



**INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW**

*An International Open Access Double Blind Peer Reviewed, Referred Journal*

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Volume 4 | Issue 4 | 2025

Art. 16

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**Recommended Citation**

Vishal and Dr. Usha Rani, *Corporate Criminal Liability and White-Collar Crime in India: A Doctrinal and Institutional Analysis*, 4 IJHRLR 269-276 (2025).  
Available at [www.humanrightlawreview.in/archives/](http://www.humanrightlawreview.in/archives/).

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# Corporate Criminal Liability and White-Collar Crime in India: A Doctrinal and Institutional Analysis

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**Manuscript Received**  
13 July 2025

**Manuscript Accepted**  
16 July 2025

**Manuscript Published**  
21 July 2025

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## ABSTRACT

*India's legal and economic frameworks are increasingly confronted with the growing threat of white-collar crime. As corporations rise in power and influence, the range of sophisticated, financially driven non-violent offenses has widened. Despite recognizing the concept of corporate criminal liability (CCL), India's legal response remains inconsistent and underdeveloped. This study evaluates the foundational legal theories and legislative tools addressing CCL within the context of white-collar crime. It investigates institutional constraints, judicial interpretations, and international models, ultimately advocating for a restructured legal regime that effectively incorporates intent attribution, rational penalties, corporate compliance incentives, and streamlined procedures. Such a reform would enhance transparency, deter misconduct, and establish accountability across India's corporate sector.*

## KEYWORDS

*White collar crime, business, criminal liability, criminal act.*

## 1. INTRODUCTION

The post-1991 economic reforms in India ushered in a period of intense corporate growth, fueled by liberalization, global investment, and technological advancements. While this transformation spurred innovation and economic expansion, it also facilitated a surge in white-collar offenses. These crimes, often committed under the guise of lawful business operations,

involve manipulation, fraud, and exploitation of trust.

India's legal architecture, historically oriented toward punishing individuals, has struggled to effectively deal with corporate offenders. The artificial nature of corporate entities complicates the application of traditional criminal law concepts such as *mens rea* and *actus reus*. Although progress has been made through legislation and judicial intervention, the enforcement landscape remains disjointed. High-profile corporate scandals—including the Satyam fraud, IL&FS default, and NSE co-location controversy—highlight the urgent need for a consistent and comprehensive framework to hold companies criminally accountable[1].

## **2. WHITE-COLLAR CRIME AND CORPORATE CRIMINAL RESPONSIBILITY**

### **2.1 Nature and Traits of White-Collar Crime**

Sociologist Edwin Sutherland coined the term "white-collar crime" to describe illicit acts committed by individuals in positions of social or professional authority[2]. These offenses diverge from traditional crimes in that they often rely on deceit, manipulation, and the abuse of power within institutions, and rarely involve violence.

Typical features of white-collar crime include access to sensitive information, abuse of fiduciary responsibility, widespread financial harm, and systemic implications for public trust and economic stability. The covert and complex nature of these crimes makes them difficult to detect and prosecute, often necessitating specialized regulatory and forensic expertise.

### **2.2 Challenges in Attributing Criminal Liability to Corporations**

Corporate criminal liability permits the legal system to hold companies accountable for unlawful acts carried out by their representatives. However, assigning guilt to a corporate body presents conceptual dilemmas. Unlike natural persons, corporations lack consciousness and physical capacity, making it difficult to determine culpability based on traditional criteria[3].

The foremost challenge lies in attributing criminal intent (*mens rea*) to a corporate structure. Additionally, when decisions emerge from collective processes rather than a single individual, determining the guilty act (*actus reus*) becomes ambiguous. These obstacles call for evolving frameworks that adapt classic criminal principles to corporate contexts[4]. Despite such difficulties, the

prevailing consensus across jurisdictions, including India, supports the inclusion of corporate entities within the criminal law ambit[5].

### 3. LEGISLATIVE PROVISIONS IN THE INDIAN CONTEXT

#### 3.1 *Bharatiya Nyaya Sanhita, 2023*

The Bharatiya Nyaya Sanhita (BNS), introduced in 2023 as a successor to the Indian Penal Code, incorporates reforms but lacks a standalone doctrine for corporate criminal liability. Section 70 of the BNS, however, authorizes the prosecution of corporate bodies and allows for monetary penalties in cases where imprisonment is prescribed.

The Supreme Court's verdict in *Standard Chartered Bank v. Directorate of Enforcement* clarified that a company can be penalized even if the statutory punishment includes imprisonment, thereby bridging earlier interpretational gaps[6].

#### 3.2 *The Companies Act, 2013*

The Companies Act, 2013 forms the legislative bedrock for corporate conduct in India. Provisions such as Section 447 (fraud), Section 448 (misstatements), Section 212 (Serious Fraud Investigation Office), and Section 166 (duties of directors) establish liability for corporate offenses[7]. However, enforcement often lacks urgency and consistency, with many penalties restricted to fines and delayed legal proceedings diminishing the deterrent effect.

#### 3.3 *Sectoral Legislations*

In addition to the Companies Act, various statutes address domain-specific offenses:

- **SEBI Act** – Insider trading, securities fraud
- **PMLA** – Money laundering through corporate channels
- **Environmental Protection Act** – Industrial pollution and negligence
- **IT Act** – Data protection and cybercrimes

Although each provides for corporate accountability, the absence of a unified enforcement approach leads to fragmented prosecutions and overlaps in regulatory jurisdiction[8].

## 4. ROLE OF THE JUDICIARY

Judicial decisions have significantly shaped the development of corporate criminal responsibility in India. The Supreme Court initially ruled in *Velliappa Textiles* (2003) that corporate bodies could not be held liable for offenses carrying mandatory imprisonment. However, this was reversed in *Standard Chartered Bank v. Directorate of Enforcement*, affirming that corporations could be fined in lieu of incarceration[9].

In *Iridium India Telecom v. Motorola Inc.*, the Court accepted that corporations can hold intent through the actions of responsible officers, further legitimizing the identification doctrine in Indian law[10]. Despite these advancements, judicial interpretations remain inconsistent, underscoring the need for legislative clarity.

## 5. MAJOR CORPORATE CRIME INCIDENTS IN INDIA

### 5.1 Satyam Computer Services (2009)

A massive accounting scandal involving inflated profits and fictitious assets exposed flaws in corporate auditing and internal control. Though key executives were convicted, the episode raised concerns about regulatory oversight and deterrence[11].

### 5.2 Infrastructure Leasing & Financial Services (IL&FS)

The 2018 IL&FS collapse involved defaults exceeding ₹91,000 crore. Investigations revealed poor risk governance, systemic failures, and delayed intervention by financial regulators[12].

### 5.3 NSE Co-location Case

This case uncovered preferential data access to select brokers, compromising fair trading practices. While SEBI imposed fines, criminal accountability remained elusive, highlighting institutional weaknesses in detecting and prosecuting such schemes[13].

## 6. COMPARATIVE LEGAL PRACTICES

### 6.1 United States

U.S. law adopts a broad view of corporate responsibility, holding companies liable for criminal acts by employees acting within their official capacity. Instruments like Deferred Prosecution Agreements (DPAs) and structured sentencing guidelines provide alternatives to prosecution while promoting compliance[14].

### 6.2 United Kingdom

The UK follows a narrower model based on the identification doctrine. However, laws like the Bribery Act (2010) and the Corporate Manslaughter Act (2007) have introduced the “failure to prevent” principle, placing the onus on corporations to demonstrate proactive measures[15].

### **6.3 Australia**

Australia's approach hinges on the "corporate culture" model, where criminal liability can arise from systemic governance failures or a company's tolerance of misconduct. This framework emphasizes ethical culture and organizational accountability[16].

## **7. BARRIERS TO ENFORCEMENT IN INDIA**

### **7.1 Disjointed Regulatory Framework**

The presence of multiple oversight agencies—SEBI, SFIO, ED, CBI, RBI—often leads to conflicting mandates and inefficiencies[17].

### **7.2 Complexity of Evidence**

Investigating corporate crime requires advanced forensic capabilities, which many agencies currently lack. The complexity of transactions and digital trails further delays proceedings[18].

### **7.3 Absence of Modern Prosecution Tools**

India has yet to integrate tools like DPAs or non-prosecution agreements that encourage early resolution and compliance reform[19].

### **7.4 No Sentencing Guidelines**

Without standardized sentencing norms, penalties are often inconsistent or insufficient, weakening their preventive value[20].

## **8. PATH FORWARD: REFORMS IN CORPORATE CRIMINAL LAW**

### **8.1 Mens Rea Attribution Models**

Legislation should define how corporate intent can be derived, using hybrid models that combine individual and organizational fault[21].

### **8.2 Structured Penalties**

A rational sentencing framework must account for severity,

recurrence, cooperation, and internal controls, ensuring proportionate consequences[22].

### **8.3 Legalization of DPAs**

Statutory DPAs can help resolve cases quickly while mandating restitution, institutional reform, and compliance measures [23].

### **8.4 Dedicated Judicial Forums**

Special corporate benches in NCLT or High Courts could expedite adjudication and ensure expertise in financial regulation [24].

### **8.5 Regulatory Incentives**

Incentives should reward ethical corporate conduct, periodic audits, whistleblower systems, and staff training on legal obligations [25].

## **9. CONCLUSION**

India's transformation into a major economic player demands a parallel evolution in corporate accountability. Lapses in regulating white-collar crime not only erode investor confidence but also undermine governance and public welfare. While legal recognition of corporate criminal liability is a step forward, India must adopt a unified and practical regime that balances deterrence with fairness.

This calls for judicial specialization, legislative precision, and regulatory reforms to embed ethical corporate behavior within the economic system. The path to a credible legal structure lies in institutional cooperation, transparent enforcement, and incentivized compliance [26][27].

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