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## **CORPORATE CRIMINAL LIABILITY IN INDIA: DOCTRINAL FOUNDATIONS AND COMPARATIVE DEVELOPMENTS**

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### **ABSTRACT**

The liability of corporations to crime has altered radically, being transformed in the juristically fiction of the impossibility of corporations having a criminal mind to one of the most important problems of contemporary juristically thought. Corporate Criminal Liability in India has transformed from the juristic fiction denying corporate mens rea to statutory framework confronting white-collar crimes and AI complexities. This present research analyses how corporate criminal liability has changed over the years in India, starting with the initial setback of having a mens rea requirement, to the modern-day challenges of artificial intelligence and globalized corporations. By analyzing some of the landmark Indian judgements, such as the Bhopal Gas Tragedy, Standard Chartered Bank v. Directorate of Enforcement, and Iridium India Telecom Ltd. v. Motorola Inc., the research clarifies the manner in which Indian courts have evolved over time to enforce the archaic penal laws on corporate entities. More so, it gives a comparative analysis with the legal frameworks of the United Kingdom, the United States and Singapore, with some approaches divergent like the UK approach of failure to prevent, the United States approach of Respondeat Superior and the Singapore approach of the Embodiment Doctrine. In this milieu the research in the present paper critically evaluates the effects of the Bharatiya Nyaya Sanhita (BNS) of 2023, by finding the progress it achieves in the codification of corporate accountability, alongside the gaps it still has, especially in the assignment of liability in terms of AI-based decision-making. It ends by giving recommendations and proposals on changes in law and judicial systems to make corporate criminal responsibility more effective in India, which would involve a shift in sentencing policy towards greater differentiation, and a more proactive and systematic strategy to corporate governance. This in-depth discussion explains why the legal frameworks must keep changing in response to the complexities of contemporary business malpractices.

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**Keywords:** Corporate Criminal Liability, Alter Ego Doctrine, Mens Rea, Bharatiya Nyaya Sanhita (BNS) 2023, Attribution, Judicial Evolution, White-Collar Crime, Corporate Governance.

## **Introduction**

The world of contemporary business is becoming more and more controlled by corporate enterprises, and their activities, either positive or negative, have the most significant influence on societies and the economies of the world. Although corporations cannot be ignored as they are the major push factor to economic growth and even innovation, they have, at the same time, great potential to cause great damage, including worsening of the environment and financial fraud, along with infringement of human rights. The issue of criminal liability of these artificial legal persons regarding their sins has long been an insurmountable challenge to the laws of the world. The old principles of criminal law, which originally focused on human beings, could not adapt to the idea of the intangible entity of a corporation and such a concept as mens rea (guilty mind). This natural contradiction has led to the need to constantly evolve principles of law and judicial interpretation to close the divide between the archaic penal codes and the actualities of corporate wrongdoing.

Judicial activism and slow pace in the enactment of legislation have characterized the process of formulating strong corporate criminal liability in India. In the early jurisprudence, a cardinal question used to be mixed up which is as the criminal intent attribution to the thing that lacks a living physical body or a conscious psyche. However, the conceptual obstacles have been demolished in a well-structured way through the landmark judicial verdicts, which have yielded to the expansive corporate accountability model. The paper shall assume a close analysis of such a multifaceted development in the Indian jurisprudence and also examine those jurisprudential decisions by the judiciary that proved the difference in establishing the current interpretation of corporate criminal liability. It provides the theological nature of such theories as the Alter Ego Doctrine and the doctrine of absolute liability and demonstrates how the courts have been creative in ensuring that corporations are never found innocent just because they are artificial legal persons.

Besides the home picture, the paper has gone a step further to compare the regimes of corporate criminal liability in such major jurisdictions as the United Kingdom, the United States and Singapore. By comparing the Indian system with these other international systems, the article will be in a position to identify the best practices, areas of convergence and opportunities in which further reforms can be done. The comparative prism has also manifested an international trend to expand the definition of corporate responsibility, often to areas that are further out of more

traditional mens rea requirements to such concepts as failure to prevent crimes and vicarious liability. Such a relative perspective plays the key role in influencing the future policy in India.

Finally, the article is critical about the impact of the recent legislative developments and how incorporation of the Bharatiya Nyaya Sanhita (BNS) 2023 has affected the status of corporate criminal liability in India. As much as the BNS 2023 is a significant step towards codification and the increased corporate accountability, it also introduces new issues, especially in relation to addressing the challenges that can arise when the field of artificial intelligence in corporate decision-making becomes more popular. A new challenge that can put the classical attribution theories into question is the issue of the black box where the intent behind the actions that AI controls is concealed. The outcome of such an analysis will be a set of recommendations and suggestions that are assumed to deliver a stronger, more open, and globally oriented system of corporate criminal liability in India whose legal procedures are sensitive to the issue of preventing and not allowing corporate wrongdoings but punishing the latter accordingly.

### **Research Questions**

This research paper aims to provide the following research questions:

1. What has the Indian judicial system, in its readings and judicial precedents, managed to work around the doctrinal difficulties in assigning criminal responsibility to corporations?
2. What are the biggest variations and commonalities in the strategies of corporate criminal liability in the top three jurisdictions (the United Kingdom, the United States and Singapore), and what can India learn from these comparative models?
3. What are the implications of modern trends, especially the passage of the Bharatiya Nyaya Sanhita (BNS) 2023 and the emergence of Artificial Intelligence, to the current system of corporate criminal liability in India, and what should be changed in this area?

### **Objectives of the Study**

The main goals of this research include:

1. The evolution of corporate criminal liability in India (both historical and judicial): how have the courts dealt with the allocation of mens rea and impossibility of punishment?

2. Form a comparative study of the corporate criminal liability systems in the United Kingdom, the United States and Singapore, in order to discover the best practices and possible lessons that can be applied to the Indian context.
3. Analyse the implications of the Bharatiya Nyaya Sanhita (BNS) 2023 and the changes that Artificial Intelligence is introducing to corporate criminal liability in India, and suggest legal and policy changes that are required.

### **Research Methodology**

The provided article follows a doctrinal research approach, as the main aim of this study is the in-depth analysis of the primary and secondary legal materials. The main sources are landmark cases of the Indian Supreme Court and other High Courts, the Indian Penal Code (today Bharatiya Nyaya Sanhita 2023), as well as the Companies Act, 2013, and other specific legislations on corporate behaviour. The secondary sources include academic literature, scholarly articles, legal commentaries and reports by the national and international organisations on corporate criminal liability. The study uses a qualitative approach to the analysis whereby the authors critically analyse the development of law, judicial interpretation, and changes in the law. A comparative juridical analysis is also carried out comparing the Indian framework with the United Kingdom, the United States, and Singapore jurisdictions in order to find some features in common, some in divergence, and possible areas of reform. This multi-dimensional approach will ensure that the subject matter is adequately interpreted to provide it with a historical background in addition to modern meaning.

### **Limitations of the Study**

In this work, the research methodology is mainly doctrinal because it utilizes judicial rulings, law, and scholarly analysis. Although this is a way of analysing the concept and legal comprehension in depth, it lacks empirical data like the rates of convictions, prosecutors' tendencies, or the statistics of enforcement. Therefore, the feasibility of corporate criminal liability in India is discussed not empirically, as far as the enforcement of such criminal liability, but rather theoretically in the theoretical context. The comparative study is limited to the few jurisdictions, that are namely the United Kingdom, the United States, and Singapore. Though these systems are important sources of insight because of their established corporate liability systems, the research does not go further into the civil law jurisdictions and developing economies. A wider comparative picture would have uncovered more structural models or reform strategies that could be used in India. The issue of corporate criminal liability is a fast-developing area, especially in the recent past, after the

implementation of the Bharatiya Nyaya Sanhita, 2023, and continuous changes in foreign jurisdictions.

Considering the changing nature of the legislative environment, some of the interpretations or comparative observations might need a review as new court precedents and statutory changes arise. The research is exploratory as the topic of artificial intelligence implications on corporate attribution is touched upon in the research, although it is an exploratory one. The point of convergence between AI governance and criminal liability is not yet established in the world over. A higher level of attribution and accountability models may develop beyond the jurisdiction of discussion under consideration as regulatory systems and jurisprudence develop.

### **The Judicial Metamorphosis: From Immunity to Accountability in India**

This Judicial Metamorphosis fulfils Research Question 1 by talking about how the Indian court system has overcome the hurdles of doctrine in apportioning criminal liability on corporate entities. Corporate criminal responsibility development in India has had a significant legal redefinition of justice, as it has transformed the previously struggling juridical system that had to deal with the question of corporate responsibility to a more powerful responsibility system. Historically the key hurdle to criminal liability of business has been Latin: *actus non facit reum nisi mens sit rea* (an act does not make one guilty unless his mind is guilty). The attribution of *mens rea*, which is a middle piece of criminal jurisprudence, was challenged by the artificial legal personhood of corporations, which lacked a physical person or a conscious mind. It is, nevertheless, the Indian courts that, with a series of landmark decisions, have systematically overcome these doctrinaire entanglements and have adapted the archaic penal codes to the modern realities of corporate behaviour.

#### **A. The Genesis of Accountability: Bhopal Gas Tragedy and the Doctrine of Absolute Liability**

One of the worst industrial tragedies in the world, the catastrophic Bhopal Gas Tragedy of 1984, was one of the catalysts in changing the concept of corporate liability in India. The spill of methyl isocyanate at the Union Carbide India Limited (UCIL) plant resembled glaring deficiencies in corporate jurisprudence, especially with regard to corporate negligence and the responsibility of parent corporations with regard to the deeds of their subsidiaries. Although the criminal prosecution in the Bhopal case had to struggle with the challenge of jurisdiction, the extradition

issue, and numerous delays, it indicated the pressing necessity of a stricter system of corporate responsibility.<sup>3</sup>

As a reaction to the tragedy, the Indian judicial system made a great leap with regard to the enhancement of the Doctrine of Absolute Liability, relying on the principles laid down in the foreign case of *Rylands v. Fletcher*. *M.C. Mehta v. Supreme Court*. The Union of India expressed a higher and stricter criterion, as it was believed that any enterprise involving hazardous activities or activities that are in essence dangerous is not and cannot be held liable to any damage caused by the activities. This dogma actually shattered the barriers of traditional explanations by making it clear that the onus is on the firm, which must ensure safety without exception. The court specifically overturned the defence of vis major or act of stranger or own fault by the plaintiff, as the cost of such hazards was to be paid by the enterprise and not by the victims or state funds. This judicial innovation provided a very important background to further increase the liability of corporations to a broader area than the conventional fault-related measurements.

### **B. Attributing Intent: The Alter Ego Doctrine and Mens Rea**

Although absolute liability had developed regarding hazardous activities, there was the problem of establishing mens rea regarding other criminal activities. Indian courts tackled this by the formulation and use of the Alter Ego Doctrine, which is also referred to as the Doctrine of Identification. According to this doctrine, the criminal intent of some significant individuals, the directing mind and will of the company, can be transferred to the corporation. These people are not just agents or servants, but are the ones who are actually running the company, and whatever they do is perceived as the work of the company. The extent of credibility is gauged by the proximity of their actions to the consequences that are eventuated by the virtue of their actions.

In the past, the application of mens rea on corporate entities was largely doubted in court. The pre-2005 status tended to restrict the use of the Alter Ego Doctrine, as some courts have discredited it in cases involving crimes that would need the particular state of criminal intent, on the principle that a corporation has no soul or mind to develop a criminal intent. Nonetheless, this conservative opinion was largely changed, especially after 2010 when the doctrine established itself. *Conquest of the Unthinkable: the case of the Standard Chartered Bank*.

The impossibility of punishment was also another important obstacle to the enforcement of corporate criminal liability. Criminal laws in India usually provide a jail term for severe crimes or

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<sup>3</sup> Covell, T. (1991). The Bhopal Disaster Litigation: It's Not over Yet. *North Carolina Journal of International Law and Commercial Regulation*, 16(3), 279-305.

a jail term along with fines. This left a legal gap, as corporations do not have a physical vehicle, so they cannot go to jail. As a result, it was argued that, in the event that imprisonment was a mandatory punishment, then corporations could not be charged with such a crime.<sup>4</sup>

The Supreme Court gave a clear answer to this dilemma in *Standard Chartered Bank v. Directorate of Enforcement*. This famous case turned back the previous restrictive interpretation, that a corporation can, in fact, be indicted and fined, although a statute may have imposed an obligatory penalty of imprisonment and fine. The Court reasoned that:

“Since the company cannot face imprisonment, the court will be left with the option of a fine, in case the wrongdoing is punishable by both imprisonment and fine. A company cannot be sentenced to serve a jail sentence by the court. Fine is the only kind of punishment that the court can bring upon. In case the court determined that the company is beyond prosecution, the common sense and the intent of the lawmakers would have been subjected to sheer violence.”<sup>5</sup>

This ruling was a successful appeal to the Doctrine of Severability that permitted the imposition of a fine to exist independently by separating the compulsory imprisonment element. It reaffirmed the doctrine of *lex non cogit ad impossibilia* (the law does not compel the impossible), but most importantly, it stated that the doctrine could not be invoked by corporations to get themselves off with crimes. This ruling encouraged the floodgates to the prosecution of corporations in all kinds of crimes, even those against the Indian Penal Code, so that a more massive scope of corporate criminal responsibility was given.

### **C. Solidifying Mens Rea Attribution: The *Iridium India Telecom Case***

Although *Standard Chartered Bank* demystified the concern of punishment, in *Iridium India Telecom Ltd. v. Motorola Inc.*, the setting of the mens rea against corporations was further demystified. The Supreme Court categorically supported the Alter Ego Doctrine as the principle to apply in the attribution of mens rea to a corporation in India. The Court affirmed that:

“The attribution of mens rea is under the principle of alter ego of the company. The individuals who manage and govern the activities of the corporation, who run the business of the company, are the ones on whom the criminal motive of the corporation is attributed.”<sup>6</sup>

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<sup>4</sup> *Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405.

<sup>5</sup> Ang, L. (2018). Effective measures against corporate crime and corporate liability in Singapore. *UNAFEI Resource Material Series*, 94, 1-18.

<sup>6</sup> Jain, A. (2023). The Principle of Alter Ego & the Evolution of Corporate Criminal Liability in India. *Journal of Legal Studies*, 4(2), 88-105.

This decision was a shift in paradigm as companies can now face charges of offences that involve mens rea, including fraud, deceit and misrepresentation. It is determined that a corporation is practically equal to any individual and can be found guilty by common law, along with statutory crimes that require the essential element of mens rea. The Iridium case principles, which regulate a company's criminal liability in India, are:

1. **Liability to all Offences:** Corporations may suffer a fine, imprisonment only or imprisonment only liability to virtually any criminal offence (including those involving mens rea).<sup>7</sup>
2. **Attribution through Alter Ego:** The criminal intent is put on the corporation under the Alter Ego Doctrine, which is concerned with the acts and intent of the top management of the corporation or individuals who run the operations of the company.<sup>8</sup>
3. **Punishment by Fine:** In case a statute provides imprisonment and a fine, the corporation may only be fined, which amounts to a reading down of the imprisonment element.<sup>9</sup>

All these judicial statements portray an aggressive and strong action by the Indian courts to see that the corporate world is made responsible for their criminal acts, and essentially change the legal landscape to be more of one of corporate immunity, rather than one of an all-around responsiveness. The post, however, was not the final step in the path since new challenges and comparative knowledge kept on informing the debate on further development of this complicated section of law.

### **Comparative Jurisprudence: Divergent Models of Corporate Attribution**

In this paper, a review is offered by providing a comparative study of models on corporate criminal liability in major jurisdictions. The system of corporate criminal liability on the international level provides a number of strategies, each of them is predetermined by the differences of law tradition, historical development and political purposes. A comparative study of these models would provide useful information about the strengths and weaknesses of various attribution mechanisms and formulate possible reforms of the Indian model. Although the jurisprudence of India has been

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<sup>7</sup> Jahan, N. (2025). Corporate Criminal Liability In India: Evolution, Challenges, And the Path Forward. *Indian Journal of Law and Legal Research*, 7(6), 1-10.

<sup>8</sup> Kumar, S. (2024). A Critical Analysis of Criminal Liability of the Officers of a Company. *All Multidisciplinary Journal*, 2(1), 1-15.

<sup>9</sup> Sahoo, S. (2025). *Standard Chartered Bank Case: A Jurisprudential Analysis*. SSRN.

more or less based on the Alter Ego doctrine, other jurisdictions have also come up with their own theories to bring the corporations to justice or to supplement the same.

### **A. The United Kingdom: From Identification to “Failure to Prevent”**

The UK has traditionally taken a more corporate criminal liability doctrine based on the Identification Doctrine that is conceptually analogous to the Alter Ego Doctrine used in India. This doctrine made the prosecution find a senior person in the company whose conduct and mens rea could be imputed to the corporation itself to effectively make the individual a so-called directing mind and will of the corporation. *Tesco Supermarkets Ltd v. Nattrass*. This strategy was cemented by *Nattrass*, who pointed out that only individuals at the heart of the company decision-making, including the members of the board or the top executives, would be the face of the corporate entity, as far as criminal liability is concerned. This limited interpretation, though, became more and more difficult in the context of big, complicated, decentralised corporate frameworks, which in many cases enabled the companies to escape responsibility when the misconduct was caused by the middle-level workers or by a group of employees.

Having realized the shortcomings of the Identification Doctrine, the UK has experienced a radical move towards a failure to prevent model. The Bribery Act 2010, specifically Section 7, is the starting point of this paradigm shift, which applies the concept of a corporate crime of not preventing bribery. Under this provision, any commercial organisations risks being held responsible in case a person connected with it bribes another person with the aim of securing or maintaining a business or other gain in the governing of the business to the organisations, unless and until the organisations proves that it had in place proper procedures to prevent bribery. This was an important breakthrough on the requirement to establish mens rea at the senior management level, laying the responsibility on the corporations to take the initiative to have in place strong compliance mechanisms.

The Criminal Finances Act 2017 further added to the scope of the failure to prevent model by introducing analogous offences of failing to prevent the facilitation of tax evasion. Most recently, the Economic Crime and Corporate Transparency Act (ECCTA) 2023 has brought about major changes in the UK in the area of corporate criminal liability. The ECCTA further extends the Identification Doctrine, by including in it a so-called senior manager test that refers to a broader category of offenses involving economic crimes, and thus subjects' large organizations to liability in cases where the perpetrator of the offense was an employee of the company, and the crime occurred in its benefit, unless the company can demonstrate that reasonable prevention measures

were actually in place. These legislative developments highlight a definite policy shift in the UK that corporations should now face consequences when systems fail in their governance and compliance practices, and that it no longer depends on the activities of a small number of senior officials.

### **B. The United States: Broad Vicarious Liability via Respondeat Superior**

This doctrine punishes companies because of the criminal acts of its workers or representatives even when they do this during their working period and at least partly in the interests of the company. This wide connotation means that even the actions of a junior employee without the approval or the authorization of the top management can be thrust onto the corporation. This was firmly realized in the historic case of *New York Central Railroad Company and Hudson River Railroad Company v. United States* that has become the pillar in federal corporate prosecutions.

The extensive use of Deferred Prosecution Agreements (DPA) and Non-Prosecution Agreements (NPAs) has been achieved due to the expansive nature of Respondeat Superior which has enabled U.S. prosecutors to prosecute corporations with less difficulty. With these deals, the formal conviction can be avoided as companies satisfy some requirements, but they might need to pay huge fines, develop better compliance tools, as well as collaborate in the investigations. The U.S. Department of Justice (DOJ) regularly updates its instructions regarding the assessment of corporate compliance programs, high-quality internal controls, ethical culture, and support of whistleblowers. The recent developments, particularly in September 2024, have placed a different perspective on the risk management concerning the artificial intelligence that is proactive in the emergence of corporate challenges. The U.S. paradigm, therefore, welcomes companies to take part in active self-policing and risk of the broad vicarious liability is a powerful mechanism in making sure that companies maintain high standards of internal compliance.

### **C. Singapore: Embodiment Doctrine and Statutory Specificity**

A hybrid system of the corporate criminal liability in Singapore is founded on the principles of the common law with references to the Embodiment Doctrine, however, the particular statutory provisions. The Embodiment Doctrine that resembles the Identification Doctrine in the UK focuses on attributing the mens rea of acts done by individuals that constitute the directing mind and will of the company to the company. The case of *Prime Shipping Corp v. Public Prosecutor* confirms that the actions of prominent leadership personnel are capable of catalyzing corporate responsibility, especially when the outcome and the motive of their actions are core to the alleged misconduct.

Nonetheless, Singapore law has certain statutory provisions as well that are considered to make corporate accountability extend far beyond the narrow boundaries of the Embodiment Doctrine. As an example, the Precious Stones and Precious Metals (Prevention of Money Laundering and Terrorism Financing) Act 2019, which associates a company with the mental motive of the company officers, agents, or employees in the execution of their role, is an expansion of the attribution in certain areas. The courts seen in *Public Prosecutor v. Singapore* see courts charged with the responsibility of eliminating crime. Although the courts are in Singapore, as the case of *Public Prosecutor v. Singapore* observes. The parsimonious attitude of China Railway Tunnel Group Co Ltd against excessive development of common law liability beyond the directing mind, the trend in law-making is the enactment of liability for failure in certain instances of the organisations. The Singapore model is based on the principle of personal responsibility and corporate punishment in order to prevent misbehavior, which encourages systemic control. This bifocal focus will see the culprits and their corporate masters punished to foster a well-balanced but strict enforcement regime.<sup>10</sup>

In conclusion, judicial interpretation in India has a long journey to go, yet the comparative approach says that there are a number of approaches to criminal liability of corporate which are sprouting everywhere around the globe. The shift of the UK to failure to prevent offences, the US-wide doctrine of *Respondeat Superior*, and the Singapore experience of common law and statutory specificity all have valuable lessons to teach on how to amend the Indian model to better serve the requirements of the multifaceted corporate misconduct in the 21<sup>st</sup> century.

### **The Contemporary Frontier: BNS 2023, AI, and the Future of Corporate Sanctions**

To this extent, the contemporary problem is being materialized through examining the existence of contemporary activities, including the BNS 2023 and Artificial Intelligence, on corporate criminal liability in India. The balance of the altering economic situation, the evolvement of technologies, and the emergence of new regulations constantly transform the world of corporate criminal liability. In India, the relevant case is the recent implementation of the *Bharatiya Nyaya Sanhita* (BNS) 2023, which is a remarkable law intervention, and the development of artificial intelligence (AI) in corporate decision-making that poses new threats to conventional attribution theories. This chapter examines such modern frontiers, evaluating the implications of the BNS

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<sup>10</sup> Rajah, V. K. (2015). Holding accountable the individuals who perpetrated the misconduct. Opinion-Editorial, Singapore.

2023 and the problem of the black box of AI, and calls for a diversification of corporate sanctions to include other forms than the standard fines.

### **A. The Bharatiya Nyaya Sanhita (BNS) 2023: A Legislative Shift**

The new Criminal Law Bharatiya Nyaya Sanhita (BNS) 2023, which replaces the Indian Penal Code of 1860, is a crucial point of change in Indian criminal jurisprudence. Although it does not establish a radical approach to failure to prevent similar to the one present in the UK, the BNS 2023 formalizes and solidifies various principles that have developed via judicial activism. Interestingly, Section 2(27) of the BNS 2023 contains an inclusive meaning of a person that includes companies, associations and bodies of persons that may be incorporated or not. This direct incorporation gives the statutory basis of prosecution of corporate entities a better backing that complements the judicial pronouncement in other cases, such as Standard Chartered Bank, that had already worked its way around the lack of such explicit provisions.

Importantly, the BNS 2023 enables imposing fines on corporations in cases where the offence has a mandatory imprisonment penalty, regardless of the punishment used alone or in combination with fines. Such clarity in litigation is effective to change the earlier judicial interpretation, including that in *Standard Chartered Bank v. Directorate of Enforcement*, into sound legal ground. What was once a juridical deception to hold companies responsible in case of government limitations is now an undoubted and well-defined element of the penal code that provides prosecutors with more grounds. However, the BNS 2023 largely maintains the conventional criterion of proving mens rea in most crimes hence retention of the Alter Ego Doctrine attribution as maintained in the *Iridium India Telecom Ltd. v. Motorola Inc.* case. Such commitment to an intent-based model, although offering continuity, also contributes to some of the difficulties in the attribution of individual intent in complex corporate structures.

Moreover, the BNS 2023 provides a new possible penalty under Section 4, namely Community Service. The new provision stretches opportunities for non-financial penalties, which means that courts can direct corporations convicted of crimes, especially those that harm the environment or society, to engage in remedial measures. These are punishments that have a high profile and reputation cost that can be a more convincing deterrent than fines, which are seen by many big companies as a business cost to be paid.<sup>11</sup>

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<sup>11</sup> Kothari, V. (2023). Corporate Sentencing: The Need for a New Paradigm in India. Vinod Kothari.

## **B. Artificial Intelligence and the “Black Box” Problem**

The extremely quick introduction of Artificial Intelligence (AI) into business practices, whether automated trading or cyber-recruitment, poses a significant challenge to the principles of corporate criminal liability as they have long been known. The main challenge is the black box nature of the more advanced AI systems in which the decision processes are opaque, and thus it is extremely hard to determine the intent of a human or at least know the exact causal connection between the action of an AI and an undesirable result. Old attribution theories, especially the Alter Ego Doctrine, fail when an AI commits an illegal act because it obscures the idea of an overseeing intellect and will. It is not possible to create a mens rea in the human sense out of the actions of an AI that behaves without human intervention and tries to act according to the learned patterns of information, but its actions can bring about serious criminal consequences, e.g. market manipulation or discrimination<sup>12</sup>.

This difficulty is also complicated by the decentralised AI development and implementation in corporations. Accountability tends to disappear when the intent cannot be packaged behind the consequences, and this has resulted in what some researchers propose is the need to concentrate on organisational culture and system-wide laxity and not on individual culpability. The reason why the companies are not adopting effective oversight systems, conducting frequent audits of AI algorithms, or establishing well-organised ethical principles regarding AI usage are in the gaps in the institutions and the team of people operating the vehicle. Whereas the current statutory models, such as the BNS and the Information Technology Act 2000, traditionally require the reasonable presence of a nexus between a course of action and a person, the autonomous nature of the AI implementation puts a significant strain on this relationship, as it is rather hard to find a personal account of the AI-driven malpractice. The rise of AI requires a reassessment of attribution models, which might shift to a more proactive governance, risk management, and responsibility for the design and implementation of AI systems, as opposed to focusing on human intent.

## **C. The Future of Corporate Sanctions: Beyond Fines**

The existing system of sanctions on corporate criminal liability in India, which is based on fines, usually fails to be a strong deterrent. In the case of large multinational companies, paying fines in large amounts is a cost of doing business, and it does not make any real change in behaviour. The

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<sup>12</sup> Ma, Y. (2025). Progress or stagnation? The evolution and reform of corporate criminal liability in the UK. *Journal of Financial Crime*, 32(3), 1-15.

comparative study of other jurisdictions has shown a wider range of efficient non-monetary penalties that India might use to strengthen deterrence and corporate responsibility.

An alternative that has been adopted is the adoption of Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs), which are common in the United States and becoming more common in the UK. The agreements enable firms to escape conviction through cooperation in investigations, paying fines and most importantly, undertaking reforms of corporate practices under court supervision, in most instances, through the employment of independent compliance monitors. The DPAs encourage self-disclosure, in-house investigations and implementation of strict control measures, and it is not about punitive actions but rather about corrective/preventive actions. This would help in motivating corporations to be active in strengthening their internal controls and ethical structures.

Adverse publicity is another effective sanction. Some legal regimes force convicted firms to put information about their conviction in the newspapers or on websites. This tarnishes the image of the firm, destroys the faith of the populace and scares investors, and this is usually more enduring than fines. Moreover, effective interventions such as corporate probation and monitorship, in which an external party is involved in monitoring internal changes and compliance, provide a way of long-term control and behaviour change. There are also severe ways of sanction, where the corporate death penalty, the liquidation of the company, although a rarity, can be the final measure, a case of the zero-tolerance of gross and recurring<sup>13</sup>.

Community service, as introduced in the BNS 2023, is a move in the right direction, although a larger diversification of sentencing options should take place. A shift towards a one-way dependence on fines to a broader set of reputational, operational, and structural penalties would give courts more flexibility to impose penalties that are effective in discouraging corporate malpractices and developing a sense of responsibility. This change is necessary in order to bring India to the level of global best practice in the area of corporate criminal liability and to overcome the difficult problems of the modern corporate environment.

## **Conclusion**

The history of liability of corporate crime in India is an indication of a significant legal development, whereby the attitude of initial skepticism about the artificially created corporate

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<sup>13</sup> Parameswaran, P. (2025). Criminological and socioeconomic aspects of corporate delinquency in securities markets. *Journal of Financial Crime*, 32(3), 1-15.

personality was changed to an effective system of liability. The doctrine of judicial activism has played a key role in breaking the doctrinal barriers on attribution of mens rea and impossibility of punishment through the landmark judgment regarding the Bhopal Gas Tragedy, the Standard Chartered Bank case and the Iridium India Telecom Ltd. These decisions have continued to make corporate criminal liability wider, such that corporations are no longer above prosecution in a host of crimes.

Nevertheless, based on a comparative analysis with the United Kingdom, the United States and Singapore, the framework of India, though developing, has ways to be further developed. There seems to be a general movement worldwide toward more systemic models, including the UK system of failure to prevent and the American-wide respondeat superior doctrine, which are more concerned with proactive compliance, organisational responsibility, rather than the perennially elusive/invisible nature of intent in large corporate organisations. Singapore, combining the doctrines of the Embodiment with the statutory specificity, can also provide useful insights into the process of individuality versus corporate responsibility.

The adoption of the Bharatiya Nyaya Sanhita (BNS) 2023 is an important legislative move, which legalizes a significant number of principles determined by the judiciary and offers a more definite statutory foundation of corporate prosecution. Introduction of community service as a sanction is also a positive indication of the diversification of sanctions. However, there are still ongoing issues, especially the necessity to focus on the issues of artificial intelligence and the existing use of fines as the main punishment tool. The black box issue regarding AI-driven decisions makes the traditional attribution theories difficult, and new AI areas of the law need innovative approaches to address governance and oversight, as well as consider the design of an AI system.

Lastly, the dilemma that India is experiencing is that it must capitalize on its positive history by being more holistic and vigorous. It is accompanied by the necessity to embrace a failure-to-prevent model, institutionalize a formalized DPA machine, seek alternatives to monetary penalty sentencing, develop specialized adjudicatory machinery and be aggressive in reacting to the legal challenges generated by new technology like AI. Through this, India will not only be able to harmonize its corporate criminal liability system in a way that successfully prevents and penalizes malpractice, but also make it consistent with international standards, an ethos of honesty and duty required in the existence of an effective and accountable corporate community. The BNS 2023 is a good start, but gradual and continual change is needed to break down the complexity of corporate culpability in the contemporary world and turn justice not into the aspiration but into the practice.

## Suggestions

To further enhance the Indian system in corporate criminal liability in order to adjust to the international best practices, a number of legislative and judicial changes are urgent. These suggestions will fill the mentioned gaps, improve deterrence, and make corporate misconduct more accountable.

### 1. Adopt a “Failure to Prevent” Model

India needs to contemplate enacting a statutory failure to prevent crime with the same concept as the Bribery Act 2010 (UK) and ECCTA 2023. It would put the onus on the corporations to show that they had sufficient procedures in place to avert particular categories of misconduct, e.g. fraud, bribery, or environmental crimes, even in cases where the intent of senior management cannot be proved. Such a model would:

- i. Promote Proactive Compliance: Reward businesses to implement a strong internal control and compliance program in advance and not as a response to a crime committed.
- ii. Ease Evidentiary Burdens: Minimise the difficulties of establishing the mens rea in organisations systems that are challenging to understand, particularly where the decisions are made by AI or collective failures.
- iii. Foster a Culture of Integrity: Promote an organisational culture of systemic ethics and compliance and make responsibility pervasive instead of limited to the top.

### 2. Introduce a Structured Deferred Prosecution Agreement (DPA) System

Institutionalizing a DPA system, based on experience in the US and UK, would offer the prosecutor a flexible and efficient means of disposing of corporate criminal cases. An organized DPA system would:

- i. Incentivize Cooperation: Promote self-reporting of misconduct, internal investigations, and strong collaboration with law enforcement agencies, and cases are resolved more quickly and effectively.
- ii. Promote Corporate Reform: Provide court-sponsored reforms such as the introduction of independent compliance overseers to guarantee significant transformation of the corporate governance and an ethical culture.

- iii. **Avoid Collateral Consequences:** Help companies to escape the dire side effects of a criminal conviction, like being barred from receiving a government contract, and yet still holding them responsible and encouraging behaviour change.

### **3. Diversify Sentencing Options Beyond Fines**

Although the BNS 2023 brings about community service, it is important to diversify the sentencing options on a wider scale. India ought to find and adopt a wider variety of non-financial sanctions, such as:

- i. **Adverse Publicity Orders:** These require corporations convicted of crimes to advertise their wrongdoings, which in turn uses a reputational loss as a strong prevention measure.
- ii. **Corporate Probation and Monitorship:** The placing of the market under some form of outside control to guarantee adherence to court reforms and ethics.
- iii. **Disgorgement of Ill-Got Gains:** This means making sure that companies are emptied of all their gains made in criminal ways, as this will eliminate the financial motive to act.
- iv. **Corporate Death Penalty:** Although a radical measure, keeping and intelligently using the alternative of corporate dissolution of gross and chronic offenders can be the deterrence of last resort.

### **4. Establish Specialized Courts and Enhance Inter-Agency Coordination**

Corporate crime, especially in financial fraud, cybercrime, and environmental crimes, is complex and requires special skills. Creating special courts that have judges who are trained in both corporate law and financial regulations and forensic auditing would:

- i. **Improve Adjudication Efficiency:** Streamline the trial process and have more prudent judicial decisions made in the description of a complex corporate issue.
- ii. **Foster Expertise:** Raise a breed of lawyers who possess good comprehension of business organisations and business complexity.

### **5. Address the Challenges of Artificial Intelligence**

The increasing relevance of AI in business decision-making means that the regulatory and legislative frameworks should be altered to address the issue of the black box problem. This could involve:

- i. **Developing AI-Specific Attribution Rules:** The creation of a legal rule that would track responsibility of AI-related wrongdoing on the design, deployment and control of AI systems and not on human intent.
- ii. **Mandating AI Governance Frameworks:** Requirements Companies must ensure excellent AI governance structures, including ethical principles, risk evaluations, and audit trails of AI systems.
- iii. **Promoting Transparency and Explainability:** Establishing the formation and use of simple and easy-to-follow AI systems to enhance responsibility in the event of wrongdoing.