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Business Crime 2027

A practical cross-border resource to inform legal minds

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

India has a quasi-federal political structure comprising 28 States and eight centrally administered Union Territories. It has an elected Union Government (also called the Central Government) and each State has its own elected State Government. Police matters are a State subject and, therefore, in the hands of the State Government.

There is a unified (all India) legislation (until recently called the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC) and the Evidence Act, 1872) prescribing the substantive and procedural laws relating to crime. These have been recast and renamed:

Parliament in 2024 brought into force three Acts, namely the "*Bharatiya Nyaya Sanhita*", 2023 (BNS), to replace the IPC, the "*Bharatiya Nagarik Suraksha Sanhita*", 2023 (BNSS), to replace the CrPC and the "*Bharatiya Sakshya Adhiniyam*", 2023 (BSA), to replace the Evidence Act, 1872. They aim to overhaul and replace laws that have been in existence since the 1860s. In brief, the Acts provide for an increased use of technology, use of forensic evidence, a timeframe for completion of investigation and speedier trials through video-conference hearings.

The investigation/enforcement authorities at the national level include the Central Bureau of Investigation (CBI), the Serious Fraud Investigation Office (SFIO) and the Enforcement Directorate (ED). The CBI is an investigative agency established by the Central Government which derives its powers from a central statute. It has its own prosecution wing called the Directorate of Prosecution.

The SFIO comprises experts in the fields of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation.

The ED is set up under the Department of Revenue, Ministry of Finance. It is responsible for investigation of financial offences including money laundering and foreign exchange law violations. The Economic Offences Wings tackle white-collar crimes and commercial fraud.

Please also see question 1.4.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body that will investigate and prosecute a matter?

The CBI is involved either at the behest of the concerned State or upon direction of the courts. The SFIO investigates and prosecutes complex corporate fraud cases assigned to it under the Companies Act, 2013 or as directed by the courts.

1.3 Can multiple authorities investigate and enforce simultaneously?

Yes, multiple authorities can investigate and enforce simultaneously.

1.4 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

The Government of India has set up various agencies including:

- The ED (for foreign exchange, money laundering and fugitive economic offences, and prevention of money laundering).
- The Central Bureau of Narcotics.
- The Directorate General of Revenue Intelligence (for customs, excise and service tax-related offences).
- The Securities and Exchange Board of India (SEBI) (to protect the interest of investors and regulate the securities market).
- The Directorate General of Foreign Trade (to monitor and curb illegal foreign trade).
- The Central Board of Direct Taxes, and the Central Board of Indirect Taxes and Customs (tax evasion).

1.5 What are the major business crime cases in your jurisdiction in the past year?

- The Reserve Bank of India released its annual report in May 2026 revealing a major decrease in the number of frauds for public and private sector banks (from 23,772 cases in 2024–25 to 10,114 cases in 2025–26). However, the amount involved has increased (from USD 3.45 billion in 2024–25 to USD 5.05 billion in 2025–26). While card/internet/digital payments fraud cases formed the majority of the cases in 2024–25, the "advances" category accounts for the largest share now.
- In March 2026, the ED exposed a massive cyber-enabled corporate fraud and cross-border laundering network involving proceeds of about USD 67 million. The predicate offence involved utilising Telegram groups to execute investment frauds, fake part-time job schemes and phishing networks. The proceeds were layered through over 20 shell companies.

- In June 2026, the CBI registered a case against a major public bank involved in an embezzlement racket involving USD 53 million from eight different departments of the State Government. The CBI has arrested senior public servants, municipal commissioner and top banking executives.
- The ED attached properties of the Anil Ambani-led Reliance Group worth USD 2.14 billion under the Prevention of Money Laundering Act, 2002 (PMLA) and USD 8.2 million under the Foreign Exchange Management Act, 1999 (FEMA) following First Information Reports (FIRs) registered by the CBI. The company is accused of diverting public funds through a web of shell and group companies controlled and managed by it. The ED is investigating the matter and has arrested eight senior officers and associates of the group so far.

2 Organisation of the Courts

2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?

Each State is divided into administrative divisions called Districts. Each District consists of a Sessions Court and courts of Judicial Magistrates.

Special courts have been set up to deal with cases instituted by the CBI or to deal with offences under special statutes.

2.2 Is there a right to a jury in business crime trials?

No, there are no jury trials in India.

2.3 Where juries exist, are they composed of citizens members alone or also professional jurists?

See above.

3 Particular Statutes and Crimes

3.1 Please describe the statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused.

· Securities fraud

The Securities and Exchange Board of India Act, 1992 (SEBI Act) deals with fraud related to securities and unfair practices or contravention of the statute. The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were enacted to comprehensively deal with fraud and unfair practices related to securities. The Supreme Court in *Kanaiyalal Baldevbhai Patel* (2017) held that while *mens rea* is required, the same is not an indispensable requirement that is to be proved beyond reasonable doubt. The Supreme Court in *Reliance Industries Ltd. v. SEBI* (2026), clarified that in situations where injury due to wrongful act is established, there would be no requirement to prove deceitful intention. On the other hand, where *mala fide* intention to defraud is clear from the conduct, establishing injury would not be required.

· Accounting fraud

Accounting fraud includes forgery, falsification of accounts, professional misconduct including failure to disclose a material fact. Under the Companies Act, 2013 (last amended in September 2023), the Central Government is empowered to inspect the books of accounts of a company, direct special audits, order investigations and launch prosecutions. In 2023, the Central Government amended the PMLA to include accountants and company secretaries within its scope requiring them to maintain all data of transactions carried out on behalf of the client and also provide data to the authorities when requested.

· Insider trading

In continuation of its efforts to curb insider trading, SEBI notified the Prohibition of Insider Trading Regulations, 2015, widening the definition of an "insider" or a "connected person". The Regulations define trading and prescribe a structured disclosure regime. Further, the Board of every listed company is required to formulate and publish its disclosure policy, including whistle-blower norms and inquiries.

· Embezzlement

Embezzlement under the BNS includes criminal breach of trust and dishonest misappropriation or disposal of property. The offence of "dishonest misappropriation of property" has seen a few changes regarding punishment, with a minimum imprisonment period of six months extendable to two years. Moreover, the provisions for "criminal breach of trust" have been consolidated (earlier they were scattered across various sections) with an increased imprisonment period from three to five years depending on the breach.

· Bribery of government officials

The law dealing with the bribery of government officials is contained in the Prevention of Corruption Act, 1988.

The acceptance, or agreement to accept or attempt to obtain such gratification or give or promise to give an undue advantage to a public servant, is sufficient to constitute an offence.

· Cartels and other anti-competition offences

Under Indian law, remedies for cartel and other competition offences are civil in nature, i.e., in the form of a cease-and-desist order or penalty (up to 30% of a firm's average relevant turnover or income).

· Environmental crimes

The main statutes are: (i) the Water (Prevention and Control of Pollution) Act, 1974; (ii) the Air (Prevention and Control of Pollution) Act, 1981; and (iii) the Environment (Protection) Act, 1986. These statutes lay down the standards for permissible emissions and the enforcement mechanism.

· Campaign-finance/election law

Elections and campaigning are regulated by the Representation of the People Act, 1951 (RPA) and the Conduct of Elections Rules, 1961 framed thereunder. The RPA provides for fixing a ceiling on the expenditure that may be incurred by candidates.

Candidates exceeding the limits face disqualification and annulment of their election. It is mandatory for political parties to declare their income, assets and liabilities, electoral expenses and contributions received.

The Companies Act, 2013 regulates corporate contributions to individual candidates and political parties. Any contravention would result in a pecuniary liability of up to five times the contributed amount and imprisonment up to six months.

Political parties are entitled to accept any amount of contribution voluntarily offered by companies other than government companies or foreign sources.

In 2018, the government notified an "Electoral Bond Scheme", which allowed donors (individuals/associations/corporations) to purchase tax-free bonds from authorised banks and donate it to political parties. Donations would be anonymous.

The Supreme Court, however, partly struck this down, holding that anonymous electoral bonds were violative of the right to information under the Constitution of India.

· Market manipulation in connection with the sale of derivatives

The sale of derivatives is controlled by the provisions of the Securities Contracts (Regulation) Act, 1956 and the SEBI Act.

The SEBI Act prohibits the use of manipulative and deceptive devices, insider trading and substantial acquisition of securities. It provides that no person shall, use or employ in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the SEBI Act or the Rules made thereunder. Contravention is punishable with imprisonment for a term that may extend to 10 years or a fine that may extend to USD 2.6 million (approx.) or both.

· Money laundering or wire fraud

Offences related to money laundering are dealt with under the PMLA. The PMLA lays down obligations on reporting entities (banking companies, financial institutions and intermediaries), in relation to maintenance of records, confidentiality, etc. The reporting entities are required to furnish information to the Financial Intelligence Unit – India (a central national agency responsible for processing, analysing and disseminating information relating to suspect financial transactions). An investigation can be initiated only by designated authorities. The PMLA provides that the Central Government may enter into an agreement with any foreign government for exchange of information or investigation.

· Cybersecurity and data protection law

The Information Technology Act, 2000 (IT Act) deals with this subject. The IT Act extends to offences or contraventions committed outside India, including those relating to a computer, computer system or computer network located in India. It prescribes punishment for offences including cyber-terrorism, identity theft, violation of privacy, sending offensive messages, etc.

In 2021, the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were implemented by the Ministry of Electronics and Information Technology. A "significant social media intermediary", i.e., one that has more than 5 million registered users in India, must establish a three-tier system for due diligence obligations. A social media intermediary that provides the primary service of messaging would have to enable the identification of the first originator of any information as may be required by a competent authority. Most media platforms have voluntarily complied with certain provisions of the Rules, while disputing some.

In 2023, the Digital Personal Data Protection Act (DPDP Act) was enacted. The Digital Personal Data Protection Rules, 2025 (DPDP Rules), under the DPDP Act, were notified in November 2025. The Rules primarily deal with regulations on Significant Data Fiduciaries that process, store or share personal data. Please also see question 7.4.

· Trade sanctions and export control violations

The Foreign Trade (Development and Regulation) Act, 1992 provides for regulation of foreign trade.

· Any other crime of particular interest in your jurisdiction

The BNS defines "organised crime" to include "*[a]ny continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence [...] by any person or a group of persons acting in concert [...] by use of violence [...] intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit [...]*". The BNS defines an "economic offence" as "*criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and government stamps, hawala [fictitious] transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form*". The BNS has also introduced a new offence of "abetment outside India".

3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed? Can a person be liable for "misprision" by helping another avoid being located or discovered?

Yes, however, not every inchoate crime is punishable. The elements constituting the offence include: (a) once the preparations are complete and with the intention to commit any offence, performing an act towards its commission; and (b) such act need not be the penultimate act but must be an act during the course of committing that offence.

In certain cases, preparation to commit an offence is a crime by itself.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity? Are there ways in which an entity can avoid criminal liability for the acts of its employees or agents?

An earlier view was that a company/legal entity does not have the *mens rea* for the commission of an offence. However, various judicial decisions have clarified that a company/legal entity is in the same position as an individual and may be convicted of a breach of statutory offences including those requiring *mens rea*.

The circumstances under which an employee's conduct can be imputed to the entity are:

- The employee must be acting within the scope and course of his employment.
- At least in part, for the benefit of the corporation, regardless of the fact that it actually receives any benefit or whether the activity might even have been expressly prohibited.

Where an act is committed solely for personal gain, outside official scope and course of employment, and without the company's knowledge, consent or active involvement, criminal liability may be avoided.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?

There is personal liability for managers, officers and directors for aiding, abetting, counselling or procuring the commission of any offence. (See also question 4.1.)

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both? Has the preference changed in recent years? How so?

See question 4.1. Usually, both are pursued. There have been judicial pronouncements holding that impleading the company as an accused is *necessary* for prosecution of the directors/individuals employed with the company.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply? When does it not apply?

To a large extent, this will depend on the mode of merger or acquisition. In a court-approved merger, the court-sanctified scheme will itself provide for successor liabilities. Generally, in a simpliciter case of acquisition of assets (slump sale mode), liability will not follow.

The Supreme Court in *McLeod Russel India Limited* (2014) held the successor entity liable to pay damages for any default in remitting provident fund (social security) contributions. The default here was committed prior to the date of transfer. The Court held that the transferee shall not stand absolved of the liabilities even if these stood assigned to the transferor entity under an agreement.

The courts have recognised the circumstances under which successor liability follows:

- transfer of assets by the purchaser for fraudulent purpose of escaping liability for the seller's debt;
- a *de facto* merger;
- the purchasing corporation is a continuation of the seller; and
- charge on the property.

The Supreme Court, in *Religare Finvest* (2023), adjudicated on whether a transferee bank can be fastened with corporate criminal liability for offences committed by the officials of the transferor bank prior to the merger. It held that criminal liability is not *ipso facto* transferred on merger either by contract or statute.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

There is no period of limitation for grave offences, i.e., those that are punishable for three years or more. For other offences, the limitations period is: six months, if the offence is punishable only with a fine; one year, if the offence is punishable with imprisonment for a term not exceeding one year; and three years, if the offence is punishable with imprisonment for a term not exceeding three years. Delay can be condoned by the court for just cause.

The limitations period commences on the date of the offence. However, the Economic Offences (Inapplicability of Limitation) Act, 1974 provides that the limitation provisions of the BNSS shall not apply in relation to, *inter alia*, the following statutes:

- Income Tax Act, 1961.
- Companies (Profits) Surtax Act, 1964.
- Wealth Tax Act, 1957.
- Central Sales Tax Act, 1956.
- Central Excises and Salt Act, 1944.
- Customs Act, 1962.
- Emergency Risks (Goods) Insurance Act, 1971.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

Yes, if it is a "continuing offence" (as opposed to an offence committed once and for all), a fresh period of limitation will begin to run at every moment of time during which the offence continues.

5.3 Can the limitations period be tolled? If so, how?

The limitations period can be tolled in the following circumstances:

- the time during which a person has, with due diligence, been prosecuting another action against the offender in another court, if it relates to the same facts and is prosecuted in good faith in a court that could not entertain it for want of jurisdiction or another cause of a similar nature;
- where the institution of the prosecution has been stayed by an injunction;
- where a previous sanction of the government is required (the time taken for the sanction is excluded); and
- the time during which the offender has been absent from India or has concealed himself.

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Under the provisions of the PMLA, if a freezing order is passed relating to property situated outside India, a Letter of Request can be issued to a court or authority in the Contracting State to execute the order. Under the Fugitive Economic Offenders Act, 2018, the Special Court may issue a Letter of Request to the Contracting State for the execution of an order for the confiscation of property situated therein. (Please also see question 6.3.)

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? Can third parties learn how the investigation began or obtain the initial file documents? If so, please describe them.

Normally, investigations are initiated by the filing of a report with the concerned police station, called an FIR. Indeed, a crime can be reported from outside the city and later assigned to the concerned police station. Police investigation, including search and seizure operations and questioning are now mandatorily required to be audio and video recorded.

If an offence is non-cognisable (i.e., where the prescribed punishment is less than three years), prior permission of the Magistrate is required for the police to investigate. Where the offence is punishable with imprisonment between three

to seven years, the officer in charge may conduct a preliminary inquiry before registering an FIR. Where the offence is "non-bailable", bail can be granted by the Magistrate (and not by the police). The inquiry must be completed within 14 days and an investigation within 90 days.

A 60-day timeline is prescribed for framing of charges by the court.

Pursuant to a 2016 Supreme Court judgment, all police stations have been directed to upload every FIR, preferably within 24 hours of its registration. Third parties have access to FIRs. However, they do not have access to chargesheets that are filed in court after due investigation. Hence, while FIRs are in the public domain, the results of the investigation are not.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

Yes, there are formal mechanisms for cooperating with foreign enforcement authorities.

An application can be made to an Indian court by an investigating officer stating that evidence is available in a jurisdiction outside India. The court may issue a Letter of Request to the concerned court or authority outside India to examine the person as specified and record his statement or produce any document or thing in his possession.

In addition, the CBI serves as the National Central Bureau for the purpose of correspondence with ICPO-INTERPOL in relation to the collection of information, the location of fugitives, etc. The Double Tax Avoidance Agreements and Tax Information Exchange Agreements strengthen the exchange of information relating to tax evasion, money laundering, etc. Further, Mutual Legal Assistance Treaties have been given legal sanction under the BNSS.

In 2016, the Central Government gave its approval for ratification of the Bay of Bengal Initiative on Multi-sectoral Technical and Economic Cooperation (BIMSTEC) Convention on Mutual Legal Assistance in Criminal Matters. The BIMSTEC comprises seven countries – Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand.

India has also signed and ratified the United Nations Convention against Corruption.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The investigation agencies have statutory powers to obtain documents, records and other information from any person, including employees, and to record statements as required. The authorities can conduct search and seizure operations at the premises of the companies, including directors. Under the PMLA, the ED has the power to require banks to produce records and documents relating to suspect transactions and to provisionally attach any property derived, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence. The BSA also provides for admissibility of electronic evidence. These procedures include summons to witnesses and accused, recording of statements and several other processes that can now be done electronically. The definition of "documents" has been widened to include electronic records including emails, server logs, computer files, messages, websites, cloud data, location information and voicemails.

Please also see question 3.1.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

Please see question 7.1.

The Central Government may assign investigation of the affairs of a company to the SFIO. Under Section 212 (5) of the Companies Act, 2013, a company under investigation is required to provide all information, explanation, documents and assistance to the SFIO.

Income tax authorities have the power to compel production of documents for the purpose of investigation. A raid may be carried out for these purposes.

Under the IT Act, an agency of the government may be directed to intercept information transmitted through any computer resource in the interest of sovereignty of the State, public order, etc. (Section 69).

The ED, which is under the administrative control of the Department of Economic Affairs, investigates offences under the PMLA and FEMA, among others. It is empowered to demand production of documents and can also conduct raids when there are suspected legal violations.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

Indian law recognises privilege in limited circumstances. Insofar as government documents are concerned, privilege can be claimed only on the ground that disclosure will be injurious to public interest (including national security or diplomatic relations).

Communication between husband and wife during marriage is generally privileged.

Lawyer/client communication is privileged if made in the course of, or for the purposes of, professional employment.

Mere confidentiality or protection of business secrets is not a ground to resist production of documents. In some cases, the court may examine the document concerned confidentially to judge its relevance/admissibility before ordering its production.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

With the enforcement of the DPDP Act and DPDP Rules, a few provisions of the IT Act stand superseded. The DPDP Act and DPDP Rules, *inter alia*, govern data processing (by individuals or legal entities). Please also see question 3.1.

Under the DPDP Act, an employer is considered a "Data Fiduciary" and the employee is the "Data Principal". While the DPDP Act requires consent for processing personal data, Section 7 provides a specific exception for "employment purposes". An employer may process an employee's personal data without obtaining explicit consent if it is necessary for purposes related to employment, such as payroll administration, provision of benefits, or compliance with applicable labour and tax laws.

Employers must, however, comply with key data protection obligations, including providing a clear privacy notice to employees, implementing reasonable security safeguards to prevent data breaches, and erasing the data once the purpose of collection has been fulfilled.

The Central Government has the power to notify a Significant Data Fiduciary (i.e., any person engaged in processing large volumes of personal data or data that can have an impact on the sovereignty and integrity of India). The Significant Data Fiduciary shall appoint a Data Protection Officer based in India and appoint an independent data auditor to carry out a data audit and undertake other measures specified under the DPDP Act.

The DPDP Act also applies to processing of personal data outside India if such processing is in connection with any activity related to the offering of goods or services to persons in India.

The Central Government may restrict the transfer of personal data to certain countries through a notification. As of the date of publication, no such notifications have been issued by the government.

7.5 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

Please see question 7.2.

7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?

Please see question 7.2.

Questioning of Individuals:

7.7 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

The BNSS empowers the investigating authority to examine any person who appears to be acquainted with the facts and circumstances of the case being investigated. At times, instead of in-person questioning, the investigating officer simply asks for production of documents. Normally, the questioning takes place at the office of the investigation agency. Similar powers have been given to investigation agencies under other special statutes.

7.8 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

Please see question 7.7.

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

The right of silence is available only for an accused. At the same time, any statement made to a police officer investigating a crime is inadmissible in evidence, and a person cannot be compelled to sign any statement given by him to a police officer in the course of an investigation. A person under interrogation has a right to the passive presence (without any interference, prompting or participation) of his advocate during questioning. The assertion of the right of silence will not result in an inference of guilt at trial. The accused is presumed innocent until proved guilty. However, investigative agencies like the ED operating under special statutes such as the PMLA are not "police officers". Therefore, statements recorded in such cases can be used as evidence in court.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases are initiated as follows:

(i) A Magistrate may take cognisance of an offence in the following manner:
  (a) upon receiving a complaint constituting an offence;
  (b) upon a police report;
  (c) upon information received from any person other than a police officer; or
  (d) upon his own knowledge that such offence has been committed.

(ii) In cases described under (i) (a):
  (a) An individual (of any nationality) or a corporate entity may file a complaint in the court.
  (b) Complaints may also be filed by statutory authorities under various enactments (for instance, for evasion of income tax under the Income Tax Act).

(iii) In cases described under (i) (b):
On completion of an investigation, the police force is required to file a report (whether an offence appears to have been committed or not). This is referred to as a charge-sheet. On receipt of such police report, the Magistrate takes cognisance of the offence and issues summons to the accused persons named therein.

(iv) In cases described under (i) (c):
The Magistrate may also take cognisance of an offence on the basis of information received by him, other than from a police officer. This may be information received from an unnamed source or an informer.

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

Please see question 4.3.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

There is no such procedure.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors that courts consider when reviewing deferred prosecution or non-prosecution agreements.

Please see question 8.3.

8.5 In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.

In India, a defendant can additionally be subjected to civil penalties or remedies (fines). Under criminal remedies, the BNSS provides for compensation to any person for any loss or injury caused by the offence if the court is of the opinion that it would be recoverable by such person in a civil suit. A non-compoundable criminal action cannot be settled by parties entering into a settlement agreement and payment of monies.

8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

Yes, the BNSS permits private prosecution including relating to business crime offences by an individual or a corporate.

In the case of a State action, the complainant can assist the public prosecutor via a pleader/counsel. The complainant, upon seeking permission from the court, can submit written or oral arguments as may be permitted.

See also question 8.1, points (i) and (ii), and question 16.3.

9 Burden of Proof

9.1 For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The burden of proof in criminal cases lies with the prosecution and does not shift during the trial. With respect to affirmative defence, generally, the party taking such defence bears the burden of proof.

9.2 What is the standard of proof that the party with the burden must satisfy?

Criminal cases require a higher standard of proof (i.e., beyond reasonable doubt) as compared with civil cases (where only preponderance of probabilities is required to be proved). Where the accused pleads an exception in law, it has the same burden as in a civil case (i.e., preponderance of probabilities).

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof? If a jury or group of juries determine the outcome, must they do so unanimously?

The judge is the arbiter of fact and determines whether the prosecution has discharged its burden of proof. As stated in question 2.2, there are no jury trials in India.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

Yes, a person who conspires or assists another to commit a crime can be held liable. These acts include abetment, conspiracy and acts carried out in furtherance of a common intention. A person will also be liable for abetment if he abets the commission of any act beyond India that would constitute an offence if committed in India. Criminal conspiracy arises when two or more persons agree to commit or cause an illegal act to be carried out or an act that is not illegal, by illegal means. For acts carried out "in furtherance of a common intention", the two elements required to be established are common intention and participation of the accused in the commission of the offence.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

Yes, unless the statute provides otherwise. The burden of proof lies with the prosecution.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

No. The maxim *ignorantia juris non excusat* (i.e., ignorance of law is not an excuse) applies.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

The BNS provides for a mistake of fact as an exception and a complete defence to a criminal charge. The necessary prerequisites here are that the act must be due to ignorance of fact and there must be good faith, i.e., reasonable care and caution applied. The burden of proof to prove the exception will lie with the accused. (See question 9.2.)

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Yes, under Section 33 of the BNSS, every person who is aware of the commission of specified offences, including murder, culpable homicide, organised crime, terrorist acts, kidnapping, human trafficking and offences against the State, is legally obliged to report such information to a Magistrate or police officer.

If a person knows or has reason to believe that a reportable offence has been committed and intentionally omits to report, he would be liable for the failure. The punishment could extend to six months imprisonment, a fine, or both.

See question 13.1 for leniency/credit for voluntary disclosure.

13 Cooperation Provisions / Leniency

13.1 If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or "credit" from the government? If so, what rules or guidelines govern the government's ability to offer leniency or "credit" in exchange for voluntary disclosures or cooperation?

The power to grant a pardon can be exercised by the Magistrate during the investigation into an offence. The provision for pardon applies only where the offence would attract a punishment of imprisonment of seven years or more. (For other cases, see plea bargaining in section 14 below.) A pardon is granted with a view to obtaining evidence from any person supposed to have been directly or indirectly concerned with or privy to an offence. A condition for the grant of pardon is that the person makes a full and true disclosure of all facts within his knowledge. Any person who accepts a tender for pardon may be examined as a witness in the trial.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.

Where a person has accepted a tender of pardon (as described in question 13.1) and it is alleged by the public prosecutor that such person has wrongfully concealed an essential fact or given false evidence, or has not complied with the conditions on which the tender was made, he may be tried for the offence in respect of which the pardon was tendered or for any other offence that he appears to have been guilty of, and also for the offence of giving false evidence.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?

Plea bargaining is available only for offences that are penalised by imprisonment for less than seven years and must be filed within 30 days from the date charges are framed by the court. However, if the accused has previously been convicted of a similar offence, he will not be entitled to plea bargaining. It is not available for offences that might affect the socio-economic conditions of the country or for offences against a woman or a child below 14 years of age. A chargesheet must be filed with respect to the offence in question, or a Magistrate must take cognisance of a complaint before plea bargaining can proceed.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

The accused is required to file an application for plea bargaining in the court where the trial is pending. On receiving the application, the court will examine the accused *in camera* to ascertain the voluntary nature of the application. The court will then issue notice to the public prosecutor and the investigating officer or the complainant. The negotiation of such a mutually acceptable settlement is left to the free will of the prosecution (including the victim) and the accused. If a settlement is reached, the court can award compensation based on the outcome to the victim, and then hear the parties on the issue of punishment. The court may release the accused on probation if the law allows for it. If a minimum sentence is provided for the offence, the accused may be sentenced to half of such punishment; in other cases, the accused may be sentenced to a quarter of the punishment provided or extendable for such offence. The accused may also avail of the benefit under Section 469 of the BNSS, which allows for setting off the period of detention undergone by the accused against the sentence of imprisonment in plea-bargained settlements. The court must deliver the judgment in an open court.

15 Sealing

15.1 Are there instances where the court proceedings or investigation files are protected as confidential or sealed?

India follows a system of open justice, and all court proceedings are open to the public, barring a few exceptions, such as rape or matrimonial disputes, where the courts are empowered to hold proceedings *in camera* to protect privacy and related rights. In trials for rape, the identity of the complainant is mandatorily protected.

In a series of judgments, the Supreme Court has frowned upon the practice of the prosecution handing over sealed cover communications "for the court's eyes only" and restricted such communications only where issues of national security are involved.

See question 6.2 for confidentiality in relation to investigation.

16 Elements of a Corporate Sentence

16.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of a sentence on the defendant? Please describe the sentencing process.

When the court determines that a defendant is guilty, it may order either a fine or imprisonment or both. The imposition of a sentence is largely discretionary in nature. If the Magistrate finds the accused not guilty, he shall record an order of acquittal. If the accused is convicted, the judge shall hear him on the question of sentence and then pass the sentence according to law. Imposition of a sentence for a business crime is generally not perceived to be harsh.

16.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

The court must look into the facts and circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive, the conduct of the accused and all other attendant circumstances.

16.3 Do victims have an opportunity to be heard before or during sentencing? Are victims ever required to be heard? Can victims obtain financial restitution or damages from the convicted party?

Yes, the victims have a right to be heard before and during sentencing.

Victims can obtain financial restitution from a convicted party. Even in cases where a penalty has not been prescribed, the court has discretion to grant compensation to the victim for any loss or injury suffered.

17 Appeals

17.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Yes, there is at least one statutory right of appeal. Thereafter, a discretionary appeal may be made to the High Court and thereafter (in exceptional cases) to the Supreme Court of India, depending on the facts.

17.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

Both parties are entitled to appeal in whole or in part.

17.3 What is the appellate court's standard of review?

If an appeal is from a Magistrates' Court to a Sessions Court, there is a full review of facts and law. If the appeal is to the High Court or the Supreme Court, the review would be confined to issues of law alone, unless there is a gross miscarriage of justice or error apparent on the face of the record. However, if the appeal is from a Magistrates' Court or a Sessions Court on a sentence of more than seven years to a High Court, then there is a full review of facts and appreciation of evidence as well as law. The review by the Supreme Court would be to the same extent.

17.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If the appellate court upholds the appeal, it may:

(a) From an order of acquittal, reverse such order and direct that further inquiry be made or the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence.

(b) In an appeal from a conviction or for enhancement of sentence:
  (i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a court of competent jurisdiction subordinate to the appellate court or committed for trial;
  (ii) maintain the sentence; or
  (iii) with or without altering the finding, alter the nature or the extent or the nature and extent of the sentence but not enhance the same.

(c) In an appeal from any other order, alter or reverse such order.

(d) Make any amendment or any consequential or incidental order that may be just and proper.



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