

Corporate Criminal Liability and The Role of Corporate Governance Mechanisms

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ABSTRACT

In most cases, a human being—one with a distinct body and spirit—is considered to be the perpetrator of a crime. Corporations are not immune to criminal activity. For a long time now, the law has been ambiguous on whether a corporation devoid of life and consciousness could be prosecuted for a crime or not. Several countries' liability concepts have evolved around the idea of assigning *actus reus* and *mens rea* to companies, assuming that businesses conspire in criminal activities. When faced with such cases, the current criminal justice system falls short. Criminal liability for companies must be defined and penalties must be established. This article examines the idea of decriminalizing corporate offenses and weighs the benefits and drawbacks of this proposal. Since good corporate governance policies are essential in reducing the likelihood of corporate misbehavior, this article also delves into the function of corporate governance in these areas.

Keywords: *Crime, Corporate Liability, Governance, Corporation, Decriminalization.*

I. INTRODUCTION

When it comes to the modern corporate world, companies have a lot of sway over decisions that impact society and the economy. However, with increased power comes greater accountability, which is why it is so important to punish companies when they do wrong. To what extent may a business be held criminally liable for the acts of its officers, employees, or agents in the course of their official business activities? This is the subject of corporate criminal liability (CCL), a legal notion. Understanding the nuances of CCL is crucial in contemporary Indian law since it supports ethical corporate activities, safeguards public interests, and maintains the rule of law.

The corporate environment in India has changed and grown significantly over the last several decades, contributing to the country's status as one of the world's most dynamic economies. Along with this increase have come opportunities and worries, especially about corporate misconduct. Corporations have the potential to deceive, pollute the environment, break product safety laws, and

conduct a host of other illegal acts. Companies' criminal culpability must be examined within the context of Indian law. Companies, lawyers, and lawmakers must comprehend the intricate web of relationships between legal entities and commercial entities in this period of heightened scrutiny. This research will shed light on corporate criminal accountability under Indian law, clarifying the current framework for holding firms responsible for their actions. This will ensure that justice is served and public trust in the corporate sector is maintained. Corporate criminal liability (CCL) has been the subject of significant legislative and judicial interpretational shifts in India's legal system in recent years. Companies should be held accountable for their actions, especially when such actions result in criminal misconduct, according to India's legal system. This recognition is grounded on the understanding that businesses are not natural creatures but rather entities with agents that may do harm to society, the economy, and the environment by their actions.

The primary legislation governing CCL in India is the Companies Act, 2013, which lays the groundwork for the creation, administration, and dissolution of companies. Companies may be held responsible for many offenses under this law, such as fraud, false claim, and noncompliance with financial reporting requirements. Businesses must adhere to these provisions if they are to be held responsible for their actions and if they are to act in a manner that benefits both the public and their shareholders.

In addition, the structure of CCL has been greatly influenced by decisions made by Indian courts. The Satyam scandal and the Volkswagen emission issue are two well-known instances that have prompted courts to question whether corporations should be criminally liable for the actions of their executives and employees. The themes of attribution, mens rea, and corporate purpose—essential in determining criminal responsibility for corporations—have been examined more closely due to these cases. One of the biggest challenges confronting CCL is achieving a balance between reform and punishment. It is as important to hold firms responsible for their misconduct as it is to encourage compliance and moral behavior. Many Indian companies have implemented compliance programs and stringent codes of conduct to prevent employees from engaging in illicit activities.

II. PROS OF DECRIMINALIZATION OF CORPORATE OFFENCES

Easing The Workload Of Indian Judicial Forum

The Indian judicial system is now swamped with an excessive amount of outstanding cases due to the imbalanced ratio of cases per court. A staggering 2,85,23,812 criminal cases are still pending before Indian courts as of June 2021, according to data gathered by the National Judicial Data Grid (NJDG). The In-house Adjudication Mechanism was established under section 454 of the Companies (amendment) Act, 2020 to alleviate the workload of court forums and to guarantee expedited trials for corporate cases.¹

An official designated as a mediating official ("AO") under the IAM Framework has the power to resolve disputes by collecting the appropriate fine from the organizations that have failed to comply and from authorities who have failed to act as well. It is possible to appeal an AO order to the MCA's

¹ The Companies (Amendment) Act, No. 29 of 2020, §454 (Ind.)

local chief ("RD"). Criminal penalties apply to those who disobey such directions from the AO or the RD. Rehashed defaults within three years after the settlement date under the IAM Framework are subject to a greater penalty as a compelling impediment.

By doing away with small, technical offenses like non-maintenance of registers, the legislative implementation of IAM has alleviated the workload of special courts like NCLT², and so forth outside of their purview. Additionally, this framework offers a more efficient and less costly way to dispose of cases compared to the conventional prosecution approach.

Civil Prosecution of Company Offences Would be More Proficient

Criminal trials are lengthy and difficult, and it is exceedingly difficult to prove corporate criminal culpability; hence, some experts argue that civil prosecution should entirely replace criminal prosecution for corporate crimes. The existence of both the *actus reus*, or the unlawful act, and the *mens rea*, or guilty thought, are necessary prerequisites for a criminal prosecution. It is difficult for authorities and prosecutors to prove the *mens rea* of a corporation, which is not a natural person, in order to establish corporate criminal culpability. Since proving *mens rea* is a prerequisite in criminal proceedings, organizations and controllers alike would gain by instituting a civil complaint against a firm for procedural defaults. It is not necessary to have guilty intent in order to be found civilly liable for "blameworthy conduct," according to the Supreme Court's decision in *Director of Enforcement v. MCTM Corporation*. Further, although a "preponderance of probability" is enough to show civil culpability, the standard for criminal offenses is higher and requires evidence "beyond all reasonable doubt."

Ease of Doing Business

In order to encourage the development of small enterprises and entice international investors, the government has decided to decriminalize some offenses under company law. One of the main reasons why international investors are hesitant to set up shop in India is because of the complicated and time-consuming legal processes that are necessary for conducting business there. Along with the objective of ease of doing business, the agitation of company owners to draw criminal consequences for little and trivial things is counterproductive. When such activities are no longer considered criminal offenses, company owners and potential investors will feel more comfortable taking risks in the country.

III. CONS OF DECRIMINALIZATION OF CORPORATE OFFENCES

Scrapping of Criminal Sanctions May Increase Corruption

The nation's business sector is restrained by the presence of strict punitive legislation. Corporate responsibility towards the state and public might be negatively impacted if wrongdoing by companies is no longer criminalized and heavy sanctions are replaced with simple fines. Also, it might lead to willful lawbreaking if the profit gained from breaking the law is greater than the penalty that would be imposed.

² The Companies Act, No. 18 of 2013, §88(5) (Ind.).

Fixed Penalties are Prejudiced Towards Businesses with Huge Turnover

The imposition of a set penalty on enterprises of varied sizes in India is limiting and unfair since the country is home to numerous businesses with turnovers ranging from fifty thousand to fifty thousand crores of rupees. If the Supreme Court's *Adamji Umar Dalal v. State of Bombay* decision is to be believed,³ The circumstances surrounding the act of misconduct should be taken into account when deciding on a particular penalty. If this is not the case, there may be exceptional circumstances that, if ignored, might lead to an excessive penalty, which would cause tremendous harm to an individual. Punishment by monetary fines is useful only if it leads to change. In the context of a twenty-million-rupee turnover, for example, a penalty of one lakh rupees can seem like a little price to pay for the opportunity to reach the target. On the other side, a fifty-thousand-rupee turnover business may go bankrupt if fined one lakh. Furthermore, the fundamental goal of luring foreign investors can be undermined if a set penalty is imposed on a company's investors and financiers.

IV. ROLE OF CORPORATE GOVERNANCE IN CORPORATE CRIMES

The public is indirectly affected by corporate crimes, and it is a lengthy and confusing work to deal with instances of corporate crimes in court because of the difficulty in deciding how to sanction corporations. Consequently, the saying "prevention is better than cure" is applicable here, and the importance of corporate governance in avoiding corporate crimes should be given top billing. To put it simply, corporate governance is a set of rules and guidelines for running and overseeing businesses. As such, corporate governance can be defined as the procedures that enable a corporation to operate in a model where ownership and management are distinct roles. These procedures lay the groundwork for the establishment of the company's objectives, the development of strategies to attain those objectives, and the exercise of the owner's oversight over the company's operations. If the system of corporate governance is well-designed, it will encourage the firm to achieve its goals while protecting the interests of its shareholders. The effectiveness of operations supervision will be enhanced, which in turn will affect resource use.

The relationship between a limited liability company's shareholders, directors, managers, and suppliers—not to mention its workers and main customers—is known as corporate governance. Every country's institutional framework contains principles of corporate governance, whether they are official or informal. The objective of good corporate governance is to streamline and improve management processes while providing genuine incentives to the Board of Directors and executives to achieve objectives that benefit the business and its investors at large. Similar to an institutional environment that considers the structure and appropriate operation of organizations, corporate governance is governed by a consistent and competent general framework of laws. Anyway, such an environment may be established via certain occurrences, which will prevent the misuse of power, and businesses won't make bets until they are confident that the risks associated with the project and the "state's" risk are manageable.

³ *Adamji Umar Dalal v. State of Bombay*, (1952) SCR 172 (Ind.).

The Organization for Economic Cooperation and Development (OECD) urged private companies, governments, and key international organizations including the World Bank to establish standards for corporate governance in 1998. In order to foster the growth of good governance practices, governments look to the principles as a comprehensive framework. Focusing on the following, they should be brief, understandable, and available to the global community:

1. Establishing a foundation for effective corporate governance
2. Shareholder rights and their involvement
3. Transparency
4. Board responsibility ⁴

Having said that, corporate crimes may be easily perpetrated when governance is inadequate. The 'Satyam Scam' is an example of corporate governance that is severely lacking. B. Ramalinga Raju, founder and chairman of Satyam Computer services, revealed that for more than seven years, the business manipulated its revenue statements, cash flows, and balance sheet as part of the Satyam scandal, which was the biggest corporate fraud in India.

The founder and CEO of Satyam, who were brothers, committed a \$1.47 billion scam by inflating the company's profits and sales to entice additional investors and stave off a hostile takeover. "It was like being on a tiger and not knowing how to get off without getting eaten," said Raju. Both Satyam and Raju were held in high esteem for their outstanding corporate governance and their respective contributions to the success of their respective businesses and entrepreneurial endeavors. When Raju tried to acquire two more family-owned firms, the truth about the founder and his accomplices' false cash deposits, misstatements of accounts receivable and payable, understated liabilities, and inflated assets came to light. Many shareholders were furious about the planned purchase because they thought it would take money away from the successful software company and give it to other failing family businesses.

As a result of corporate wrongdoing and ineffective leadership, Indian stockholders have lost nearly \$2 billion since 2003⁵, long before news of the Satyam scandal surfaced. According to a report published on January 7, 2009, by an analyst at one of India's top investment firms, only four out of sixty-eight Indian companies met "highly desirable" disclosure standards. Among those that did not meet the mark, over half were prominent names with a strong international footprint.

V. PROCEDURAL PROTECTIONS INHERENT IN CRIMINAL CORPORATE LIABILITY

To shield itself from legal action, the corporation may rely on five inherent qualities. Being a distinct legal body, having limited liability, delegating managerial responsibilities, having investor ownership, and being able to transfer shares are the five qualities. The bulk of these qualities have practical use in securing the business. While there are numerous valid reasons to protect a firm, these precautions are often misused.

⁴ Angel Gurria, G20/Oecd Principles of Corporate Governance, 22(2015)

⁵ Corporate India's governance crisis, Business Week, (Feb.2, 2009).

The first characteristic that corporations often misuse is the absolute right to exist as a separate legal entity. Several legal scholars contend that the corporation cannot be prosecuted for criminal charges as it may be seen as an independent legal body. If a court of competent jurisdiction decides to breach the corporate veil or makes the directors vicariously accountable for the actions of the business, then only the firm's directors may be held liable.

The LIC v. Escorts case was decided by the Supreme Court,⁶ determine certain criteria for slicing through a company's corporate shell. The respondent in this instance violated the rules laid down by FERA. The appeals court's decision outlined certain conditions under which the "corporate veil" of a corporation may be lifted. A company's corporate veil may be lifted in cases of tax evasion, closely tied to a subsidiary, or illegal dealings. In spite of the Supreme Court's standards, directors continue to break the law while operating under the guise of a corporation.

The burden of evidence is another procedural loophole that corporations exploit. If they want to get someone convicted of a crime, the prosecution has to show that they're guilty beyond a reasonable doubt. Civil proceedings have a more lenient predominance of evidence standard. Criminal proceedings may cost much more than civil ones because of the greater burden of evidence required.⁷ Finding, investigating, and demonstrating business wrongdoing is not an easy task. Large corporations are able to easily exploit the procedural system because of its very formal requirements. Therefore, the burden of evidence should be reduced or raised by a court of law according to the situation. False acquittals would decrease with a lower level of evidence, whereas false convictions would decrease with a higher standard of proof. Both deficits exacerbate societal costs that were already there.

Article 20 (3) of the Indian Constitution provides a third procedural safeguard in the event of double jeopardy. Although companies are also subject to the protection against double jeopardy, the argument for its applicability is less robust in a corporate context.⁸ The reduction and prevention of erroneous convictions is one potential justification for the protection against double jeopardy. The rule that prohibits the government's arguments but not a respondent's, which is unique to double jeopardy, suggests this line of thinking. Concern over erroneous convictions is absurd in a business context, as shown in the discussion of the standard of evidence. It is also likely that double jeopardy protection "restricts the ability of the government to use its power and resources to inflict the uncertainty and financial drain of trial on a defendant more than once." However, when considering situations involving major firms, this burden does not seem persuasive. Regardless, it's easy to circumvent double jeopardy with laws that explicitly distinguish between crimes, thus its implementation may not matter much.

VI. CONCLUSION

As civilization has progressed, corporations have been more integrated into people's lives, both positively and negatively. In areas of societal concern including consumer protection, environmental legislation, and occupational health and safety standards, corporate criminal liability is becoming more important. It is important to rein in or halt the crimes committed by society's higher units for

⁶ (1986) 1 SCC 264 (India).

⁷ V. S. Khanna, Corporate Criminal Liability: What Purpose Does It Serve? 109 Hard. L. Rev. 1489 (1996).

⁸ Barry D. Baysinger, Organization Theory and the Criminal Liability of Organizations, 7 B.U. L. REV. 341, 346 (1991).

the sake of society's improvement and the protection of the innocent people from exploitation. When determining the potential danger of a business entity, India has tried to adhere strictly to the methods outlined by its leaders, employees, and other operators. More legislation or changes to corporate governance won't stop corporate crime; what would work is harsh punishment for those responsible. There has to be a stronger regulatory structure and plans in place for the application of harsh legal sanctions in order to fight corporate crimes.

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