

Corporate Accountability and Director Liability: Decoding Vicarious Liability in Indian Law

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Introduction

In the interplay of corporate governance and law, the principle of vicarious liability is an often discussed and contentious subject. Based on the idea that individuals may be held accountable for the actions of another owing to a specific relationship or role, the principle of vicarious liability has far-reaching implications for directors and key managerial personnel of corporate enterprises.

Corporate entities, by their very nature, are incapable of independent action. As artificial legal persons, their intent and actions are attributed to their officers, directors, and key managerial personnel. However, the question that persists is whether directors can be held personally liable for the company's wrongdoings.

The legal treatment of vicarious liability of directors in India has traversed a delicate path, balancing accountability with the need to prevent frivolous litigation against corporate officials. This issue has become increasingly pertinent with a surge in corporate crimes and financial misconduct. This article delves into the intricate layers of vicarious liability in the Indian legal framework, its statutory and judicial evolution, and its present-day relevance.

Understanding Vicarious Liability in the Indian Context

At its core, criminal law in India adheres to the maxim *actus non facit reum nisi mens sit rea* (an act does not make one guilty unless there is a guilty mind). This fundamental principle inherently limits the scope of vicarious liability in criminal contexts. Unless expressly provided for by statute, criminal liability is individual and personal.

(i) Indian Penal Code, 1860

The IPC does not generally provide for vicarious liability in criminal cases. As clarified in ***Sunil Bharti Mittal v. Central Bureau of Investigation*** [(2015) 4 SCC 609], directors cannot be automatically implicated in criminal proceedings solely by virtue of their position. The Supreme Court held that liability must stem from direct involvement or a statutory provision explicitly imposing vicarious liability.

(ii) Negotiable Instruments Act, 1881

Section 141 of the Negotiable Instruments Act ("**NI Act**") serves as an exception to the general rule. It imposes liability on directors for cheque dishonour cases under Section 138, provided there are specific averments that the accused director was in charge of and responsible for the company's operations at the time of the offence. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*** [(2005) 8 SCC 89], the Supreme Court emphasised that a mere allegation without particulars of involvement is insufficient.

(iii) Other Regulatory Statutes

Several sector-specific laws, such as the Environmental Protection Act, 1986, and the Companies Act, 2013, contain provisions for imposing liability on directors. These laws typically distinguish between executive directors involved in the day-to-day management and non-executive or independent directors, who are often shielded from liability unless there is clear evidence of their complicity.

Judicial Interpretation: Key Cases and Principles

Sunil Bharti Mittal v. Central Bureau of Investigation [(2015) 4 SCC 609]

This case arose from the infamous 2G Spectrum Allocation Scam. The Special Magistrate summoned Sunil Bharti Mittal, Chairman and Managing Director of Bharti Cellular Ltd., on the grounds that he represented the "*directing mind and will*" of the company. The summons relied on the reverse application of the alter ego doctrine, attributing the company's actions to its directors. The Supreme Court quashed the summons, ruling that criminal liability in India is fundamentally personal and cannot be imposed on directors solely by virtue of their position. The Apex Court clarified that the reverse application of the alter ego doctrine is impermissible unless there is explicit statutory backing or direct evidence of the director's involvement. This case reinforced that directors cannot be held vicariously liable for corporate actions unless there is a clear statutory or evidentiary basis for such liability.

Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. [2021 SCC OnLine SC 806]

In this case, the complainant accused that the directors of contracting companies of trespassing on his land and causing damage during a pipeline construction project. However, there were no specific allegations about the directors' individual roles or involvement in the offence. The Supreme Court ruled that vicarious liability cannot be presumed in the absence of specific allegations and evidence. It quashed the proceedings *qua* the directors stating that holding directors liable without concrete proof would undermine the principles of fairness and justice. This case highlighted the need for complainants to provide detailed and substantiated allegations when seeking to hold directors accountable for corporate actions.

Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]

In this case, the directors of Pepsi Foods were summoned without substantial evidence linking them to the alleged offence of adulterating of bottled beverages. The Supreme Court held that summoning an individual to face criminal proceedings is a serious matter and requires the magistrate to ensure that there is sufficient material to justify the action. The Apex Court emphasised that criminal law cannot be set into motion as a matter of course and that vague or unsubstantiated allegations are insufficient to implicate directors.

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89]

This case addressed the issue of vicarious liability under Section 141 of the NI Act in cheque dishonour cases. The complainant alleged that the directors of the accused company were liable but did not provide specific details about their roles. The Supreme Court ruled that merely naming directors in a complaint is not enough. It held that complaints must specifically aver that the directors were in charge of and responsible for the conduct of the company's business at the time of the offence.

***Ashutosh Ashok Parasrampuriya v. Gharkul Industries Pvt. Ltd.* [(2023) 14 SCC 770]**

This case dealt with a complaint under Section 138 of the NI Act regarding a dishonoured cheque. The complainant alleged that the directors of the company which had issued the cheque were responsible for the offence but failed to provide specific details about their roles. The Supreme Court dismissed the proceedings against the directors, emphasising that Section 141 of the NI Act requires specific averments about the accused's involvement in the company's business operations at the time of the offence. Non-executive directors, in particular, were held to be outside the scope of liability unless there was concrete evidence of their participation in the offence. This judgment reaffirmed that vague or general allegations cannot justify implicating directors in criminal cases.

Evolving Jurisprudence: From Presumption to Precision

Over time, Indian Courts have progressively refined the scope of vicarious liability for directors, shifting from a presumptive approach to one that is grounded in concrete evidence and clearer statutory guidelines. This evolution is marked by several key developments:

First, the Indian Courts now require specific and detailed allegations regarding a director's role in the alleged offense. Generalized or broad statements are no longer deemed sufficient to establish liability.

Second, a distinction is increasingly made between different categories of directors. Non-executive and independent directors are generally excluded from liability unless there is direct and compelling evidence of their involvement in the offense. This distinction reflects a more nuanced understanding of the varying degrees of responsibility held by different directors within a company.

Lastly, there has been a noticeable shift in the judicial approach to the issuance of summons and the initiation of criminal proceedings against directors. Courts now subject these actions to more rigorous scrutiny, ensuring that such steps are warranted based on the facts and evidence at hand.

Challenges and Way Forward

While the Indian judiciary has made commendable strides in delineating the boundaries of vicarious liability, challenges persist. Directors often face harassment through frivolous complaints, especially in cheque dishonour and financial misconduct cases. This not only burdens the judiciary but also deters capable professionals from taking up directorial roles. Another criticism is the lack of uniformity in statutory provisions across different laws.

There is a pressing need for introducing legislative clarity on the scope of vicarious liability. Statutes should clearly delineate the circumstances under which directors can be held liable, taking into account their role and level of involvement. Inspired by global best practices, India could introduce safe harbour provisions for independent and non-executive directors. Such measures would shield them from liability in the absence of evidence of complicity. Magistrates and judicial officers should receive specialised training to handle corporate crime cases with the necessary expertise and sensitivity.

The principle of vicarious liability of directors in India sits at the intersection of accountability and fairness. While directors must exercise due diligence in overseeing corporate affairs, they should not be subjected to baseless litigation. The evolving jurisprudence, as shaped by landmark judgments, strikes a delicate balance, ensuring that only those with a demonstrable role in the wrongdoing are held accountable.

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