

## CORPORATE CRIMINAL LIABILITY UNDER THE COMPANIES ACT, 2013 AND BHARATIYA NYAYA SANHITA: AN OVERLAPPING JURISDICTION?

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### **Abstract**

*Corporate criminal liability has become an essential element in modern legal systems, as corporations increasingly exert influence in economic, social and political spheres. In India, the Companies Act, 2013 provides a detailed framework for determining criminal liability for corporate actions. It provides legal liability for violations of law such as fraud, wrongful termination and non-compliance by corporate entities and their officers. The Bharatiya Nyaya Sanhita, 2023 (BNS) has now been enacted. It amends the Indian Penal Code, 1860, raising new questions – how corporations are included in the general criminal law. This paper examines the jurisdictional overlap when transferring corporate criminal conduct using the Companies Act and the BNS. Through a doctrinal analysis, the conceptual foundations of corporate liability, several legal frameworks, their specific possibilities, and similar trends from the UK and the USA are also examined. "The confusion between specific laws and general laws, competition, integration, and duplication exist. This calls for harmonization of enforcement and liability principles, as well as ensuring legal justice and corporate responsibility."*

**Keywords:** *Corporate Criminal Liability, Companies Act, Bharatiya Nyaya Sanhita, Overlapping Jurisdiction, Corporate.*

### **1. Introduction**

The development of corporate criminal liability is a major departure from the ancient common law understanding that corporations could not have a sense of guilt (*mens rea*). But today, given the enormous economic power that corporations wield in the marketplace and their ability to inflict harm on individuals more than and equally than individuals, it has become imperative to hold them liable under criminal law. Corporate criminal liability in India is framed through two main areas category-specific laws, particularly the Companies Act, 2013, and the General Penal Code, which until its recent amendment was the Indian Penal Code,

1860 (IPC). With the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), new debates have arisen regarding the scope and harmonisation of criminal liability of corporations in India. The key question is whether criminal acts by a company, such as fraud, negligence, or environmental violations, should be prosecuted under the Companies Act, the general criminal law BNS, or both. This overlap between corporate regulatory offences and general criminal offences raises a number of legal and procedural issues for example, double jeopardy, how to attribute *mens rea* to a company, and which agency has jurisdiction. This paper aims to analyse these relationships and amendments and to assess whether the

arrangement of the Companies Act and the BNS together creates a mutual responsibility or creates jurisdictional disputes.

## 2. Development and concept of corporate criminal liability

Historically, companies were considered incapable of committing crimes in English common law. The legal principle "*actus non facit reum nisi mens sit rea*" (no act without a criminal mind makes a person guilty) was the basis for this. But as corporations took on a wider range of commercial and public functions, the need to impose criminal liability on them became clear. The identification doctrine, developed in *Tesco Supermarkets Ltd v Natrass*<sup>110</sup>, established that the acts and intentions of directors and senior officers could be attributed to the company. A broader approach was adopted in the United States the doctrine of respondeat superior whereby the company was also liable for the acts of employees in the course of their employment.<sup>111</sup> In India, the courts have gradually accepted corporate liability. In *Standard Chartered Bank v Directorate of Enforcement*<sup>112</sup>, the Supreme Court ruled that companies could be held liable and punished by fines even in circumstances where imprisonment was a possibility. This decision resolved the conflict between corporate personality and criminal liability, paving the way for modern legal systems.

### Basic Concepts of Corporate Criminal Liability

Corporate criminal liability is based on three principles mainly that are attribution of mens rea attributing the conduct and actions of directors or senior management to the company, Vicarious liability i.e. personal liability as an "officer in default", Corporate fines and penalties where recognition of penalties that are legally enforceable.

## 3. Corporate Criminal Liability under the Companies Act, 2013

The Companies Act, 2013 is an Act that consolidates corporate governance, control and criminal liability. The Act creates a specific penal system for corporate offences and specific legal remedies for fraud, misrepresentation, negligence and non-compliance. Section 447 defines and punishes corporate fraud. It is punishable with imprisonment for a term which may extend to ten years and a fine which may extend to three times the amount involved.<sup>113</sup> It includes cheating, concealment of facts and attempt to obtain undue advantage by abusing one's power.

### Other important penal provisions:

1. Section 448 which defines punishment for making false statements or concealing facts in documents.
2. Section 449 which defines giving false evidence in the proceedings of a company.
3. Sections 450–452 which defines general penalties in cases where no specific penalty is prescribed.
4. Section 463 which defines power to grant relief to an officer once the court is satisfied that he has acted honestly and reasonably.

The Serious Fraud Investigation Office (SFIO) under section 211 investigates complex corporate crimes. Proceedings under the Companies Act can lead to imprisonment, fines and disqualification of directors. A key feature is the introduction of vicarious liability, through section 2(60) "Officer in default" which imposes personal liability. Thus, the law views corporate offences as a combination of institutional wrongdoing and personal wrongdoing. However, since the Companies Act is special legislation, it is limited to corporate offences. If the same act is found to be a general criminal offence (e.g. cheating under the IPC), questions of reliance and overlap arise.

<sup>110</sup> *Tesco Supermarkets Ltd. v. Natrass*, [1972] A.C. 153 (H.L.).

<sup>111</sup> *United States v. Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972).

<sup>112</sup> *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530.

<sup>113</sup> Companies Act, No. 18 of 2013, INDIA.

#### 4. Corporate Criminal Liability under the Indian Penal Code, 2023

The Indian Penal Code, 2023 (Bharatiya Nyaya Sanhita, BNS), which replaced the IPC, modernizes the penal code in India. It is characterized by gender-neutral language and simple classification. Most importantly, the term “person” is broadly defined in the BNS, which also includes companies.<sup>114</sup>

##### Relevant sections:

1. Section 111 which states fraud and concealment of assets
2. Section 318 which defines Cheating
3. Section 324 which defines Forgery
4. Section 336 which defines Criminal breach of trust

The BNS does not focus solely on corporate governance or fiduciary responsibilities, as in the Companies Act. The nature of the offence is what is important, not whether it is in a corporate or personal context. For example, if a company falsifies documents to defraud investors, it will be liable under both sections 447 of the Companies Act (Fraud) and 318 of the BNS (Cheating). Furthermore, section 58 of the BNS Punishment for offences committed by “companies or associations” provides that the offence can be punished in the name of both the company and its officers. This gives legal form to the doctrine of vicarious liability. That is, the company and its officers can be prosecuted together. Because of this broad coverage of the BNS, the same corporate wrongdoing can be prosecuted through more than one legal avenue at the same time. This can give rise to jurisdictional conflicts the issue of which law should prevail.

#### 5. Repetitive Jurisdiction and Doctrinal Conflicts

The overlap between the Companies Act and the BNS arises from the coexistence of general penal laws and special penal laws. The principle of *lex specialis derogat legi generali* (special law supersedes general law) provides guidance

but does not provide a clear solution in all cases.

#### 5.1 Problems of Repeated Proceedings and Double Jeopardy

According to Article 20(2) of the Constitution:<sup>115</sup> “A person shall not be prosecuted or punished more than once for the same offence.” However, the Supreme Court has held in *State of Bihar v. Murad Ali Khan*<sup>116</sup> that double proceedings are possible if the same act violates different sections of law with different elements. For double jeopardy to apply, the elements of both the offences must be the same. Therefore, if a company commits financial fraud: Corporate fraud under the Companies Act

##### Cheating under the BNS

It can be prosecuted under both even if the elements of punishment are different. But the act is in reality the same. This creates a conflict between legal justice and investigative efficiency.

#### 5.2 Institutional Overlaps

Companies Act violations are investigated by agencies such as SFIO, Registrar of Companies, NCLT. On the other hand, BNS offences are investigated by the police or CBI. If there is no coordination between these systems: Parallel investigations, Disparate decisions, Unnecessary duplication of efforts, There can be. This was clearly seen in the Satyam Computer Services Ltd. <sup>117</sup>fraud case, where several agencies pursued corporate offences and criminal offences together. The lack of clear procedural guidelines creates additional burdens for the justice system.

#### 5.3 Mens rea and its attribution – doctrinal issues.

The two statutes approach mens rea differently: Companies Act links intention to the company through “officer in default”. BNS follows the general criminal liability doctrines. Courts have

<sup>115</sup> INDIA CONST. art. 20, cl. 2.

<sup>116</sup> *State of Bihar v. Murad Ali Khan*, (1988) 4 SCC 655.

<sup>117</sup> *CBI v. B. Ramalinga Raju*, (2018) 14 SCC 1.

<sup>114</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA

often had difficulty reconciling these. In *Iridium India Telecom Ltd. v. Motorola Inc.*,<sup>118</sup> the Supreme Court accepted that companies can also have mens rea through human agents. However, it did not provide clarity on how the overlapping offences under the two statutes should be prosecuted.

## 6. Judicial Interpretations and Comparative Analysis

Although Indian courts have gradually developed the doctrines of corporate criminal liability, the issue of overlap between general and special laws has not yet been fully resolved. In *Sunil Bharti Mittal v. CBI*<sup>119</sup>, the Supreme Court held that corporate liability does not extend automatically to directors; personal involvement must be proven. While this principle applies equally to the Companies Act and the BNS, in practice, investigative agencies often tend to mix individual liability with corporate liability. Similarly, in *P. V. Narasimha Rao v. State (CBI/SPE)*<sup>120</sup>, the Court recognized that corporate corruption can affect individuals and corporations simultaneously, i.e., concurrent liability is possible.

### Approaches in different countries

In the *United Kingdom (UK)*, the Corporate Manslaughter and Corporate Homicide Act, 2007 provides a separate system of punishment for organizational wrongdoing, as opposed to individual crimes. In the *United States (US)*, Prosecutors often use Deferred Prosecution Agreements (DPAs) a mechanism that balances punishment and compliance. However, the system in India is fragmented and unclear, with a variety of laws and agencies working together. This overlap: reduces uniformity in determining guilt, weakens deterrence, and can affect the impartiality of justice.

## 7. Solutions and Policy Reforms

Some policy reforms can be suggested to eliminate overlapping jurisdiction and ensure sustainable corporate accountability:

### 7.1 Statutory Harmonisation

The legislature should clearly state that offences under the Companies Act, if they relate to the activities of corporate management, should take precedence over general criminal laws. At the same time, BNS can be applied to acts that cause widespread harm to the general public. This would legally strengthen the *lex specialis* principle.

### 7.2 Coordinated Enforcement

A joint coordination mechanism should be initiated between the SFIO and the central criminal investigation agencies. A “Corporate Crimes Coordination Committee” can be formed to ensure convergence between investigation and prosecution. This can avoid duplicate investigations and contradictory decisions.

### 7.3 Unified Mens Rea Standard

A single, clear and consistent standard for attribution of intent (*mens rea*) to corporations should be formulated, combining the identification doctrine and the aggregation doctrine. This could be implemented through an amendment or through judicial clarification.

### 7.4 Restorative & Preventive Approaches

India may adopt Deferred Prosecution Agreements (DPAs) which give corporations an opportunity to make internal reforms, but do not absolve them of liability. Corporate compliance programs may also be considered as mitigating factors in sentencing.

### 7.5 Judicial Interpretation

Courts should adopt purposive interpretation. If both laws apply, the law that best captures the primary nature of the offense may be preferred. For examples, financial fraud affecting shareholders Companies Act preferred. Fraud

<sup>118</sup> *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.

<sup>119</sup> *Sunil Bharti Mittal v. Cent. Bureau of Investigation*, (2015) 4 SCC 609.

<sup>120</sup> *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626.

affecting the public BNS may be applied as a supplement.

## 8. Conclusion

The relationship between the Companies Act, 2013 and the Code of Civil Procedure, 2023 (CCL) reveals both the strengths and weaknesses of India's approach to corporate criminal liability. While the CCL acts as a specialised regulatory framework, the CCL is a general penal foundation. While the co-existence of the two provides the capacity for comprehensive legal proceedings, it also creates the potential for duplication and confusion. To safeguard the credibility of corporate governance and procedural fairness, India needs to integrate these two legal frameworks through legal clarity, a coordinated investigative mechanism and judicial vigilance. The aim is not to give preference to one over the other. The aim is to ensure effective punishment for corporate fraud and wrongdoing without compromising fairness and clarity. Ultimately, the challenge is to create a system where corporate responsibility and legal uniformity coexist, where the corporate veil protects legitimate enterprise and does not become a shield for criminal activity.



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