

Corporate Criminal Liability in India: A Pressing Issue

Pranavi Agrawal

Wharton School, University of Pennsylvania

Introduction

A company is regarded as a distinct legal body from its owners.¹ It may be characterized as a group of people working towards a single purpose, typically commercial. The degree to which a firm, as a distinct organization, is accountable for the actions of its workers is defined by Corporate Criminal Liability under Indian criminal law. The two main questions raised about corporate liability are whether a company can commit a crime, and whether it is legally accountable for the alleged criminal conduct.²

This paper analyzes the history of the concept of Corporate Criminal Liability around the world, its background and development in India, and how it has evolved over the years. Through case studies, this paper attempts to study how the concept applies to the Indian judicial system and lists the shortcomings that need to be addressed. In the end, the research suggests how Corporate Criminal Liability laws and their applications can be improved to hold corporations more accountable, and ultimately, safeguard the public.

Development of the Concept of Corporate Criminal Liability

The criminal liability of any act is based on the Latin '*maxim Actus non facit reum mens sit rea,*' which means that to make a person or any entity liable, it must be shown that there is an act or omission which is forbidden by law, and with '*mens rea,*' which is legally understood as having a guilty mind.³

¹ "What is a company? - NSW Small Business Commissioner."
<https://www.smallbusiness.nsw.gov.au/get-help/business-basics/what-company>.

² "Bringing Criminal Charges Against Corporations." 11 Apr. 2010,
<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/charging-corps.PDF>.

³ "Corporate Criminal Liability - White Collar Crime - Legal Service India."
<https://www.legalserviceindia.com/legal/article-521-corporate-criminal-liability-white-collar-crime.html>.

In comparison, criminal conduct is not necessary for a civil lawsuit.⁴ Claims that the accused operated carelessly and caused the plaintiff injury are made in several of these disputes. As opposed to criminal trials, which are viewed as offenses against society, civil lawsuits entail disagreements between people, thus the reason for this distinction. In addition, rather than being imprisoned, the punishment for the offender in a civil lawsuit is just financial loss or the enforcement of specific rights.⁵

Historically, businesses were not held accountable for any crimes. It was believed that because a corporation had an artificial personality governed by laws, it was prohibited from acting unlawfully, making these actions *ultra vires* by definition. Additionally, the company could not be imprisoned; therefore, *mens rea* was not present.⁶ Therefore, academics, bureaucrats, law enforcement agencies, adjudicating bodies, lawmakers, and the general public have never studied or been concerned with corporate crime. It was a minor point in the judicial processes and only had little significance, even on a national scale.

With the development of the modern judicial system, it became clear that corporations might engage in a wide range of illegal acts, including false marketing, financial fraud, data manipulation, and environmental degradation.⁷ However, the proportion of success in holding a business accountable and bringing legal action against it has been dismal due to the lack of public awareness of a firm participating in illegal actions.⁸ As a result, the gradual emergence of this principle is marked by a never-ending battle between the legislative branch and the judiciary

⁴ "Civil Cases | United States Courts." <https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases>.

⁵ "The Differences Between a Criminal Case and a Civil Case - FindLaw." 16 Apr. 2020, <https://www.findlaw.com/criminal/criminal-law-basics/the-differences-between-a-criminal-case-and-a-civil-case.html>.

⁶ "The Law on Ultra Vires Acts and Contracts of Private Corporations." <https://core.ac.uk/download/pdf/148693594.pdf>.

⁷ "White-Collar Crime - FBI." <https://www.fbi.gov/investigate/white-collar-crime>.

⁸ "Corporate Criminal Liability: An Overview of Federal Law." 30 Oct. 2013, <https://www.everycrsreport.com/reports/R43293.html>.

to resolve the difficulty of imputing criminal responsibility to made-up entities in a legal system that, up until this point, has simply relied on individual responsibility.

Scope of Corporate Crime

Marshall B. Clinard and Peter C. Yeager noted that enormous businesses have such vast sums of money and tremendous political and social power that their activities have a critical impact on almost everyone's life, 'from the cradle to the grave.'⁹

Corruption, money laundering, tax evasion, a lack of regard for corporate responsibility, and schemes carried out by large corporations can threaten the economic stability of a country. The quality of goods, the unemployment rate, and inflation tendencies are all heavily influenced by businesses. Through the increasingly powerful utilization of mainstream media, they may and frequently do sway public opinion while having a noticeable impact on the environment.¹⁰

The safety and welfare of the general population are seriously threatened by the production of inferior commodities and the provision of inadequate services. Collaborative actions by giant corporations that remove competitive pricing for the items may result in higher prices for individuals. A corporate organization may cheat common shareholders who have deposited their savings when it makes false assertions about its holdings. Tax evasion robs public wealth, which is necessary for growth. Scam commissions and dishonest public officials foster a corrupt climate that compromises societal well-being. The hoarding of critical goods impacts the availability of necessities for the daily lives of the general populace.¹¹

⁹ "9781412804936: Corporate Crime (Law and Society) - AbeBooks." 31 Oct. 2005, <https://www.abebooks.com/9781412804936/Corporate-Crime-Yeager-Peter-1412804930/plp>. Accessed 15 Sep. 2022.

¹⁰ "Corporate Criminal Liability in India." <https://www.athensjournals.gr/law/2022-8-1-2-Singh.pdf>.

¹¹ "Scarcity and Hoarding: Economic and Social Explanations and" <https://www.acrwebsite.org/volumes/5764>.

The welfare of the general public is impacted by the manufacturing and distribution of poor quality, fake, and contaminated medications and food products, which can potentially kill hundreds of individuals. In addition to seriously harming the environment, breaking pollution control regulations and using dangerous production practices in industrial facilities may hurt the surrounding ecosystem in the long run. In the end, the nation's entire growth process is impacted.

Doctrines Governing Corporate Criminal Liability in India

Two models govern the principle of corporate criminal liability in India. The first one is the Derivative Model, and the second one is the Organizational Model.¹²

1. **Derivative Model** - Under the derivative model of corporate criminal liability in India, an organization's liability is derived from the actions of an individual employed by the company and is responsible for the wrongful act. The organization faces liability because of its connection with this individual. This model of Corporate criminal liability is further subdivided into two categories- Vicarious Liability and Identification Doctrine, with sub-sections of the Doctrine of Alter Ego, Attribution, Collective Blindness, and Willful Blindness:

- a. **Vicarious Liability**- The concept of Vicarious Liability is based on two legal Latin maxims. The first maxim means that 'he who acts through another shall be deemed to have acted on his own,' and the second, *respondeat superior*, which means 'let the master answer.' Traditionally, the doctrine of Vicarious liability was only applied to civil cases. However, the Indian judiciary has recognized that

¹² "Corporate Criminal Liability in India - MyAdvo.in." https://www.myadvo.in/blog/corporate-criminal-liability-in-india/?utm_source=youtube&utm_medium=organic&utm_campaign=video-corporate-criminal-liability-in-india.

since a corporation is an artificial person and a separate legal entity, this doctrine also applies to corporate criminal liability.

- b. **Identification Doctrine** - The Doctrine of Identification tries to identify the prominent persons of a corporation who act on its behalf and whose conduct can be attributed to that of a corporation. The identified persons' acts should be within the scope of their authority and employment. The act must be conducted within the employee's assigned area of operation, though the particulars might be unauthorized. The scope of the Identification Doctrine narrows down the scope of Vicarious Liability.¹³
- c. **Doctrine of Collective Blindness** - Courts have ruled that the Doctrine of Collective Blindness allows for corporate liability even when no individual employee was responsible, taking into account the collective knowledge of the entire firm.
- d. **Doctrine of Willful Blindness** - This doctrine is applicable whenever an unlawful or criminal conduct is undertaken, and the corporate agent does not take any action to stop the occurrence of such acts.
- e. **Doctrine of Attribution** - According to the concept of attribution, the controlling mind and will of the companies are held accountable for the *mens rea*, or guilty mind, in cases of punishment or imprisonment for acts or omissions that result in criminal law violations.

¹³ "Corporate Criminal Liability - Doctrine of Identification."
<http://www.legalservicesindia.com/article/488/Corporate-Criminal-Liability---Doctrine-of-Identification.html>.

- f. **Doctrine of Alter Ego** - Alter Ego is defined as a person's character that is hidden from other people. The company's Alter Ego is said to be the owners and those in charge of it. According to this belief, since an organization has no soul, body, or mind and since humans are the decision makers, the directors and other individuals who manage the business can be held accountable for the actions taken by, or on behalf of, the corporation.¹⁴

2. **Organizational Model** - The Organizational Model of corporate criminal liability in India focuses on an organization's culture that can be conducive to illegal activity. As an artificial person, a corporation cannot have *mens rea* or the criminal intent to commit a crime. However, the organization can create an environment that would encourage or psychologically support its employees to commit a crime or an atmosphere that leads to the commission of the crime. In these cases, it is held that the corporation had the required *mens rea* for a charge of corporate criminal liability.¹⁵

Establishment of Corporate Criminal Liability in India

In India, the notion of corporate criminal culpability developed considerably more slowly than in the rest of the world. As a common law nation, India relied on men's *rea* for prosecution, with the focus remaining on its necessity for a long time. According to Section 11[20] of the Indian Penal Code, 1860, a person includes any business, organization, or group of people. Registered or otherwise, body corporates are also included.¹⁶ This makes it possible for

¹⁴ "Alter Ego and Shareholder Liability - Brown & Charbonneau, LLP."

<https://www.bc-llp.com/alter-ego-shareholder-liability/>.

¹⁵ "'Corporate Culture' as a basis for The Criminal"

<https://media.business-humanrights.org/media/documents/f72634fd87adfd3d31a22f5f4b93150267b8a764.pdf>.

¹⁶ "Corporate Criminal Liability: Tracings Its Origin And Development |."

<https://legalreadings.com/corporate-criminal-liability-tracings-its-origin-and-development/>.

authorities to use the IPC's corporate prosecution clauses. However, major improvements came with the introduction of Companies Act, 2013.

In India, the Companies Act 2013, which replaced the Companies Act 1956, increased the Corporate Liability of the directors of a corporation significantly.¹⁷ For example, section 53[21] outlines penalties if the rules established by this section are broken.¹⁸ Raising the monetary damages and penalties higher, the Companies Act has not only made directors more criminally liable but also included officers in default, such as whole-time directors, key managerial personnel, or any director that is aware of the proceedings (and has not raised any objection, or where the non-compliance is with his consent or connivance).¹⁹ However, while the Companies Act has taken some strides towards recognizing Corporate Criminal Liability, it is still at a nascent stage. Many theoretical and practical riddles hurdle the prosecution of companies under Criminal law in India.

Understanding the Development of Corporate Criminal Liability through Case Studies

A. Commonwealth vs. Beneficial & co.

Facts

Beneficial Finance Co. (Defendant) was convicted of bribing state banking officials to get preferential treatment from the Small Loans Regulatory Board, a state agency.²⁰ The collective actions of the employees of the company gave rise to the conviction of the defendant. Employees

¹⁷ "The Companies Act 2013, Criminal Liability in a Nutshell." 20 Nov. 2021, <https://ksandk.com/corporate/the-companies-act-2013-criminal-liability/>.

¹⁸ "Corporate Criminal Liability: Tracings Its Origin And Development |." <https://legalreadings.com/corporate-criminal-liability-tracings-its-origin-and-development/>.

¹⁹ "Companies Act, 1956 - MCA." https://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf.

²⁰ "Commonwealth v. Benefit Fin. Co. | Case Brief for Law School." <https://www.lexisnexis.com/community/casebrief/p/casebrief-commonwealth-v-benefit-fin-co>.

of two different subsidiaries of the defendant entity colluded to bribe federal banking authorities to advance the company's interests before the local lending regulating body. It is vital to note that none of these two Beneficial Finance Co. employees served as a managerial officer or director.²¹

Issue

Is a company criminally responsible for the wrongdoing committed by its workers while working within the bounds of the power granted upon them by the company?

Synopsis of the Rule of Law

A company is found guilty for the criminal conduct of its workers who were working within the bounds of their power during a specific commercial arrangement that was found to be unlawful.

Outcome

Yes. A company is responsible for breaking the criminal law if a personnel is at a capacity in which he/she is authorized to represent the company in the specific organizational activity that is the focus of investigation.²² Criminal liability ought not be determined by an individual's position inside a company. In actuality, a large number of workers are given charge of the company's daily activities. Since the ordinary workers in this instance can not be assumed to corrupt the authorities out of their own pockets, it may be assumed that the corporation's payment of monies to a public banking authority was a corporate action.²³

²¹ "Commonwealth v. Benefit Fin. Co. | Case Brief for Law School."

<https://www.lexisnexis.com/community/casebrief/p/casebrief-commonwealth-v-benefit-fin-co>.

²² "Commonwealth v. Benefit Fin. Co. | Case Brief for Law School."

<https://www.lexisnexis.com/community/casebrief/p/casebrief-commonwealth-v-benefit-fin-co>.

²³ "Commonwealth v. Benefit Fin. Co. | Case Brief for Law School."

<https://www.lexisnexis.com/community/casebrief/p/casebrief-commonwealth-v-benefit-fin-co>.

Information Gathered

We learned from this decision that the legal system may apply the idea of vicarious responsibility for criminal offenses and that Beneficial Finance Co. was held accountable for the conduct of its workers, who were neither executives nor administrators.

B. State of Maharashtra vs. M/s Syndicate Transport Co.*Facts*

Mr. Manohar sent a letter to Kmart Motors asking for an advance payment of Rs. 11,000 to buy a diesel engine for the business (Opp. No. 2).²⁴ According to the letter, the company's bus number BYY-610 was supposed to be fitted with the mentioned diesel engine before the bus is transferred into his name. The business will operate the bus under a hire purchase arrangement up till the upfront payment of Rs. 11,000 has been satisfied.²⁵ There was no bus transfer, though, because the engine was transferred to another bus once the money was received. Under Sections 420 and 406/403 of the Indian Penal Code, the claimant filed a complaint against the company's managing director, another director, and a shareholder.²⁶ The magistrate then issued a separate order charging the company's managing director Chinta, shareholder, and Director Harinarayan with the offense and discharging them.²⁷

Issue

²⁴ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

²⁵ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

²⁶ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

²⁷ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

Mr. Hardas, on counsel of the complaining corporation, argued that Sections 2 and 11 of the IPC plainly declare that according to this Act, every individual is punishable, and this definition of all “individuals” includes a corporate organization.²⁸ In addition, he argued that because the firm may be held accountable for the actions of its appointed employees, a corporate entity is liable for all crimes, including *men’s rea*. In addition, the crimes of breach of trust and theft by fraudulent measures do not always carry mandatory jail sentences. In light of these circumstances, the Judge ought to be permitted to take legal action against the corporation.

Mr. Madholkar and Mandpe representing Messrs., on the other side, contended that, while the definition of an “individual” includes a corporation, a business only works on account of its operators, rendering it ineligible of committing some acts liable for jail time.²⁹ Section 2 provides that, except as otherwise stated in topic or circumstances, the business entity may be exempt from penalty for specific violations. Furthermore, he maintained that prosecuting a corporation for a violation containing *men’s rea* was not allowed if the *men’s rea* of a corporation’s employee could not be linked back to the firm.

Outcome

Taking into account the findings and assertions advanced by both groups, the Judge held that when a private corporation performs actions representative of its officials, illegal activities committed by those officials, such as their intention, state of mind, knowledge, or belief, should

²⁸ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

²⁹ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

be handled as omissions or actions on part of the business, regardless of the applicability of *men's rea*.³⁰

Information Gathered

We may deduce from this judgment that the court applied vicarious culpability in criminal conduct and plainly indicated that a corporation, even when it is an invented entity, can have *men's rea*.

C. 2G Spectrum Case

Facts

In 2008, it was legally allowed by the (then) Minister of Tele-communication to hold Unified Access Services Licenses. Later, however, certain types of illicit activities were revealed to be done with the aid of these licenses, which was the cause of heavy losses for the National treasury. Thus, these illicit activities were brought to the notice of the CBI. After iterating that the obtained Uniform Access Services License was accessed and used completely illegally, the directors, as well as the private companies, were held accountable and summoned. CBI found evidence of the collusion of the accused party with the above mentioned minister, and presented the findings in the court of law.³¹

Synopsis of the Rule of Law

The doctrine of attribution is based on the illicit activities of the stakeholders of the company, also extended to the company, even though not a natural person, denoting 'Alter ego'. In the trial of Sunil Bharti Mittal, the doctrine of attribution is seen in the reverse context, and

³⁰ "The state of Maharashtra vs. Syndicate Transport Company Pvt. Ltd." 18 Aug. 2021, <https://lawtimesjournal.in/the-state-of-maharashtra-vs-syndicate-transport-company-pvt-ltd/>.

³¹ "A Raja defends trial court's verdict in 2G spectrum case." 10 Nov. 2020, <https://lawtimesjournal.in/a-raja-defends-trial-courts-verdict-in-2g-spectrum-case/>.

thus, illicit activities committed on behalf of corporations will also make the members of the company liable through the principle of 'Alter ego.'³²

Outcome

The Supreme Court finds it difficult to interpret the notion of vicarious responsibility because it cannot be contrary to legislative order. Consequently, through virtue of a legal fiction, the executives of the business should bear particular vicarious culpability for the corporation's conduct. Because no obvious vicarious responsibility was indicated in penal capacity, the conduct of a crime deriving from vicarious liability must be expressed in the Statute by using legal fiction.³³

The Court further determines that the Special Judge's agreement with the papers included by Central Bureau of Investigation was not specified and deemed insufficient. Taking into account all of the facts, the Court overturned the ruling to rule in favor of the complainant Sunil Bharti Mittal, finding that there was inadequate reasonable data to punish the plaintiff.³⁴

Information Gathered

It is reasonable to conclude that in this scenario, the idea of alter ego is applied in the inverted meaning, with the company's employees prosecuted in place of crimes committed on its behalf. As a result, the notion of corporate criminal culpability has an opposite application in India.³⁵

³² "Corporate criminal liability: principles of attribution and vicarious" 4 Feb. 2015, <https://www.lexology.com/library/detail.aspx?g=53977423-4ab0-4745-b8fd-582a6d86c690>.

³³ "Corporate criminal liability: principles of attribution and vicarious" 4 Feb. 2015, <https://www.lexology.com/library/detail.aspx?g=53977423-4ab0-4745-b8fd-582a6d86c690>.

³⁴ "Corporate criminal liability: principles of attribution and vicarious" 4 Feb. 2015, <https://www.lexology.com/library/detail.aspx?g=53977423-4ab0-4745-b8fd-582a6d86c690>.

³⁵ "Corporate criminal liability: principles of attribution and vicarious" 4 Feb. 2015, <https://www.lexology.com/library/detail.aspx?g=53977423-4ab0-4745-b8fd-582a6d86c690>.

Reflection

A human cannot perform any tasks alone in the modern industrialized, market-based society, notably those involving production, service provision, advertising, and commercial operations. As a result, humans create corporate entities to carry out such commercial operations. As the penal law serves as a powerful tool for controlling anyone's conduct, corporations are proclaimed to be legal entities in order to govern the acts carried out by them. All business entities' actions that have serious negative effects on society are classified as legal offenses, and criminal culpability is imposed.

I believe that to tackle the problem of economic crime and protect society, corporations and their human agency involved in corporate crime must be penalized. However, it is also important to realize that corporate entities are indispensable for society; they perform business, manufacturing, marketing, transportation, banking, service providing, infrastructure development, welfare activities, and many others. Proper functioning of corporate bodies ensures employment availability and economic prosperity of the citizenry and the country. In such a situation, it is essential that stringent penal action against corporate entities may also adversely affect society's need to balance the penal actions.

Therefore, I maintain that criminal liability has to be taken against the corporate body in such a manner that corporate activities have to be effectively and adequately regulated, while at the same time, not affecting the legitimate activities conducted by the corporation. Corporate entities do not have physical bodies, thereby corporal punishment cannot be imposed. Generally, in most cases, liabilities imposed on corporate entities are monetary, and usually, a fine is charged as a lenient punishment. However, a fine does not create a labeling effect. Two-pronged actions have to be envisaged in criminal laws dealing with corporate crimes; firstly, strict and

stern punishment besides monetary punishment against the doer of criminal act and person controlling the affairs of a corporate body, and secondly, monetary penalty against the corporate body. Some other actions may also be used against the corporate body to tackle corporate crime, like the closure of business till due observance of legal regulations, which may cause fear of loss of business, and publicizing the name of the corporation if proved guilty, which may cause the fear of loss of reputation and goodwill.

Conclusion

Criminal law jurisprudence has a well-established legal premise about the criminal responsibility of businesses. A company may break the law and be held accountable for its actions. However, Indian law does not hold businesses legally responsible since it has not managed to keep up with these advances. Even if they do, the rules and court rulings only impose a fee as a penalty. To change this, the Supreme Court has suggested that separate statutes with mechanisms for holding companies criminally liable are necessary and shall be incorporated.

It is suggested that to prevent unlawful activities, firms should face more severe penalties in addition to fines. Depending on the situation, penalties might include property seizure, restitution to the victims, provisional closure of the corporation, a time limit on the enterprise's ability to conduct business, or closing down the business altogether. Another option is to mandate more social responsibility from businesses as part of the "Corporate Social Responsibility" metric. Since it is ultimately customers who suffer rather than businesses, the financial gain benefits the government and society as a whole. According to the type of

company, it is also possible to categorize companies for whom criminal liability may be imposed. Few enterprises that may be hazardous or damaging to the environment should be put in a distinct division and subject to severe responsibility.

The effectiveness of corporate criminal liability laws has always been a concern in India, with their necessity and need put in question repeatedly throughout the years. After the establishment of the Companies Act 2013, India has made significant strides in the fight toward holding corporations more accountable for their actions; however, it still has a long way to go. The government should implement stronger rules addressing the difficulties mentioned above to match the expectations of a developed democratic society. If properly and efficiently acted upon, the above-mentioned measures can significantly deter companies from engaging in illegal activities, further strengthening India's economy and people's well-being.