
Corporate Criminal Liability in India: An Analysis Through the Lens of The Nirav Modi–PNB Fraud

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Abstract

The evolution of corporate criminal liability in India has been both reactive and reluctant, often exposed only in the aftermath of large-scale financial frauds—none more illustrative than the Nirav Modi–Punjab National Bank scam. This scandal, which shook the Indian banking and corporate sectors, revealed significant gaps in the existing legal framework for holding corporations and their key personnel accountable for economic offences. Traditionally, Indian law approached corporate liability through the doctrine of vicarious liability, which attributed crimes committed by employees to the company itself without necessarily proving the company’s direct intent or mens rea. However, as corporate frauds have grown in scale and complexity, the limitations of this approach have become glaringly apparent. The Nirav Modi case brings to the forefront the urgent need to re-examine and strengthen the principles underlying corporate criminal liability. This paper aims to analyse the current statutory and judicial frameworks governing corporate criminal liability in India, focusing on the challenges of attributing criminal intent to corporate entities. By using the Nirav Modi fraud as a case study, the paper highlights the failures of regulatory oversight, internal controls, and accountability mechanisms that allowed the fraud to go undetected for years. The study concludes with policy recommendations for a more robust statutory framework that incorporates clear liability standards, stricter oversight of financial institutions, and effective enforcement tools. Strengthening whistleblower protection and enhancing accountability at the board and compliance level are emphasized as essential steps toward preventing future corporate misconduct.

Unmasking the Nirav Modi – PNB Scam

The Nirav Modi–Punjab National Bank (PNB) fraud, which came to light in early 2018, stood as one of the most significant banking scandals in India’s financial history, involving an estimated ₹13,000 crore (approximately USD 1.8 billion).¹ It exposed not only a complete breakdown of internal banking controls but also highlighted the inadequacies of India’s legal system in holding corporate entities accountable for large-scale economic offences.²

At the core of the fraud lay the misuse of Letters of Undertaking (LoUs), a banking instrument that allowed domestic entities to access short-term overseas credit. Employees at a single branch of PNB in Mumbai had issued unauthorized LoUs to companies owned by Nirav Modi—such as Firestar International, Solar Exports, and Stellar Diamonds³—without securing the necessary collateral or recording these transactions in the bank’s core banking system. These transactions were processed exclusively through the SWIFT messaging system, thereby bypassing the bank’s internal software and escaping standard audits and supervisory checks.⁴ The fraudulent scheme continued undetected for nearly seven years. It was sustained through collusion between bank employees and Modi’s companies, combined with a total absence of effective auditing and compliance mechanisms. Modi’s firms used the unauthorized LoUs to obtain credit from foreign branches of Indian banks, such as Allahabad Bank and Axis Bank, without any record of liability on PNB’s books.⁵ The fraud came to light only when a new official, unfamiliar with the ongoing scheme, declined the issuance of fresh LoUs in early 2018, prompting an internal inquiry.

Investigations conducted by the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), and the Serious Fraud Investigation Office (SFIO) revealed a complex

¹ “PNB-Nirav Modi Case”; THE HINDU (May 10th, 2025 6:47 PM) <https://www.thehindu.com/topic/PNB-Nirav-Modi-case/>

² Vatsal Gaur & Siddharth Raja, *Banking on Fraud: The PNB Scam and the Role of Internal Controls*, 6(2) IND. J. L. & PUB. POL’Y 67 (2018).

³ “What is PNB Scam”; BUSINESS STANDARD (May 10th, 2025 6:14 PM) <https://www.business-standard.com/about/what-is-pnb-scam>

⁴ Ankit Malhotra, *Corporate Criminal Liability: A Case for Reforms in India*, 5(3) INDIAN J. L. & ECON. DEV. 84 (2020).

⁵ “How Nirav Modi cheated PNB of Rs 14,000 crore through fraudulent LoUs”; THE ECONOMIC TIMES (May 10th, 2025 6:49 PM) <https://economictimes.indiatimes.com/news/india/explainer-how-nirav-modi-cheated-pnb-of-rs-14000-crore-through-fraudulent-lous/articleshow/95410291.cms?from=mdr>

network of shell entities, forged documentation, and cross-border money laundering operations.⁶ Legal proceedings were initiated under various provisions of the Indian Penal Code, the Prevention of Corruption Act⁷, and the Prevention of Money Laundering Act⁸.

While individuals were arrested and charged, holding the involved corporate entities criminally liable proved to be a far more intricate task. The Nirav Modi case ultimately exposed how existing corporate criminal liability frameworks in India struggled to effectively address economic offences perpetrated through artificial legal persons.⁹

Corporate Criminal Liability in India: Legal Framework and Doctrinal Evolution

India's approach to corporate criminal liability had historically been guided by the traditional common law principle that a corporation, as an artificial person, could not possess the mental element—or *mens rea*—required to commit a crime. Over time, however, Indian jurisprudence evolved to acknowledge that companies could indeed be held liable for criminal acts, either through the doctrine of vicarious liability or by attributing the intent of key managerial personnel to the company itself.¹⁰

The statutory foundation for imposing criminal liability on companies lay scattered across several enactments. The Indian Penal Code, 1860 (IPC), although primarily drafted for natural persons, had been invoked in fraud cases involving corporations under sections relating to cheating (Section 420), criminal breach of trust (Section 409), and conspiracy (Section 120B).¹¹ Meanwhile, the Companies Act, 2013 introduced express provisions targeting corporate fraud. Section 447¹² defined “fraud” in broad terms and allowed for punishment of both companies and their officers. Importantly, it imposed liability not only for direct participation but also for connivance or negligence leading to fraud.

In the context of the Nirav Modi–PNB scam, authorities relied heavily on these provisions, along with the Prevention of Corruption Act, 1988¹³ to prosecute colluding bank officials, and

⁶ Samanwaya Rautray & M. Rajshekhar, *Nirav Modi Scam: How a Billion-Dollar Fraud Happened Right Under RBI's Nose*, ECONOMIC TIMES (Feb. 2018).

⁷ Prevention of Corruption Act, 1988

⁸ Prevention of Money Laundering Act, 2002

⁹ Sumeet Malik, *The Nirav Modi-PNB Scam: Reassessing Corporate Accountability*, in *Legal Developments in Indian Corporate Law 2020* (EBC Publishing, 2021).

¹⁰ Saurabh Bhattacharjee, *Mens Rea and Corporate Criminal Liability: A Critical Analysis of Indian Jurisprudence*, 5 NALSAR L. REV. 57 (2010).

¹¹ Indian Penal Code, 1860, § 120B, § 409, § 420.

¹² Companies Act, 2013, § 447.

¹³ Prevention of Corruption Act, 1988, § 7, § 13.

the Prevention of Money Laundering Act, 2002 (PMLA)¹⁴ to trace the illicit proceeds of crime. The Enforcement Directorate (ED) initiated proceedings under PMLA, leading to the attachment of assets belonging to Nirav Modi's companies, on the basis that the entities themselves had been instrumental in laundering public funds.

Judicial pronouncements also reflected a shifting stance. In *Standard Chartered Bank v. Directorate of Enforcement*¹⁵, the Supreme Court held that companies could be prosecuted even for offences that prescribed mandatory imprisonment, reinforcing the principle that corporations are not immune from criminal law. Later, in *Iridium India Telecom Ltd. v. Motorola Inc.*¹⁶, the Court reiterated that companies could possess criminal intent through their directing minds.

Despite these developments, challenges persisted. Proving corporate *mens rea* remained a complex task, particularly in large organisations where decisions were diffused and multiple levels of approval existed.¹⁷ Courts were often hesitant to convict a company in the absence of clear evidence that senior management either authorised or wilfully ignored criminal conduct. This gap in prosecutorial clarity was evident in the early stages of the Nirav Modi case, where it proved difficult to distinguish between rogue employee conduct and institutional complicity.¹⁸

Furthermore, while the Companies Act empowered regulatory bodies to disqualify directors and levy penalties, it did not provide a holistic framework for punishing systemic corporate misconduct with criminal consequences.¹⁹ Unlike jurisdictions such as the United Kingdom, which had enacted the Corporate Manslaughter and Corporate Homicide Act²⁰, or the United States with its robust DOJ corporate enforcement policy, India lacked a unified statute dealing exclusively with corporate criminal liability.²¹

The Nirav Modi case thus highlighted the need for a more coherent legislative approach. Fragmented provisions scattered across statutes were insufficient to address high-value

¹⁴ Prevention of Money Laundering Act, 2002, § 3, § 5.

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

¹⁶ *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.

¹⁷ R. K. Suri & R. K. Goel, *Corporate Governance and Corporate Criminal Liability: A Comprehensive Overview* (LexisNexis, 2019).

¹⁸ Aparna Chandra & Mrinal Satish, *Of Corporate Criminals and Controlling Minds: Revisiting the Basis of Corporate Criminal Liability in India*, 7 NUJS L. REV. 1 (2014).

¹⁹ N. Vasanthi, *Corporate Criminal Liability: A Jurisprudential Shift in India*, 3 IND. J. CORP. AFF. & GOVERNANCE 33 (2020).

²⁰ United Nations Office on Drugs and Crime, *Corporate Liability and Combating Money Laundering* (2017).

²¹ UK Ministry of Justice, *The Bribery Act 2010: Corporate Offences* (2010).

financial crimes executed through sophisticated corporate networks. The limitations of vicarious liability and the evidentiary burdens of proving *mens rea* required a rethinking of India's legal doctrine to bring it in line with global standards on corporate accountability.²²

Vicarious Liability and the Challenge of Corporate Mens Rea

The doctrine of vicarious liability, long recognized in civil jurisprudence²³, gradually found limited but evolving application in Indian criminal law, especially in cases involving corporate offences. Under this doctrine, a corporation could be held liable for criminal acts committed by its employees or agents if it was established that such acts were carried out in the course of employment and for the benefit of the company. However, when it came to offences requiring *mens rea*—the mental element of a crime—the application of vicarious liability became deeply contentious.²⁴

In corporate fraud cases such as the Nirav Modi–PNB scam, the challenge lay in determining whether the company, as a separate legal entity, could possess criminal intent. Since a company lacked a physical or mental existence, the intent had to be inferred from the actions and knowledge of its “directing mind and will” — typically, the top managerial personnel. Yet, in practice, proving this attribution proved difficult, especially when the individuals responsible for the fraud either acted covertly or were no longer traceable.

Indian courts oscillated on this issue. In *Sunil Bharti Mittal v. Central Bureau of Investigation*²⁵, the Supreme Court clarified that mere designation as a director or officer was insufficient for criminal prosecution; there had to be material showing active involvement in the commission of the offence. This ruling made it harder for prosecutors to pin liability on corporate heads unless concrete evidence linked them to the criminal conduct.²⁶

Additionally, Section 66 of the Information Technology Act, 2000²⁷ and Section 140 of the Customs Act, 1962²⁸ explicitly introduced vicarious liability by providing that corporate officers could be held liable if it was proven that the offence was committed with their consent,

²² Sandeep K. Singh, *Corporate Criminal Liability and the Global Trend: Insights for India* in *Indian Business Law Journal* (2020).

²³ Saurabh Bhattacharjee, *Mens Rea and Corporate Criminal Liability: A Critical Analysis of Indian Jurisprudence*, 5 NALSAR L. Rev. 57 (2010).

²⁴ Aparna Chandra & Mrinal Satish, *Of Corporate Criminals and Controlling Minds: Revisiting the Basis of Corporate Criminal Liability in India*, 7 NUJS L. Rev. 1 (2014).

²⁵ *Sunil Bharti Mittal v. Central Bureau of Investigation*, (2015) 4 SCC 609 (India).

²⁶ *Anil Kumar Agrawal v. Enforcement Directorate*, (2014) 13 SCC 352 (India).

²⁷ Information Technology Act, No. 21 of 2000, § 66 (India).

²⁸ Customs Act, No. 52 of 1962, § 140 (India).

connivance, or due to their neglect. However, general criminal statutes like the Indian Penal Code²⁹ lacked such express provisions, leading to inconsistent enforcement.³⁰

The Nirav Modi case further demonstrated the limitations of relying solely on vicarious liability. While a few lower-level bank employees were swiftly arrested and charged, it remained difficult to prove institutional culpability or the complicity of top executives at PNB or the partner banks. As the fraud had been orchestrated through carefully planned omissions and bypassing of core banking systems, tracing command responsibility became nearly impossible.

India's continued reliance on outdated doctrines of attribution and limited vicarious liability mechanisms had, therefore, created a structural weakness in tackling corporate fraud.³¹ The Nirav Modi scandal starkly illustrated this inadequacy and called for a doctrinal realignment—one that recognised institutional culpability based on systemic failure, culture of compliance, and governance practices, rather than relying only on individual guilt.

The Case for Reform — Corporate Mens Rea to Structural Liability

In light of the challenges posed by the Nirav Modi fraud and other large-scale corporate crimes, there has been growing recognition in the legal community of the need for reform in the application of corporate criminal liability. The traditional reliance on *mens rea*—the requirement for a criminal intent—has become increasingly inadequate in addressing the complex nature of corporate misconduct. A corporate entity, as a non-human legal construct, cannot possess the mental state required for criminal liability in the same way an individual can. This has led to a systemic gap, especially in the realm of corporate governance, where accountability often falls short despite widespread financial damage.³²

The reliance on proving *mens rea* in corporate crimes is problematic. In cases such as the Nirav Modi scandal, the fraud was committed not by a single individual but by a network of corporate actors within and outside the bank. Establishing intent in such cases, where actions are often the result of systemic failures, complicates the prosecution. This highlights the urgent need to move away from traditional *mens rea* requirements and adopt a framework of **structural**

²⁹ Indian Penal Code, No. 45 of 1860, §§ 120B, 409, 420 (India).

³⁰ SEBI Act, No. 15 of 1992, § 15HA (India).

³¹ K. D. Gaur, *Corporate Criminal Liability in India – Emerging Trends*, 2 *Nirma U. L.J.* 67 (2013).

³² Aparna Chandra & Mrinal Satish, *Of Corporate Criminals and Controlling Minds: Revisiting the Basis of Corporate Criminal Liability in India*, 7 *NUJS L. Rev.* 1 (2014), <https://nujlawreview.org/2014/03/05/of-corporate-criminals-and-controlling-minds/>.

liability.³³ Under structural liability, the focus would shift from the intent of individual perpetrators to the overall structure and functioning of the organization.

Structural liability holds a corporation accountable based on the failure of its internal systems, governance structures, and compliance frameworks. A corporation would be liable for misconduct if it failed to implement adequate preventive mechanisms or if it exhibited a culture of neglect or indifference to regulatory norms.³⁴ This framework could hold companies liable for actions taken by individuals within their ranks, without the need to prove personal criminal intent, thus ensuring greater accountability in cases of large-scale fraud.

The Need for Reform in India: A Forward-Looking Approach

In India, while there have been some attempts to introduce corporate liability frameworks, such as in the **Prevention of Money Laundering Act, 2002**³⁵ and the **Companies Act, 2013**³⁶, these remain limited in scope. The Indian legal system continues to rely heavily on *mens rea* in corporate criminal liability, and there is a lack of comprehensive legislation that mandates structural liability in the context of corporate crime. The **Nirav Modi scandal**³⁷ underscored the inadequacies of the current system, where corporate executives escaped liability due to the difficulty of proving intent, despite clear evidence of systemic lapses.³⁸

For India to effectively address corporate crime, legal reforms must be implemented to expand the scope of corporate liability. The introduction of a **failure to prevent** offence akin to the UK Bribery Act could be a starting point. This would require companies to demonstrate the existence of robust compliance and governance systems. Additionally, legislation that imposes a **corporate duty of care**—requiring corporations to take steps to prevent harm caused by fraud or other illegal activities—would ensure that companies prioritize risk management and ethical conduct.³⁹

³³ K.D. Gaur, *Corporate Criminal Liability in India – Emerging Trends*, 2 *Nirma U. L.J.* 67 (2013).

³⁴ Priyanka Mohan, *The Myth of Corporate Criminal Liability in India*, 6 *J. Corp. L. & Governance* 122 (2017).

³⁵ Prevention of Money Laundering Act, No. 15 of 2003, § 3, § 5, § 8 (India).

³⁶ Companies Act, No. 18 of 2013, § 447, § 2(60), § 212(6) (India).

³⁷ PNB fraud a failure of internal controls, says RBI, *ZeeBiz* (May 10th, 2025 8:32 PM), <https://www.zeebiz.com/india/news-pnb-fraud-a-failure-of-internal-controls-says-rbi-37389>.

³⁸ Satyajit A. Desai, *Corporate Criminal Liability and the Failure to Prevent Model: Need for Indian Reform*, *Indian B. Rev.* (2020).

³⁹ Brookings India, *India's Corporate Frauds and Legal Framework: A Critical Review*, (May 10th, 2025 8:32 PM) <https://www.brookings.edu/india>

The future of corporate criminal liability in India must embrace a more holistic and pragmatic approach. By shifting the focus from individual *mens rea* to organizational failure, Indian law can create a more effective deterrent against corporate misconduct. Reforms in this direction would not only address the shortcomings revealed by the Nirav Modi case⁴⁰ but also contribute to a broader shift towards greater corporate accountability in India.⁴¹ Strengthening corporate governance structures, fostering a culture of compliance, and holding organizations accountable for systemic failures will be key to ensuring that corporate crime is prevented and, when necessary, punished.⁴²

⁴⁰ Rajeswari Pillai Rajagopalan, *From Nirav Modi to IL&FS: A Pattern of Institutional Gaps*, Observer Research Found. (May 10th, 2025 8:32 PM), <https://www.orfonline.org/research/from-nirav-modi-to-ilfs-a-pattern-of-institutional-gaps-48388/>.

⁴¹ Vidhi Centre for Legal Policy, *The Architecture of Corporate Liability in India*, (May 10th, 2025 8:32 PM) <https://vidhilegalpolicy.in/>

⁴² PNB fraud was enabled by systemic oversight failure, says RBI, *Business Standard* (May 10th, 2025 8:32 PM) https://www.business-standard.com/article/finance/rs-114-bn-pnb-fraud-happened-due-to-failure-of-internal-controls-rbi-118021601195_1.html.