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# **CORPORATE CRIMINAL LIABILITY UNDER THE NEW REGIME**

AUTHORED BY - AVISHA SINGLA

## **Abstract**

This paper delves into the elaboration and present condition of marketable lawless liability in India, particularly in light of the new lawless legal frame. Effective from July 1, 2024, this frame encompasses the Bhartiya Nyaya Sanhita (BNS) 2023, the Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023, and the Bhartiya Sakshya Adhiniyam (BSA) 2023. The study highlights essential principles, statutory variations, significant legal precedents, enforcement patterns, compliance scores, and the challenges faced in exercising marketable responsibility.

## **Introduction**

The terrain of marketable lawless liability in India has endured a substantial metamorphosis. Before June 30, 2024, the frame for marketable lawless responsibility was governed by the established guidelines within the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Substantiation Act. still, from July 1, 2024, these aged bills will be superseded by the streamlined BNS, BNSS, and BSA<sup>1</sup>. These reforms are poised to review how marketable bodies, along with their directors and agents, are held responsible for their conduct.

This paper will cover

- The core principles bolstering marketable lawless liability
- The legal frame outlined in the BNS, BNSS, and BSA
- Statutory running of marketable offenses and the mechanisms for responsibility
- Applicable judicial precedents and trends in enforcement
- Strategies for compliance and the systemic challenges involved
- Prospects for the unborn developments of laws and their implementation, and counteraccusations for policy

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<sup>1</sup> Government of India, The Bhartiya Nyaya Sanhita, 2023, Bhartiya Nagarik Suraksha Sanhita, 2023, Bhartiya Sakshya Adhiniyam, 2023

## Foundations of Marketable Lawless Liability

### 1. Identification/ Commanding- Mind Doctrine

The Indian bar has historically recognized the identification doctrine, generally appertained to as the "directing mind and will" test. This legal principle allows the intentions of elderly directors or directors to be attributed to the pot itself. There are some Landmark case laws for this concept to be understandable, like Iridium India Telecom Ltd v. Motorola Inc.<sup>2</sup> and Standard Chartered Bank v. Directorate of Enforcement<sup>3</sup>, which establish that a company can be held criminally liable for offenses committed by its controlling individuals. Under this doctrine, the unethical conduct of vital decision-makers is seen as representative of the pot's intent.

### 2. Vicarious Liability

Differing from the identification doctrine, vicarious liability holds a pot responsible for conduct carried out by its workers, even when the company didn't authorize these acts, as defined by specific laws. Legislation like the Prevention of Corruption Act (PCA), since 1988<sup>4</sup>, which was later amended in 2018, and currently we are using the 2018 act, the Negotiable Instruments Act<sup>5</sup>, the Food Safety Act, the Medicines Act, and the Prevention of Money Laundering Act (PMLA)<sup>6</sup> contains provisions that put this liability. Notably, the new BNS enactment doesn't impose general vicarious liability; rather, particular responsibility for officers arises only when specifically mandated by law.

### 3. Collaborative, Wilful, and Formative Liability

Transnational practices admit liability stemming from a pot's culture and operation failings, indeed in the absence of direct intent, which is constantly nominated as collaborative or wilful blindness. Although this generality hasn't been formally embraced in India, courts are gradually getting more open to compliance-based responsibility, especially when an operation fails to address wrongdoing. The BNS introduces a frame for group and formative liability, including:

- common liability (Section 3(5)) Actors participating in a common intent can face equal liability.
- lawless knowledge liability (Section 3(6)).

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

<sup>3</sup> Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530

<sup>4</sup> Prevention of Corruption Act, 1988 (as amended by Act 16 of 2018)

<sup>5</sup> Negotiable Instrument Act, 1881, Section 141

<sup>6</sup> Prevention of Money Laundering Act, 2002

- Liability for cooperation in offenses (Section 3 (8)), abettor's liability (Section 54), and formative liability for unlawful assemblies (Section 190)<sup>7</sup>.

## **Statutory Reforms Under the New Regime**

### **1. Bhartiya Nyaya Sanhita (BNS) 2023**

Starting on 1 July 2024, the BNS will take the place of the IPC and figure colourful crimes, including profitable and marketable offenses, with tougher penalties.

- " Organized crime" now includes profitable crimes analogous to fraud, cybercrime, phony, and money laundering<sup>8</sup>, performing in harsher corrections and possible group liability for duplication of malefactors.
- Pots can be held criminally responsible for offenses carried out under their authority, meaning that " persons" also encompass companies.
- While BNS increases penalties by setting minimal jail time or forfeitures for serious crimes, it doesn't automatically assign liability to companies unless specified by law.

### **2. Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023**

Replacing the CrPC, the BNSS modernizes how examinations for marketable offenses are conducted

- It introduces digital styles for filing FIRs and statements, sets conditions for primary inquiries, outlines disquisition timelines, and allows for electronic processing<sup>9</sup>.
- The law permits persuasions without the presence of the indicted for serious crimes (10 times or more punishment) can proceed in absentia<sup>10</sup> for corporate executives, enabling trials of elderly directors indeed if they aren't in court.
- Agencies like the CBI, ED, and SFIO have new powers to proactively inquire into fiscal fraud under BNSS rules.
- lately, a court in Hyderabad seized assets worth ₹ 4 crores in a marketable fraud case under BNSS, demonstrating its effectiveness against white- collar crime.

### **3. Bhartiya Sakshya Adhiniyam (BSA) 2023**

The BSA updates the Substantiation Act to enhance confirmation morals

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<sup>7</sup> BNS 2023, Sections 3(5), Section 54, Section 190

<sup>8</sup> BNS 2023, Section 111

<sup>9</sup> BNSS 2023, Section 173-180

<sup>10</sup> BNSS 2023, Section 356

- It broadens the description of “documents” to include digital records analogous as emails, logs, call data, and blockchain records<sup>11</sup>.
- It creates presuppositions against companies in fraud cases, shifting the burden of validation in some profitable offenses.
- For complex or large pieces of confirmation, forensic checks and expert validation will be demanded.

Together, these three laws (BNS, BNSS, BSA) establish a stricter procedural frame and enhance responsibility in diving marketable crime.

## **Community and collaboration among the PCA, NI Act, and IBC**

### 1. 2018 amendments to the Prevention of Corruption Act

The PCA amendments hold companies responsible if their workers commit corruption for business earnings unless adequate anti-corruption mechanisms are provided<sup>12</sup>. Directors and officers can be held liable if they were involved in or approved of the conduct. Companies can defend themselves by showing they followed proper compliance procedures.

### 2. Negotiable Instruments Act, PMLA, Environmental Laws

These laws still put liability on company officers; indeed, under the BNS guidelines, which generally don't allow for automatic marketable liability<sup>13</sup>.

### 3. Insolvency and Bankruptcy Code —Immunity clause under section 32A

Section 32A protects companies once the NCLT approves their resolution plan and any functional changes. For illustration, Dunar Foods Ltd case<sup>14</sup> was cleared of lawless charges in May 2025 under this provision, the company was absolved for pre-resolution criminal liability by the court for their act under section 32A of IBC, despite its part in the 2016 NSEL fraud case.

## **Judicial Trends and Enforcement Patterns**

### 1. Supreme Court Rulings

In the case of Standard Chartered Bank, the court ruled that companies can be held liable for

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<sup>11</sup> BSA 2023, Section 2(1)(c), Section 62, Section 63

<sup>12</sup> PCA 2018, Section 9

<sup>13</sup> NI Act, 1881, Section 141; Environment Protection Act, 1986

<sup>14</sup> Dunar Food Ltd. Case (2025), NCLT Judgement, New Delhi Bench

crimes that carry obligatory jail time, replacing fines if applicable<sup>15</sup>. The Iridium India Telecom ruling clarified that marketable liability exists when someone in control commits an offense.

## 2. Enforcement Conduct under New Canons

The first asset seizure under the BNSS took place in Hyderabad, with ₹ 4 crores taken in a marketable infidelity case, showing the addition of enforcement of BNSS in white-collar crimes<sup>16</sup>. Law enforcement training at RMLNLU stressed the significance of administering these new canons effectively in profitable crime cases.

## 3. Section 111 Group Offenses & Economic Crime Issues

Section 111 specifically defines organized crime, including profitable offenses, which raises enterprises to face multiple charges and double jeopardy. The courts still need to clarify how SEBI, PMLA, and BNS executions interact, a matter that remains contentious under Article 20(2) of the Constitution<sup>17</sup>.

# Marketable Liability Analysis

## 1. When Is a Company Liable?

A company can be held responsible for wrongdoing if either the identification doctrine links the wrongdoing to the company's leadership or if specific laws, like the PCA, directly hold the company responsible<sup>18</sup>. still, simply having a hand act erroneously doesn't make the company or its top officers liable if these connections are missing.

## 2. Officer and Director Liability

Directors and compliance officers can be held responsible if they knew about, agreed to, or had control over the wrongdoing, especially under laws like the PCA or NI Act<sup>19</sup>. Without laws allowing for automatic liability, courts need validation of intent or direct involvement from directors before taking action.

## 3. Defences and Compliance Protection

The PCA offers a defence for companies that demonstrate effective anti-bribery measures.

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<sup>15</sup> Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530

<sup>16</sup> "Hyderabad Court Seizes ₹4 crores in Corporate Fraud Case", The Hindu, July 2025

<sup>17</sup> Constitution of India, Article 20(2)

<sup>18</sup> Case, Supra Note 2

<sup>19</sup> Acts, Supra Note 4

Having strong compliance programs, including regular checks and hand training, can reduce pitfalls and may help lessen nonsupervisory scrutiny or execution<sup>20</sup>.

#### 4. Concurrences and Penalties

Companies can be fined, but can't be doomed to captivity. The BNS law raises fiscal penalties and sets minimal rulings for serious offenses to discourage wrongdoing. It also allows the seizure of means in cases of marketable fraud<sup>21</sup>. "After the amendment, section 32A of IBC reduced the legal responsibility of corporate debtors for offences committed before the change in management policies by the government."

### **Challenges and Emerging Issues**

#### 1. Proving Responsibility in Large Companies

In big enterprises with spread-evaluation authority, it can be hard to identify who's truly in charge when misconduct occurs<sup>22</sup>. Wrongdoing by lower-position workers constantly is not directly linked to upper management, making it tough for enforcement agencies to gather confirmation, especially when the operation isn't transparent.

#### 2. Double Jeopardy enterprises

Pursuing charges under BNS, along with laws like SEBI or PCA for the same conduct, could violate Article 20 (2)<sup>23</sup>. Courts are still working to clarify the commerce between these lapping laws.

#### 3. Trials Without Presence

BNSS allows trials for serious, profitable crimes without taking the directors to be present in court, which can put fresh pressure on MNCs<sup>24</sup>.

#### 4. Limited discipline Options

While companies face forfeitures, the absence of captivity rulings reduces the truculent effect and doesn't compensate victims. Critics suggest the need for tougher supervisor penalties or

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<sup>20</sup> Act, supra note 12

<sup>21</sup> BNS 2023, Section 113, 114

<sup>22</sup> S. Satyanarayana Raju, "Corporate Criminal Liability: The Indian Experience", ILI Law Review, 2023

<sup>23</sup> R. Narasimhan, "Double Jeopardy and Overlapping Offences", Bar & Bench, 2024

<sup>24</sup> BNSS 2023, Section 356

marketable exploration<sup>25</sup>.

### 5. Digital Evidence Challenges

Although the BSA permits further digital evidence, creating comprehensive forensic examination trails remains challenging<sup>26</sup>. Issues like synthetic data and broken chains of trust can weaken cases. Multitudinous associations struggle with effectively managing digital forensic evidence.

## **Compliance and trouble operation rudiments**

To successfully navigate the new legal terrain, companies should:

- figure compliance systems that feature trouble assessments, whistleblower channels, checks, board oversight, and thorough due diligence.
- Educate elderly leadership on BNS, BNSS, and BSA, emphasizing marketable risks and legal protections.
- Get ready for forensic evidence conditions by fastening on data retention, maintaining examination logs, administering digital shadowing, and ensuring cybersecurity compliance.
- Launch internal examinations immediately when allegations arise to prepare a defence and manage inquiries.
- Align board governance with lawless pitfalls, easily defining places, arrears, and escalation procedures for compliance matters.

Taking this way will enhance defences against marketable liability and promote a culture of responsibility.

## **Conclusion**

India's new legal framework, including BNS, BNSS, and BSA, marks a vital shift in marketable responsibility for crimes. While marketable liability still hinges on the identification doctrine and laws regarding vicarious liability, these new canons offer better tools for handling confirmation, group liability, and corrections for profitable offenses. Enforcement agencies are now better equipped, and courts are laboriously using new measures like asset attachment and trials in absentia.

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<sup>25</sup> K. Narasimhan, "Why White-Collar Crime Still Pays", Business Line, 2024

<sup>26</sup> BNS 2023, Section 62; Indian Computer Emergency Response Team guidelines, 2024

Still, challenges persist in applying these laws within complex marketable settings, dealing with lapping legal systems, and addressing administrative responsibility gaps due to IBC impunity. Limited corrective measures also pose difficulties. eventually, having strong compliance systems and effective governance is now essential for companies to manage lawless risks in India’s revised legal terrain.

