Revisiting Corporate Criminal Liability: A Legal Analysis of Recent Criminal Law Reforms and Economic Legislations in India

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***"Any system that values profit over human life is a very dangerous one indeed. Simply put, it lacks value, and such a system will eventually collapse once the masses discover its true light. Though some say that capitalism is a modern system, corruption has been the source of the demise of every great civilisation."*— Suzy Kassem.**

Abstract

The evolution of corporate criminal liability in India shows how globalisation, economic liberalization, and the push for tough regulatory oversight. This paper takes a look at how the jurisprudence of corporate criminal liability has evolved under the new laws in criminal justice system. With LPG reforms more MNC are spreading their wings in India and therefore our goal is to strike a balance between encouraging business growth and keeping companies accountable. In this paper we have analysed the idea of corporate criminal liability and shift in the interpretation of the same overtime. Histrionically the corporate law function of the basis of the focus on traditional principles of fault based liability, but as economy grows the regulatory compliance, corporate governance, transparency, accountability takes more important in maintaining oraganisational integrity. The paper further analyses recent legislative measures that streamline compliance mechanisms, reduce procedural burdens, and foster a stable and conducive business climate.

Keywords:- *Bharatiya Nyaya Sanhita, Bharatiya Sakshya Sanhita, Bharatiya Nagarik Suraksha Sanhita, LPG Reforms, corporate fraud, SEBI, SCRA.*

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I. Introduction

The evolution of corporate criminal liability can be traced alongside industrial growth. Earlier, business used to be done at the individual level; in an individual capacity, corporations did it. Sales, investments, ventures, purchases, etc., and business transactions after industrialisation are no longer limited to an individual capacity.[3] Corporations that were formed were granted separate legal identities and could sue and be sued, as well as enter and form contracts in their legal capacity.[4]

In the beginning, the corporations were not held liable for wrongs committed by them, and the significant reasons for the reluctance of the Government and the courts to impose liability on the corporations were

- First, the corporations were jurisprudential, legal fictions;
- Secondly, corporations lacked mens rea, which was a crucial element for criminalisation; and
- thirdly, corporations lacked a body that could appear before the Privy Councils and courts.

Also, deciding punishments for the wrongs done by corporations was a problem.[5] Environmental damage, fraud, worker casualties, bribery, antitrust violations, and financial crimes increased in the 1990s, prompting the US, Canada, and Europe to pass legislation to legally punish businesses and restrict misconduct associated with industrialisation and corporate culture.[6]

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[3] Grant Gilmore, *From Tort to Contract: Industrialization and the Law*, 86 YALE L.J. 788, 788 (1977) (reviewing Morton J. Horwitz, *The Transformation of American Law, 1780–1860*), https://doi.org/10.2307/795645.

[4] Wilfrid Prest, Review of *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844* (Ron Harris, Roy Calvert & Thráinn Eggertsson), 76 J. Mod. Hist. 175, 175 (2004), https://doi.org/10.1086/421197.

[5] Guy Stessens, *Criminal Liability: A Comparative Perspective*, 43 The International and Comparative Law Quarterly 493, 493-520 (1994).

[6] Elidiana Shkira, "*A Comparative Approach to Corporate Criminal Liability in Common Law and Civil Law Countries*", http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290878.

A corporation is considered a separate legal entity. After registration, the corporate body can take all legal actions without holding members liable[7]. However, sometimes it is necessary to lift the veil of legal fiction which is crucial for determining the wrongdoer and establishing the mens rea.[8]

Companies are legally distinct from their shareholders, directors, and other stakeholders because they have personal status.[9] Thus, corporate accountability is distinct from individual criminal liability for crime. Modern corporate law in India was shaped by British colonialism.[10] The Charter Act of 1833 and 1853 gave Indian corporations legal recognition.[11] This made corporations more sustainable.

In the present era, corporations are dominating the economies of the world. More often than not, the revenue of MNE's are more significant than the GDP of many developing and least developed countries which has given a lot of power to the company. Which in many cases is followed by indulgence in fraudulent activities.

The basic rule of criminal liability lies in in the Latin maxim "actus *non facit reum nisi mens sit rea*" (an act is not wrongful unless accompanied by a wrongful state of mind).[12] Corporations can be held criminally liable for any offence that have occurred during their operation. They may be convicted in a criminal court whenever they violate the country's penal laws. The crimes that a

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[7] Reinier H. Kraakman, *Corporate Liability Strategies and the Costs of Legal Controls*, 93 YALE L.J. 857 (1984), https://heinonline.org/HOL/P?h=hein.journals/ylr93&i=877

[8] Krishna Bahadur, *Personality of Public Corporation and Lifting the Corporate Veil*, 14 J. INDIAN L. INST. 207, 207–27 (1972), http://www.jstor.org/stable/43950130.

[9] A. A. Berle & Gardiner C. Means, *Corporations and the Public Investor*, 20 AM. ECON. REV. 54, 54–71 (1930), http://www.jstor.org/stable/1807948.

[10] Petra Mahy & Ian Ramsay, *Legal Transplants and Adaptation in a Colonial Setting: Company Law in British Malaya*, 2014 SING. J. LEGAL STUD. 123, (2014), https://heinonline.org/HOL/P?h=hein.journals/sjls2014&i=132

[11] Amar Farooqui, *Governance, Corporate Interest and Colonialism: The Case of the East India Company*, 35 SOC. SCIENTIST 44, (2007), http://www.jstor.org/stable/27644239.

[12] Cross, *Criminal Justice, Actus Reus and Mens Rea*, in *Forensic Psychology, Crime and Policing* (Policy Press 2023), https://doi.org/10.51952/9781447359418.ch019.

corporation may commit include "*murder as well as offences of omission, such as the failure to install safety precautions in a factory*."

Criminal law jurisprudence increasingly scrutinises corporate accountability for offences perpetrated by directors, managers, officials, and workers during commercial activities. The implementation of the "*Bharatiya Nyaya Sanhita"* (BNS), "*Bharatiya Nagarik Suraksha Sanhita*" (BNSS), and "*Bharatiya Sakshya Sanhita*" (BSS) in 2023 imposes a more rigorous regulatory framework on Indian enterprises.[13] The recent legislative amendments emphasise how important it is for corporations to remain cognisant of the constantly changing legal environment and to comply with enhanced standards of accountability. The amendments introduce greater penalties for offences such as fraud, criminal breach of trust, and corporate misconduct.

The amendments to the provisions of the *"Information Technology Act 2000"* (IT Act), *"Income Tax Act 1961", "Prevention of Money Laundering Act 2002 (PMLA), "Companies Act 2013" and "Prevention of Corruption Act 1988"* seek to enhance the effectiveness of measures against corporate fraud and counterfeiting.[14] The existing legal structure categorises minor infractions as significant offences, which may result in severe allegations, asset forfeiture, prolonged enquiries, and stringent bail conditions.[15]

The latest changes emphasise the significance of corporate responsibility in scenarios of trust breaches and prescribe stricter sanctions, which may include life imprisonment for offences deemed as organised crime. As a result, commercial entities are required to adopt rigorous compliance protocols while strengthening their legal structures to mitigate potential risks. The

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[13] Chitranjali Negi, *Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers - An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023,* (2023), https://ssrn.com/abstract=4677357

[14] R.K. Handa & V. Prakash, *Emerging Trends in Corporate Crime(s): An Indian Legal Perspective*, J. Positive Sch. Psychol., 5088–5091(2022), https://www.journalppw.com/index.php/jpsp/article/view/4203.

[15] M.N. Roy & S.S. Saha, *Decriminalisation of Corporate Offences in India Leading to Ease of Doing Business in the Backdrop of Amrit Mahotsav*, MGMT. ACCOUNTANT J. 57, 52–57 (2022), https://nirdprojms.in/index.php/maj/article/view/168369/115463.

modifications pose challenges for legal professionals and business stakeholders in dealing with these complex legal responsibilities.

This researcher uses a doctrinal and exploratory methodology, analyzing legal precedents and legislative frameworks. The goal is to provide a thorough review of how these laws affect the criminal liability of businesses.

This article looks at how recent changes to criminal and economic laws affect corporate accountability. The results are aimed to assist attorneys and companies in becoming used to these new legal requirements so that businesses may obey the law in their everyday work.

II. Indian Jurisprudence on Corporate Criminal Liability

The first and landmark case in which a corporation was made criminally liable for acts of intent was *New York Central & Hudson River Railway Co. v. United States* in 1909, where the Supreme Court had decided that "enforcement of statutes would be successful only if corporations that derived benefits from unlawful practices were target of prosecution"[16] According to the facts of the case the State of United States had passed *Elkins Act* which prohibited payment of any rebates or discounts to ensure healthy competition. The defendant corporation had paid rebates to American Sugar Refining Co. for their shipment that was to be sent from New York to Detroit and, by doing this, had disobeyed the provisions of the Elkins Act. The issue in this case was whether or not the corporation's agents, to whom the company has given power, can be held responsible for acts done by the corporation.[17] In this case, the reason for penalising the defendant corporation was to include corporations under the state laws' authority, and criminalisation is an effective method of controlling corporate misconduct.[18] This judgment brought about further debates on whether corporate criminal liability is just and needed, and whether it is the most crucial way of protecting society from corporate crimes. This further grew and became a trend in the UK and the USA. In the USA, the doctrine of respondeat superior developed, where the corporations could be made liable for the acts of the company agent who had committed an illegal act with the

[16] *Id.*
[17] New York Central & Hudson River Railroad Co. v. United States, 212 U.S. 481 (1909).
[18] Supra note 3.

requisite mens rea.[19] In the UK, the company's agent is held criminally liable only if he is an alter ego of the company. [20]

Corporate criminal liability is not a theory that developed in India; it was brought to India by its colonial legal system. The history of corporate legal liability is just a few cases old, and there is no practical theory, analysis, or model that the Indian judiciary follows to make companies liable. For the first time, the *47th Law Commission Report* recommended that all criminal liability and punishment should be linked with the corporation and not merely with the Director's or manager's name.[21]

Following this, the judiciary has been criminalising companies for crimes of intent and the vicarious involvement of companies in legal misconduct.

- In *A K Khosla v S Venkatashan*[22], the Court emphasised that mens rea and the capacity to enforce a required penalty are the two fundamental prerequisites for prosecuting companies. A corporate entity cannot be deemed to possess the requisite mens rea nor be subjected to incarceration due to the absence of a physical form.
- In *MV Javali v. Mahajan Borewell & Co and Ors*[23], the Supreme Court ruled that a mandatory sentence of jail and a fine must be imposed where applicable, but when it cannot be applied, such as in the case of a corporation, simply a fine should be levied as punishment.
- In *Zee Tele Films Ltd. v. Sahara India Co. Corp. Ltd*[24], it was established that mens rea is a fundamental ingredient in the charge of criminal defamation and that a corporation cannot possess the necessary mens rea.

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[19] Robert Luskin, *Caring about Corporate 'Due Care': Why Criminal Respondeat Superior Liability Outreaches Its Justification*, 57 AM. CRIM. L. REV. 303, (2020), https://heinonline.org/HOL/P?h=hein.journals/amcrimlr57&i=316.

[20] *Id.*

[21] Law Commission of India. 47th Report: Trial and Punishment of Socio-Economic Offences, para 8.1.

[22] A. K. Khosla and Ors. v T.S. Venkatashan and Ors., 1992 Cri LJ 1448.1992).

[23] MV Javali v. Mahajan Borewell & Co and Ors., (1997) 8 SC 72.

[24] Zee Telefilms Limited v. M/s. Sahara India Commercial Corporation Ltd. & Anr., (2001) 1 Cal LT 262.

- In *Motorola Inc. v. Union of India*[25] , it was decided that a company could not establish the necessary mens rea, which was a fundamental component of the violation.
- In *Standard Chartered Bank and Ors. v. Directorate of Enforcement*[26], The Supreme Court ruled that the company might face prosecution and penalties, including fines, irrespective of the obligatory sanctions stipulated under the relevant legislation.
- In the *State of Maharashtra v. Syndicate*[27] , the High Court had held that the firm could not be prosecuted for crimes that inherently included imprisonment or corporal punishment; doing so would merely lead to a trial with a guilty judgment and no applicable penalty.
- In *Iridium India Telecom Ltd. v. Motorola Incorporated and Ors*[28], the Supreme Court held that a company might be prosecuted under common law and statute charges, including those needing mens rea; it is practically in the same situation as any person.
- In *CBI v. M/s Blue-Sky Tie-up Ltd and Ors*[29], the Supreme Court reaffirmed the legal ruling that corporations might face criminal charges and penalties for their actions.

III. Law and Administration of Corporate Crimes in India

India's strategy for addressing corporate crime is influenced by its quasi-federal political structure, including a democratically elected Union Government and distinct state administrations. The enforcement of criminal law, including corporate crime, entails a complicated interaction between federal and state institutions, emphasizing both procedural and substantive legal frameworks.

A. State and Central Investigative Structure

The Indian Constitution says that the police are in charge of criminal investigations in India. This is because of state jurisdiction.[30] All states have a

[25] Motorola Inc. v. Union of India, 2004 Cri LJ 1576.
[26] Standard Chartered Bank and Ors. v. Directorate of Enforcement, (2005) 4 SCC 530.
[27] State of Maharashtra v. Messrs Syndicate Transport Company Private Ltd., (1964) 2 Cri LJ 276.
[28] Iridium India Telecom Ltd. v. Motorola Incorporated and Ors., AIR 2011 SC 20.
[29]CBI v. M/s Blue-Sky Tie-up Ltd and Ors., (2011) 15 SCC 144.

law enforcement agency that is in charge of investigating crimes that occur within its borders. The "*Code of Criminal Procedure*, *1973"* (CrPC) and "*Indian Penal Code, 1860*" (IPC), now substituted by BNS and BNSS, are broad legislation that regulate both substantive and procedural aspects of criminal law across the land.

However, specific corporate offences, particularly those that span across state lines or involve complex elements, necessitate the engagement of central investigative bodies. The *Central Bureau of Investigation* (CBI), recognised as India's premier federal investigative agency, possesses the authority to investigate major fraud or cheating cases that transcend state boundaries or require an impartial examination.[31] Unless otherwise directed by the Supreme Court of India, the CBI will carry out its duties with the authorisation of the appropriate state. For effective judicial processes, the Directorate of Prosecution keeps tabs on the prosecution branch.

When it comes to economic and corporate crime, the *Serious Crime Investigation Office* (SFIO), an integral part of the Ministry of Corporate Affairs (MCA), exercises a crucial role.[32] In SFIO, the Accounting, forensic auditing, legal, and IT experts work together as a cohesive unit to combat white-collar crime.

B. Specialised Central Authorities

The Indian Government has created specialised agencies to address specific categories of corporate crimes. Principal agencies comprise:

- The "*Directorate of Enforcement"* (ED) concentrates on foreign exchange infractions and money laundering following the *"Foreign Exchange Management Act 1999"* (FEMA) and the PMLA.

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[30] JG.P. Joshi, Police Accountability in India (Commonwealth Human Rights Initiative 2005),
http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf

[31] Gawali & D. Dube, *Law and Process of Investigation by* Central Bureau of Investigation*: Issues and Perspectives*, INDIAN J. HUM. RTS. & L. 10, 51–78 (2013).

[32] B. Gawali & D. Dube, *Law and Process of Investigation by* Central Bureau of Investigation*: Issues and Perspectives*, INDIAN J. HUM. RTS. & L. 10, 51–78 (2013).

- The "*Securities and Exchange Board of India*" (SEBI) oversees the securities market to deter misconduct and safeguard investor interests under the "*Securities and Exchange Board of India Act 1992*" (SEBI Act).
- The "*Financial Information Unit-India"* (FIU-IND) collects and analyses financial information to address money laundering and terrorism funding.
- "*Central Economic Intelligence Bureau*" (CEIB): Orchestrates initiatives to combat economic crimes.
- "*Directorate General of Revenue Intelligence*" (DGRI): Addresses customs and excise violations.
- The "*Competition Commission of India"* (CCI) inhibits anti-competitive behaviour and fosters market equity under the "*Competition Act 2002*".
- "*Directorate General of Foreign Trade*" (DGFT): Oversees illicit foreign trade activities.

IV. Companies Act 2013 and Criminal Liability

The *"Joint Stock Companies Act of 1850*" was the first official attempt to regulate businesses in India. It was the beginning of corporate regulation in the country.[33] This first law was the basis for how corporate governance in India has changed over time. Over the years, the Act went through several changes to keep up with the complexities of the business world, which eventually led to the creation of the Indian Companies Act of 1956.[34] The 1956 Act aimed to provide a complete set of rules for businesses, encouraging them to follow standards, good governance, and be accountable. The *Companies Act of 1956* was changed several times to keep up with changing global practices.[35]

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[33] Philip Lipton, *The Evolution of the Joint Stock Company to 1800: An Institutional Perspective* (Monash UniversityDepartment of Business Law & Taxation Research Paper No. 19, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1413502.

[34] S. Verma & S.J. Gray, *The Development of Company Law in India: The Case of the Companies Act 1956*, CRIT. PERSP. ACCT. 20, 110–135 (2009), https://www.sciencedirect.com/science/article/pii/S1045235407000822.

[35] S. Jhunjhunwala & B. Deepa, *Corporate Governance Law in India: An Updated Comparative Analysis of the Companies Act 2013 and the Companies Act 1956*, INDIAN J. CORP. GOVERNANCE 6, 52–114 (2013), https://journals.sagepub.com/doi/abs/10.1177/0974686220130204.

However, it became clear that India needed a modern, globally consistent framework as its economy evolved and became more connected to the rest of the world.

The *Companies Act of 2013* (CA 2013) is a major change that aims to improve corporate governance, encourage openness, and boost investor trust. The CA 2013 shows that India is serious about following global standards in corporate governance, which is important for a growing economy.

Corporate criminal liability is the legal accountability of businesses for illegal conduct taken by their workers or agents while working toward the company's aims. Various theories explain how companies may be held liable for criminal activities, such as identification theory, strict responsibility, and vicarious liability. These theories are important for understanding how this liability might come about.[36] This is the first step toward holding businesses accountable.[37]

The identification hypothesis posits that a company may incur criminal culpability if an offense is committed by someone considered the "*directing mind*" of the organization, often including top management or executives. This principle has been affirmed in numerous judicial decisions, where courts have acknowledged that the conduct of essential personnel can be ascribed to the corporation, thus enabling the application of criminal liability.[38] However, the application of this doctrine raises questions regarding the extent to which corporations can be held accountable for the actions of their employees, particularly in cases where those actions deviate from corporate policies or are undertaken without the knowledge of senior management.

[36] M. Afrizal, *The Development of Corporate Regulation as a Subject of Criminal Law in Indonesia*, AKSELERASI J. ILMIAH NASINOL 4, 90 (2022), https://doi.org/10.54783/jin.v4i3.608.

[37] Nandini Agarwal, *Legal Aspects of Corporate Fraud in White Collar Crimes in India*, INDIAN J. LEGAL REV. 4, 728–739 (2024).

[38] Jennifer Arlen, *Corporate Criminal Liability: Theory and Evidence*, in Research Handbook on the Economics of Criminal Law (Keith N. Hylton & Alon Harel eds., 2012), https://doi.org/10.4337/9780857930651.00014.

The CA 2013 emphasises corporate governance and requires corporations and personnel to prevent corporate fraud and comply with laws.[39] Company directors and *Key Managerial Persons* (KMP) are the company's mind and will be liable under Indian law. Such individuals have a fiduciary responsibility and must behave diligently and in the company's best interests.

V. Important Criminal Liability Provisions

Companies cannot discount shares under Section 53 except sweat equity shares under Section 54.[40] Any violation invalidates the issue and carries a penalty of ₹1 lakh to ₹5 lakh for the firm. Defaulting officials may face imprisonment for up to six months, penalties ranging from ₹1 lakh to ₹5 lakh, or both. This clause prevents share issuance manipulation that might damage shareholder trust.

The alteration of meeting minutes constitutes an offence as stipulated in Section 118(12). Individuals found guilty may be subjected to incarceration for a duration of up to two years, alongside fines ranging from ₹25,000 to ₹1 lakh. For the sake of transparency and effective corporate governance, documents must remain accurate and unaltered.

Section 128(6) says that businesses must keep accurate records. People who break the law might go to jail for up to a year or pay fines of ₹50,000 to ₹5 lakhs for officials, or they could face both punishments. Section 129(7) says that entities must follow the rules for financial statements, or they will face the same consequences as those that don't. According to Section 134, directors and officials must approve and submit financial statements. This shows how important it is to keep financial records honest. Pretending to be a shareholder to get illegal access to corporate assets or money is a severe crime under Section 57. Those who are found guilty may spend 1 to 3 years in prison and pay fines of ₹1 lakh to ₹5 lakh.

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[39] M.M. Bergman, Z. Bergman, Y. Teschemacher, B. Arora, D. Jyoti & R. Sengupta, *Corporate Responsibility in India: Academic Perspectives on the Companies Act 2013*, SUSTAINABILITY 11, 5939 (2019), https://www.mdpi.com/2071-1050/11/21/5939.

[40] D. Kathuria & M. Bansal, *Recasting of Companies Act 1956, Companies Act 2013 & Companies Amendment Act 2015*, INT'L J. MGMT. & SOC. SCI. 4, 376–380 (2016), https://www.indianjournals.com/ijor.aspx?target=ijor:ijmss&volume=4&issue=1&article=043.

The director's interest declaration in corporate transactions is covered under Section 184(4). Non-disclosure may result in a one-year jail sentence, penalties ranging from ₹50,000 to ₹1 lakh. This rule eliminates corporate conflicts of interest and fosters openness.

Fraud-related Section 447 is one of the strictest. The fraudster faces six to 10 years in jail and penalties up to three times the amount. If the fraud affects the public interest, a three-year minimum sentence applies. This section defines fraud broadly as a deception for excessive gain.

The Companies Act (CA) 2013 comprehensively defines "officer in default" under section 2 holds directors and other compliance officers liable. This broad breadth prevents delegating obligations to avoid accountability. Vicarious liability enforcement has been difficult with this strategy.

In *Shiv Kumar Jatia v. State of NCT of Delhi*[41] (2019), the Supreme Court clarified that corporate accountability needs active engagement and criminal intent (mens rea). This ideology holds business leaders accountable. Despite strict laws, corporate fraud thrives.

VI. Corporate Criminal Liability under other Laws

In India, corporate criminal liability is regulated by many statutes, including the IPC read with the CA 2013 and laws about anti-corruption, tax evasion, money laundering, and securities infractions.

A. Banking Sector

Unlike the CA 2013, the IPC and Negotiable Instruments Act of 1881 contain criminal responsibility requirements, frequently requiring convincing proof of individual wrongdoing. In *Davinder Kaur v. State of West Bengal* (2015),[42] the Calcutta High Court supported the Negotiable Instruments Act prosecuting a cheque signature, emphasising the individual's active engagement.

Corporate fraud[43] is common. Thus, criminal culpability laws require vigorous enforcement. Mandatory ownership for influential executives might align their

[41] Shiv Kumar Jatia v. State of NCT of Delhi, AIR 2019 SC 4463.
[42] Davinder Kaur v. State of West Bengal, CRR 1341 of 2015.
[43] Companies Act, 2013, § 447, No. 18, Acts of Parliament, 2013 (India).

interests with the company's and discourage malpractices. Whistleblower protection and enhanced fraud detection may also improve internal controls.

B. **Securities Market**

The Market Regulator, SEBI, operates within the general structure of the criminal process defined by the CrPC, 1973, and does not possess an autonomous mechanism for criminal enforcement. The jurisdiction to initiate criminal actions derives from specific clauses in the Securities and Exchange Board of India Act of 1992 (SEBI Act), *the Securities Contract (Regulation) Act of 1956 (SCRA)*, and the *Depositories Act of 1996*.

According to Section 24 of the SEBI Act, SEBI is authorised to prosecute infractions of its regulations, which may result in imprisonment for up to 10 years, fines up to ₹25 crores or both penalties. Furthermore, Section 24(2) permits legal action for the non-payment of fines or non-compliance with SEBI's directives.

The Securities Laws (Amendment) Act 2014 established special courts to accelerate trials under these laws.[44] The Central Government designates these courts in cooperation with High Courts, according to the CrPC processes.

The SEBI Act and its Rules govern fraudulent conduct inside securities markets. This includes manipulative or misleading tactics used during the issue, acquisition, or disposition of securities listed or intended to be listed on recognised stock exchanges. Fraud involves deceptive actions, misrepresentation, or hiding significant facts, regardless of the pursuit of illicit benefit.[45] The SEBI Act prohibits insider trading, forbidding insiders from trading securities or disclosing "*unpublished price-sensitive information"* (UPSI)[46]. Penalties go from penalties of up to $5 million or three times the

[44] H. Kaur, *Securities Market in India: Regulation of Undesirable Practices by the Securities and Exchange Board of India*, in Regulations and Applications of Ethics in Business Practice 273–293 (2018), https://link.springer.com/chapter/10.1007/978-981-10-8062-3_15.

[45] Aadi Mandani & Tanushree Jain, *A Study of Unfair Trade Practice: An Indian Experience*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023). https://heinonline.org/HOL/P?h=hein.journals/injlolw10&i=323.

[46] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, reg. 2(g) (India).

insider trading gains. The Prohibition of Insider Trading Regulations, 2015 by SEBI widen the definition of insiders.[47]

C. **Cyber Crimes**

The Information Tehnology Act, 2000, is India's primary legislation addressing cybercrime, which includes cyberterrorism, hacking, phishing, selling personal information, and data manipulation.[48] Initially, the Act aimed to boost e-commerce by legally enforcing electronic agreements. However in 2008, revisions were introduced to meet the increasing number of cyber dangers, broadening the Act to include measures on data protection, corporate accountability, and cybercrime.[49]

The Act defines several cyber offences, including identity theft, cyber-terrorism, and privacy infractions, and sets dispute resolution methods. The amendments made in 2008 impose accountability on companies that neglect to implement adequate security measures, resulting in harm or benefit to individuals, thereby reinforcing the obligation of corporations to safeguard personal data.[50]

The provisions of Section 43 of the Act delineate infractions as instances of system interruption and access denial, mandating that offenders provide compensation to the victims affected.[51]

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[47] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, reg. 2(n) (India).

[48] S.R. Dokku & D. Kandula, *A Study on Issues and Challenges of Information Technology Act 2000 in India*, ANNALS JUST. & HUMANITY 1, 39–49 (2021), https://goodwoodpub.com/index.php/ajh/article/view/1389.

[49] Sumanjeet, *The State of E-Commerce Laws in India: A Review of the Information Technology Act*, INT'L J. L. & MGMT. 52, 265–282 (2010), https://www.emerald.com/insight/content/doi/10.1108/17542431011059322/full/html.

[50] Shiv Shankar Singh, Privacy and Data Protection in India: A Critical Assessment, 53 J. Indian L. Inst. 663, 663–77 (2011), available at http://www.jstor.org/stable/45148583 (last visited Nov. 21, 2024).

[51] Shiv Shankar Singh, *Privacy and Data Protection in India: A Critical Assessment*, J. INDIAN L. INST. 53, 663–677 (2011), http://www.jstor.org/stable/45148583.

The Cyber Appellate Tribunal, established under Section 46, hears initial appeals, while the High Court oversees higher appeals.[52] Section 66 addresses further cybercrimes, such as cyber-terrorism and identity theft, and imposes sanctions.

D. **Corporate Corruption**

Bribery and corruption among public officials are dealt with under the 1988 Prevention of Corruption Act.[53] It makes several crimes committed by public officials and others illegal, such as:

(i) receiving anything of value from parties engaged in proceedings or business with the official,
(ii) using corrupt or unlawful methods to influence the official,
(iii) accepting something of value to influence the official personally and
(iv) receiving valuable items without consideration.

The Prevention of Corruption Act of 2018 does not hold businesses criminally liable, which is ironic.[54]

In addition to punishing the commission of the violation, the Act makes it a crime to aid and abet such an offence. Other laws, such as the PMLA and the *Benami Transactions (Prohibition) Act*, also address bribery and corruption-related offences.

E. **Competition**

The *Competition Act 2002* controls firm mergers, abuse of dominance, and anti-competitive agreements, among other market activities. Parties engaged in mergers, acquisitions, or transactions lowering market competition in India may be subject to penalties under its penalty clauses. However, criminal responsibility only applies if an Act's stated directive is violated.

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[52] Q.N. Alam & K. Shamim, *Information Technology Act & Cybercrimes: A Perspective*, VIDHIGYA J. LEGAL AWARENESS 5, 90–97 (2010).
[53] P.S. Muhar, *Corruption in the Public Services in India*, INDIAN J. POL. SCI. 26, 1–18 (1965), http://www.jstor.org/stable/41854054.
[54] Aneira Pereira, *Anti-Corruption Legislation in India: Effective or Ineffective*? 2 INDIAN J.L. & LEGAL RSCH. 2, 1(2021). https://heinonline.org/HOL/P?h=hein.journals/injlolw2&i=3060.

Typical remedies for infringement of competition laws include fines and cease-and-desist directives. Ignoring these directives or failing to pay fines might result in fines of up to Rs. 250,000,000 or three-year imprisonment.[55]

Citing regular judicial challenges to CCI decisions, the Competition Law Review Committee expressed worries about the poor recovery rate of fines in its 2019 report to the MCA. This has spurred debates about the efficacy of present legislation and the possible necessity of criminal penalties.

F. **Environmental Crimes**

Prominent legislation governing corporate accountability for environmental infractions in India includes;

- The *Water (Prevention and Control of Pollution) Act of 1974* (Water Act)
- the *Air (Prevention and Control of Pollution) Act of 1981* (Air Act), and
- The *Environment (Protection) Act of 1986* (Env Act).

Under the provisions of the Water Act, entities that discharge hazardous pollutants into aquatic environments are subject to imprisonment terms spanning from 18 months to six years, alongside potential financial penalties.[56] Individuals who repeatedly commit offences face the possibility of more severe penalties, which may include incarceration for a duration of up to seven years.[57] The Air Act says that those who break the rules of air pollution should get the same punishments, which may include jail time and fines.[58]

It is also important to stress that breaking the Hazardous Waste (Management and Handling) Rules, 1989, which were set up by this Act, may lead to jail time of up to five years. For repeat offenders, the penalty can be as long as seven years.

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[55] Competition Act, 2002, § 42, No. 12, Acts of Parliament, 2002 (India).
[56] Water (Prevention and control of Pollution) Act, 1974, s. 41, 42, 43, 44, 45, 45A No. 6 Act of 1974, Parliament 1974 (India).
[57] *Id.*
[58] Air (Prevention and Control of Pollution) Act, 1981, §§ 37–40, No. 14, Acts of Parliament, 1981 (India).

G. **Economic Offences**

The Indian Parliament has passed a number of laws that are meant to make things more open and fight business crimes. The *Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015*, and *the Companies (Amendment) Act*, 2015, are two important laws that tried to improve the regulatory structure.

The government has also just started working on new rules to help stop financial crimes. As a result, the *Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Act of 2019* was passed to deal with unlawful deposit schemes, such as Ponzi schemes, and to make sure that depositors are safe. The law says that anybody who breaks it more than once might face jail time of up to 10 years and fines of up to Rs. 50 crores.[59]

Further, *the Fugitive Economic Offenders Act of 2018* aims to deter individuals from fleeing the country prior to undergoing criminal prosecution. The legislation stipulates the confiscation of assets within India and abroad, and it bars individuals designated as fugitives from initiating civil claims. These proceedings are conducted by specialized courts created under the PMLA of 2002.

H. **Money Laundering**

The Prevention of Money Laundering Act, 2002 governs money laundering offences in India, revised in 2009 and 2012. The Act specifies offences and sets reporting duties for banks and financial organisations, such as record keeping and secrecy. Investigations may only be launched by recognised agencies, such as the *Directorate of Enforcement* (DOE), and international collaboration is facilitated by agreements with other governments.

Notable examples include the Kingfisher Airlines incident, in which Vijay Mallya utilised corporate structures to avoid accountability, and the Satyam Scam[60], in which corporate manipulation was employed to defraud the public.

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59 Banning of Unregulated Deposit Schemes Act, 2019, § 24, No. 21, Acts of Parliament, 2019 (India).

60 Dr. Madan Lal Bhasin, *Revisiting the Satyam Accounting Scam: A Case Study*, 5 IJMSSR 31, 32, (2016)

Another case, *Chanda Deepak Kochhar v. ICICI Bank*[61], concerned money laundering via illegal loan transfers engineered by Chanda Kochhar and her husband. The pair benefitted from their position, while others, including Videocon's chairman, were detained and held responsible by the PMLA.

I. Labour Laws

Earlier, the fundamental principle of criminal law was evolved on the underlying principle of "no mens rea means no crime". Such principles have eroded with time, and in the modern era, certain statutory offences rightly punish corporations. One such example of statutory offences imposing criminal liability is the Labour Laws. In the Factories Act, proving basic tenets of criminal law is not essential. Various legislations have incorporated a chapter under the headline of "Offences by Companies", which vicariously holds companies liable for nefarious action against employees. No doubt, the jurisprudence of holding corporations varies from enactment to enactment, but the underlying principle remains the same. In the case of *Greaves v. State of West Bengal*[62], the Supreme Court held that *"any Director or person-in-charge appointed through the proper Board resolution must be held accountable under labour legislation. However, to prosecute the Director, it must be shown to the court that he was the person in charge during the commission of the crime and offences*".

IX. Challenges to Corporate Liability and Developing Political Economy

Corporate criminal liability has become a trend in the judicial world across the globe. Corporations that have become influential stakeholders in the market and a country's economy must be deterred from committing unlawful acts and, therefore, have to be made liable for the crimes committed under their façade. Criminal liabilities were considered the most effective measure of control by the governments, and it was assumed to have a deterrent effect on the corporations to stop them from committing the offence. However, there are other ways of creating deterrence and imposing liabilities, such as corporate civil liability, civil enforcement through government agencies, and civil

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[61]Chanda Deepak Kochhar v. ICICI Bank, 2020 SCC OnLine Bom 374.
[62] Greaves v. State of West Bengal, (1996) 87 Comp Cas 14 (CAL).

enforcement through private rights of action.[63] The main idea behind imposing such liability was to deter others from wrongdoing, but what happens in real life is not necessarily the same.

Corporations are mainly profit-making bodies, and profit is the sole incentive for their functioning. To make profits, companies intentionally cross the boundaries and limits imposed by laws, and even if there are pre-decided cases to deter them, they find new ways of going around the law and creating corruption in the system. Corporations work for profits; therefore, economic sanctions can be a better deterrent.

Even if criminal sanctions deter some corporate offences, without a standard or framework of dos and don'ts, criminal sanctions will not be able to reduce corporate crimes. Corporate criminal liability has also become a tool in the hands of the Government to blackmail and control innocent corporations.

Enforcement costs are costs that the corporations have to bear in order to identify and punish the wrongdoer. Corporate criminal liability works by increasing the enforcement cost and putting pressure on corporations to identify wrongdoers. An increase in enforcement costs deters corporations from committing legal wrongs, but sometimes, it works the opposite: it incentivises more sophisticated crimes. The costs of crime and the amount of loss created due to crimes have increased over the years due to the ineffectiveness of corporate criminal liability as a mechanism to curb corporate crimes.[64]

Another problem with corporate criminal liability is that it attaches a social stigma to the company's name. Criminal law increases the time and cost attached to the legal issues, but it does the same as could have been done by corporate civil liability and managerial criminal liability. Labelling something as criminal means that the message being sent out is wrong, putting corporate culture in a debacle. Also, calling economic crimes like such can reduce the impact that the word criminal connotes and undermine other crimes.[65] Strict

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[63] John T. Byam, *The Economic Inefficiency of Corporate Criminal Liability*, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 73, 582–603 (1973).

[64] Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 J. LEGAL STUD. 833, 833–867 (1994).

[65] *Supra* note 3.

laws that impose criminal liability on corporations also hinder international business between companies and can restrict growth.

Historically, India's regulatory system has been hampered by what is known as "regulatory cholesterol," many regulations and compliance that impede entrepreneurial activity and job development.[66] There are over 1000 laws controlling business in India, with over 65,000 compliance requirements, most of which include punishment provisions. The intricate nature of this regulatory framework has led to ambiguity and, on occasion, stifled corporate innovation.

An obvious issue is the reliance on incarceration as a method of regulation. A significant portion of these statutes includes criminal provisions, with some addressing minor offences or administrative errors. The existing regulations have shown a hesitance to adapt to the contemporary economic landscape, where automation and digital technology are increasingly prevalent. Sanctions, including imprisonment for noncompliance with routine documentation or procedural violations, frequently illustrate the gravity of offences like sedition, which may be excessively harsh in relation to the actions undertaken.[67]

India made reforms to its laws to deal with these issues, mostly by changing the CA 2013 and making certain regulatory violations no longer crimes. Decriminalization is either changing certain crimes into civil wrongs or getting rid of laws that aren't needed.[68] This change is meant to make things easier and safer for businesses in India by lowering the number of rules they have to follow. The focus is on simplifying legal systems.

The move toward decriminalization shows that more people are realizing that although corporations need to follow the law, making too many things illegal

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[66] Y. V. Reddy, *Financial Sector Regulation in India*, 45 ECON. & POL. WKLY. 40, 40–50 (2010), http://www.jstor.org/stable/25664304.

[67] P. Kapoor & P. Kapoor, *On the Path of Decriminalising the Misdemeanours: Strides Towards Ease of Doing Business — The Underlying Principles and Arguments*, 57 MGMT. ACCOUNTANT J. 48, 48–51 (2022), https://nirdprojms.in/index.php/maj/article/view/168369/115463.

[68] G.R. Srikkanth & K.I. Pavan Kumar, *Critical Review of Offences Under Legal Metrology Act 2009: With Special Reference to Proposed Decriminalisation of the Offences*, 36 MAPAN 903, 903–07 (2021), https://link.springer.com/article/10.1007/s12647-021-00491-9

might slow down growth and new ideas.[69] Progressing forward, the regulatory framework governing corporations in India requires further transformation to achieve its ambition of emerging as a global commercial leader. The political economy surrounding the new corporate laws in India increasingly highlights the importance of company transparency, corporate governance, financial accountability, and the enhancement of regulatory practices.

Alongside the recent changes in corporate legislation, a significant milestone has been realised in India's legal landscape with the introduction of three new codes: BNS, BNSS, and BSA. These laws superseded the criminal laws established during the colonial period. Although all of these changes aim to facilitate modernisation, they concurrently impose stricter regulations, potentially complicating matters for businesses seeking to ease the burden of legal obligations. These rules make directors, executives, and managers more responsible, which helps stop fraud and other bad behavior. These restrictions will affect everyone involved, including businesses, executives, and workers. Companies are under a lot of pressure to quickly answer complicated questions and take part in legal procedures by conducting extensive internal investigations. As economic crimes and trials in absentia become more common, organizations need to change to fit these new frameworks.

X. Criminal Law Reforms affecting Corporate Liability

The Indian government has recently worked to make small violations of the Companies Act legal. This would make it easier for businesses to develop while being held accountable. At the same time, stricter rules are being put in place to hold senior executives responsible and stop dishonest and illegal behavior. This plan encourages economic growth while also promoting openness and good business practices. Good governance is necessary to achieve equitable growth and make sure that people have better services in areas like healthcare, education, and social security. To achieve sustainable development objectives in India, there has to be strong cooperation between the legislative, executive, and judicial departments. This would help democracy and good government.

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[69] T.H. Vishnu, *The Curious Case of Criminalizable Corporate Harms in India: The 1991 Economic Reforms and the Neoliberal Turn*, 7 GNLU J.L. & Econ. 35, 35–60 (2024), http://gjle.in/wp-content/uploads/2025/01/Vol-7-Issue-2-2.pdf#page=43

The Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act 1872 have been replaced by three new laws: the BNS 2023, the BNSS 2023, and the BAS 2023.[70] These new laws went into effect on July 1, 2024, and they are meant to update and replace legal systems that have been in existence since the mid-1800s. The Acts stress the use of technology, the better use of forensic evidence, the setting of fixed deadlines for investigations, and the speeding up of trials by using video conferencing for hearings, among other changes.

- The Bharatiya Nyay Sanhita, 2023, makes a number of important changes to the law that will have a direct effect on enterprises, especially those in the corporate sector. It keeps most IPC crimes the same, but it changes the way the punishments are set up. For businesses, it is very important that the crimes of cheating (Section 318) and breaking trust (Section 316) be combined. In the world of business conflicts, these crimes now have more precise definitions and updated punishments. This means that firms need to be extra careful to avoid legal problems.
- The creation of Section 111 is a major step forward since it defines organized crime to include economic crimes like fraud, counterfeiting, and cyber crimes. This broad definition has big effects on corporations since directors might be held criminally responsible for their company's involvement in illicit actions. The penalties for these crimes range widely, from death to life in prison. This means that businesses need to have strict compliance and risk management plans in place to avoid breaking the law.
- The Bharatiya Nagarik Suralsha Sanhita, 2023, will make it easier to defend the rights of victims, notably children and women, during criminal investigations. These steps also affect the corporate world. Section 193(2) says that police investigations into circumstances that may include corporations in some manner must be finished within two months. This is to speed up the end of these problems. However, the

[70] K. Bansal, *Rebooting Criminal Justice Systems in India*, 15 J. MGMT. & PUB. POL'Y 4, 4–10 (2024), http://jmpp.in/wp-content/uploads/2024/07/Journal-of-Management-Public-Policy-Vol-.-15-No.-4-June-2024.pdf.

effectiveness of these schedules will depend on how well the courts and police carry them out.

- Section 356 introduces trial-in-absentia allows judicial proceedings to continue even when the accused is not present, but only under particular circumstances. This might have an impact on businesses, especially those that have to deal with criminal charges in more than one area. Because of this, cases will be settled faster, and those who are accused will have less time to drag out the process.
- Zero FIR (Section 173) makes the complaint process even easier by letting victims go to any police station, no matter where it is, to file a report. This law might help companies that have been victims of cybercrime or fraud if it makes it simpler to start investigations.
- Adding technology-based methods and forensic evidence (Sections 530, 176) makes investigations stronger and evidence processing more reliable. This might help businesses defend themselves or make their arguments stronger.
- The Bharatiya Sakshya Adhiniyam, 2023 puts a lot of stress on using electronic and digital evidence in today's digital business world. The BSA has made it official that "documents" and "evidence" now include electronic records like emails, chats, and digital signatures. This upgrade makes it easier for businesses to utilize digital interactions and recordings as proof in cybercrimes, contract disputes, intellectual property issues, and other legal matters.
- The need under Section 63(4) for experts to certify digital evidence adds another layer of verification, which might affect how businesses present digital evidence in court. As more businesses move to digital transactions, these changes to the law show how important it is to have good digital evidence management systems.

The basic ideas and rules that govern crime and its consequences are firmly rooted in established systems. We can probably expect that the first step of putting these new rules into effect will cause a lot of confusion, which will need to be cleared up by either the courts or the legislature. The main goal is to improve and strengthen India's criminal justice system, but the problems that come up in the early stages of these changes should not be ignored.

Overall, these law updates present both challenges and opportunities for businesses. Companies must be proactive in understanding and adapting to these changes, particularly in corporate governance, criminal liability, evidence management, and the use of technology in legal proceedings.

Recently implemented changes to India's criminal laws have essential consequences for e-commerce and digital companies.

(i) Data and Self-Incrimination: The state's growing access to digital data raises serious self-incrimination and privacy rights issues. The practice of sweeping confiscation of electronic devices without content-specific rules violates constitutional protections. As a result, digital organisations must create comprehensive methods for storing and managing user and employee data to comply with the new regulatory frameworks and reduce legal liabilities.

(ii) Cyber Security and Data Protection: As governments gain more access to private data, digital enterprises must take on more data protection duties. An impartial committee or regulatory body should oversee law enforcement's jurisdiction over electronic records and devices. Furthermore, the applicability of exemptions under the Digital Personal Data Protection Act of 2023 to law enforcement organisations needs further clarity. Businesses must establish secure, standardised data-gathering processes and invest in comprehensive digital infrastructure to protect sensitive data, especially in light of the Criminal Procedure (Identification) Act of 2022.

(iii) Expanded Police Powers: The new laws provide law enforcement authorities with significant discretionary powers, including the authority to arrest without a warrant and seize property. To avoid abuse of power, corporations should fight for explicit procedural norms and accountability measures for law enforcement organisations.

Eventually, these legislative revisions required proactive actions by digital enterprises to maintain compliance with growing privacy, data security, and law enforcement regulations.

Corporate Law Reforms

The primary aim of penalising individuals who harm others is to deter wrongdoing and protect society. In his work On Liberty, John Stuart Mill argues that individuals should be free to act unless their actions harm others, and the Government may intervene to prevent harm.[71]

The need to reduce procedural criminalisation has become more apparent over time. The global business landscape is increasingly converging between developed and developing economies. The World Bank's 2020 report highlighted a significant disparity in the ease of starting a business between high- and low-income nations.[72] Following the economic liberalisation in India in 1991, there has been a notable enhancement in the ease of conducting business. Nonetheless, advancing further necessitates the decriminalisation of certain practices, which is an essential approach for future development.[73] It is crucial that you clear up any regulatory concerns in order to earn investor trust and bring in foreign direct investment. This is particularly true now as many Indian entrepreneurs are looking for business prospects abroad.[74] India's 63rd place on the Ease of Doing Business Index also shows how important it is to make changes that would help it play a stronger role in the global economy.[75]

The CA 2013 superseded the previous legislation to conform to international benchmarks and enhance the operational efficiency of Indian enterprises, providing increased independence and minimising state intervention. Although there have been advancements, the position of India in the ease of doing business index continues to raise concerns, as the nation was ranked 63rd in 2019.[76] Penal provisions in the Act directly impact a company's market

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[71] JOHN STUART MILL, ON LIBERTY 16 (Longmans, Green and Co 1859).

[72] The World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies*, WORLD BANK (2020), www.worldbank.org.

[73] Bharat Vasani, Decriminalizing our Company Law – Has the Pendulum Moved Too Far?, CYRIL AMARCHAND BLOG (Dec. 05, 2019), https://corporate.cyrilamarchandblogs.com/2019/12/decriminalizing-company-law/.

[74] Zaid Sofi, *Decriminalizatioan of Companies Act, 2013: Another Amendment Expected*, TAXGURU (2020), https://taxguru.in/company-law/decriminalization-companies-act-2013-amendment-expected.html.

[75] Arun Kumar, *Decriminalisation of Company Law: A Welcome Change,* IND. CORP. L. BLOG (Jan. 07, 2020), https://indiacorplaw.in/2020/01/decriminalisation-company-law-welcome-change.html.

[76] Yogita Sharma, *India Jumps to 63rd Position in World Bank's Doing Business 2020 Report*, THE ECONOMIC TIMES (Oct. 19,

reputation, as seen when IndusInd Bank's stock dropped due to its CEO's retirement.[77] A balance between ease of doing business and corporate governance is crucial for effective market control. The Act distinguishes offences into civil liabilities, compoundable, and non-compoundable categories to protect the public interest. Nonetheless, some offences necessitate more rigorous enforcement, whereas others ought to be addressed through civil penalties.[78]

With the passage of the Companies (Amendment) Act 2019 and the Companies (Amendment) Act 2020, the Ministry of Corporate Affairs (MCA) decriminalised several offences under the CA 2013 in the hopes of attracting more foreign direct investment and encouraging Indian companies to expand in India. Decriminalisation would dispel the myth that India's regulatory environment is inconsistent, unpredictable, and burdensome. The already terrible Indian economy was made much worse by the coronavirus outbreak. Decriminalising certain business misdeeds was seen to be one of the most significant ways to deal with the current economic downturn and spur economic expansion. The need to decriminalise corporate misdeeds to facilitate corporate governance more easily is covered in this article. The Companies (Amendment) Acts of 2019 and 2020 decriminalised some corporate violations by dividing them into categories A–H and switching them from a compounding procedure to an in-house adjudication mechanism (IAM). For instance, Category A focuses on breaking authority directives and entails penalties ranging from ₹20,000 to ₹3 lakh. Depending on the kind of infraction, the penalties for categories B and C, which focus on failing to maintain registers,

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2019**,** https://economictimes.indiatimes.com/news/economy/indicators/india-jumps-to-63rd-position-in-world-banks-doing-business-2020-report/articleshow/71731589.cms.

[77] ET Markets, *IndusInd Bank Tumbles 10% as Romesh Sobti Retires as MD & CEO*, THE ECONOMIC TIMES (Mar. 24, 2020)**,** https://economictimes.indiatimes.com/markets/stocks/news/indusind-bank-tumbles-10-as-romesh-sobti-retires-as-md-ceo/articleshow/74786180.cms.

[78] Manisha Kumar & Kunal Gopal, *Decriminalising Companies Act Offences - Striking a Balance Between Ease of Doing Business and Corporate Governance*, MONDAQ (Sept. 26, 2019), https://www.mondaq.com/india/corporate-commercial-law/848750/decriminalising-companies-act-offences-striking-a-balance-between-ease-of-doing-business-and-corporate-governance.

vary from ₹50,000 to ₹5 lakh. Other categories that deal with regulatory defaults, firm governance, and liquidation processes have separate penalties and fines. Other clauses, including those in 8(11), 40(5), and others, also eliminated incarceration and replaced it with fines to link penalties to corporate actions rather than criminal intent.

A significant alteration for companies was the modification of Corporate Social Responsibility (CSR) in the CA 2013. Recent changes have improved this clause by adding penalties for not complying with Section 135, which requires CSR expenditure. Additionally, according to the Amendment Act, businesses can carry over any surplus in CSR spending to the next fiscal year. In addition, a CSR Committee is no longer required by law for companies with CSR commitments below INR 50 Lakhs; instead, the Board is now empowered to manage CSR operations. These alterations are an attempt to strengthen the CSR framework, hopefully leading to more corporate responsibility and, in turn, aiding in government social welfare initiatives.

Implementing penalty reductions in many sectors also reduced the burden on companies and officers in default (OID). Some criminal provisions, such as those relating to changes in shareholder rights and corporation dissolution, were omitted; NCLT now handles non-compliance cases. A new framework was created to manage issues like business dissolution and non-cooperation during liquidation. Decriminalisation has had several positive effects, including reduced court expenses and congruence with the Government's inclusive development strategy.

Financial Law Reforms

Using its authority under the SEBI Act, it enacted several measures last year to mitigate unlawful stock market activities. These measures focus on influencers, brokers, and other intermediaries involved in unethical or illegal conduct to safeguard investors and preserve market integrity. SEBI aims to enhance openness, accountability, and compliance with regulatory requirements in the Indian stock market while protecting the interests of all stakeholders.

The Government and SEBI are also planning to redraft the securities laws to make them conform to the changing political economy. The objective of the "*Unified Securities Markets Code"* (SMC), which is now being developed, is to decriminalise important clauses in important financial sector legislation.[79] The code seeks to replace four pivotal statutes: the *Government Securities Act, the Depositories Act, the* SCRA, and the *SEBI Act 1992*. It is expected that seven provisions, encompassing those from the SEBI Act, Depositories Act, and SCRA, will undergo decriminalisation.[80] Furthermore, by streamlining the components of these regulations, the SMC aims to facilitate compliance for enterprises. The SMC, introduced by Finance Minister Nirmala Sitharaman in the *Union Budget for 2021–2022*, aims to foster a more conducive regulatory landscape for investment by removing minor criminal penalties and focusing on significant market violations. This may attract both domestic and international enterprises to invest in and expand within India.

Digital Business Reforms

The *Digital Personal Data Protection Act 2023* (DPDP Act) represents a notable progression in the legal structure governing the handling of digital personal data, applicable both within India and in relation to products or services offered to data principals located in India.[81] The law discusses "*significant data fiduciaries*" (SDF). This classification is based on the amount and sensitivity of the personal data being processed and the dangers that come with it. SDFs must meet certain standards, such as hiring a "*Data Protection Officer*" (DPO) in India, setting up an independent data auditor, and completing a "*Data Protection Impact Assessment*" (DPIA).

The DPDP Act gives people more authority by creating a complete set of rights for data principals, which gives them more control over their personal data. Still, it's not clear when the grievance redressal processes will be put into place. One of the Act's most important features is its punishment mechanism, which says that anybody who breaks the law may be fined up to INR 250 crore.

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[79] PIB, https://pib.gov.in/Pressreleaseshare.aspx?PRID=1693901 (last visited Nov. 21, 2024).

[80] MONEYCONTROL, https://www.moneycontrol.com/news/business/economy/govt-set-to-roll-out-unified-securities-markets-code-bill-at-drafting-stage-12839956.html (last visited Nov. 21, 2024).

[81] K. Sundara & N. Narendran, *The Digital Personal Data Protection Act, 2023: Analysing India's Dynamic Approach to Data Protection*, 24 COMPUT. L. REV. INT'L 129, 129–141 (2023).

Concerns about protecting children's data, not telling the Data Protection Board about impacted data principles when personal data is breached, and fines for breaking data principle rights are all included.

It is vital to point out that the Act does not include offline, non-automated, or personal data that has been around for more than a hundred years. Also, the deadline for reporting a violation has been abolished, and the maximum fine has been raised. The Act has a wide range of effects on many areas of an organization, such as IT, legal, human resources, marketing, procurement, finance, and information security. In light of the DPDP Act, these industries must establish comprehensive data privacy protocols, indicative of an increasing trend towards imposing criminal liability on corporations for failures in data protection. The development shows how businesses are becoming more responsible for making sure they follow data privacy laws. It also shows how data governance affects both the legal and operational sides of a modern company.

While the DPDP Act, 2023, does not impose specific criminal penalties for privacy violations, Section 72A of the "*Information Technology Act, 2000*" (IT Act) serves as an appropriate legal mechanism for addressing privacy infringements. Section 72A says that if someone discloses personal data without permission and breaks a legitimate contract, they might face fines of up to INR 5 lakh, jail time of up to three years, or both. This rule covers everyone who shares personal information without permission or with the goal of causing unfair damage or getting an unfair advantage, including middlemen.

Socio-economic Reforms

The Indian government recently approved the *Jan Vishwas (Amendment of Provisions) Act, 2023*. This law changed the country's rules in a big way by making tiny violations not crimes and making punishments more fair across 42 Central Acts in 19 Ministries. To cut down on the necessity for judicial action, important laws, including the *Environment Protection Act (1986), the Pharmacy Act (1948*), and *the Copyright Act (1957)* have been changed so that the penalties fit the seriousness of the violation.[82] For small crimes, like those

[82] A. Bansal, *Jan Vishwas (Amendment of Provisions) Act Comes into Force Today*, SPICYIP (2024), https://pure.jgu.edu.in/id/eprint/8225/.

covered by the *Indian Post Office Act*, there are now fines or punishments instead of prison time. The goal of this method is to make the criminal justice system less busy and make it easier for businesses to follow the rules. The administration is also thinking about making other changes, such as the *Consumer Protection Act of 2019* and the *Maternity Benefit Act of 1961*, to speed up enforcement.

The Jan Vishwas Act's main aims are to make certain behaviors legal, make penalties more reasonable, and make it easier for people to do business by streamlining administrative processes. These changes are meant to lessen legal risks, cut compliance costs, and make the business climate more welcoming, especially for startups and "*Small and medium-Entreprises"* (SMEs). The Act encourages firms to concentrate on innovation instead of dealing with complicated rules by changing criminal sanctions to civil fines. Additionally, options for Alternative Dispute Resolution (ADR), which provide a faster and more effective way to settle compliance issues outside of court, are also pushed.

The Act makes it simpler for companies to run by making compliance easier, lowering penalties, and lowering the chance of going to jail for lesser crimes. SMEs have more money to spend on expansion and new ideas since they don't have to follow as many rules. The Jan Vishwas Act is meant to make India more competitive in the global market, speed up regulatory procedures, and create a vibrant business climate by making governance more based on trust.

In May 2023, the Indian Government's Ministry of Finance expanded the PMLA's use to help investigating agencies better identify suspicious shell company activities and halt money laundering. This reform is part of a wider trend of tighter laws in response to the Adani group's alleged misdeeds.

Further, in the May 3, 2023, notification (S.O. 2036(E)), professionals such as chartered accountants, company secretaries, and cost accountants were identified as "reporting entities" and brought within the PMLA's jurisdiction.[83] They are required to maintain records, do due diligence on customers, and perform other tasks under the PMLA. By the May 9, 2023, notification (S.O. 2135(E)), these responsibilities were further broadened to include a variety of

[83] JNEELA, https://jneela.com/notification-under-pmla-dated-may-3-2023/ (last visited Nov. 21, 2024).

commercial activities, including company formation, trustee responsibilities, and client business address maintenance. Despite the fact that these changes are meant to stop money laundering, the ambiguity of terms like "formation agent" and "arranging for another person to act as" poses potential concerns.[84] Clarifications are necessary to avoid misconceptions and ensure that small-scale consultants are not overburdened by compliance obligations.

XI. Conclusion

As a result of globalisation's relaxation of foreign policies, more money is flowing in from other countries, and investors all around the world are reaping the benefits. Indian company law has changed its regulations to help businesses adapt to the changing global market. There is now a more favourable compliance climate that promotes company development.

The way that corporate criminal responsibility is determined has changed a lot throughout the years. As multinational firms flourish, we need to establish effective national and international systems to keep an eye on corporate conduct. Following the rules that govern how businesses work is important for good governance and compliance. These rules make the firm more transparent and responsible by holding people accountable and keeping the organization's integrity.

Changes to corporate liability have made it easier for firms to run and have encouraged new enterprises to start up. This changing set of rules is good for reputable businesses that are willing to fill in compliance gaps. Businesses in India may be able to run more smoothly if they can meet compliance standards with less work, which would make the business environment more stable and positive. These policies make corporate leaders more responsible for their conduct by holding them criminally responsible for what they do. The new crime of failure to prevent fraud greatly expands corporate criminal responsibility by making firms responsible for not taking the right steps to protect themselves against fraud.

[84] TAXMANN, https://www.taxmann.com/research/fema-banking-insurance/top-story/222330000000022304/govt-widens-pmlas-scope-brings-directors-nominee-shareholders-and-formation-agents-under-its-ambit-news?msockid=3b5456e195ea62652ec4478b94586385 (last visited Nov. 21, 2024).