



Who's to blame?

9 May 2025



*With corporate criminal liability cases, courts are faced with the responsibility of balancing accountability and fairness, writes **Katherine Abraham***

The subject of corporate criminal liability keeps finding its way, time and again, before the courts. The court had to once again render its decision on this matter in the case of Sanjay Dutt v State of Haryana.

The criminal liability of company directors in India has been a hot topic issue that has garnered significant media and legal attention, particularly in light of recent rulings by the Supreme Court.

The court's recent decision in the above-mentioned case set the foundation and sharpened the contours of corporate criminal liability, specifically for company directors.

In the case, the Supreme Court division bench, comprising JB Pardiwala and R Mahadevan, clarified the extent of vicarious liability for company directors. The court observed: “While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic.”

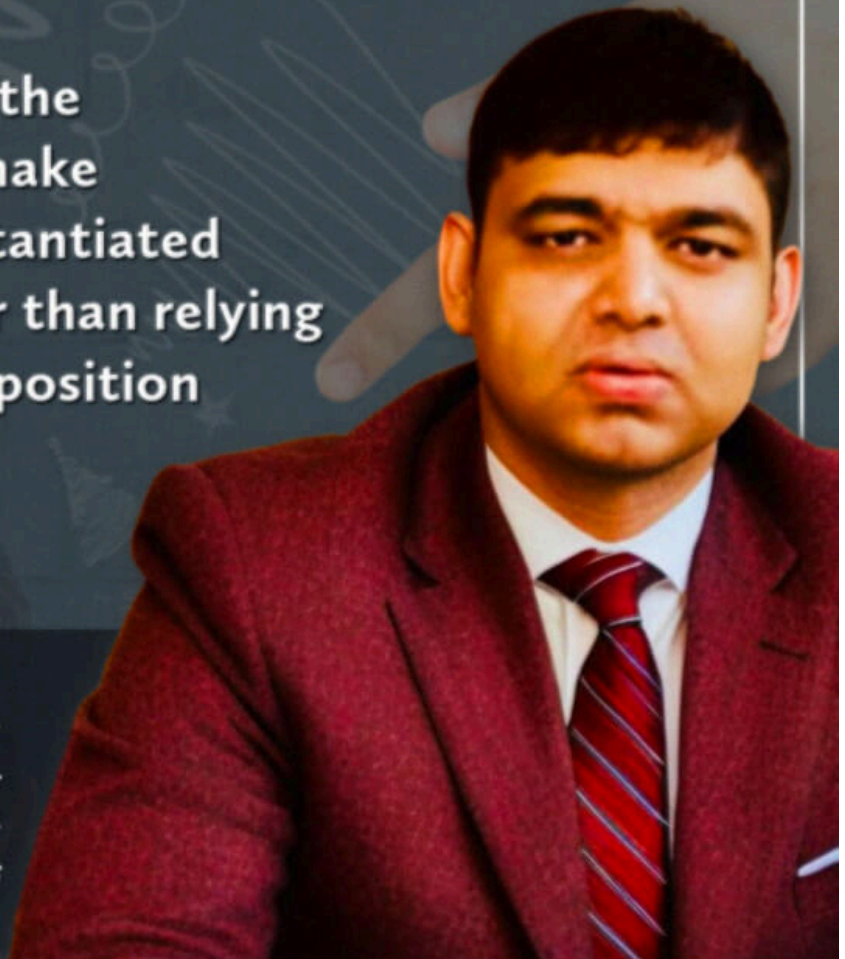
It stated that a director may attract vicarious liability if: (1) the company was liable in the first place; and (2) if such director personally acted in a manner that directly connects their conduct to the company’s liability. Mere authorisation of an act at the company’s behest, or exercising a supervisory role within the company, was not enough to render a director vicariously liable.



The burden is on the complainant to make specific and substantiated allegations rather than relying on the director’s position in the company

Ashish Deep Verma

*Managing Partner
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New Delhi*



Ashish Deep Verma, managing partner of the litigation-focused firm, Vidhisastras, in New Delhi, says: “The burden is on the complainant to make specific and substantiated allegations rather than relying on the director’s position in the company.

“A crucial inference from this ruling is that courts must exercise caution in taking cognisance of complaints against directors.”

Guilty mind

In global legal history, companies were able to evade liability due to a lack of mens rea (guilty mind). The situation changed in 1915, with the UK case *Lennard’s Carrying Co Ltd v Asiatic Petroleum*, where Lord Haldane, one of five judges presiding over the case and influenced by German company law, identified the corporation’s “directing mind and will” as liable.

In the matter, Asiatic Petroleum contracted Lennard’s Carrying to transport oil, but the ship, the Edward Dawson, which was carrying the oil, sank due to its unseaworthiness. It was claimed that the managing director, Lennard, was aware of the ship’s defective condition and had failed to act.

The House of Lords, which at the time exercised judicial function, ruled that Lennard’s knowledge was attributable to the company because he was its “directing mind and will”. The court established the “identification doctrine”, or the “alter ego” theory, which holds that a company can be liable for the actions of individuals who represent its controlling mind. This landmark case redefined corporate liability law, clarifying when a company can be deemed responsible for wrongful acts committed by its key officers.

With the evolving corporate landscape, the question is whether the legal framework in India governing corporate leaders and their roles, responsibilities and potential accountability is enough.

Various Supreme Court judgments in India have aimed to clarify the extent to which directors can be held liable for criminal offences.

Verma says: “The [Dutt] judgment also signals a strong stance against frivolous prosecutions that fail to differentiate between corporate governance and criminal liability. By setting a clear threshold for imputing liability, the court ensures that only those who are directly involved in, or have actively facilitated, an offence are held accountable.”

Case origins

In *Sanjay Dutt v State of Haryana*, the appellants – Dutt, managing director and CEO of Tata Realty and Infrastructure; Tata Housing Development's vice president, Kamal Sehgal; and former project head, Satpal Singh – were implicated in a complaint alleging the illegal uprooting of 256 trees and 62 small plants in Gurugram, Haryana.

The complaint, filed under section 4 of the Punjab Land Preservation Act, 1900 (PLPA), accused the appellants of causing environmental damage. The special environment court took cognisance of the complaint under section 19 of the PLPA.

The appellants sought to quash the proceedings, but the Punjab and Haryana High Court dismissed their petition, which led to an appeal before the Supreme Court. The Supreme Court, after a thorough examination of the complaint, especially in the absence of explicit statutory provisions imposing such liability, held that the PLPA did not contain any provisions that automatically imposed vicarious liability on directors or officers for offences committed by the company.

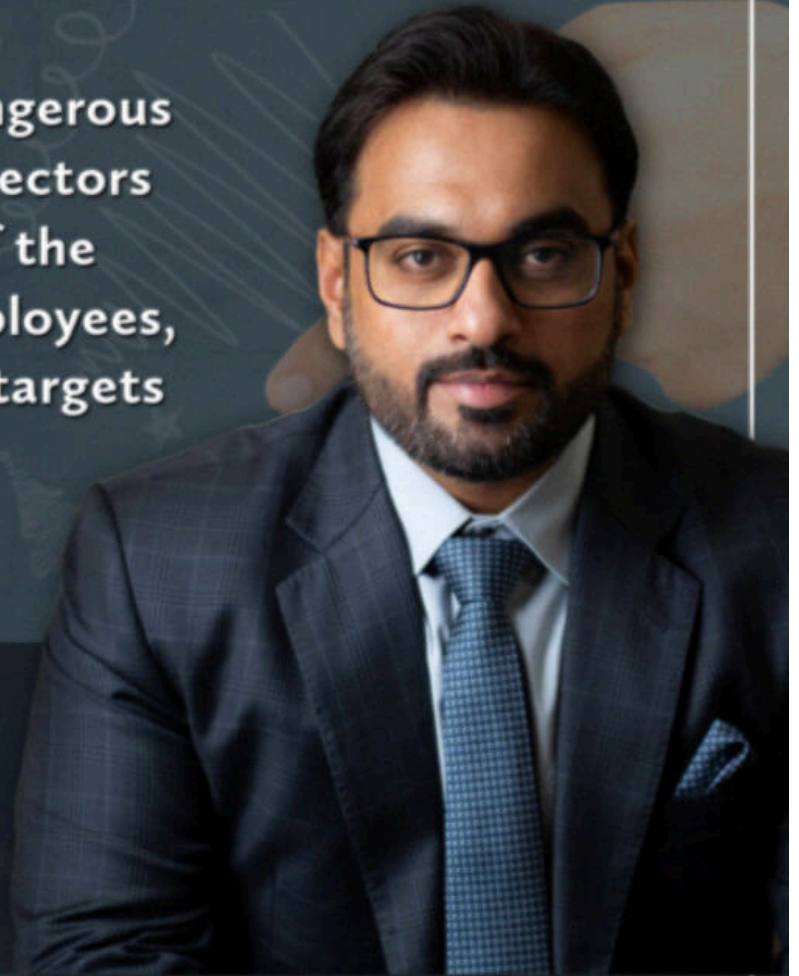
It further emphasised that, for a case of vicarious liability to be established, specific allegations relating to any personal involvement of the accused must be provided.



India is facing a dangerous trend of making directors liable for actions of the company or its employees, since they are soft targets

Chinmay Bhosale

*Advocate
Bombay High Court
Mumbai*



Speaking on the judgment, advocate Chinmay Bhosale, of the Bombay High Court, said: “India is facing a dangerous trend of making directors liable for actions of the company or its employees, since they are soft targets.” He added: “Stern action or imposing of heavy costs against such ill-found allegations is the need of the hour, in the absence of malicious prosecution laws in our country.”

The Supreme Court held that an authorisation or a supervisory role does not suffice for a charge of vicarious liability and there was no clear evidence of the parties being directly involved in the matter, apart from carrying out their routine corporate roles and duties.

Mitigating risks

“The Sanjay Dutt case provides valuable insight into the preventive measures that can be adopted to mitigate corporate liability risks,” notes Sara Sundaram, a partner in the white-collar crimes and dispute resolution practice at [Cyril Amarchand Mangaldas](#) (CAM) in Mumbai.



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Sara Sundaram

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In examining constructive knowledge, a term used to define knowledge a person is legally presumed to have, the Supreme Court clarified that a director's liability is not based on their title alone, but on whether they had awareness of and control over the company's operations, even if they were not directly involved in the specific act.

Arman Roop Sharma, a partner at Anand Sharma & Associates specialising in white-collar crime and dispute resolution in Delhi, says: “Mere authorisation or supervision does not establish liability without evidence of direct involvement and intent.”

In the case of *KK Ahuja v VK Vohra* (2009), the court noted that the appellant filed two criminal complaints in Delhi against Motorola Speciality Oils and eight individuals under section 138 of the Negotiable Instruments Act, citing dishonour of cheques totalling INR41 million (USD478,000).



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Arman Roop Sharma
Partner
Anand Sharma & Associates
New Delhi

The company issued the cheques to the appellant’s firm. The appellant alleged that all the accused were responsible for the company’s financial dealings. On 3 October 2001, the magistrate ordered a summons to be issued to all the accused.

Speaking about the case, Tarun Gaur, an advocate with a focus on white-collar crime based in New Delhi, says: “The distinction between ‘direct involvement’ and ‘constructive knowledge’ was discussed where the Supreme Court examined the meaning of being ‘in charge of’ and ‘responsible for’ the company.

“The court ruled that only individuals who meet both criteria can be held liable under vicarious liability provisions.”

Nisarg Desai, a partner at Gandhi Law Associates in Ahmedabad who deals with commercial dispute resolution, says: “Investigation authorities, at the [initial] stage of complaint, generally go by ‘constructive knowledge’ in assigning criminal liability to the directors, especially as against direct involvement.”

Desai adds that while issuing summons, the concerned court issuing the order is bound to “record prima facie satisfaction about the role played by the directors in their respective capacities, without which he/she cannot be made vicariously liable”.

Ashish Kabra, head of the Singapore office of Nishith Desai and Associates (NDA), sheds light on the Sanjay Dutt case through another case. In *Sunil Bharti Mittal v CBI (2015)*, the Supreme Court laid down that “an individual can be held vicariously liable for a company’s act only where the statute so provides, or if there is direct evidence of the individual’s active role in the commission of the offence itself”.

Thus, says Kabra, “corporate culpability is well distinguished from individual directors’ liability under Indian law”.

Adding to Kabra’s argument, Sundaram says the Sanjay Dutt judgment “highlights the importance of clearly designating responsibility or specifying the persons responsible at the operational level, particularly in areas that require environmental compliance, to prevent unwarranted liability of directors”. He adds that “the delegated execution to appropriate officers can be recorded in the board minutes”.

Viral Mehta, a lead in private equity and financial services regulatory at NDA in Mumbai, says: “Courts assign criminal liability to directors by analysing the specific facts of the case, including the evidence on record, to determine the actual role played by the director in the criminal act.”

Speaking in a personal capacity, Prerak Ved, a partner at [AZB & Partners](#) in Mumbai who specialises in white-collar crimes, also notes: “Individual criminal liability arising from a company directorship is a serious legal consequence. While ‘direct involvement’ may be

sufficient to assign criminal liability, 'constructive knowledge' is a much higher bar to affix individual criminal liability and would depend on several factors including nature of directorship [whether executive or non-executive], extent of involvement or awareness, legal issues involved, and other relevant facts."

Vidhisastras' Verma points out that even in cases where directors delegate duties, they cannot be held liable for the malfeasance conducted by the delegate. He adds that if "the complaint lacks specific allegations against the director and only names them by virtue of their designation, it can be challenged as a misjoinder".



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[The Sanjay Dutt] ruling aligns with previous judgments ... which emphasised the need for specific statutory provisions and allegations to establish vicarious liability

Amit Jajoo
*Head of Dispute Resolution
IndusLaw
Mumbai*

The graphic features a dark background with faint, stylized white lines and stars. On the right side, there is a portrait of a man with short dark hair, wearing a blue suit, white shirt, and an orange tie with a blue polka-dot pattern. On the left side, there is a large white quotation mark icon at the top, followed by a vertical line and the quote text in white. Below the quote, the name 'Amit Jajoo' is written in bold white text, followed by his title and firm name in a smaller, italicized white font.

By setting a clear threshold for imputing liability, the court ensures that only those who are directly involved in, or have actively facilitated, an offence are held accountable.

“[The Sanjay Dutt] ruling aligns with previous judgments, such as *Maharashtra State Electricity Distribution Company Limited v Datar Switchgear Limited (2010)*, which emphasised the need for specific statutory provisions and allegations to establish vicarious liability,” says Amit Jajoo, head of dispute resolution at [IndusLaw](#) in Mumbai.

Independent directors’ role

“Unlike executive directors, independent and non-executive directors are not involved in the day-to-day management of the company,” says NDA’s Kabra.

“Consequently, under the statutes, they are normally not liable unless the contravention occurred with their consent, connivance or neglect. Recognising the nature of a non-executive director’s role, a safe harbour provision was included in the Companies Act, 2013, limiting their liability only to cases where they did not act diligently, or were involved in the commission of the offence.

“However, in high-profile fraud cases, the agencies have prosecuted non-executive directors for turning a blind eye to the fraud committed.”

Adding more context to the idea of an officer in default, CAM’s Sundaram refers to a 2020 circular from the Ministry of Corporate Affairs titled “Clarification on prosecutions filed or internal adjudication proceedings initiated against independent directors”.

The circular states that in the case of non-promoters, non-key managerial personnel and non-executive directors, “civil and criminal proceedings should not be initiated against independent directors or non-executive directors (who do not qualify as key managerial personnel or a promoter) unless there is sufficient evidence to suggest that the lapses are directly attributable”.

[IndusLaw](#)’s Jajoo says: “While the company and its directors can take precautions with respect to defining the roles of the directors, identifying the responsibilities of other officers and ring-fencing third-party liabilities, the jurisprudence on vicarious liability does not categorically exempt directors from liabilities.

“The court considers various factors such as statutory provisions, nature of offence, directors/officers’ involvement and knowledge, including the company’s policies and procedures. Therefore, while precautions can minimise risk, they do not eliminate the possibility of vicarious liability.”

Legal antecedents

Gaur clarifies that while in the past there have been instances where, by virtue of a key managerial position, directors have faced the music, there are also important examples where the courts have set a new precedent even before the current judgment.

Gaur and Sundaram both cite cases, such as *SMS Pharmaceuticals v Neeta Bhalla* (2005) and *Susela Padmavathy Amma v Bharti Airtel* (2024), which have established that for a director to be held vicariously liable, the complainant must specifically state the director's role in the commission of the offence.

Speaking about the Dutt case, which has now placed a powerful precedent, Sundaram says: "While the Sanjay Dutt case deals with an offence where the statute does not expressly impose vicarious liability, preventive measures are crucial in cases where the statute expressly imposes vicarious liability.

"To mitigate potential liabilities of directors in such cases, the companies must ensure legal and regulatory compliance, particularly for high-risk projects."

NDA's Mehta says: "Indian directors facing allegations of vicarious criminal liability often rely on six key legal defences. Directors often raise six key defences in criminal liability cases: (1) lack of mens rea or criminal intent; (2) acting diligently and in good faith under the 'business judgment rule'; (3) no knowledge, consent or connivance in the offence; (4) not being in charge of day-to-day operations; (5) absence of statutory provision for vicarious liability; and (6) lack of specific averments in the complaint."

Jajoo adds: "While Indian courts recognise defences such as 'lack of knowledge' and 'due diligence', their application and availability can be inconsistent. Additionally, India's regulatory framework for corporate governance and director liability is continually evolving, although it may not yet possess the same level of comprehensiveness and consistency as other countries."

Investigative agencies

Verma says potential criminal prosecution for directors "may arise from violations such as financial fraud, misrepresentation in financial statements, insider trading, corporate governance failures, non-compliance with environmental laws, tax evasion and money laundering".

Kabra, of Nishith Desai & Associates, notes that the Serious Fraud Investigation Office (SFIO) "investigates and prosecutes cases of serious fraud and violation of the Companies Act that

the central government assigns to it. It was set up in 2002, pursuant to the Naresh Chandra Committee's recommendations, mirroring the Serious Fraud Office in the UK."

Bhosale adds: "In the matters investigated by the SFIO or the Enforcement Directorate [India's anti-money laundering enforcement body] often directors are investigated."

Kabra says the number of successful convictions secured by Indian agencies has remained low. "Care needs to be taken that no person should be dragged into the investigation just because he or she holds the post of a director in the concerned company."

Compliance strategies

The question that arises against this backdrop is: How can companies secure their directors and boards, and mitigate further legal issues?

"Conducting internal policy reviews and investigations enables early detection of potential legal violations, thereby reducing the risk of unwarranted liability of directors," says Sundaram, of CAM.

Verma says boards must adopt robust compliance strategies "to shield directors from potential criminal prosecution for corporate misconduct, ensuring that corporate governance frameworks effectively mitigate legal risks".

AZB's Ved says that, in addition to having a robust compliance and reporting framework, "boards should identify sensitive areas where potential criminal liability may be affixed to directors, including aspects like employee safety and compliance with environmental laws, and put in place additional safeguards and precautions to mitigate potential criminal prosecution".

NDA's Mehta believes that companies should implement a three-pronged compliance strategy – prevention, detection and cure – which will protect directors from criminal prosecution.

He adds that, to prevent issues, organisations should adopt a robust compliance programme with regular training, clear conduct standards, a chief compliance office and external audits.

For detection, strong internal controls are key, including board oversight, committees like the audit and risk management committee, and a whistleblower programme.

As a remedy, securing directors and officers (D&O) insurance helps protect directors from liability claims.

Desai, of Gandhi Law Associates, says boards should insist on preparation of absolutely accurate agendas, minutes of meetings, and resolutions.

Desai adds that boards should ensure that clear documents define the roles and responsibilities of directors. They must identify major risks so that directors can take preventive measures. “Directors must fully grasp their core duties and obligations and be aware of early warning signals and red flags that require immediate attention. Timely reporting of such risks to the board can serve as a ‘protective shield’ in the future,” he says.

Anand Sharma & Associates’ Sharma says potential amendments to corporate liability laws may introduce clearer distinctions between corporate and director culpability.

“Proposed reforms, including modifications to the Companies (Incorporation) Rules and Indian Accounting Standards, aim to balance regulatory oversight with protection for directors uninvolved in corporate wrongdoing.”

Comparing jurisprudence across borders, CAM’s Sundaram says that India’s approach to corporate criminal liability is statute-driven, with “no automatic vicarious liability”.

In contrast, the US applies the Responsible Corporate Officer doctrine, where liability can arise from mere “position and authority”, even without knowledge of the offence. The UK traditionally follows the Identification doctrine, linking liability to those who are the “controlling mind” of the company.

However, under the UK’s Economic Crime and Corporate Transparency Act, 2023, the extent of liability is expanding, making companies responsible for employee misconduct unless “reasonable procedures” are in place and holding directors accountable if they “enable or ignore” economic crimes.

Says AZB’s Ved: “We have seen a sustained focus from the government on decriminalisation of offences as a part of the larger theme for rationalisation of legal and regulatory compliances. Announcements have been made in the Union Budget 2025 as well.”

Ved is hopeful that the initiative will “clarify and streamline individual criminal liability, especially vicarious liability, for directors across statutes, to reduce uncertainty”.



