

Corporate Criminal Liability Under the Companies Act, 2013

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Abstract: *The liability of corporations has taken centre stage in the discourse of new corporate governance. It is evident that it is not pointless to hold artificial things as corporations, to account for their crime, particularly because companies have become such an important part of the economic life. Previously, we had been accustomed to charging people with committing a crime, but with the emergence of multifaceted corporations, politicians had to go to the extent of making companies themselves responsible. One of the steps taken by India is the Companies Act of 2013. It strengthened and established the way through which companies and individuals in their companies should be punished in case of any illegal action. This article will explore how the concept of corporate criminal liability played out in the Companies Act, 2013. It de-jurisdictionalizes the wording of the law: what directors and key managers get dragged into, what the courts have already said when disagreements occur. To unravel, there is much. What is and is not considered a liability is defined by the courts and their views influence real-life results to companies and individuals being accused of crimes. Actual challenges to the implementation of these laws exist. Mens rea the intention or knowledge of wrongdoing is infamously difficult to demonstrate it when the mind is not a person, but a fiction before the law. The vicarious liability is an extra complexity that poses how responsibility goes all the way to senior level to the junior levels. Corporate crimes also face debate in their punishments, as corporations cannot be jailed. Another point that is highlighted in the paper is where oversight and compliance should be enhanced as well as where better governance can prevent incidences of crime before they occur. Lastly, although the Companies Act, 2013, introduced new tougher or more realistic rules and actions regarding the responsibility of holding companies accountable, there is still more work to be done. Court enforcement and clarity only play equally important roles compared with good laws to ensure that the corporations do not get away with breaking the law.*

Keywords: Corporate Criminal Liability, Companies Act 2013, Corporate Governance, Mens Rea, Vicarious Liability, Directors' Liability, Compliance, Economic Offences

1. Introduction

Corporate criminal liability departs from the old concept that crime can only be committed by flesh and blood. Since corporations assumed larger positions in the economy, it was evident that letting them off the hook would not work. The law must have followed. A business organisation is a legal entity, but it operates as a real individual; its board, managers and workers. Although the law acknowledges a company as a separate legal person, there has always been controversy in terms of whether a company can form criminal intent and whether a company can be the one who takes the criminal complaint down when the law is broken. The Companies Act, 2013,¹ intervenes. It does not simply allow companies to be behind in their paperwork. The Act provides regulations that result in the business and the people calling the shots, with directors being responsible for the crimes. Corporate crime is heavy stuff: fraud and cooking the books; insider trading stuff that has ripple effects that harm shareholders, creditors and even the people. One of the methods of ensuring that such actions are severely dealt with is through criminal sanctions. The current paper is dedicated to the way in which the Companies Act, 2013² addresses the topic of corporate criminal liability, dives into what the case law has to say about the matter, and explains why, to this day, the situation remains complicated by the practical challenges.

2. Legal Framework Under Companies Act, 2013

The Companies Act, 2013³ has put up a strict legal framework where people and companies are put to account of their misbehaviour. It not only serves to punish the wrongdoing but also strives to increase transparency, accountability and responsibility of the companies, most especially governance and oversight.

1) Corporate Criminal Liability - Statutory Basis.

Though the Act does not explicitly refer to corporate criminal liability, the idea is connoted in the penal clauses. The company as a legal entity and the individuals operating it, i.e. directors, key managerial staff and other officers in default, are both subject to the law.

This framework is motivated by three main concepts:

- Attribution of Liability:** When an individual performs something, and it happens in the line of duty, his or her deeds are attributed to the company. When a company director or employee is misled and gets into trouble with the law when he/she is on duty, the company is on the hook⁴.
- Dual Liability:** Both the individuals and the company can be held responsible, and in some cases simultaneously. There is no place to stay in the stock company.
- Strict Compliance regime:** An intent is not always an issue when it comes to the Act. Many of the sections

¹ The Companies Act, 2013

² The Companies Act, 2013

³ The Companies Act, 2013

⁴ Gower & Davies, *Principles of Modern Company Law*

indicate that you can just be held to non-compliance with certain, especially regulatory, sections.

2) Officer Who is in Default under Section 2(60)⁵

This is an essential section. It determines who has a personal liability in relation to a violation of the Act. That includes whole-time directors, key managerial personnel, any director who knows about the wrongdoing, and anyone in charge of compliance.

Legal Significance

Section 2(60)⁶ expands the net. You cannot just delegate your responsibilities and expect to escape liability. It holds decision-makers responsible and makes them answer unless they are cleared of the responsibility. This is core in ensuring that a culture in which accountability is not a choice but a requirement of law is built.

Section 447⁷ - is the most difficult penalty provision in the Act. It describes fraud in general terms as any deception, omission, concealment, misuse of power or conspiring to dishonest end is fraudulent. When one gets caught, there are some harsh penalties to be paid: jail terms between six months and ten years, and a fine that may be three times the sum itself. Active misconduct, as well as grey-eyed inaction, is discussed here, and the focus is on directors, officers, and even foreigners⁸. It does not have to have an actual loss; the intention to do so is sufficient to drop the hammer. It is an influential work that intensifies corporate responsibility and complies with the international standards of fraud prevention.

Section 448⁹ - puts emphasis on false statements. When anyone lies in financial statements, reports, and other official reports, they will by default fall under any of the penalties under

Section 447- There is no necessity of additional prosecution procedures simply because a false statement is made to cause liability.

Section 449¹⁰ - It goes after fake evidence. When a person gives fake evidence when being investigated or in any other proceedings, they face up to seven years in prison, in addition to fines. It is present because it is needed to protect the process, and it does not allow corporate investigations to be compromised.

Section 450¹¹ - When no specific penalty is provided for a breach, it provides fines up to 10,000 rupees and additional fines for daily repetitions. The safety net is the one who ensures that no one gets away with anything and that the floor of the legislature does not get shaky.

Section 451¹² - It takes on repeated offences. It intensifies the sanction against those who continue to violate the law and puts in place a high deterrent to habitual offenders.

Section 134¹³ - It establishes the direct liability of directors towards the integrity of financial statements. They should make sure that the records they keep are fair and true, and well-maintained. Otherwise, they can be imprisoned for a maximum of three years and pay fines. Criminal liability here relates directly to corporate governance.

Section 166 - It prescribes the duties of the directors in the black and white act in good faith, practice due diligence, and avoidance of conflicts of interest. In case they violate these rules, both a civil and a criminal penalty may be enforced.

Section 212¹⁴ - It creates the Serious Fraud Investigation Office (SFIO), which is considered as a specialised agency that has the muscle to arrest under Section 212(8) and file reports as evidence against the police. It centralises fraud investigations and boosts enforcement.

Sections 36 and 447 – They deal specifically with fraud in prospectuses. False affirmations in this case cause criminal penalties, and they protect investors against fraud.

The but-for-the-hybrid approach of vicarious liability in the Act places the responsibility on the principal officer, but the officers who consented to it or acted negligently are targeted. In such a way, all bases are covered in terms of accountability. The offences of the Act are diversified: there are cognizable, and some are non-bailable when it concerns section 447 in particular, as well as different offences that can be compounded, whereas some cannot all, depending on the seriousness of the issue. In regard to enforcement, a number of authorities intervene: Registrar of Companies (ROC), National Company Law Tribunal (NCLT), SFIO, and ordinary courts. Less severe offences attract administrative sanctions, whereas major crimes result in criminal charges. The system is designed in accordance with the reaction to the magnitude and gravity of the breach. The image of corporate criminal liability has been changed in Indian courts. They are not simply imposing rules, but they are literally exercising to clear-cut thorny matters, mens rea, vicarious liability, and punishment.

3. The Corporate Criminal Liability Recognition

The case of Standard Chartered Bank v. Directorate of Enforcement¹⁵ It was a groundbreaking case. The Supreme Court affirmed: it is true that a company can be prosecuted as a criminal. Fines still come in even in case the jail is not available. The actual lesson- Being a Corporate does not make

⁵ Companies Act, 2013, Section 2(60) – “Officer who is in default

⁶ Companies Act, 2013, Section 2(60) – “Officer who is in default

⁷ Companies Act, 2013, Section 447 – Punishment for fraud

⁸ S. K. Verma, “Corporate Criminal Liability: A Jurisprudential Analysis” (2018) Journal of Corporate Law

⁹ Companies Act, 2013, Section 448 – Punishment for false statements

¹⁰ Companies Act, 2013, Section 449 – Punishment for false evidence

¹¹ Companies Act, 2013, Section 450 – Punishment where no specific penalty is provided

¹² Companies Act, 2013, Section 134 – Financial statements and Board responsibility

¹³ Companies Act, 2013, Section 166 – Duties of Directors

¹⁴ Companies Act, 2013, Section 212 – Serious Fraud Investigation Office (SFIO)

¹⁵ Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530

the liability go away, even though the penalty includes imprisonment.

- 1) **Attribution of Mens Rea:** In *Iridium India Telecom Ltd. v. Motorola Inc.*, the Supreme Court resolved the debate long time companies do possess criminal intent, but c via their leaders. They implored the Identification Theory: the will of the top decision-makers of the company is to be considered the will of the company. This made it very easy to pursue corporate fraud.
- 2) **Directors' vicarious liability:** It was clarified by *SMS Pharmaceuticals v. Neeta Bhalla*¹⁶. The directors are not necessarily liable whenever the company commits blunders, and it depends on the decision of whether one was present and in control over the manner in which the company conducts its business. The impact- Blanket liability must be out allegations must be particular¹⁷.
- 3) **Pre-requisite of giving a lively part:** The case of *Sunil Bharti Mittal v. CBI*¹⁸ has made a significant impression. Prosecution must be based on the fact that one was a director. The liability does not attach without evidence of active involvement Conclusion: no vicarious liability deemed statutorily.
- 4) **Economic offences - corporate liability:** *Assistant Commissioner v. Velliappa Textiles*¹⁹ began with the perception that you could not charge companies where jail was obligatory. This got overturned by *Standard Chartered Bank*. The development depicts a dynamic judiciary that is ready to reconsider and revisit.
- 5) **Doctrine of Alter Ego and Attribution:** Courts have come to recognise that the top management is the alter ego of the company. They actually act on behalf of the company.
- 6) **Trend in Courts: Maintaining a Balance between accountability and fairness:** Indian courts are in a tight-wire-walking exercise. They are tough and focus on deterrence when it is related to fraud or an economic offence. In the case of independent directors or directors who are not participants in the operations, the courts are biased towards protective guarding against unfair prosecution.
- 7) **Standard of Proof and Presumption:** The prosecutors should prove the role of the accused and the issue of knowledge or negligence. The law sometimes changes the burden, and the accused must demonstrate innocence.
- 8) **Sentencing Trends:** Jail is not an option for corporations, and therefore, the courts resort to substantial fines, penalties, and compliance mandates as a way of holding the companies accountable.
- 9) **Emerging Judicial Developments:** This has resulted in a move towards greater corporate governance standards for companies. Lack of compliance is evident in courts. They are aware of the severity of white-collar crime and understand the far-reaching consequences of corporate crimes to the economy.

4. Critical Analysis of Judicial Approach to Corporate Criminal Liability

The manner in which courts in India deal with the criminal liability of corporations has transformed radically. Courts began with uncertainty, staying in a close perspective that enabled corporations to escape the serious economic offences. They have, however, gradually moved slightly but perceptibly towards the realisation that it is not only individuals who can commit a crime, but companies as well. This change has largely been spearheaded by judges who attempt to fill in the gaps created by poorly defined statutes.

1) Rigid Tradition to Pragmatic Progress.

Early on, courts held fast to the notion that a company, acting as a legal fiction, is incapable of intent and, thus, cannot be held liable to commit crimes it cannot. Such an attitude created a gaping hole that corporations could escape serious charges without difficulty, but then the landscape was different. It was compelled by landmark cases such as *Standard Chartered Bank v. Directorate of Enforcement and Iridium India Telecom Ltd. v. Motorola Inc.*²⁰ which necessitated a new approach. The courts eventually admitted that corporate entities could go to trial and that mens rea could be transferred through human agents acting on behalf of the company. This important development was largely the result of judicial imagination. The initiative was taken by courts, which interpreted the laws differently, in many cases going ahead of genuine legislative reforms. It is an inevitable development, yet it is also an indication of a legal system in response to problems, rather than in the prevention of problems.

2) Mens Rea: The Repeat Puzzle.

Indian Supreme Courts rely more on the Identification Doctrine, thus classifying the high-level managers as the directing mind and the will of the company as the company. This gives a definite structure: in case the top brass has plans of committing a crime, the company as well. It prevents the feigning ignorance of CEOs, board members and brings Indian practice closer to international standards. Nevertheless, this model does not work with contemporary companies. When hundreds of decision-makers in continents share power, who will be talking on behalf of the company. In huge organizations, the blame can be avoided through diffusing authority by hiding under the umbrella of committees and hierarchies. In a way, though, the theory is logical, just that it is becoming more and more obsolete in the modern spread-out, intricate corporations.

3) Vicarious Liability: Walking a Fine Line.

Such cases as *SMS Pharmaceuticals v. Neeta Bhalla*²¹ and *Sunil Bharti Mittal v. CBI*²² have established firm boundaries: merely being a board member does not make her or him a criminal liability. Those in charge and those who are actively involved are at risk of prosecution. This model balances the overreaching tendency of prosecutors and guarantees non-

¹⁶ *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89

¹⁷ S. K. Verma, "Corporate Criminal Liability: A Jurisprudential Analysis" (2018) *Journal of Corporate Law*

¹⁸ *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609

¹⁹ *Assistant Commissioner v. Velliappa Textiles Ltd.*, (2003) 11 S.C.C. 405

²⁰ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 7

²¹ *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89

²² *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609

executive board members who have no connection to the misconduct. But the reverse- The prosecution has a high bar. Some compliant executives will avoid being on record to be in charge and get behind compliance departments. The consequence: actual power elites will tend to fall through the loopholes, and deterrence will begin to lose its sting.

4) Courts: Uncertainty on a Case-by-Case Basis.

The reading of the law by various benches has been extremely different. Consider Velliappa Textiles²³, where the court ruled that companies were not able to be prosecuted due to their refusal to serve jail time as required by law. Then Standard Chartered came and vetoed that idea. Such U-turns imply that the business and regulators cannot always make the exact claim on how the law is applicable. The general framework has not yet attained a stable, consistent teaching.

5) The Punishment Problem

It presents a fundamental dilemma before the judges: What do you do when the law says that a company should go to jail? Instead, they generally give a fine. Large companies are hardly ever hurt by fines. They are able to simply cover up fines while doing business. Some of the other penalties, probation, real compliance monitoring or compelling changes in corporate structures have not been tried extensively by Indian law. That is, the system penalizes though not very creatively and is frequently ineffective.

6) Accountability vs Individual Rights

Courts seek to strike the right balance between holding companies accountable and individuals against unwarranted charges. The issue of the fairness of blanket liability is circumvented. Yet, such cautiousness often does allow the directors to keep their hands dirty by remaining uninvolved. Protecting people too much poses a threat of watering down the responsibility in committing corporate crimes.

7) Independent Directors, Non-Executive Directors: Shielded or Unshielded?

Recent cases decided largely favour the independent or non-executive directors unless it is established that there was clear evidence that the directors were aware or that they agreed with the malpractice. This will promote serious professionals to join boards with no concerns that they may be criminally exposed. The negative aspect is that the directors can escape the blame just by saying that they did not know.

8) Proof and Prosecution: The Hardest Score

Indian courts require tough evidence and a definite demonstration of the role of each accused. It is sound; however, in reality, corporate offences are a bureaucratic coat of paper, and roundabout decision-making and collective behaviours make it hard to construct a case. It is these high evidentiary hurdles that most prosecutions suffer²⁴.

9) Delay and Inefficiency

The cases of corporate crime may prolong to several years. Never-ending investigations, various authorities, and

procrastinations weaken deterrence. Firms get to know how to outlast the legal procedure as it hardly stings fast and further.

10) Change on the Horizon

In recent times, there has been increased awareness of white-collar crimes. Courts will be more concerned with governance standards and regard failure in compliance as red flags. Nonetheless, the system continues to lag behind new realities of digital crimes, cross-border corporate forms, and the speed of business today.

5. Overall Assessment

Strengths- The judicial system has come to understand the intent of corporations, attribute doctrines, and prevent arbitrary prosecution. There is an emerging trend in Indian courts towards international best practices. But weaknesses remain. Their theories are still old and are relied on in courts as corporate life evolves. Slows and inconsistency in the systems of procedure are problem areas. Most importantly, the methods of punishment and deterrence under the law are out of date. It is still evolving, and still a long way to go, before corporate criminal liability in India is really strong and efficient.

6. Conclusions and Recommendations

Corporate criminal liability under the Companies Act, 2013 is also a tremendous development in the Indian corporate jurisprudence as it includes a deliberate change in approach towards addressing the traditional concept of responsibility with an individual resting on individual culpability towards corporate responsibility corsetted in the broader framework. To control the actions of corporations with such a giant economic power and influence in their possession, it has become unavoidable and cannot be done without criminal charges. The Act provides a thorough and strict legal framework which attempts to prevent corporate misconduct by enforcing legal responsibility not to external corporate entity, but also to individuals who operate it. Articles like Section 447 (fraud)²⁵, Section 448 (false statements)²⁶, and Section 134 (financial accountability of directors)²⁷ reflect the will of the legislature to establish a zero-tolerance rule to corporate fraud and mismanaged. The presence of the mechanisms like the Serious Fraud Investigation Office (SFIO) also make the architecture of enforcement stronger, as the investigation of the complex corporate offenses will be conducted by qualified and meticulous personnel. The judicial interpretation has been instrumental in defining and narrowing down the boundaries of corporate criminal liability in India. The basic questions have been satisfactorily solved through the courts, including the assignment of mens rea upon corporates, and the limit of vicarious liability of directors. Previous case rulings have made it clear that although a company can be prosecuted in a criminal case, it should be on the basis of indisputable evidence of involvement, knowledge or neglect, which would avoid arbitrary prosecution. Such a

²³ Assistant Commissioner v. Velliappa Textiles Ltd., (2003) 11 S.C.C. 405

²⁴ Gower & Davies, *Principles of Modern Company Law*

²⁵ Companies Act, 2013, Section 447 – Punishment for fraud

²⁶ Companies Act, 2013, Section 447 – Punishment for evicence

²⁷ Companies Act, 2013, Section 134 – Financial statements and Board responsibility

moderate judicial system can ensure the law is effective and fair, avoiding misuse and at the same time being accountable. Nevertheless, the statutory framework despite its strength still faces a number of obstacles to effective application of corporate criminal liability. The natural challenge in placing criminal intent on artificial actors, the elaborate nature of the contemporary corporate formations, and the delays in the prosecution and investigation processes constitute noteworthy problems. Also, the restriction of punishment especially failure to punish corporations through imprisonment brings up questions concerning the effectiveness of deterrence in matters concerning big-scale crimes of money. Risks of over-criminalization is another severe problem as the provisions of excessive penalties can have the negative impact of deterring lawful business operation and can make the climate of regulatory unpredictability. Consequently, finding a delicate balance between stringence and being business friendly is important to allow compliance requirements to be not too heavy and at the same time uphold high standard of corporate governance. Conclusively, the criminal liability of corporations according to the Companies Act, 2013 is not only a punitive device but a crucial tool towards transparency, accountability and integrity in corporate operations. As much as much has been achieved, the dynamic characteristics of the corporate operations require continuous vigilance, reform and adjustment. The greater objectives of economic stability, protection of investors, and the confidence of the people can only be met when there is a set of powerful laws, effective enforcement of these laws and responsible corporate behaviour.

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