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# **CORPORATE STRUCTURES AND WHITE-COLLAR CRIME: CHALLENGES TO FIXING LIABILITY IN INDIA**

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## **1. Abstract**

White-collar crime in India has increasingly assumed complex corporate forms, where layered corporate structures, subsidiary networks, and the doctrine of separate legal personality often obscure individual accountability. This article critically examines how corporate structures are frequently used—intentionally or otherwise—to dilute liability in cases involving economic offences, fraud, and regulatory violations. Through a socio-legal lens, the paper analyses the challenges faced by enforcement agencies and courts in fixing liability on directors, key managerial personnel, and controlling shareholders. It evaluates the effectiveness of existing legal mechanisms such as the doctrine of piercing the corporate veil, corporate criminal liability under the Companies Act, 2013, and judicial approaches adopted by Indian courts. The article argues that while Indian jurisprudence recognises the need to look beyond formal corporate structures, inconsistent application and high evidentiary thresholds continue to limit accountability. It concludes by suggesting the need for clearer legislative standards and a more purposive judicial approach to ensure corporate structures do not become safe havens for white-collar crime.

## **2. Introduction**

White-collar crime has emerged as one of the most pressing challenges confronting India's corporate and regulatory framework. As business operations become increasingly complex, corporate entities often function through layered structures comprising holding companies, subsidiaries, and intermediaries. While such structures serve legitimate commercial purposes, they also create significant obstacles in attributing criminal liability for economic offences, fraud, and regulatory violations. The principle of separate legal personality, though foundational to corporate law, has frequently been invoked to shield individuals exercising effective control from accountability.

Indian courts and enforcement agencies have repeatedly grappled with the question of fixing responsibility in cases where corporate misconduct is diffused across organisational hierarchies. The difficulty lies not merely in establishing the commission of an offence, but in identifying the natural persons behind corporate decisions. This challenge is further compounded by evidentiary burdens, procedural delays, and inconsistencies in judicial approaches to corporate criminal liability. Against this backdrop, this article seeks to examine how corporate structures interact with white-collar crime in India and assesses the adequacy of existing legal mechanisms in ensuring effective accountability.

### 3. Corporate Structures and the Problem of Attribution of Liability

One of the central challenges in prosecuting white-collar crime in India lies in attributing criminal intent within complex corporate structures. The doctrine of separate legal personality, while essential for commercial certainty, often creates a legal distance between the corporation and the individuals who exercise actual control over its affairs. This separation becomes particularly problematic when economic offences are committed through layered corporate arrangements, making it difficult to identify the “directing mind and will” behind the unlawful act.

The Supreme Court of India has recognised corporate criminal liability, including for offences involving mens rea. In *Standard Chartered Bank v Directorate of Enforcement*, the Court held that a company can be prosecuted and punished for criminal offences even where the statute prescribes mandatory imprisonment, thereby affirming that corporate entities are not immune from criminal prosecution merely due to their juristic nature.<sup>1</sup> This position was further strengthened in *Iridium India Telecom Ltd v Motorola Inc*, where the Court clarified that corporations are capable of possessing the requisite criminal intent, which can be attributed through the actions of their controlling officers.<sup>2</sup> However, while corporate liability is well established, fixing individual liability within corporate hierarchies remains inconsistent. In *Sunil Bharti Mittal v CBI*, the Supreme Court cautioned against mechanically implicating directors and senior executives in criminal proceedings without specific evidence of their active role or intent.<sup>3</sup> The Court emphasised that vicarious liability in criminal law must be expressly provided by statute and cannot be presumed solely on the basis of a person’s designation within

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<sup>1</sup> *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 530 (SC).

<sup>2</sup> *Iridium India Telecom Ltd v Motorola Inc* (2011) 1 SCC 74 (SC).

<sup>3</sup> *Sunil Bharti Mittal v Central Bureau of Investigation* (2015) 4 SCC 609 (SC).

the company. This judicial restraint, though necessary to prevent abuse of process, has often been criticised for enabling senior management to evade accountability by operating behind corporate structures.

The doctrine of piercing the corporate veil has been invoked by courts to address such accountability gaps. In *Delhi Development Authority v Skipper Construction Co (P) Ltd*, the Supreme Court lifted the corporate veil where companies were used as a façade to perpetrate fraud, holding that courts must look beyond the corporate form when it is employed to defeat law or public interest.<sup>4</sup> Despite such precedents, Indian courts have applied veil-piercing sparingly, often requiring a high threshold of proof, which poses challenges in complex white-collar crime investigations.

#### **4. Statutory Framework and Enforcement Challenges in Fixing Corporate Liability**

The Indian legal framework provides multiple statutory mechanisms to address white-collar crime committed through corporate entities. The Companies Act, 2013 explicitly recognises corporate criminal liability and prescribes punishment for officers who are “in default” for offences such as fraud, misstatements, and failure of compliance. Section 447 of the Act, in particular, marks a significant legislative shift by criminalising corporate fraud and extending liability to directors, key managerial personnel, and any person who is knowingly a party to the offence. Despite this expansive provision, its practical enforcement has remained limited due to difficulties in proving knowledge, intent, and active involvement.<sup>5</sup> In addition to company law, statutes such as the Prevention of Money Laundering Act, 2002 (PMLA) and the Indian Penal Code, 1860 (IPC) play a crucial role in addressing corporate economic offences. The Supreme Court, in *Serious Fraud Investigation Office v Rahul Modi*, affirmed that individuals in control of a company’s affairs can be prosecuted for corporate fraud when sufficient material indicates their involvement.<sup>6</sup> However, investigative agencies often face structural hurdles, including opaque financial transactions, cross-border operations, and prolonged litigation strategies adopted by corporate defendants.

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<sup>4</sup> *Delhi Development Authority v Skipper Construction Co (P) Ltd* (1996) 4 SCC 622 (SC).

<sup>5</sup> Companies Act 2013, s 447.

<sup>6</sup> *Serious Fraud Investigation Office v Rahul Modi* (2019) 5 SCC 266 (SC).

Judicial interpretation has further shaped the contours of liability. In *Anil Hada v Indian Acrylic Ltd*, the Court acknowledged that while companies can be prosecuted independently, individuals cannot automatically be held liable unless statutory provisions expressly impose vicarious liability.<sup>7</sup> This strict approach, though doctrinally sound, has been criticised for failing to account for the realities of modern corporate governance, where decision-making is decentralised yet controlled by a small group of individuals. Consequently, enforcement agencies frequently struggle to move beyond symbolic prosecution of corporate entities to impose meaningful personal liability on those who orchestrate white-collar crime. The result is a persistent accountability gap, where corporate structures function as legal buffers rather than instruments of responsibility.

## 5. Judicial Trends and Inconsistencies in Piercing the Corporate Veil

Indian courts have repeatedly acknowledged that the corporate veil cannot be allowed to operate as a shield for fraudulent or illegal conduct. However, the judicial approach towards piercing the corporate veil in cases of white-collar crime has remained cautious and, at times, inconsistent. Courts have tended to balance the need for accountability against the risk of indiscriminate prosecution of corporate officers, resulting in uneven outcomes.

In *State of Rajasthan v Gotan Lime Stone Khanij Udyog Pvt Ltd*, the Supreme Court reiterated that the corporate veil may be lifted where the company is used as a mere instrumentality to evade legal obligations or perpetrate fraud.<sup>8</sup> Similarly, in *ArcelorMittal India Pvt Ltd v Satish Kumar Gupta*, the Court pierced the corporate veil to identify persons acting in concert to defeat statutory objectives under insolvency law, emphasising substance over form in corporate arrangements.<sup>9</sup> Although this case arose in the insolvency context, its reasoning has significant implications for corporate criminal liability, particularly where complex structures are deliberately employed to avoid responsibility. Conversely, courts have also demonstrated restraint. In *Maksud Saiyed v State of Gujarat*, the Supreme Court held that criminal proceedings against directors cannot be sustained in the absence of specific allegations demonstrating their active role in the offence.<sup>10</sup> This insistence on precise pleadings, while safeguarding due process, often creates practical difficulties in early-stage investigations where

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<sup>7</sup> *Anil Hada v Indian Acrylic Ltd* (2000) 1 SCC 1 (SC).

<sup>8</sup> *State of Rajasthan v Gotan Lime Stone Khanij Udyog Pvt Ltd* (2016) 4 SCC 469 (SC).

<sup>9</sup> *ArcelorMittal India Pvt Ltd v Satish Kumar Gupta* (2019) 2 SCC 1 (SC).

<sup>10</sup> *Maksud Saiyed v State of Gujarat* (2008) 5 SCC 668 (SC).

evidence is largely within corporate control. The lack of clear statutory guidance on when and how the corporate veil should be lifted in criminal cases has resulted in a fragmented jurisprudence. Consequently, judicial discretion plays a decisive role, leading to uncertainty in enforcement and enabling corporate structures to continue functioning as barriers to effective accountability in white-collar crime cases.

## **6. Comparative Perspectives on Corporate Criminal Liability**

A comparative examination of corporate criminal liability in other jurisdictions highlights the limitations of the Indian approach in addressing white-collar crime through complex corporate structures. In the United Kingdom, corporate liability has traditionally been governed by the “identification doctrine,” which attributes criminal intent to the company through individuals who represent its directing mind and will. However, this doctrine has been criticised for its inadequacy in dealing with large corporations where decision-making is diffused. The UK Supreme Court, in *Tesco Supermarkets Ltd v Natrass*, demonstrated the restrictive nature of this doctrine, which often allows senior management to escape liability.<sup>11</sup> In response, legislative interventions such as the Bribery Act, 2010 have introduced a failure-to-prevent model, imposing liability on corporations for not preventing misconduct unless adequate procedures are shown.<sup>12</sup>

The United States adopts a broader approach through the doctrine of respondeat superior, under which a corporation may be held criminally liable for acts committed by its employees within the scope of employment and with intent to benefit the corporation.<sup>13</sup> This expansive model prioritises deterrence and compliance, reducing the ability of corporate structures to dilute responsibility. Compared to these jurisdictions, India lacks a clear statutory framework imposing affirmative duties on corporations to prevent white-collar crime, thereby limiting effective accountability.

## **7. Socio-Legal Implications of Corporate Impunity in White-Collar Crime**

The inability to effectively fix liability for white-collar crime has consequences that extend beyond doctrinal corporate law and into the social and economic fabric of society. Corporate impunity undermines public confidence in regulatory institutions and erodes trust in the

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<sup>11</sup> *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 (HL).

<sup>12</sup> Bribery Act 2010, s 7 (UK).

<sup>13</sup> *New York Central & Hudson River Railroad Co v United States* 212 US 481 (1909).

fairness of the legal system. When individuals responsible for large-scale financial misconduct escape accountability through corporate structures, it reinforces perceptions of inequality before the law, particularly when contrasted with the swift prosecution of individual or small-scale offenders.

From a socio-legal perspective, white-collar crime inflicts diffuse yet significant harm. Economic offences involving corporations often affect shareholders, employees, consumers, and the public exchequer. Unlike conventional crimes, the victims are dispersed and less visible, which reduces public outrage and weakens enforcement urgency. Scholars have argued that this invisibility contributes to regulatory complacency and judicial hesitation in aggressively piercing the corporate veil.<sup>14</sup> In India, high-profile corporate frauds have repeatedly revealed how prolonged trials and procedural complexities dilute deterrence, allowing corporate actors to internalise legal risk as a cost of doing business. Furthermore, the persistence of accountability gaps has implications for corporate governance and ethical business practices. Weak enforcement incentivises compliance on paper rather than in substance, fostering a culture of minimal adherence to legal norms. This is particularly problematic in emerging markets like India, where regulatory capacity is still evolving and economic growth often takes precedence over strict corporate oversight. The failure to impose meaningful liability on decision-makers thus perpetuates a cycle where corporate structures are strategically designed to fragment responsibility, weakening the normative force of criminal law.

## **8. Reform Proposals and the Way Forward**

Addressing the challenges posed by corporate structures in white-collar crime requires a combination of legislative clarity, judicial consistency, and institutional reform. One possible reform lies in introducing a statutory framework that explicitly defines standards for attributing criminal liability to individuals exercising de facto control over corporate decision-making. Such an approach would move beyond formal designations and focus on functional authority, thereby reducing the ability of senior executives to evade liability by remaining formally detached from day-to-day operations.

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<sup>14</sup> Sutherland EH, *White Collar Crime* (Yale University Press 1949).

India may also draw lessons from comparative jurisdictions by adopting a compliance-based or failure-to-prevent model for certain economic offences. Imposing affirmative duties on corporations to prevent fraud, bribery, and financial misconduct would shift the focus from reactive prosecution to proactive governance. This would incentivise internal compliance mechanisms, risk assessment protocols, and transparent reporting structures.<sup>15</sup> Additionally, clearer legislative guidance on when courts may pierce the corporate veil in criminal cases would reduce reliance on judicial discretion and promote predictability in enforcement. Judicially, a purposive interpretation of corporate criminal liability provisions is necessary to align legal doctrine with economic realities. Courts must strike a balance between protecting individuals from arbitrary prosecution and ensuring that corporate structures do not become instruments of injustice. Strengthening investigative capacity, expediting trials in economic offences, and enhancing coordination between regulatory bodies are equally critical to ensuring effective accountability.

Ultimately, the objective of reform should not be to undermine legitimate corporate activity, but to ensure that corporate form does not operate as a sanctuary for white-collar crime. A robust liability framework is essential not only for deterrence, but also for preserving the integrity of India's corporate and legal ecosystem.

### **Conclusion**

White-collar crime in India continues to exploit the structural and doctrinal protections offered by corporate law, particularly the principle of separate legal personality and the limited application of the corporate veil doctrine. While Indian jurisprudence has formally recognised corporate criminal liability, the practical challenge of fixing responsibility on individuals who exercise real control over corporate decision-making remains largely unresolved. Complex corporate structures, high evidentiary thresholds, and cautious judicial approaches have collectively contributed to persistent accountability gaps. This article has demonstrated that although courts possess the doctrinal tools necessary to address corporate misuse—such as veil-piercing and attribution of mens rea—their inconsistent application undermines deterrence and public confidence in the legal system. Comparative insights further reveal that India's framework remains reactive and fragmented, lacking clear statutory standards that reflect the realities of modern corporate governance. Addressing these shortcomings requires a purposive

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<sup>15</sup> Ministry of Corporate Affairs, *Report of the Company Law Committee* (2016).

shift towards accountability-oriented reforms that prioritise substance over form. Strengthening legislative clarity, encouraging proactive corporate compliance, and adopting a more consistent judicial approach are essential to ensuring that corporate structures serve legitimate economic purposes rather than functioning as shields for white-collar crime. Only through such measures can India reinforce the integrity of its corporate and criminal justice systems.

