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Corporate Criminal Liability in India

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ABSTRACT

Corporate liability refers to the legal responsibility of corporations and other business entities for wrongful acts committed by their directors, officers, employees, or agents in the course of business operations. With the increasing complexity of corporate structures and global commercial activities, determining accountability has become a significant legal challenge. Traditionally, corporations were considered incapable of committing crimes due to the absence of a physical mind or body; however, modern legal systems have developed doctrines such as vicarious liability, the identification theory, and strict liability to attribute criminal and civil responsibility to corporate entities.

Corporate liability plays a crucial role in ensuring corporate governance, protecting stakeholders, and promoting ethical business conduct. It encompasses civil, criminal, regulatory, and environmental liabilities arising from fraud, negligence, statutory violations, and corporate misconduct. The evolution of corporate liability reflects a shift from individual culpability to collective accountability, emphasising the need for compliance mechanisms and corporate ethics programmes. This study critically examines the concept, legal framework, and contemporary challenges associated with corporate liability, highlighting its significance in fostering transparency, accountability, and sustainable corporate practices in the modern commercial world.

Keywords: *Corporate Liability; Corporation; Governance; Legal System.*

I. INTRODUCTION

According The development of corporate criminal liability marks one of the most important advances in modern legal thought. Traditionally, criminal law has been used to regulate the actions of natural persons. The idea of a corporation as a legal entity was initially limited to civil and commercial matters, such as owning property, entering into contracts, and suing or being sued. However, as the corporate form became the main way businesses operate, questions naturally arose about whether such artificial entities could also be held criminally responsible for illegal acts.

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A. Separate Legal Personality

The foundation of corporate law rests on the doctrine of separate legal personality, established by the landmark English case *Salomon v. Salomon & Co. Ltd.* (1897).¹ This ruling confirmed that once a company is incorporated, it acquires a personality separate from its owners. This concept enables companies to own assets, sign contracts, and assume liabilities in their own name. While the doctrine revolutionised commerce by allowing limited liability and easier capital growth, it also created legal and moral challenges when corporations commit crimes. If a company is an artificial person, can it commit crimes? Can it possess the mens rea (guilty mind) required for most criminal offences? These questions formed the basis of the initial resistance to the idea of corporate criminal liability. Early jurists argued that, because a corporation lacks a physical form or mind, it cannot form intent or be punished by measures such as imprisonment.

B. Industrialisation and the Rise of Corporate Power

By the late nineteenth and early twentieth centuries, the corporate form had become the engine of industrialisation. Corporations controlled vast resources, employed thousands of workers, and directly affected the lives of consumers, employees, and the general public. With this rise in corporate power came an increase in misconduct: industrial accidents, unsafe working conditions, environmental pollution, and fraudulent business practices.

In India, the growth of large industrial enterprises after independence, especially following economic liberalisation in 1991, underscored the social and economic influence of corporations. From conglomerates such as Tata and Reliance to multinational subsidiaries, corporations became key players in the economy. This growing influence heightened the importance of addressing harm caused by corporate activities, as traditional civil remedies often proved inadequate for the scale of the damage. This, in turn, created the need for mechanisms to establish criminal responsibility.

C. Early Doctrinal Challenges

The primary obstacle to acknowledging corporate criminal liability was the challenge of attributing mens rea to a corporation. Criminal liability typically requires both an actus reus (guilty act) and mens rea (guilty mind). Although the actus reus of a corporation could be established through the actions of its employees or agents, the issue of intent presented significant difficulties. Legal systems responded with doctrinal innovations, including vicarious

¹ *Salomon v. A Salomon & Co. Ltd.*, [1897] A.C. 22 (H.L.).

liability, which holds the corporation accountable for the acts of its employees when committed within the scope of employment; the identification doctrine, which ascribes the mental state of senior managers or directors (the ‘directing mind and will’) to the corporation; and strict liability offences, which impose liability on corporations without proof of mens rea, particularly in regulatory domains such as environmental law and consumer protection. These doctrines laid the groundwork for recognising corporations as entities capable of committing criminal acts.

D. Corporate Criminal Liability in India

The issue of corporate criminal culpability has been especially pertinent in India in relation to financial fraud, environmental offences, and industrial disasters. The Union Carbide pesticide factory leak that caused the Bhopal Gas Tragedy in 1984 was a pivotal event that drew attention to the potentially disastrous consequences of corporate carelessness. Thousands of people lost their lives in the catastrophe, which also left a legacy of lawsuits, compensation battles, and debates about the criminal liability of multinational businesses.

Scandals that followed, such as the 2009 Satyam Computers fraud, in which company accounts worth thousands of crores were fabricated, showed how corporate wrongdoing could erode investor confidence and jeopardise financial markets. More recently, the Punjab National Bank–Nirav Modi fraud (2018) and the IL&FS crisis (2018) exposed structural flaws in regulatory oversight and the role of corporate entities in perpetuating white-collar crime.

These incidents underscore the pressing need for an effective framework of corporate criminal liability in India. Without credible mechanisms for holding corporations accountable, corporate misconduct not only undermines investor confidence but also erodes public trust in the rule of law.

II. THEORETICAL JUSTIFICATIONS FOR CORPORATE CRIMINAL LIABILITY

There are compelling practical and normative justifications for acknowledging corporate criminal liability.

Deterrence. The enforcement of criminal penalties encourages businesses to establish robust compliance systems and to avoid wrongdoing.

Fairness. While corporations enjoy legal rights and advantages, it is only just that they also bear obligations, including criminal culpability.

Social protection. Strong punitive measures are necessary because many corporate crimes, such as financial fraud and environmental damage, affect society as a whole.

Accountability. Whereas civil penalties may be viewed as a cost of doing business, criminal culpability carries a stigma that encourages accountability.

Critics nonetheless contend that individual corporate wrongdoers should be the main focus, and that penalising corporations often harms innocent stakeholders such as shareholders and employees. The balance between personal and corporate culpability remains a central challenge in the law.

III. BACKGROUND

The background to corporate criminal liability demonstrates the tension between the legal fiction of separate personality and the practical necessity of holding corporations accountable. In India, where corporate activity plays a pivotal role in economic development but where corporate scandals and industrial disasters continue to occur, this issue is of immense significance. Recognising corporate criminal liability is not merely a legal technicality; it is a matter of social justice, economic integrity, and the credibility of the legal system.

IV. RELEVANCE OF CORPORATE CRIMINAL LIABILITY IN INDIA

Owing to India's distinct socio-economic setting, rapid industrialisation, and frequent business scandals, the concept of corporate criminal culpability is especially significant in the country. India's economy is characterised by concentrated promoter control, lax enforcement, and a history of massive industrial disasters, in contrast to many industrialised nations where corporate structures are more regulated and decentralised. Taken together, these characteristics make corporate criminal responsibility in India both urgent and complex.

A. Industrial Disasters and Public Safety

The Bhopal Gas Tragedy of 1984, caused by a gas leak at the Union Carbide pesticide plant, is arguably the most vivid illustration of why corporate criminal culpability matters in India. The catastrophe caused hundreds of thousands of injuries, thousands of immediate deaths, and long-term environmental and health effects.

The Bhopal case showed how a corporation's carelessness could cause far more mass casualties than any single individual offender. The difficulty of prosecuting Union Carbide, a multinational corporation headquartered overseas, drew attention to the shortcomings of the Indian judicial system. Even though some compensation was eventually obtained, there were significant concerns about justice for the victims, owing to the absence of strong criminal-responsibility procedures.

Industrial disasters did not end with Bhopal. Subsequent incidents, such as the Visakhapatnam LG Polymers gas leak (2020), the Sterlite Copper pollution case (Vedanta, 2018), and repeated accidents in the mining and construction sectors, have reinforced the need for stringent corporate accountability mechanisms. In each case, the inadequacy of civil damages and regulatory fines underscores the importance of criminal liability as a deterrent.

B. Corporate Fraud and Financial Crimes

Numerous high-profile corporate scams in India have tarnished the integrity of Indian markets and undermined investor trust. Massive shortcomings in governance and auditing standards were revealed in the 2009 Satyam Computers incident, in which the promoter, Ramalinga Raju, admitted to inflating the company's assets and revenues. The scam, amounting to approximately ₹7,000 crore, became one of the most notorious episodes in India's corporate history.

The 2018 IL&FS default crisis demonstrated how poor corporate governance in a systemically significant financial company could transmit liquidity shocks to the whole economy. The 2018 Punjab National Bank–Nirav Modi scam revealed business entities and bank officials working together to commit frauds totalling more than ₹11,000 crore. These incidents demonstrate that financial crimes frequently arise from structural flaws in company systems rather than being the isolated acts of rogue individuals. Criminal responsibility for businesses is therefore crucial both for restoring investor confidence and for deterrence.

C. Environmental Protection

India faces serious environmental challenges, such as climate change, deforestation, and industrial pollution, which are frequently centred on corporate activity. Cases such as the Tamil Nadu Sterlite Industries (Vedanta) matter have drawn attention to how corporate operations affect nearby populations and ecosystems. Administrative fines or civil penalties are sometimes insufficient to redress environmental degradation, especially when the impact is irreversible. Criminal culpability has a greater deterrent effect because it signals that environmental degradation is regarded by society as a crime against the community rather than a mere regulatory infraction. This approach is consistent with the idea of sustainable development and with Article 21 of the Indian Constitution, which courts have construed to include the right to a healthy environment.

D. From Reluctance to Acceptance

Initially, courts resisted the idea of corporate criminal liability. Early English cases, for example, held that corporations could not commit crimes requiring mens rea. However, by the twentieth century, with industrialisation and corporate power expanding, courts began to recognise that

justice demanded corporate accountability. In the United Kingdom, the identification doctrine was applied in cases such as *Tesco Supermarkets Ltd. v. Nattrass*² (1972). In the United States, courts embraced the doctrine of *respondeat superior*, holding corporations liable for the acts of their employees. In India, corporate liability gained recognition in cases such as *Standard Chartered Bank v. Directorate of Enforcement*³ (2005), where the Supreme Court held that companies could be prosecuted and convicted even for offences requiring mandatory imprisonment, with fines substituted for imprisonment.

V. HISTORICAL EVOLUTION OF CORPORATE CRIMINAL LIABILITY

The doctrine of corporate criminal liability did not develop overnight. It has been shaped by centuries of debate, judicial decisions, and legislative reforms. Different legal systems, civil law and common law traditions alike, have evolved distinct approaches to the question of whether corporations can commit crimes.

A. Early Resistance to Corporate Liability

In early common law, corporations were viewed merely as associations of individuals. Courts were reluctant to extend criminal liability to these artificial entities for two main reasons. First, the mens rea requirement: since corporations lack a physical body and mind, it was believed they could not form intent or commit crimes of moral blameworthiness. Second, the difficulty of punishment: traditional sanctions such as imprisonment could not logically be applied to a company. As a result, corporations were initially thought capable of only civil liability, through tort or contract law, but not of criminal liability.

B. Emergence of Liability for Public Nuisance and Regulatory Offences

The earliest recognition of corporate liability came in cases involving public nuisance and regulatory offences. Corporations could, for instance, be held liable for failing to repair roads or maintain bridges, as these duties were linked to their charters. Gradually, with the growth of industrialisation, legislatures imposed statutory duties on corporations in areas such as food safety, workplace conditions, and environmental protection. These duties were often backed by strict liability offences, where proof of fault was unnecessary. The rationale was that corporations engaged in socially risky activities must bear responsibility for harm caused to the public.

² *Tesco Supermarkets Ltd. v. Nattrass*, [1972] A.C. 153 (H.L.).

³ *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 S.C.C. 530 (India).

C. The Identification Doctrine in the United Kingdom

By the twentieth century, courts in the United Kingdom developed the identification doctrine to overcome the problem of attributing mens rea to corporations. In *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.*⁴ (1915), the House of Lords held that the knowledge and intent of certain senior officers, who represent the 'directing mind and will' of the company, could be attributed to the corporation itself. This principle was reaffirmed in *Tesco Supermarkets Ltd. v. Natrass*⁵ (1972), where the House of Lords held that only those individuals who are the 'embodiment of the company' could be said to constitute its directing mind. The identification doctrine provided a theoretical basis for holding corporations criminally liable, though it was criticised as too narrow, since it often shielded corporations by limiting liability to the acts of top management.

D. The U.S. Model: Respondeat Superior

The United States adopted a more expansive doctrine, *respondeat superior* (vicarious liability), under which a corporation may be held criminally liable for the acts of its employees if the act was committed within the scope of employment and was intended, at least in part, to benefit the corporation. This approach, established in *New York Central & Hudson River Railroad Co. v. United States*⁶ (1909), has allowed United States prosecutors to impose liability on corporations for a wide range of offences, including fraud, bribery, and antitrust violations. The United States system also developed Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs), under which corporations avoid conviction by paying fines, cooperating with investigations, and adopting compliance measures. These mechanisms reflect a pragmatic approach, balancing deterrence against the need to avoid collateral consequences such as job losses.

E. Evolution in International Law

The globalisation of commerce led to the recognition of corporate liability in international law as well. Conventions such as the OECD Anti-Bribery Convention (1997)⁷ and the United Nations Convention Against Corruption (2003)⁸ require member states to establish the liability

⁴ *Lennard's Carrying Co. v. Asiatic Petroleum Co.*, [1915] A.C. 705 (H.L.).

⁶ *New York Central & Hudson River R.R. Co. v. United States*, 212 U.S. 481 (1909).

⁷ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1.

⁸ United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.

of legal persons for corruption-related offences. Many countries, including civil law jurisdictions traditionally resistant to corporate criminal liability, have introduced corporate liability regimes under international pressure.

F. Development in India

In India, the evolution of corporate criminal liability has been gradual. Before independence, colonial laws such as the Indian Penal Code, 1860⁹ were drafted primarily with natural persons in mind, and corporations were rarely considered criminally liable. After independence, with the rise of large public-sector undertakings and private corporations, legislation began to impose statutory duties on companies, particularly in the areas of taxation, labour welfare, and environmental protection. Courts initially hesitated to impose criminal liability requiring imprisonment; however, in *Standard Chartered Bank v. Directorate of Enforcement*, *supra* note 3, the Supreme Court held that corporations could be prosecuted and punished with fines even for offences prescribing mandatory imprisonment. In *Iridium India Telecom Ltd. v. Motorola Inc.*¹⁰ (2011), the Supreme Court recognised that corporations can indeed possess mens rea through the acts and intentions of their officers, firmly establishing corporate criminal liability in Indian jurisprudence.

G. International Convergence and Standards

The growing influence of international instruments has narrowed the gap between common law and civil law systems. The OECD Anti-Bribery Convention, *supra* note 6, obliges member states to establish the liability of legal persons for the bribery of foreign officials, and the United Nations Convention Against Corruption, *supra* note 7, likewise requires states to adopt measures to hold corporations accountable. As a result, even traditionally reluctant jurisdictions have introduced mechanisms for corporate liability, whether through criminal, quasi-criminal, or administrative frameworks.

VI. STATUTORY FRAMEWORK OF CORPORATE CRIMINAL LIABILITY IN INDIA

The Indian legal system has progressively brought corporations within the ambit of criminal law. While the Indian Penal Code, 1860 initially focused on natural persons, later statutes such as the Companies Act, 2013, the SEBI Act, 1992, and the Environment (Protection) Act, 1986 explicitly recognised corporations as subjects of criminal liability. This section examines the key statutes that collectively constitute the framework of corporate criminal liability in India.

⁹ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

¹⁰ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 S.C.C. 74 (India).

A. Indian Penal Code, 1860

The Indian Penal Code, although enacted in the colonial era, has been judicially interpreted to include companies within its scope. Corporations have been prosecuted under provisions dealing with cheating (Section 420), criminal conspiracy (Section 120B), and criminal breach of trust (Section 406). In *Iridium India Telecom Ltd. v. Motorola Inc.*, *supra* note 9, the Supreme Court held that a company can be prosecuted for offences requiring mens rea, such as cheating and conspiracy. The Court recognised that the intent of directors and officers can be attributed to the corporation itself, thereby overcoming the obstacle of corporate artificiality. Although imprisonment cannot be imposed on corporations, courts have held that fines may be substituted for imprisonment wherever necessary.

B. Companies Act, 2013

The Companies Act, 2013¹¹ is the most comprehensive statute governing corporations in India. It contains numerous provisions imposing criminal liability on companies and their officers. Section 447 provides for imprisonment and fines for any person, including a company, guilty of fraud, which is defined broadly to include deceit, abuse of position, or any act done to gain undue advantage. Section 34 makes companies and their officers liable for untrue or misleading statements in a prospectus. Section 76A provides for the prosecution of companies that fail to repay deposits or interest. Several other provisions mandate the appointment of directors, auditors, and board committees, with penalties for default. Recent amendments, such as the Companies (Amendment) Act, 2020, have decriminalised minor procedural defaults, such as delays in filing returns, while retaining criminal liability for serious offences such as fraud, mismanagement, and misstatement.

C. Securities and Exchange Board of India Act, 1992

The SEBI Act¹² is crucial for maintaining integrity in the capital markets. Corporations are subject to prosecution under several provisions: Section 15G penalises insider trading, that is, dealing in securities on the basis of unpublished price-sensitive information; the regulations on fraudulent and unfair trade practices prohibit misleading statements, price rigging, and market manipulation; and corporations may be prosecuted for misstatement in a prospectus or accounts, or for the concealment of material facts. SEBI has extensive enforcement powers, including prosecution, disgorgement orders, the suspension of trading, and the imposition of penalties.

¹¹ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

¹² Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

Notable cases, such as the Sahara India matter, highlight SEBI's role in prosecuting corporate misconduct.

D. Environment (Protection) Act, 1986

The Bhopal Gas Tragedy exposed the insufficiency of existing laws in dealing with corporate-caused industrial disasters. In response, the Environment (Protection) Act, 1986¹³ was enacted. Section 16 provides that, where an offence is committed by a company, every person in charge of the company, as well as the company itself, shall be liable, and that directors and managers may be held personally liable where the offence was committed with their consent, connivance, or neglect. This statute firmly embeds strict liability into Indian law, making corporations accountable for environmental harm regardless of intent.

E. Prevention of Money-Laundering Act, 2002

The Prevention of Money-Laundering Act¹⁴ was enacted to combat financial crimes, including the laundering of the proceeds of crime, and defines 'person' to include companies and other legal entities. Corporations can be prosecuted for involvement in laundering illicit funds, with penalties including heavy fines, the attachment and confiscation of property, and disqualification from business activities; directors and officers may be personally prosecuted if found complicit. The Act reflects India's compliance with international anti-money-laundering standards under the Financial Action Task Force (FATF).

F. Insolvency and Bankruptcy Code, 2016

Although the Insolvency and Bankruptcy Code¹⁵ is primarily regulatory, it provides for action against fraudulent conduct by corporate management. Section 66 addresses fraudulent or wrongful trading carried out by directors to defraud creditors, and Section 69 prescribes punishment for carrying on business with intent to defraud creditors. These provisions allow for the criminal prosecution of corporate actors whose misconduct precipitates insolvency.

G. Other Relevant Statutes

Several other statutes impose corporate liability. The Prevention of Corruption Act, 1988 (as amended in 2018)¹⁶ extends liability to commercial organisations for the bribery of public officials. The Food Safety and Standards Act, 2006¹⁷ holds corporations liable for selling unsafe

¹³ Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

¹⁴ Prevention of Money-Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India).

¹⁵ Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

¹⁶ Prevention of Corruption Act, 1988, No. 49, Acts of Parliament, 1988 (India).

¹⁷ Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India).

or adulterated food. The Information Technology Act, 2000¹⁸ provides for liability in respect of data breaches, cyber fraud, and intermediary misconduct. The Competition Act, 2002¹⁹ penalises anti-competitive practices, such as cartels and the abuse of dominance, by corporations.

VII. EMERGING TRENDS IN CORPORATE CRIMINAL LIABILITY

The doctrine of corporate criminal liability has evolved significantly over the last century, adapting to new realities of global commerce, technological innovation, and corporate misconduct. While the early debates focused on whether corporations could be liable for crimes at all, the modern question is how best to enforce liability in a manner that is both effective and just. India, like other jurisdictions, faces a dual challenge: ensuring that corporations are held accountable for wrongdoing while maintaining a business environment conducive to economic growth. This balance has given rise to several emerging trends in the enforcement and conceptualisation of corporate liability.

A. From Individual to Systemic Accountability

Historically, corporate liability was rooted in the conduct of specific individuals: directors, managers, or employees. The focus has now shifted toward the systems, culture, and governance structures of corporations. This reflects the recognition that misconduct often arises not from rogue individuals but from systemic failures and profit-driven cultures that tolerate illegality.

B. Rise of Strict and Vicarious Liability

Legislators worldwide are increasingly relying on strict liability (where intent is irrelevant) and vicarious liability (where companies are liable for the acts of employees) to ensure accountability. This trend is particularly visible in regulatory fields such as environmental, consumer-safety, and securities law. In India, strict liability under environmental laws and vicarious liability under the Companies Act and the SEBI Act demonstrate this global pattern.

C. Corporate Manslaughter and Organisational Homicide

The concept of corporate manslaughter has gained prominence in countries such as the United Kingdom, where corporations can be prosecuted for deaths caused by gross management failures. Although India does not yet have a dedicated statute, industrial disasters such as the Bhopal Gas Tragedy and numerous factory accidents underline the urgent need to recognise

¹⁸ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

¹⁹ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

corporate manslaughter as a separate offence. This trend is examined in detail in the following section.

D. Deferred Prosecution and Non-Prosecution Agreements

Another significant trend, particularly in the United States, is the use of Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs). These allow corporations to avoid conviction by paying fines, cooperating with investigations, and adopting compliance reforms. India is beginning to explore similar mechanisms under the Companies Act, 2013 and through regulatory settlements by SEBI.

E. Globalisation and Extraterritorial Liability

Globalisation has blurred the boundaries of corporate misconduct. Multinational corporations operate across jurisdictions, making it essential for countries to adopt extraterritorial provisions. Anti-bribery laws such as the United States Foreign Corrupt Practices Act (FCPA)²⁰ and the United Kingdom Bribery Act²¹, which apply to companies operating abroad, have set global benchmarks. India, through amendments to the Prevention of Corruption Act in 2018, has begun aligning with these international standards.

F. Role of Compliance and Corporate Governance

There is increasing emphasis on preventive measures such as corporate compliance programmes, whistle-blower mechanisms, and independent boards. Courts and regulators increasingly consider the existence of compliance frameworks when determining liability and penalties. This shift reflects the belief that fostering a culture of compliance within corporations is more effective than punitive sanctions alone.

G. Technology and Digital Liability

The rapid growth of digital platforms and data-driven business models has created new risks. Issues of data privacy, cybersecurity, and the misuse of digital platforms now fall within the ambit of corporate criminal liability. In India, the Information Technology Act, 2000 and the Digital Personal Data Protection Act, 2023²² highlight this emerging dimension of liability.

H. Relevance for India

For India, these emerging trends are especially relevant. As the country seeks to attract global investment and strengthen corporate governance, adopting international best practices while

²⁰ Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 to 78dd-3 (U.S.).

²¹ Bribery Act 2010, c. 23 (U.K.).

²² Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

addressing domestic challenges is crucial. The rise of corporate scams, environmental crises, and financial frauds shows that India cannot rely solely on traditional doctrines; instead, it must embrace innovative enforcement mechanisms that combine deterrence with fairness.

VIII. CORPORATE MANSLAUGHTER AND ORGANISATIONAL HOMICIDE

One of the most significant emerging trends in corporate criminal liability is the recognition of corporate manslaughter (also known as organisational homicide). This doctrine holds corporations criminally liable for deaths caused by gross negligence, systemic failures, or unsafe business practices.

A. Concept of Corporate Manslaughter

Traditionally, homicide offences required proof of *mens rea*, which was difficult to attribute to a corporation, and courts often struggled to hold companies accountable for fatalities caused by unsafe operations. The concept of corporate manslaughter overcomes this obstacle by focusing on management failures rather than the intent of specific individuals. Corporate manslaughter refers to the offence in which a death is caused by a company's gross breach of a duty of care through systemic negligence or organisational failure. Its key feature is that liability attaches to the organisation as a whole, rather than being limited to individual directors or employees.

B. International Developments

The United Kingdom was a pioneer in introducing a dedicated statute. The Corporate Manslaughter and Corporate Homicide Act 2007²³ provides that a corporation can be guilty of manslaughter if its activities cause a person's death through a gross breach of a duty of care, with the focus on the way activities are managed or organised by senior management. Penalties include unlimited fines, remedial orders, and publicity orders. The law was enacted after several industrial accidents, including the Herald of Free Enterprise ferry disaster (1987), where failures in corporate systems led to mass fatalities.

The United States does not have a specific corporate manslaughter statute, but corporations have been prosecuted for deaths under general criminal law using *respondeat superior*; for example, corporations have faced liability for unsafe working conditions and environmental disasters resulting in loss of life. In Australia, some states, such as Queensland, have enacted corporate manslaughter provisions under workplace-safety laws. In Canada, the Westray Bill

²³ Corporate Manslaughter and Corporate Homicide Act 2007, c. 19 (U.K.).

(Bill C-45, 2004)²⁴ amended the Criminal Code to impose liability on corporations for workplace deaths caused by negligence.

C. Indian Position

India does not yet have a dedicated statute on corporate manslaughter. However, several provisions of existing law can be used to impose liability on corporations for fatalities. Sections 304A and 304 of the Indian Penal Code provide for punishment for causing death by negligence and for culpable homicide; corporations can, in principle, be prosecuted under these provisions, though courts have rarely imposed liability. The Factories Act, 1948²⁵ imposes duties on corporations to ensure worker safety, and violations leading to death can attract criminal liability. The Environment (Protection) Act, 1986 provides for corporate liability where environmental harm leads to fatalities.

The leading example is *Union Carbide Corporation v. Union of India*²⁶ (1989). The Bhopal Gas Tragedy, one of the world's worst industrial disasters, killed thousands and injured many more. Although civil compensation was awarded, the criminal prosecution of Union Carbide faced significant hurdles, and the company largely escaped full criminal accountability. The tragedy highlighted the urgent need for a corporate manslaughter framework in India. Other cases, such as frequent mine accidents, factory fires, and construction mishaps, also reveal the inadequacy of current laws in holding corporations accountable for deaths.

D. Justifications for a Corporate Manslaughter Law in India

Accountability for industrial disasters. India has a history of industrial accidents causing mass fatalities, and civil compensation alone does not provide adequate deterrence.

Closing legal gaps. The current provisions under the Indian Penal Code and sectoral laws are fragmented and often inadequate for systemic corporate failures.

Global alignment. Enacting a corporate manslaughter statute would bring India into line with international best practices, especially those of the United Kingdom, Canada, and Australia.

Strengthening worker and public safety. A specific offence would compel corporations to invest in compliance, workplace safety, and preventive measures.

²⁴ Criminal Code, R.S.C. 1985, c. C-46 (Can.), as amended by An Act to Amend the Criminal Code (Criminal Liability of Organizations), S.C. 2003, c. 21 (the Westray Bill).

²⁵ Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India).

²⁶ *Union Carbide Corp. v. Union of India*, (1989) 2 S.C.C. 540 (India).

E. Challenges in Implementation

While desirable, introducing corporate manslaughter in India faces several challenges. Determining whether a death was caused by organisational negligence rather than individual fault can be complex. Lengthy trials may undermine the deterrent effect. Industry may resist such laws, arguing that they discourage investment. Finally, effective enforcement would require strengthening agencies such as the Directorate of Industrial Safety and Health.

F. Suggested Reforms for India

A dedicated statute, similar to the United Kingdom Corporate Manslaughter Act and focusing on systemic management failures, should be enacted. The law should define clear standards for the corporate duty of care toward employees, consumers, and the public, and should provide graduated penalties, including heavy fines, remedial orders, and even the temporary suspension of licences. Compliance incentives should allow reduced liability for companies that demonstrate effective compliance and safety mechanisms, and a victim-centric approach should ensure that penalties contribute to victim compensation and community rehabilitation.

IX. CHALLENGES IN THE ENFORCEMENT OF CORPORATE CRIMINAL LIABILITY IN INDIA

While India has formally recognised the doctrine of corporate criminal liability through statutes, judicial decisions, and regulatory frameworks, the real challenge lies in enforcement. The effectiveness of any legal framework depends not only on the provisions of the law but also on the capacity of institutions to implement it. In India, the gap between the law in books and the law in action remains strikingly wide. Corporate crime is inherently complex; unlike conventional crime, where individual offenders can be readily identified and prosecuted, corporate misconduct often involves layered structures of decision-making, cross-border operations with offshore subsidiaries, sophisticated financial instruments that obscure transactions, and collective or systemic failures rather than individual wrongdoing. These features make the detection, investigation, and prosecution of corporate crime an uphill task.

A. Importance of Effective Enforcement

Effective enforcement of corporate liability is crucial for several reasons. Without visible punishment, corporations may treat violations as a mere cost of doing business, undermining deterrence. Investors, employees, and consumers lose confidence in markets if corporate offenders escape accountability. Unequal enforcement between individuals and corporations undermines the legitimacy of the legal system and the rule of law. Finally, with Indian

corporations competing globally, weak enforcement risks sanctions from foreign regulators and harms India's reputation.

B. Key Dimensions of Enforcement Challenges in India

Enforcement challenges in India manifest in several interconnected ways. Regulatory bodies such as the SFIO, SEBI, the Enforcement Directorate, and the CBI often face overlapping jurisdiction, political interference, and resource constraints. Corporate trials frequently take decades, diluting the deterrent value of punishment. Doctrinal uncertainties, such as the attribution of mens rea and the scope of vicarious liability, complicate prosecution. Large corporations wield economic and political influence that can frustrate regulatory efforts. Cross-border operations make investigation and the collection of evidence difficult without effective international cooperation.

C. The Indian Paradox

India presents a paradox. On paper, the statutory and judicial framework for corporate criminal liability is robust and aligned with global standards; in practice, enforcement remains sporadic, selective, and often ineffective. For example, despite the scale of the IL&FS crisis (2018) and the PNB–Nirav Modi scam (2018), prosecutions have been slow and accountability diluted. Similarly, the Bhopal Gas Tragedy (1984), despite being one of the worst industrial disasters in history, saw limited criminal liability imposed on corporate executives, and Union Carbide Corporation largely escaped accountability.

D. Doctrinal and Legal Challenges in Enforcement

One of the foremost obstacles to enforcing corporate criminal liability in India lies in the doctrinal ambiguities of the law itself. Unlike traditional crimes committed by natural persons, attributing criminal responsibility to corporations raises fundamental legal questions. The doctrine of mens rea is central to criminal liability; since corporations are artificial legal entities without physical or mental existence, the question arises how intent or knowledge can be attributed to them. Under the identification theory, or directing-mind doctrine, the mental state of key individuals such as directors or managers is attributed to the corporation. In *Iridium India Telecom Ltd. v. Motorola Inc.*, *supra* note 9, the Supreme Court held that corporations could be prosecuted for offences requiring mens rea; however, the practical application of this doctrine is limited where decisions are taken collectively or through diffuse structures. Some statutes also impose vicarious liability on companies for the acts of employees or agents, yet courts in India have been reluctant to extend vicarious liability beyond express statutory provisions. The

lack of clarity on when and how mens rea may be imputed creates uncertainty and often leads to acquittals.

E. Liability of Directors and Officers

Corporate misconduct often results from decisions at the level of top management, yet attributing liability to directors and officers is not straightforward. Many laws impose liability on ‘persons in charge of and responsible for the conduct of business’, and courts have struggled to define precisely who falls within this category. Directors often claim ignorance of day-to-day operations, while lower-level employees argue that they acted under orders, and this diffusion of responsibility leads to weak accountability. In *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*²⁷ (2005), the Supreme Court clarified that only persons in charge of, and responsible for, the conduct of the business at the time of the offence can be held liable under the Negotiable Instruments Act; even so, enforcement remains inconsistent.

F. Corporate Manslaughter and Negligence

As discussed earlier, India lacks a dedicated framework for corporate manslaughter, and reliance on general provisions such as Section 304A of the Indian Penal Code (death by negligence) is inadequate to address systemic failures. In the Bhopal Gas Tragedy (1984), despite the massive loss of life, Union Carbide and its executives largely escaped serious criminal liability. Without a clear statutory offence, corporations continue to evade responsibility for deaths caused by organisational negligence.

G. Strict Liability versus Due Diligence Defence

Indian law often oscillates between strict liability, where corporations are liable regardless of intent, and the allowance of due diligence defences, where corporations escape liability if they prove compliance efforts. In environmental law, the principle of absolute liability laid down in the Oleum Gas Leak case, *M.C. Mehta v. Union of India*²⁸ (1987), is theoretically strict, yet enforcement is inconsistent. The Companies Act and the SEBI laws, by contrast, provide due diligence defences that sometimes weaken deterrence. This inconsistency creates legal uncertainty and makes enforcement unpredictable.

H. Overlap of Civil, Criminal, and Regulatory Liability

Corporate misconduct often attracts overlapping legal consequences: civil liability (compensation to victims), regulatory penalties (fines and sanctions by agencies such as SEBI,

²⁷ *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 S.C.C. 89 (India).

²⁸ *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).

the RBI, or the Competition Commission), and criminal liability (prosecution under the Indian Penal Code or special statutes). However, the absence of clear guidelines on how these mechanisms interact often results in duplication, delay, or dilution of punishment.

I. Nature of Cross-Border Corporate Crime

Corporate misconduct in the global context often involves transfer-pricing manipulation and tax evasion through offshore jurisdictions, money laundering using shell companies and foreign bank accounts, corruption and bribery in overseas markets by Indian companies or their subsidiaries, environmental harm caused by multinational projects spanning multiple jurisdictions, and cyber and data crimes targeting international networks. Such offences rarely occur within the boundaries of a single state, requiring international cooperation for effective enforcement.

J. Jurisdictional Challenges

One of the central issues in cross-border enforcement is jurisdiction: which country has the right to prosecute, whether multiple jurisdictions may prosecute the same misconduct, and whether liability should be determined by the place of incorporation, the location of the misconduct, or the impact of the crime. In bribery cases involving Indian corporations operating abroad, for example, both India and the foreign state may claim jurisdiction, leading to diplomatic tensions and legal uncertainty.

K. Key Challenges Identified

Doctrinal and legal ambiguities. Difficulty in attributing mens rea to corporations, the lack of a corporate manslaughter framework, and the inconsistent application of strict and vicarious liability.

Institutional weaknesses. A multiplicity of regulators with overlapping jurisdictions, resource shortages and a lack of expertise in forensic and financial investigation, and political and corporate interference undermining the independence of regulators.

Judicial and procedural delays. A chronic backlog of cases and adjournments, the complexity of corporate trials involving technical evidence and multiple defendants, and prolonged trials that reduce the deterrent effect of punishment.

Corporate power and political economy. The influence of corporations through lobbying and opaque political funding, selective enforcement and regulatory capture, and weak penalties that corporations treat as business costs.

Globalisation and cross-border issues. Jurisdictional conflicts and evidentiary challenges, delays in the extradition of corporate executives, and a lack of capacity to pursue transnational corporate misconduct.

X. SUGGESTIONS FOR REFORM

The preceding sections have shown that, although India has formally embraced the doctrine of corporate criminal liability through statutes, judicial decisions, and regulatory frameworks, enforcement continues to face significant hurdles. Doctrinal ambiguities, institutional weaknesses, judicial delays, corporate influence, and globalisation-related complexities have all undermined the effective prosecution of corporate misconduct. Recognising these shortcomings is only the first step; the greater challenge lies in designing and implementing reforms that can strengthen the framework of corporate accountability in India while ensuring that enforcement remains fair, proportionate, and in line with global best practices.

A. The Need for Reform

Corporate crime has far-reaching consequences. It erodes investor confidence and damages financial markets, undermines worker safety and environmental sustainability, weakens the rule of law by allowing powerful corporations to evade accountability, and tarnishes India's international reputation, especially as the country integrates into the global economy. These realities highlight the urgency of systemic reform. Without it, India risks repeating the cycle of corporate scandals, such as Satyam and Nirav Modi, without meaningful deterrence.
