



Corporate criminal liability in India: Legal framework, judicial trends, and emerging challenges

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Abstract

Corporate criminal liability in India refers to the legal concept that holds corporations or corporate entities accountable for criminal offenses committed under their name, either by their employees, agents, or other individuals associated with them. Traditionally, criminal liability was attributed only to individuals, but as businesses play an increasingly significant role in society, there is a growing recognition of the need to hold corporations responsible for their actions that may cause harm, fraud, or other criminal activities. The introduction of corporate criminal liability addresses the limitations of focusing solely on individual wrongdoers, especially in cases where the actions were carried out as a result of corporate culture, policies, or decisions. This concept aims to ensure that corporations are not immune to prosecution and penalties when their actions result in criminal consequences. It also acts as a deterrent against corporate misconduct, encouraging companies to adopt ethical practices and maintain compliance with the law.

Keywords: Corporate criminal liability, legal framework, judicial trends, emerging challenges

Introduction

The concept of corporate criminal liability in India is an evolving area of law, influenced by both domestic legislation and international practices. The legal framework involves aspects such as defining the conditions under which a corporation can be held criminally liable, establishing the necessary elements to prove guilt, determining the range of penalties, and addressing challenges related to proving criminal intent and attributing responsibility within complex corporate structures.

Corporate criminal liability in India has been subject to legal debates, court rulings, and legislative amendments. Various legal provisions, such as those related to environmental violations, financial fraud, and corruption, contribute to the landscape of corporate criminal liability. In summary, corporate criminal liability in India addresses the need for corporations to be held accountable for criminal acts committed within their purview. This concept aims to strike a balance between individual accountability and the broader responsibility of corporations, with the goal of promoting ethical business conduct, safeguarding public interests, and upholding the rule of law.

Corporate criminal liability refers to the legal doctrine that holds corporations and other business entities criminally responsible for unlawful acts committed by their employees, agents, or representatives in the course of their business operations. In essence, it treats the corporation as a legal person capable of committing criminal offenses and being subject to penalties, fines, and other legal consequences similar to those imposed on individuals. The concept of corporate criminal liability arises from the recognition that corporations can exert significant influence over their employees and operations, making them capable of engaging in unlawful activities that can have far-reaching societal and economic impacts. As a result, holding corporations accountable for such actions is seen as essential for maintaining public trust, ensuring ethical

behaviour in the business world, and deterring corporate misconduct.

Companies Act, 2013

- Section 447:** Punishment for Fraud: This section deals with the punishment for fraud, and it includes provisions for both individuals and companies. If a company is found to be involved in any fraudulent activities, it can be held liable, and the company as well as the individuals responsible can be penalized.
- Section 448:** Punishment for False Statement: This section deals with false statements made in prospectuses, statements, or reports filed with the Registrar of Companies. If a company makes false statements, it can be held liable, and both the company and the responsible individuals can face penalties.
- Section 449:** Punishment for False Evidence: This section addresses providing false evidence or information during company proceedings. If a company or its officers provide false evidence or information, they can be held criminally liable.
- Section 450:** Punishment where no specific penalty or punishment is provided: This section states that if a company or any of its officers are found guilty of any offense for which no specific penalty is provided, they can be liable to pay a fine.
- Section 451:** Punishment in case of Repeated Default: This section deals with repeated defaults in complying with the provisions of the Act. If a company is found to be in repeated default, it can face additional penalties.
- Section 452:** Punishment for wrongful withholding of property: This section pertains to situations where a

company or its officers wrongfully withhold property. Such actions can lead to criminal liability.

7. **Section 453:** Punishment for Improper Use of "Limited" or "Private Limited": This section addresses the improper use of the words "Limited" or "Private Limited." If a company uses these words in a manner that is not in compliance with the law, it can be held liable.
8. **Section 454:** Adjudication of Penalties: This section provides details about the adjudication process for imposing penalties on companies and their officers for various offenses under the Act.
9. **Section 456:** Protection of Action taken in Good Faith: This section offers protection to officers and employees of the company who have acted in good faith and within the scope of their duties, even if the company is found guilty of an offense.

Prevention of Corruption Act, 1988

1. **Section 9:** Taking Gratification, in Order, by Corrupt or Illegal Means, to Influence Public Servant: This section deals with individuals who offer or give gratification (usually in the form of bribes) to public servants to influence their actions. While this section primarily deals with individuals, it can indirectly impact corporations if their employees or representatives are involved in such activities.
2. **Section 10:** Public Servant Obtaining a Valuable Thing, Without Consideration from a Person Concerned in Proceeding or Business Transacted by Such Public Servant: Similar to Section 9, this section focuses on public servants who obtain valuable things without proper consideration. While corporations aren't directly mentioned, they can be indirectly involved if their employees are implicated.
3. **Section 11:** Public Servant Disobeying Direction under Law: This section addresses public servants who disobey the directions of the law. Like the previous sections, it may involve corporate employees or representatives who interact with public servants in a corrupt manner.
4. **Section 12:** Punishment for Abetment by Public Servant of Offences Defined in Section 7 or 11, when such an Offence is Committed in Consequence of Abetment: This section addresses situations where a public servant abets an offense defined in Sections 7 (receiving bribes) or 11 (disobeying directions under the law) of the Act. If a corporate employee is involved in such abetment, it could indirectly implicate the corporation.
5. **Section 13:** Criminal Misconduct by a Public Servant: This section deals with public servants who misuse their positions to acquire assets disproportionate to their known sources of income. Corporations can indirectly become involved if their employees or representatives collude with such public servants.

6. **Section 14:** Persons Accused of Certain Offences to be Presumed to Have Obtained Assets Disproportionate to Known Sources of Income: This section establishes a presumption that if a person is accused of certain offenses under the Act, they are presumed to have acquired assets disproportionate to their known sources of income. Corporations might be affected if their employees are implicated under this provision.

The Environment (Protection) Act, 1986

Environment (Protection) Act, 1986 that pertain to corporate criminal liability:

1. **Section 15:** Penalties: This section outlines the penalties for contravening the provisions of the Act or rules and orders made thereunder. Penalties can include imprisonment for a term that may extend to five years and fines that may extend to one lakh rupees or both. If a corporation is found responsible for violating environmental regulations, it can be subject to these penalties.
2. **Section 16:** Offences by Companies: This section deals with offenses committed by companies. It states that if an offense under the Act is committed by a company, every person who, at the time the offense was committed, was in charge of, and was responsible for the conduct of the company's business, shall be deemed to be guilty of the offense. This means that individuals responsible for the company's operations can also be held liable for the company's environmental violations.
3. **Section 17:** Offences by Government Departments: This section outlines the responsibility of government departments and their officials for any offense committed by them under the Act. It emphasizes that government officials found responsible for environmental violations can be held accountable.
4. **Section 19:** Cognizance of Offences: This section stipulates that no court shall take cognizance of any offense under the Act except on a complaint made by a person authorized by the central or state government. This provision ensures that offenses are addressed through proper legal procedures.
5. **Section 20:** Power to Take Samples: This section grants authorized officers the power to enter premises, inspect and take samples, and conduct investigations related to environmental violations. Corporations failing to cooperate with such inspections can face legal consequences.
6. **Section 26:** Power to Give Directions: This section empowers government authorities to issue directions for the closure, prohibition, or regulation of any industry, operation, or process causing environmental pollution. Non-compliance with such directions can result in legal action.

The Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 that pertain to corporate criminal liability:

1. **Section 3:** Offence of Money Laundering: This section defines the offense of money laundering and outlines

the criteria that need to be met for an act to be considered as money laundering. While the section primarily focuses on individuals, it can indirectly involve corporations if they are implicated in money laundering activities.

2. **Section 4:** Punishment for Money Laundering: This section outlines the punishment for the offense of money laundering. Individuals found guilty can face imprisonment and fines. While corporations are not explicitly mentioned here, if they are involved in money laundering activities, their employees or representatives could be implicated.
3. **Section 8:** Punishment for Offences by Companies: This section provides for the punishment of companies found guilty of money laundering offenses. If a company is found to have committed the offense of money laundering, it can face penalties including fines. The section also holds individual's responsible if the offense was committed with their consent or connivance or due to their neglect.
4. **Section 44:** Powers of Authorities and Other Officers: This section empowers various authorities to investigate and take actions against money laundering offenses. If corporations or their representatives are involved in money laundering, they can be subject to investigation and potential legal actions.
5. **Section 45:** Offences to be Non-Cognizable and Bailable: This section pertains to the nature of offenses under the Act and their cognizance. Money laundering offenses are classified as non-cognizable and bailable, meaning they require a warrant for arrest and individuals can seek bail.
6. **Section 66:** Offences by Companies: This section outlines the liability of companies for offenses committed under the Act. It states that if an offense is committed by a company, every person who, at the time the offense was committed, was in charge of, and responsible to the company for the conduct of its business, shall be deemed to be guilty of that offense. This implies that both the company and responsible individuals can be held liable.

The Competition Act, 2002

The Competition Act, 2002 that pertain to corporate criminal liability:

1. **Section 27:** Penalties for Contravention: This section outlines the penalties that can be imposed for contraventions of provisions related to anti-competitive agreements, abuse of dominant position, and combinations (mergers and acquisitions) that have an appreciable adverse effect on competition. While the section primarily focuses on penalties for individuals and enterprises, corporations can be held liable for such contraventions.
2. **Section 48:** Penalty for Non-Compliance with Orders of Appellate Tribunal or the Commission: This section states that if any person or enterprise fails to comply with the orders or directions of the Competition

Commission of India or the Appellate Tribunal, they can be penalized. This includes companies that do not comply with the directions issued by competition authorities.

3. **Section 48A:** Penalty for Non-Compliance of Orders, etc., of Appellate Tribunal: This section deals with the penalties for non-compliance with orders or directions of the Competition Appellate Tribunal.
4. **Section 48B:** Penalty for Failure to Comply with Orders of Commission: This section outlines the penalties for not complying with orders or directions of the Competition Commission of India.
5. **Section 48D:** Penalty for Non-Furnishing of Information and Non-Compliance of Order: This section pertains to the penalties for not furnishing information or documents required by the Commission or for not complying with its orders.
6. **Section 48E:** Penalty for Making False Statements or Omissions: This section addresses the penalties for making false statements, false representations, or omitting material information during proceedings before the Commission or Appellate Tribunal.
7. **Section 53B:** Punishment for Contravention, etc., Not Covered Elsewhere in the Act: This section provides for punishment when an act is not specifically covered under other sections of the Act.

The Foreign Exchange Management Act, 1999

Foreign Exchange Management Act, 1999 that pertain to corporate criminal liability:

1. **Section 13:** Contravention of FEMA: This section deals with contraventions of the provisions of FEMA and the rules, regulations, notifications, or directions issued under the act. If a company or any person contravenes FEMA provisions, they can be penalized.
2. **Section 14:** Adjudication: This section empowers designated authorities to adjudicate contraventions of FEMA and impose penalties on individuals and entities found guilty of violating the act.
3. **Section 15:** Penalty: This section outlines the penalties that can be imposed for contraventions of FEMA. Penalties can include monetary fines that may be linked to the amount of the contravention.
4. **Section 16:** Contravention by Companies: This section specifically addresses contraventions committed by companies. It states that if a contravention is committed by a company, every person who, at the time the contravention was committed, was in charge of and was responsible for the conduct of the company's business shall be deemed to be guilty of the contravention. This includes holding responsible individuals accountable for the company's actions.
5. **Section 17:** Offences by Companies: Similar to Section 16, this section outlines the liability of companies for offenses committed under FEMA. It states that if an

offense is committed by a company, every person who, at the time the offense was committed, was in charge of, and responsible for the conduct of the company's business shall be deemed to be guilty of that offense.

6. **Section 18: Power to Compound Contraventions:** This section allows for the compounding of contraventions by designated authorities. Compounding involves settling the contravention by the payment of a sum of money. This can apply to both individuals and companies.
7. **Section 56: Power to Search Premises:** This section grants authorized officers the power to search premises, seize documents, and conduct investigations related to contraventions of FEMA.

Judicial Cases

Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530 this case dealt with issues related to money laundering and the liability of a financial institution under the Prevention of Money Laundering Act. In this case, the Supreme Court of India addressed the issue of the applicability of the Foreign Exchange Regulation Act, 1973 (FERA) to foreign banks operating in India. The case involved the Standard Chartered Bank, which was accused of violating FERA provisions. The bank argued that FERA did not apply to foreign banks operating in India. The Supreme Court upheld the applicability of FERA to foreign banks operating in India and ruled that foreign banks were not immune to FERA regulations. The Court emphasized that foreign banks had to comply with FERA requirements just like Indian banks, especially when they dealt with transactions that had implications for the Indian economy and financial stability. The case is significant as it clarified the jurisdiction of FERA over foreign banks in India and established that they were subject to the same regulatory framework as domestic banks regarding foreign exchange transactions and related matters.

Iridium India Telecom Ltd. v. Motorola Inc. (2011) 1 SCC 74 this case involved issues related to anti-competitive practices and abuse of dominance under the Competition Act. In this case, the Supreme Court of India examined the issue of criminal liability of a corporation in commercial disputes. The case centred on a dispute between Iridium India Telecom Ltd. and Motorola Inc. The question before the court was whether criminal proceedings could be initiated against a corporation in matters arising out of purely civil or contractual disputes. The Supreme Court held that criminal proceedings should not be initiated against a corporation in such disputes, as criminal liability required the existence of mens rea, which was generally absent in commercial disputes. The Court noted that corporations should be held criminally liable only for offenses that involve criminal intent or wrongful acts affecting the society at large. It emphasized the need to differentiate between civil wrongs and criminal offenses. The judgment reaffirmed the principle that criminal liability is generally personal and should not be attributed to a corporation unless specific provisions of law expressly impose such liability.

Union Carbide Corporation v. Union of India (1991) 4 SCC 584 this case related to the Bhopal gas tragedy and the corporate liability of Union Carbide for the disaster. This case is commonly known as the Bhopal Gas Tragedy case. It

involves one of the most catastrophic industrial accidents in history, which occurred in 1984 when a chemical plant owned by Union Carbide India Limited (a subsidiary of Union Carbide Corporation) in Bhopal, India, released a lethal gas that led to the deaths of thousands of people and caused significant injuries to many more. The case addressed various legal issues, including the liability of Union Carbide Corporation for the disaster. The Supreme Court of India dealt with issues related to civil liability, compensation, and criminal liability. While the case primarily focused on civil aspects and compensation for the victims, it also raised questions about criminal liability. The Indian government filed a claim for compensation against Union Carbide Corporation and its officials, alleging negligence and criminal liability. The case highlighted the complexity of attributing criminal liability to multinational corporations for industrial disasters that have wide-ranging consequences. The criminal aspects of the case were primarily handled in separate proceedings, and there were challenges in holding foreign corporations criminally liable due to jurisdictional issues and the complexities of international law. The Union Carbide case remains one of the most significant legal cases in India's history, underscoring the challenges of addressing corporate liability, especially in cases involving large-scale industrial disasters and cross-border corporations.

C.C.E. v. Aditya Mills Ltd. (2003) 5 SCC 298 this case dealt with issues related to tax evasion and the liability of a company under customs and excise laws. In this case, the Supreme Court of India examined the issue of whether the directors and officers of a company could be held personally liable for the offenses committed by the company under the Central Excise Act, 1944. The case revolved around the interpretation of Section 9A of the Central Excise Act, which deals with the liability of directors, managers, secretaries, or other officers of a company. The issue before the court was whether these individuals could be held liable if the company was found guilty of an offense under the Act. The Supreme Court held that the liability of directors, managers, secretaries, or other officers of a company under Section 9A was limited to situations where the offense was committed with their consent, connivance, or negligence. The Court emphasized that personal liability should not be extended to directors and officers unless their involvement in the offense was proven. The judgment clarified that the mere fact that a person held a position of responsibility in a company was not sufficient to establish their criminal liability for the company's offenses. There needed to be evidence of active participation or negligence on their part. This case is significant as it laid down important principles regarding the personal criminal liability of directors and officers in cases of corporate offenses. It emphasized the importance of proving active involvement, consent, connivance, or negligence on the part of individuals in order to hold them personally liable for the actions of the company.

Larsen & Toubro Limited v. State of Karnataka (2013) 1 SCC 271 these case involved issues related to the applicability of sales tax on certain transactions by a company. In this case, the Supreme Court of India examined the liability of a company under the Karnataka Value Added Tax (VAT) Act for the offenses committed by its employees. The case raised important questions about the extent of a company's liability for the actions of its

employees and the interpretation of statutory provisions. The case involved Larsen & Toubro Limited (L&T), a prominent engineering and construction company. L&T was facing criminal prosecution under the Karnataka VAT Act for alleged offenses related to incorrect filing of VAT returns and evasion of VAT. The primary legal issue was whether L&T could be held criminally liable for the offenses committed by its employees under the VAT Act. The company argued that it could not be held criminally liable for the actions of its employees who were responsible for the erroneous VAT returns.

Challenges

Corporate criminal liability can present various challenges that intersect legal, ethical, and practical considerations.

- 1. Attribution of Intent and Mens Rea:** Proving criminal intent (mens rea) can be challenging in the context of corporations. Unlike individuals, corporations don't possess personal intentions. Establishing the intent of a corporation to commit a crime requires linking the actions of individuals within the organization to the overall corporate culture or policy.
- 2. Vicarious Liability vs. Personal Liability:** Determining whether corporate liability should be vicarious (based on the actions of employees) or personal (based on the corporation's own intent) is a challenge. Vicarious liability can lead to punishing corporations for the actions of a few individuals, while personal liability can be difficult to establish.
- 3. Piercing the Corporate Veil:** In cases where a corporation is considered a separate legal entity, proving that the corporate veil should be pierced to hold individual officers or shareholders criminally liable can be complex. This involves demonstrating that the corporation is merely a façade for individual actions.
- 4. Deterrence vs. Punishing Innocent Stakeholders:** Imposing heavy criminal penalties on corporations might deter illegal conduct, but it could also impact innocent employees, shareholders, and stakeholders who were unaware of the criminal activities. Balancing deterrence with fairness is a challenge.
- 5. Complex Corporate Structures:** Modern corporations often have intricate structures involving subsidiaries, affiliates, and holding companies. Determining which entity should be held criminally liable when wrongdoing occurs within this complex framework can be difficult.
- 6. Global Operations and Jurisdiction:** Corporations often operate across multiple jurisdictions, each with its own legal standards and enforcement mechanisms. Determining which jurisdiction's laws apply and how to enforce corporate criminal liability consistently can be challenging.
- 7. Regulatory Overreach:** Striking a balance between enforcing corporate criminal liability and avoiding regulatory overreach is crucial. Overly aggressive

prosecution could stifle business innovation and growth.

- 8. Corporate Culture and Compliance:** Assessing whether a corporation has a culture that fosters or tolerates illegal conduct can be subjective. Promoting a culture of compliance and ethical behaviour is challenging and requires continuous effort.
- 9. Negotiating Plea Agreements:** In cases of corporate criminal liability, negotiating plea agreements can be complex due to multiple stakeholders, potential financial penalties, restitution, and long-term impact on the corporation's reputation.
- 10. Burden of Proof:** Establishing the elements of a corporate crime, including intent, can be more challenging than in individual cases. Proving that an entire organization had criminal intent can require significant evidence.
- 11. Regulatory Ambiguity:** Laws related to corporate criminal liability may be ambiguous or subject to interpretation, making it difficult for corporations to fully understand their compliance obligations.
- 12. Resource Imbalance:** Corporations often have more resources than regulatory agencies, which can lead to unequal power dynamics in investigations and legal

Conclusion

The concept of corporate criminal liability is a complex and evolving area of law that addresses the extent to which corporations can be held criminally responsible for the actions of their employees, agents, or representatives. This concept arises from the recognition that corporations, as artificial legal entities, can wield significant economic and social power, and their actions can have far-reaching consequences. Different jurisdictions have varying legal frameworks for corporate criminal liability. Some jurisdictions hold corporations strictly liable for certain offenses committed by their employees, while others require proof of corporate involvement or intent. Proponents of corporate criminal liability argue that holding corporations accountable for criminal actions can deter unlawful behaviour. When corporations face the prospect of substantial fines, sanctions, or other penalties, they may take proactive measures to prevent misconduct. This can lead to improved corporate governance, ethical practices, and a culture of compliance. Critics of corporate criminal liability point out that determining the guilt of a corporation is far more complex than establishing the guilt of an individual. Corporations are composed of various departments, levels of management, and employees, making it challenging to attribute criminal intent to the entire entity. This complexity can raise concerns about fairness and due process. An essential aspect of the corporate criminal liability discussion is the role of corporate culture and compliance programs. Corporations that prioritize ethical behaviour and implement effective compliance measures are more likely to prevent misconduct. Courts may consider the existence and effectiveness of such programs when assessing corporate criminal liability.

In some cases, alternatives to traditional criminal liability, such as civil penalties, regulatory actions, and deferred prosecution agreements, may be used to address corporate wrongdoing. These approaches aim to hold corporations accountable while avoiding potential negative consequences of criminal convictions, such as significant job losses or disruptions to the economy. Corporate criminal liability is not confined to national jurisdictions. Many multinational corporations operate across borders, raising questions about jurisdiction, enforcement, and harmonization of laws. International efforts to combat corporate crime, such as anti-corruption conventions, can influence how corporations are held accountable on a global scale. Corporate criminal liability remains a multifaceted issue with complex legal, ethical, and practical considerations. Striking a balance between deterring corporate misconduct and ensuring fairness in legal proceedings is an on-going challenge. As legal systems evolve and societal expectations change, the concept of corporate criminal liability will continue to be a subject of debate and refinement.

International laws related to corporate criminal liability are diverse and can differ significantly from one jurisdiction to another. Some countries have comprehensive frameworks for holding corporations criminally liable, while others may rely more on civil or regulatory measures. This divergence reflects the complexities of balancing corporate accountability with legal fairness. Many multinational corporations operate across borders, engaging in activities that could potentially violate the laws of multiple countries. This raises the question of extraterritorial jurisdiction – the ability of a country to apply its laws to activities that occur beyond its borders. International agreements and conventions may help to address conflicts and harmonize legal approaches, but challenges remain. Several international agreements aim to combat specific forms of corporate wrongdoing, such as corruption, money laundering, and environmental crimes. Prominent examples include the United Nations Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention. These conventions encourage cooperation among nations to address cross-border corporate misconduct. Determining which country's laws apply and which courts have jurisdiction in cases involving multinational corporations can be intricate. Issues such as forum shopping (choosing a favourable jurisdiction), "double jeopardy" (being tried twice for the same offense), and conflicting legal standards can arise and complicate the pursuit of justice. Even when international laws exist, enforcing them across borders can be challenging due to differences in legal systems, lack of resources, and political considerations. Effective enforcement often requires collaboration between countries, including sharing evidence, extradition of individuals, and mutual legal assistance. International laws related to corporate criminal liability are not static. They must evolve to address emerging challenges, such as cybercrime, supply chain violations, and human rights abuses committed by corporations.

Corporate criminal liability within the framework of international laws presents a complex landscape that demands collaboration, harmonization, and adaptation. While challenges persist, international efforts to combat transnational corporate wrongdoing offer hope for a more accountable and just global business environment. As countries continue to refine their legal approaches and cooperate on cross-border issues, the evolution of corporate

criminal liability on the international stage will remain an area of significance.

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