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Corporate Culture As A Basis For Criminal Liability In India: Challenges, Comparative Insights, And Reform Proposals

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Abstract

Corporate criminal liability in India has evolved from a narrow identification doctrine to a broader recognition of corporate personhood under the Bharatiya Nyaya Sanhita (BNS) and Companies Act, 2013. However, Indian law does not yet treat “corporate culture” defined as the attitudes, policies, rules, practices, or systemic failures within an organisation that authorise, encourage, tolerate, or lead to criminal conduct — as an independent basis for liability. This paper critically examines the doctrinal gaps, contrasts India’s approach with Australia’s explicit “corporate culture” model (Criminal Code Act 1995, s 12.3), the UK’s management-failure test, and US sentencing guidelines, and analyses landmark Indian cases such as Iridium India Telecom Ltd v Motorola Inc (2011) and Standard Chartered Bank v Directorate of Enforcement (2005). Through doctrinal, comparative, and case-study methods, it demonstrates that the current identification/vicarious framework fails to capture diffused responsibility in modern corporations. The paper proposes statutory amendments to incorporate an organisational-liability model focused on corporate culture, supported by due-diligence defences and enhanced sentencing tools. Such reform would promote ethical governance, deter systemic wrongdoing, and align India with international best practices while preserving legitimate business activity.

Keywords: *Corporate criminal liability, corporate culture, organisational liability, identification doctrine, white-collar crime, corporate governance, Bharatiya Nyaya Sanhita, Companies Act 2013, corporate fraud, compliance culture, comparative criminal law, Australia Criminal Code Act 1995, corporate accountability*

Introduction

The modern corporation occupies a central position in the global economic system and is recognised in law as a separate legal entity possessing rights and responsibilities distinct from its shareholders and managers. The principle of corporate personality, famously articulated in *Salomon v A Salomon & Co Ltd*, allows corporations to exist independently of the individuals who compose them.¹ While this legal fiction facilitates commercial efficiency, it also creates challenges for criminal law when corporate structures are used to conceal or diffuse responsibility for harmful acts. Large corporations operate through multilayered management hierarchies, making it difficult to identify a single individual whose actions or intent can be attributed to the organisation. As a result, corporate misconduct such as environmental pollution, financial fraud, corruption, and product-safety violations frequently occurs within organisational systems that shield decision-makers from direct legal accountability. Traditional criminal law doctrines, designed primarily for natural persons, rely upon the presence of both actus reus and mens rea. Applying these principles to corporations requires the law to determine how an artificial legal entity can possess the mental element required for criminal responsibility.²

Indian criminal law recognises corporations as “persons” capable of committing offences. Section 11 of the Indian Penal Code historically included companies within the definition of a person, and the Bharatiya Nyaya Sanhita continues this approach. Likewise, the Companies Act 2013 imposes penalties on corporations for offences such as fraud, mismanagement, and regulatory violations. Nevertheless, the attribution of criminal intent remains grounded in the identification doctrine, which attributes the mens rea of senior officers who constitute the “directing mind and will” of the corporation to the company itself.³ This doctrine has been accepted in Indian jurisprudence, particularly through the Supreme Court’s decision in *Iridium India Telecom Ltd v Motorola Inc*, where the Court recognised that a corporation can possess the requisite criminal intent through the actions of its senior management.⁴ While this approach represents a significant doctrinal development, it remains limited in its capacity to address systemic organisational misconduct. In many large corporations, decision-making authority is

¹ *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL).

² Celia Wells, *Corporations and Criminal Responsibility* (2nd edn, OUP 2001).

³ Companies Act 2013, s 447.

⁴ *Iridium India Telecom Ltd v Motorola Inc* (2011) 1 SCC 74 (SC).

distributed among various departments and levels of management, making it difficult to identify a single directing mind responsible for criminal activity.

The concept of corporate culture offers an alternative framework for addressing these challenges. Under the corporate culture model, liability is attributed not merely through the intent of individual managers but through organisational attitudes, policies, and practices that encourage or tolerate unlawful conduct. This concept is most clearly articulated in Australian criminal law, where the Criminal Code Act 1995 defines corporate culture as an attitude, policy, rule, course of conduct, or practice existing within a corporation or within a particular part of the corporation where the relevant activities occur.⁵ If such a culture directs, encourages, tolerates, or leads to the commission of an offence, the corporation itself may be held criminally liable. By focusing on systemic organisational behaviour rather than individual wrongdoing, the corporate culture model addresses the problem of “insulation by delegation,” where senior management deliberately distances itself from operational decisions while benefiting from unlawful practices carried out by subordinates.⁶

This paper employs a doctrinal and comparative research methodology to evaluate the adequacy of the current Indian approach to corporate criminal liability. It examines statutory provisions, judicial decisions, and scholarly commentary to identify the limitations of the identification doctrine in the Indian legal context. The study then compares the Indian framework with corporate liability models adopted in Australia, the United Kingdom, and the United States, highlighting the advantages and limitations of each approach. Through case studies such as the 2G spectrum controversy, the Satyam corporate fraud scandal, and the Sterlite Copper environmental dispute, the paper demonstrates how systemic corporate misconduct often escapes effective prosecution under existing legal doctrines. Based on these findings, the article proposes legislative reforms that would incorporate the corporate culture model into Indian criminal law, supported by sentencing guidelines and compliance-based defences designed to encourage responsible corporate governance.

Conceptual Framework: Models of Corporate Criminal Liability

⁵ Criminal Code Act 1995 (Cth) s 12.3 (Australia).

⁶ Model Criminal Code Officers Committee, Corporate Criminal Responsibility (1993).

Global legal systems generally adopt one of two principal approaches to corporate criminal liability: the derivative model and the organisational model. The derivative model, which includes both identification and vicarious liability doctrines, attributes liability to the corporation through the acts and intent of individual employees or managers. Under the identification doctrine, the corporation is considered liable only if the offence is committed by individuals who represent the “directing mind and will” of the organisation. This doctrine was articulated in the House of Lords decision in *Tesco Supermarkets Ltd v Nattrass*, where Lord Reid held that certain senior officers embody the corporate personality and their intent may therefore be attributed to the company itself.⁷ Indian courts have adopted a similar reasoning in cases involving corporate fraud and regulatory violations. The derivative model also includes forms of vicarious liability commonly used in regulatory statutes, where corporations may be held liable for offences committed by employees acting within the scope of their employment and for the benefit of the company. However, this model remains limited because it requires proof of individual fault, which may be difficult to establish within complex corporate structures.

In contrast, the organisational model treats the corporation as an autonomous entity capable of committing crimes through its internal systems, policies, and institutional culture. The Australian Criminal Code Act 1995 provides the clearest statutory expression of this approach. Section 12.3 allows courts to attribute fault to a corporation where the corporate culture of the organisation encouraged or tolerated the commission of an offence, or where the corporation failed to create and maintain a culture of compliance with the law.⁸ The Model Criminal Code Officers Committee, which drafted the Australian provisions, emphasised that corporate culture serves as the closest analogue to human intent in the context of corporate wrongdoing. By focusing on systemic organisational behaviour rather than individual culpability, the model reflects the reality that corporate crimes often arise from institutional incentives, internal policies, and management practices rather than isolated acts of individual misconduct.⁹

Other jurisdictions have adopted partial variations of the organisational model. In the United Kingdom, the Corporate Manslaughter and Corporate Homicide Act 2007 introduced a management-failure test that considers the role of organisational policies and practices in

⁷ *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 (HL).

⁸ Criminal Code Act 1995 (Cth) s 12.3.

⁹ MCCOC Report (n 6).

determining corporate liability for deaths caused by gross negligence. Courts assessing liability under this statute may examine whether the attitudes, policies, systems, or accepted practices within the organisation contributed to the breach of duty.¹⁰ In the United States, corporate liability generally remains vicarious; however, the Federal Sentencing Guidelines incorporate organisational culture at the sentencing stage. Companies that maintain effective compliance and ethics programmes may receive reduced penalties, whereas those that tolerate or encourage misconduct face enhanced sanctions.¹¹

India currently operates primarily within the derivative model, relying on identification and statutory vicarious liability provisions to attribute corporate criminal responsibility. Although certain regulatory statutes provide due-diligence defences or impose liability on companies for the acts of their officers, the law does not yet recognise corporate culture as an independent basis for criminal liability. As a result, systemic organisational failures that encourage unlawful conduct may remain legally invisible unless a specific individual can be identified as the directing mind responsible for the offence.

Evolution of Corporate Criminal Liability in Indian Law

The evolution of corporate criminal liability in India reflects a gradual shift from judicial scepticism toward greater acceptance of corporate culpability. In the early years of Indian criminal jurisprudence, courts hesitated to prosecute corporations for offences requiring mens rea, largely because corporations could not be imprisoned and were therefore considered incapable of fulfilling the punishment requirements prescribed by criminal statutes. This position began to change with the landmark decision of the Supreme Court in *Standard Chartered Bank v Directorate of Enforcement*, where the Court held that corporations could indeed be prosecuted for offences involving mandatory imprisonment, even though imprisonment could not practically be imposed.¹² Instead, courts could impose fines or other monetary penalties on corporate offenders.

The doctrine of attribution was further clarified in *Iridium India Telecom Ltd v Motorola Inc*, where the Supreme Court affirmed that corporations can possess criminal intent through the mental state of their senior management. The Court recognised that the acts and intentions of

¹⁰ Corporate Manslaughter and Corporate Homicide Act 2007 (UK) s 8.

¹¹ United States Sentencing Commission, Federal Sentencing Guidelines Manual (2023) ch 8.

¹² *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 530.

individuals who constitute the directing mind of the corporation may be attributed to the company itself.¹³ However, the Court also reaffirmed the limitations of this doctrine, noting that only individuals who exercise controlling authority over the corporation's affairs can be treated as the directing mind for the purpose of establishing corporate mens rea.

Subsequent decisions have addressed the liability of corporate officers and directors. In *Sunil Bharti Mittal v CBI*, the Supreme Court held that directors cannot automatically be held criminally liable for corporate offences unless there is clear evidence of their active involvement and criminal intent, or unless the relevant statute expressly provides for vicarious liability.¹⁴ This judgment emphasised the importance of protecting individuals from unjustified prosecution while simultaneously highlighting the challenges of attributing corporate fault within existing legal frameworks.

Despite these developments, the Indian model continues to exhibit several significant limitations. The identification doctrine primarily captures wrongdoing by top-level management but fails to address misconduct arising from middle-level management or organisational systems. Furthermore, the law lacks mechanisms for prosecuting corporations whose internal culture encourages non-compliance with legal obligations. Punishments available under existing statutes are also relatively limited, typically involving financial penalties rather than remedial orders designed to reform corporate governance structures. As a result, corporate criminal liability in India remains largely reactive rather than preventive.

Conclusion

India's corporate criminal liability framework stands at a critical stage of development. While judicial decisions have expanded the scope of corporate accountability, the continued reliance on the identification doctrine limits the effectiveness of criminal law in addressing systemic corporate wrongdoing. The complexity of modern corporations means that criminal conduct often emerges from organisational cultures that prioritise profit over compliance rather than from the isolated actions of identifiable individuals. Recognising corporate culture as a basis for criminal liability would therefore represent a significant step toward aligning Indian law with contemporary corporate realities. By adopting an organisational liability model similar to

¹³ *Iridium India Telecom Ltd v Motorola Inc* (2011) 1 SCC 74.

¹⁴ *Sunil Bharti Mittal v CBI* (2015) 4 SCC 609.

that found in Australian law, India could strengthen deterrence, promote ethical governance, and enhance public trust in corporate institutions. Legislative reforms incorporating corporate culture, supported by due-diligence defences and modern sentencing mechanisms, would allow courts to hold corporations accountable for systemic failures while encouraging responsible business practices. In an era of increasing corporate influence over economic and social life, such reforms are essential to ensure that corporate power is balanced by effective legal accountability.

