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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

WHO BEARS THE BLAME? DIRECTOR LIABILITY AND CORPORATE CRIME UNDER THE COMPANIES ACT, 2013

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1. ABSTRACT

This paper reviews the principle of vicarious criminal liability of the directors based on the Companies Act, 2013, and puts special emphasis on the question of corporate responsibility and individual justice. It examines the attempts of the Indian corporate criminal law in identifying the responsibility of directors in crimes committed by companies particularly under Sections 2(60), 166, 447 and other related statutes. By a dissection of doctrines and significant judicial rulings such as Sunil Bharti Mittal v. CBI, SMS Pharmaceuticals and Pooja Ravinder Devidasani, the paper mentions that there are undeterred enforcement issues including demonstration of knowledge, role confusion, and inconsistency in the trial courts. A comparative study of the UK and the US systems in a few words highlights the unclear nature of India. The paper conclusively claims an argument to the statutory tests, greater protection to independent directors and structured guidelines in the courts to provide fair, predictable and role based attribution of criminal liability.

2. KEYWORDS

Vicarious Liability; Company Directors; Corporate Criminal Liability; Companies Act, 2013; Officer in Default; Judicial Interpretation.

3. INTRODUCTION

“How can a dead, lifeless thing do a crime and be penalised for it?” It sounds strange but it's a real dilemma attached to any criminal liability regime. In corporate law, the concept of vicarious liability is premised on a singular fact: companies act through people - directors, managers, employees. Therefore, when things go south, there is usually a human decision that caused it. In India, this becomes especially troublesome because of the “Companies Act, 2013”¹. Take for

¹ Companies Act 2013 (India).

instance “Section 447”² - which deals with fraud, and has prescribed harsh punishment. But the big question is this: should a director who is simply the negligent top management decision maker go to jail for something they were not directly involved in? Negligence is one thing, what about honest mistakes or a director who has no idea?

The courts have attempted to grapple with this issue. In “Sunil Bharti Mittal v. CBI (2015)”, the Supreme Court could not really mitigate this logic, ruling that a director could not be pulled into criminal proceedings simply for being a director without any evidence of actual involvement or intent.³

This essay goes on to explore is the overall development of vicarious liability, and whether it achieves a balance between accountability and overreach.

4. CONCEPT AND EVOLUTION OF VICARIOUS LIABILITY

Vicarious liability seems like a complicated legal phrase, yet it is very straightforward: one can be liable for what another is, usually based on some authority or control existed over the person. It arose in tort law, for example when an employee makes an innocent mistake in the course and scope of the job, the employer may be liable. The logic of the rule is very simple: if one can benefit from another's labour, you should also accept a share of the liability/risk.

However, when applying this idea to criminal law and corporation law, the type of liability imposed is much more complicated. Can a director be liable if someone else in the corporation in oversight, charged with her employer's duties, committed a crime? This is a far more difficult issue to resolve.⁴ For example, if a factory of the corporation violates environmental laws, should the managing director of the corporation be charged? If the managing director knew about the violations and simply didn't care, sure.

² Companies Act, 2013, s 447.

³ Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609 (SC).

⁴ Sharma A, ‘Criminal Cases and Vicarious Liability of Company Directors’ *LiveLaw* (17 April 2023) <https://www.livelaw.in/lawschool/articles/criminal-cases-and-vicarious-liability-of-company-directors-286535> accessed 27 May 2025.

Courts have gradually responded to the confusion. In the past, the mere title was enough for the presumption of guilt. Conversely, in “**Sunil Bharti Mittal v. CBI**”⁵, the Supreme Court held that evidence proving involvement should be required instead of simply having an impressive job title. Still, vicarious liability is about fairness. But if I'm being honest, that is far from settled in the complex world of corporate structures. It is a work in progress, and some days it feels like we are building the plane while we are flying it.

5. THERORETICAL FOUNDATIONS AND STATUTORY FRAMEWORK UNDER THE COMPANIES ACT, 2013

5.1. Vicarious Liability in Corporate Law:-

When is Liability Criminal? At the center of vicarious liability is an uncomfortable split, accountability versus justice. The idea is as uncomplicated as it is tied up in power. On some level one could make a logical case for accountability at the top of an organization or institution who has allowed wrongdoing with their directorship, when simply not doing anything makes the person a passive or unwitting participant. After all power comes with responsibility.⁶ But when you try to put this into practice and apply it to how real organizations actually operate it can be more complicated. Vicarious liability was never meant to be a vehicle for punishing the innocent. At its essence, vicarious liability thinks about how power operates inside institutions. Those in power make decisions, are major decision-makers in forming culture, and profit.

And in a corporate context this logic becomes more pointed. Certainly, a company is a legal "person," but it cannot act on its own. A company relies entirely on human agents - directors, managers, employees. So, in the event a company commits an offence, the better question is: who, within that structure, allowed it to happen - or did nothing to stop it?

5.2. The Companies Act, 2013: A Tightening Net

The Companies Act, 2013⁷ represented a shift away from the regime of 1956. It was also decidedly

⁵ Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609 (SC).

⁶ Sharma A, ‘Criminal Cases and Vicarious Liability of Company Directors’ *LiveLaw* (17 April 2023) <https://www.livelaw.in/lawschool/articles/criminal-cases-and-vicarious-liability-of-company-directors-286535> accessed 27 May 2025.

⁷ Companies Act 2013 (India).

harder on director responsibilities and compliance. While the Act does not spell out "vicarious liability" in technical terms, it certainly introduces the concept in several significant sections.

Let's begin with Section 2(60). This provision defines an "officer who is in default" quite broadly - just about anyone from managing and whole-time directors to CFOs and company secretaries can be implicated if the company breaches the law. A broadly cast net.⁸

Section 166 sets out the duties of directors - must act honestly, avoid conflicts of interest, and exercise reasonable care. If a director breaches these duties section 166(7) gives authority for punishment, up to ₹5 lakh in fines. But the more serious offences show up in sections such as:-⁹

- **Section 447** - fraud and with a kind of penal provision—all terms of imprisonment up to 10+ years, if Directors are knowingly involved in this, then they could multiples of "officer".¹⁰
- **Section 448:** False statements in applications or declarations? Yes - that is another offence.¹¹
- **Section 76A:** If a company receives deposits in contravention of the law, it is not just the company liable - but every officer who is responsible and is knowingly a party to that failure can be imprisoned for up to a maximum 7 years.¹²

Note the language here - "knowingly", "responsible for the conduct", "officer in default". The Act is clearly aware of the potential for scapegoating / opportunistic misconstructions. It asks for the courts to distinguish between opportunistic / wrongful conduct on the one hand, and merely being there on the other.

But, there is still the question, what does "responsible" even mean in the corporate context? If a natural person simply attends and votes and registers they approve the education, does that count? The examples in the Act are not always easy going to translate.

5.3. Other Supporting Frameworks:-

Outside of the Companies Act, there are supportive legal provisions that rely on the same logic. For example, **Section 141 of the Negotiable Instruments Act, 1881**¹³ identifies the vicarious liability of directors with respect to dishonour of cheque. The case law confirms that there can be

⁸ Companies Act, 2013, s 2(60)

⁹ Companies Act, 2013, s 166.

¹⁰ Companies Act, 2013, s 447.

¹¹ Companies Act, 2013, s 448.

¹² Companies Act, 2013, s 76A.

¹³ Negotiable Instruments Act, 1881, s 141.

no liability through indirect means; it must be proved that the accused director is culpable for the dishonour of cheques, in all of the cases reviewed by the courts.¹⁴

The same logic applied to officers of companies under the Environment Protection Act.¹⁵ Courts have defined scope for vicarious liability of company officers for environmental breaches now established in Canadian law; however the courts require a showing of "consent, connivance or neglect" for there to be liability.

Here's where the theory gets tested. On one hand, the law wants to prevent directors from using their status as a shield. On the other, it doesn't want to criminalize people for things they had no control over. Internal compliance systems are improving, but they can't replace individual responsibility. Maybe what we need is a clearer legal test, one that considers role-specific duties, actual knowledge, and intent rather than vague notions of default. Because without sharper tools, we risk turning accountability into blame, and that helps no one.

6. PRACTICAL & DOCTRINAL ISSUES IN ENFORCEMENT

If nothing else, the Companies Act, 2013 has made it clear that directors can no longer sit in the backseat. However, when it comes to the enforcement of vicarious liability under the Act, things will quickly become complicated. The law may read very good in as far as vicarious liability is concerned, but the use of the law often stumbles with a myriad of practical and doctrinal issues. To be clear, there are many, but three issues stand above the rest: knowledge or involvement, role in a corporate context, and chaotic case law application by the judiciary.

6.1. The 'knowledge' trap: proving involvement is difficult:-

One of the most enduring difficulties is proving that a director or officer knew about the misconduct, or contributed to it. Statutes use phrases like consent, connivance, or neglect - which may sound simple but are incredibly difficult on the ground to prove. How do you prove someone was complicit in allowing a regulatory breach to take place without acting? Particularly in large companies - where there are lots of layers of management and lots of people making decisions side

¹⁴ Ravi Kumar, 'Directors' Vicarious Liability under the Negotiable Instruments Act' (2021) 9(1) Corporate Law Review 67.

¹⁵ Environment Protection Act 1986 (India).

by side - it is almost impossible to show a neat relationship between being responsible and the normal course of business practice and oversight.

This problem is compounded in the case of fraud-related and compliance-related offences under Sections 447 and 448. It is not enough for the prosecution to prove that things went wrong, they need to prove that the director knew - or ought to have known - that things would go wrong. A very heavy burden to prove. In this area, the courts have been rightfully cautious, but the result is generally overreaching or inaction.

6.2. Role Confusion: Director Not Director:-

Another major challenge is the uniform views of directors. The term "officer in default" provided in Section 2(60) is broad, its attempts to define scope, it simply renders people liable across the board. For example, independent directors are regularly included in complaints solely as a function of sitting on the Board, even though they may not have even participated in the event in question. This results in a chilling effect. Why would anyone want to serve as a director - even in a non-executive role - if they might get dragged into a lawsuit based on something that happened deep in the company supply chain? The law does attempt to provide some protection in some circumstances (especially for independent directors under Section 149(12)), but in practice, those protections are not consistently implemented.

6.3. Judicial Inconsistency: Too Much Depends on Who's Deciding:-

Even when beneficial precedent exists, the law's enforcement tends to depend so much on the way that a particular judge reads the law. One court could easily dismiss a complaint against a director, on the basis that the allegations are too vague or lack specifics, while another can proceed with a vague and imprecise complaint – all based on vague assumptions of responsibility. The Sunil Bharti Mittal judgement was explicitly intended to put to rest this issue, and powerfully reinforced that vague allegations of directors involvement were not title to see involvement. However, trial courts continue to routinely summons directors on the basis of nothing more than the formal title of their position as 'director' and regardless of the status of facts surrounding their role in the event in question.

7. COMPARATIVE JURISDICTION ANALYSIS

As we look beyond India, it is evident that vicarious liability is not an Indian problem and it is a problem that most legal systems around the world are trying to get right. Looking to the UK, the application of vicarious liability and the vicarious nature of liability of limitation of liability does tend to be strict from the outset, particularly with respect to corporate manslaughter and regulatory offences (the **UK Companies Act 2006** gives directors strong fiduciary duties but typically there is liability if a director is found to have acted in a derelict manner) - it requires a little more than sitting around the table. There is typically a far stronger connection between the role, the breach and the resulting harm.¹⁶

In the USA it gets even more nuanced. In the USA, corporate criminal/fine liability is predicated on the "respondeat superior" doctrine which means that an organization is liable for acts of third parties, but it also means that a company can only get a director or other officer's personal liability to arise if they are practically involved in the act which resulted in the fine or loss of reputation or if they are guilty of gross negligence. The USA system relies on internal corporate compliance tools, options for prosecutors, rather than blanket criminalisation.

Compared to this, India's approach feels both cautious and contradictory. We talk about not punishing innocent directors, but still see them summoned routinely under Sections 447, 448, or 2(60) without clear proof. Maybe that's what we're still figuring out—how to strike a balance that holds people accountable without turning every boardroom into a courtroom.

8. JUDICIAL TRENDS AND KEY CASE LAWS

Judicial interpretation has given shape to how vicarious liability operates under the Companies Act, 2013. It is possible now to read into judicial decisions that the courts have evolved from a broad automatic attribution of vicarious liability to a more measured evidence based and cautious view. Significantly, however, there remains a lack of clarity with respect to the circumstances in which directors can be held liable.

¹⁶ *Percy & Simmonds*, 'Directors' Duties under the Companies Act 2006' (2021) 12(3) *Journal of Corporate Law Studies* 345.

“*Sunil Bharti Mittal v. Central Bureau of Investigation (2015)*”¹⁷, is one of the more significant decisions on the subject. The Supreme Court held that directors could not face any criminal liability simply based on their status. There should be relevant allegations that identify an active role, intent, or knowledge. This was a landmark opinion as it indeed pushed back the trend whereby directors were summoned in every corporate offence simply because they were “in charge.”

However, lower courts have not always followed this principle. In many cases, directors have still found themselves being pulled into proceedings based on attenuated allegations, particularly under Section 2(60) of the Companies Act which defines “officer in default”. The language in this section is broad, and often extends beyond what its purpose was intended to justify—where directors (of which independent or non-executive directors would normally have no part) were getting drawn in for something they were not responsible for.

Another case of significance is “*SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr. (2005)*” in which the Supreme Court noted that for vicarious liability under Section 141 of the Negotiable Instruments Act, the mere designation does not involve liability—it must be shown with some particularity how that person was in charge of, and utilized their responsibilities for the conduct of business.¹⁸

Yet more recently, “*Pooja Ravinder Devidasani v. State of Maharashtra (2014)*”, reiterated that criminal liability cannot be based off an assumption of involvement, but a clear involvement. A director cannot be assumed to be so on the basis of their office alone.¹⁹

Sometimes the judiciary acts without the willingness to show caution; sometimes that caution is all lost in the pressure of the moment of the process, and that is when we begin to see genuine miscarriages of justice.

¹⁷ *Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609 (SC).*

¹⁸ *SMS Pharmaceuticals Ltd v Neeta Bhalla & Anr (2005) 5 SCC 602 (SC).*

¹⁹ *Pooja Ravinder Devidasani v State of Maharashtra (2014) 7 SCC 772 (SC).*

9. SUGGESTED REFORMS BASED UPON JUDICIAL DEFICIENCIES

While there has been some level of judicial engagement, it is not deniable that India's system of vicarious liability under the Companies Act, 2013 entails a degree of structural ambiguity. Courts have appropriately demanded an elevated evidence standard in theory, but in practice, directors are often erroneously summoned without specifying any allegations or particulars. If the doctrine is to hold any fairness or predictability, we need to fix the situation with some intentional reforms. This is what a proposed reform package might entail.

9.1. A More Certain Statutory Test for Director Liability:-

Currently, provisions like sections 2(60), 166, and 447 contain language that is vague, like “responsibility” or “officer in default”. Although they do not provide direction on the substantive standard of the director’s actual level of involvement, they create an impression of culpability. The legal system would be better served by issuances of statutory test that captures degree of responsibility, role in making the decision, and any documented communications around the decision making process; this hope is that the test would prevent arbitrary interpretation. Other jurisdictions like the UK have clearer standards based on the specific role; we could grab that clarity without the entirety of their model.

9.2. Shielding Independent and Non-Executive Directors:-

We're still seeing complaints against independent directors simply because they were on the board following Sunil Bharti Mittal. Section 149 (12) of the Companies Act is somewhat protective but whereas it may apply weakly; we require additional procedural safeguards. For example, the pre-screening of complaints required by a regulatory body before advancing to criminal proceedings should be the norm. If these barriers are not implemented, the competent professionals will be rightfully discouraged from accepting independent directorships at all.²⁰

9.3. Trial Court Guidelines for Summoning Directors:-

This idea is simple and yet so terribly important. Highs courts and the Supreme Court have continually re-iterated the legal need for specific pleadings yet low courts continue to summon

²⁰ Companies Act, 2013, s 149(12).

companies directors based on generic FIRs and complaints. The introduction of procedural rules/guidelines that are binding on trial courts (that require them to provide detailed reasons for a summons) could fill that gap. Otherwise, directors will continue to be subject to reputational and potential legal harm just by being named.

10. CONCLUSION

In my opinion, vicarious liability under the Companies Act, 2013 is at an ambiguous intersection of corporate accountability and individual justice. It seeks to prevent directors from hiding behind the corporate veil with impunity, yet while interpreted it applies overly harshly at times, and at others lacks the ability to impact unjust conduct. It is grounded in a basic premise that those that are in a position of power should also have some accountability. Yet, therein lies the true challenge, of differentiating between supervision and accountability, honest mistake and criminal activity.

From a jurisprudence perspective, cases like Sunil Bharti Mittal have provided an opportunity for a more nuanced discussion, whilst there exist shortcomings particularly in respect to implementation and interpretation at the trial levels. If remedy is not forthcoming soon either through stricter statutory prescriptions, procedural filters, or improved internal compliance procedures, we may run the risk of thwarting competent individuals from actively engaging in corporate governance altogether. In the end, we should not be aiming to criminalize every judgment foul-up. Rather, we should aim for an accountable structure that reflects how companies actually operate and that intervene where accountability is rightfully warranted. Anything else will undermine avenues to justice and integrity at companies.