanisms are crucial. Policies should balance punishment with protecting consumer and investor interests.

Additionally, clarifying directors' diligence obligations can strengthen compliance without overzealous personal liability. Aspects of the U.S. approach imposing liability on authority-wielding corporate officers could inform India's framework.

Corporate liability necessitates continually evolving jurisprudence in India. While the legal foundations are strong, gaps remain requiring regulatory improvements and sentencing policy reforms aligned with global best practices. The way forward entails crafting a uniquely Indian model balancing accountability, due process and justice to effectively counter rising corporate offenses.