
CRIMINAL LIABILITY OF DIRECTORS IN CORPORATE OFFENCES

Nurien Sheoran, O.P. Jindal Global Law School

Introduction

At the intersection of corporate law, criminal law and regulatory enforcement lies the criminal liability of directors for corporate offences. While a company is seen as a separate legal entity, which is capable of committing statutory violations, corporate decision-making is ultimately exercised through human agency. Hence the important question is under what circumstances the criminal responsibility may be extended to directors and officers who were in charge of or exercised control over the company's affairs.

A general principle criminal law is that it is founded on personal culpability and does not ordinarily recognise vicarious liability. Such a liability only arises when a statute expressly says or suggests so. The Supreme Court of India has consistently cautioned against integrating civil law notions of collective responsibility into criminal law without clear legislative sanction. Regulatory statutes such as the SEBI Act incorporate limited provisions for vicarious liability thus acknowledging the realities of corporate functioning while subjecting such liability to strict statutory conditions.

The doctrine of separate legal personality established via *Salomon v. Salomon & Co. Ltd*¹ forms the doctrinal foundation of this inquiry. Upon incorporation a company becomes a separate legal entity and is thus liability for corporate acts that ordinarily rests with the company itself rather than its directors. While courts have developed the doctrine of lifting the corporate veil to prevent misuse of the corporate form especially in cases of fraud or abuse attribution of criminal liability in the regulatory context does not primarily rest on judicial veil-piercing. Instead the veil has been statutorily via provisions such as Section 27 of the SEBI Act and Section 141 of the Negotiable Instruments Act which create narrow exceptions permitting liability to attach to individuals who exercised control over corporate affairs at the relevant

¹ *Salomon v. Salomon & Co. Ltd.* [1897] AC 22

time.

The limits of such statutory vicarious liability were emphatically reaffirmed by the Supreme Court in *Sunil Bharti Mittal v. CBI*² where the Court rejected the prosecution of a company's chairman solely based on his position. It was clarified that a director or officer may be prosecuted for a corporate offence only when there is specific material indicating active involvement along with the requisite mens rea or where the statute expressly creates vicarious liability and its conditions are strictly satisfied. This reasoning underscores that statutory deeming provisions do not dispense with the requirement of establishing a factual foundation linking the individual to the offence.

Against this doctrinal backdrop Section 27 of the SEBI Act is interpreted as a carefully circumscribed exception and not as a general rule of personal criminal liability. While the provision enables regulatory enforcement against culpable individuals it also simultaneously incorporates role-based, time-specific and rebuttable safeguards that prevent mechanical or presumptive prosecution of directors. The judicial insistence on strict construction ensures that accountability in corporate crime follows real authority and responsibility rather than formal office or designation.

Statutory Framework under the SEBI Act

Section 24 (creates offences) and Section 27 (governs the liability attributed when offences are committed by a company) of the SEBI Act create the statutory foundation for criminal prosecution. Section 27 does not create an independent offence, it only operates after an offence is established under Section 24 and functions as a mechanism to assign liability to the prescribed individuals.

Section 24 of the SEBI Act³ criminalises two categories of conduct-

Section 24(1)⁴ covers the substantive contraventions of the act, rules, directions and regulations issued by SEBI. This also includes violations such as market manipulation, insider trading, illegal public issues and disclosure failures.

² *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609

³ Securities and Exchange Board of India Act 1992, s 24.

⁴ Securities and Exchange Board of India Act 1992, s 24(1).

Section 24(2)⁵ criminalises wilful non compliance of SEBI orders including failure to pay penalties or comply with binding directions.

In both of the above cases the company is treated as the principal offender and the provision itself makes no reference to directors or officers, this reflects the legislative premise that corporate wrongdoings are first attributed to the juristic entity.

Section 27(1)⁶ of the SEBI Act defines the circumstances in which individuals within a company may be held criminally liable for offences committed by the company. It provides that every person who, at the time of the offence, was in charge of and responsible for the conduct of the company's business shall be deemed guilty. The provision is deliberately restrictive and does not extend liability to all directors or officers by default. It requires the coexistence of two elements: actual control over the company's affairs ("in charge of") and entrustment of responsibility for the conduct of business. This formulation ensures that liability is based on functional involvement rather than formal designation. Section 27(2)⁷ operates independently of section 27(1) and extends liability to cases where the offence is committed with the consent or connivance of or is attributable to the neglect of any director, manager, secretary or other officer. The provision targets culpable participation even in the absence of overall control. However courts have consistently required that consent, connivance or neglect be specifically pleaded and proved, and have rejected vague or omnibus allegations as insufficient. The proviso to Section 27 acts as a critical safeguard which allows an accused to escape liability by demonstrating lack of knowledge or the exercise of due diligence. Liability under the provision is therefore rebuttable and arises only upon the establishment of a prima facie case of control or responsibility. Section 27⁸ is also temporally anchored, fixing liability at the time of commission of the offence rather than the stage of investigation or prosecution, thereby preventing retrospective attribution of vicarious liability to individuals who joined the company subsequently.

Both of the above mentioned sections read together provide us with a two stage inquiry-

First, has the company committed an offence under the SEBI Act?

⁵ Securities and Exchange Board of India Act 1992, s 24(2).

⁶ Securities and Exchange Board of India Act 1992, s 27(1).

⁷ Securities and Exchange Board of India Act 1992, s 27(2).

⁸ Securities and Exchange Board of India Act 1992, s 27.

Second, are the statutory conditions for attributing the offence to specific individuals satisfied?

Once both stages are is when criminal prosecution od the directors can legitimately proceeds. Such a structure balances effective regulatory enforcement with fundamental principles of criminal liability.

Comparative Interpretation under the Negotiable Instruments Act

Under the Negotiable Instruments ACT 1881, particularly in the case of check dishonour offences, a substantial body of jurisprudence on directors criminal liability has evolved. Critical importance has been assumed in SEBI prosecutions especially since Section 141 of the NI Act⁹ is virtually identical to Section 27 of the SEBI Act. Hence, courts have acknowledged this similarity and have relied on the interpretations of Section 141 NI Act to guide the application of Section 27 SEBI Act. Both provisions create vicarious criminal liability while confining it to a narrowly defined class of individuals. They reflect a legislative attempt to balance the doctrine of separate legal personality with the reality that corporate decisions are executed through human agency.

The Court In *K.K. Ahuja v. V.K. Vohra*¹⁰ clarified that vicarious liability does not extend to all directors by virtue of their position. Liability only attaches to those who were both in charge of the company's business and responsible for its conduct. A clear distinction was drawn by the court between strategic or policy roles and operational control and emphasised on a functional, role-based approach rather than a designation based one. This reasoning directly influences the interpretation of Section 27 due to similar concerns of mechanical prosecution. The Court also held that merely describing a person as a director or officer in the complaint is not sufficient. The complaint must disclose how and in what manner the accused was in charge of and responsible for the conduct of the business at the relevant time. This insistence on specific pleadings prevents the criminal process from being initiated on vague assertions or assumptions rooted in corporate hierarchy.

Such a protective approach was applied to the non-executive directors in *Pooja Ravinder*

⁹ Negotiable Instruments Act 1881, s 141.

¹⁰ *K.K. Ahuja v. V.K. Vohra*, (2009) 10 SCC 48

Devidasani v. State of Maharashtra¹¹ where the Supreme Court recognised the evolving structure of corporate governance. The Court observed that non-executive directors are primarily entrusted with oversight and governance and not day-to-day management, hence they cannot be held criminally liable unless the statutory conditions are clearly satisfied. This reasoning has particular relevance in cases involving non-executive and independent directors.

In Hitesh Verma v. M/s Health Care at Home India Pvt. Ltd.¹² a more recent and doctrinally significant clarification can be seen where the Supreme Court held that the expressions “in charge of” and “responsible for the conduct of the business” represent distinct requirements which must be satisfied independently of each other. The Court emphasised that complaints must specifically plead both elements and prosecution cannot be sustained even at the threshold if they fail to do so.

The Negotiable Instruments Act jurisprudence also reinforces the temporal nature of vicarious liability fixing, responsibility at the time of commission of the offence and preventing retrospective attribution. By importing these principles into SEBI jurisprudence courts have ensured doctrinal consistency across regulatory statutes and reinforced that vicarious criminal liability remains a narrow, carefully circumscribed exception grounded in functional control, specific responsibility and temporal nexus

Judicial Safeguards Against Prosecution of Directors

Courts and tribunals have consistently treated Section 27 of the SEBI Act as a narrow exception to the general rule against vicarious criminal liability and have insisted that prosecution of directors must be based on demonstrable role and responsibility rather than presumptions arising from designation. This judicial approach operates as a necessary check against regulatory overreach while preserving core principles of criminal jurisprudence.

One of the foundational safeguards is the requirement that even where a statute creates vicarious liability the prosecution must establish the factual foundation necessary to attract the deeming provision. This principle was also established by the Supreme Court in Sunil Bharti Mittal v. CBI¹³ where the Court rejected the assumption that once a company commits an

¹¹ Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1

¹² Hitesh Verma v. Health Care at Home (India) (P) Ltd., (2025) 7 SCC 623

¹³ Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609

offence all persons occupying senior positions automatically become liable. The Court also clarified that statutory vicarious liability does not dispense with the need to demonstrate how the accused satisfies the statutory description and thus reaffirmed that criminal liability cannot be presumed and must be linked to role and involvement.

This approach has been consistently reinforced by the Securities Appellate Tribunal (SAT). In *Sayanti Sen v. SEBI*¹⁴ the Tribunal rejected presumed liability and held that SEBI must record specific findings that show that the director was responsible for the conduct of the company's affairs. SAT has emphasised that liability cannot be fastened solely on the basis of directorship especially in the absence of evidence of participation in day-to-day affairs, execution of relevant documents or involvement in the alleged violation. This principle was further refined in the cases of *Pritha Bag v. SEBI*¹⁵ and *Manoj Agarwal v. SEBI*¹⁶ where the tribunal underscored the necessity of clear entrustment of responsibility, vicarious liability was held to arise only where there is material showing that the director was specifically entrusted with the obligation that was breached. Hence anchoring liability to the actual distribution of functions within the company rather than its organisational hierarchy.

SAT has also insisted on giving full effect to the proviso to Section 27 of SEBI Act. In *Rahul H. Shah v. SEBI*¹⁷ it was clarified that the proviso is an important component of the statutory scheme and not a mere formality. It enables directors to demonstrate that the offence was committed without their knowledge or despite the exercise of due diligence and SEBI cannot proceed on assumptions of absolute liability while disregarding this statutory defence.

These safeguards have been reenforced by the High Courts as well where they have recognised internal corporate hierarchies. The Madras High Court in *Agritech Hatcheries & Food Ltd. v. Valuable Steels India Pvt. Ltd.*¹⁸ held that mechanically prosecuting non-executive or ordinary directors where a company has a managing or whole-time director responsible for day-to-day affairs would amount to an abuse of process. Along similar lines, the Andhra Pradesh High Court in *Smt. G. Vijayalakshmi & Ors. v. SEBI*¹⁹ rejected the proposition that directorship by itself creates criminal liability hence affirming that the presumption under deeming provisions

¹⁴ *Sayanti Sen v. Securities and Exchange Board of India*, 2019 SCC OnLine SAT 132

¹⁵ *Pritha Bag v. Securities and Exchange Board of India*, 2019 SCC OnLine SAT 110

¹⁶ *Manoj Agarwal v. Securities and Exchange Board of India*, 2017 SCC OnLine SAT 178

¹⁷ *Rahul H. Shah v. Securities & Exchange Board of India*, 2004 SCC OnLine SAT 77

¹⁸ *Agritech Hatcheries and Food Ltd. v. Valuable Steels India (P) Ltd.*, (1999) 96 Comp Cas 534

¹⁹ *G. Vijayalakshmi v. SEBI*, (2000) 100 Comp Cas 726

is rebuttable and that directors are entitled to demonstrate absence of role.

It has also been consistently held by courts that vague or omnibus allegations are insufficient to sustain prosecution. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*²⁰ the Supreme Court quashed proceedings where the complaint failed to disclose how the directors were vicariously liable and held that criminal law cannot be set in motion on conjecture or generalised assertions. In more recent times the Bombay High Court in *Rajiv Ranjan Singh v. SEBI*²¹ reaffirmed that liability under Section 27 is anchored to the individual's role at the time of the offence and must be supported by prima facie material and clarified that only a clear exoneration on merits can bar criminal prosecution.

Taken together, these decisions establish a coherent judicial framework governing director prosecution under the SEBI Act. They confirm that Section 27 is a targeted accountability mechanism aimed at individuals who exercised real control over corporate conduct at the relevant time, and not an instrument of collective or positional punishment.

Procedural Law Regarding Prosecution of Directors

The limits on the criminal liability of directors under the SEBI Act are reinforced by procedural safeguards under the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS). Even when Section 27 SEBI Act is attracted the prosecution must satisfy multiple procedural thresholds designed to prevent the mechanical invocation of the criminal process against directors who lack statutory responsibility.

The first safeguard operates at the stage of taking cognizance under Section 210 BNSS²² (Sections 190 CrPC) read with Section 223 BNSS²³ (200 CrPC). At this stage the Special Court must examine whether the complaint discloses the commission of an offence and whether the accused fall within the statutory framework allowing prosecution. Although a detailed evaluation of evidence does not get undertaken the court is required to apply its judicial mind to decide whether the essential ingredients of the offence and the conditions for invoking vicarious liability are alleged prima facie.

²⁰ MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1

²¹ 2025:BHC-AS:51582

²² Bharatiya Nagarik Suraksha Sanhita 2023, s 210.

²³ Bharatiya Nagarik Suraksha Sanhita 2023, s 223.

The next safeguard arises at the stage of issuance of process under Section 227 BNSS²⁴ (Section 204 CrPC). Issuance of process is not automatic and the court must be satisfied that sufficient grounds exist to proceed against each accused individually. In the case of directors the complaint must disclose how the accused was in charge of and responsible for the conduct of the company's business at the relevant time or how consent, connivance or neglect can be attributed.

A further safeguard is available at the stage of discharge under Section 262 BNSS²⁵ (Section 239 CrPC). Where the charge appears groundless directors may seek discharge especially if they were not in office at the time of the offence or lacked functional responsibility for the impugned conduct.

An overarching safeguard is provided by the inherent powers of the High Court under Section 528 BNSS²⁶ (Section 482 CrPC) which can be invoked to prevent abuse of process. Across all stages procedural law reinforces the temporal anchoring of liability and ensures that prosecution of directors proceeds only where a clear and legally sustainable basis exists.

Practical Application of Discussed Doctrines and Case Laws

The application of the above doctrines will be explained via a hypothetical company. At the time of the commission of an alleged offence under the SEBI Act the board of Company Z comprised of Directors A, B and C. By the time SEBI passed its adjudicatory order Director A had resigned and Director E had joined the board. At the stage of initiation of criminal prosecution Director B had also resigned and Director F had joined thus leaving Directors C, E and F as the current directors. The issue hence which directors may in bear criminal responsibility for the corporate offence under Section 27 of the SEBI Act read with Sections 24(1) or 24(2).

We will start by analysing the temporal anchoring of liability as it constitutes the most decisive doctrinal constraint on director prosecution. Section 27 expressly fixes liability with reference to the time of commission of the offence, this requirement is substantive and reflects the fundamental criminal law principle that liability cannot be imposed retrospectively or based

²⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 227.

²⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 262.

²⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 528.

solely on association with the company. Consequently, the composition of the board at the time of adjudication or prosecution is legally irrelevant except as far as it may show evidence of continuing control or subsequent culpable conduct. What is determinative is who was in charge of and responsible for the conduct of the company's business when the offence occurred.

On this basis only Directors A, B and C will fall within the potential statutory ambit of Section 27 as they were in office at the time of the offence. However, consistent with the Supreme Court's rejection of automatic vicarious liability in *Sunil Bharti Mittal* mere directorship does not conclude the inquiry. Section 27 mandates a director specific and role based assessment of functional control and responsibility and does not permit collective or presumptive liability.

Director A's resignation prior to SEBI's adjudicatory order does not extinguish liability for acts or omissions during their tenure. Resignation operates prospectively and cannot erase past culpability. If the prosecution establishes that Director A exercised functional control or was entrusted with responsibility for the breached statutory compliance prosecution under Section 27 is legally sustainable. At the same time Director A remains entitled to invoke the proviso to Section 27 by demonstrating lack of knowledge or due diligence hence liability is contingent not automatic.

Director B stands on similar footing as Director A. His resignation prior to initiation of prosecution is legally immaterial as criminal liability depends on the nexus with the offence at the time of its commission rather than continuous association with the company. Director B may thus be proceeded against subject to the same role based inquiry and statutory defences.

Director C presents the strongest prima facie case as they were on the board throughout. Nonetheless liability cannot be presumed. As clarified in *SEBI v. Gaurav Varshney*²⁷ and reiterated by the SAT in numerous cases continuity of office or designation cannot substitute for evidence of functional control or entrustment of responsibility. Hence Director C retains the right to seek discharge if the complaint lacks specific material establishing such role.

Directors E and F stand on a different legal footing. Director E joined the board after the offence had already been committed while Director F joined only at the stage of prosecution. Neither of the directors meet the temporal requirement under Section 27(1) nor do they attract Section 27(1) in the absence of any allegation of a continuing offence or of consent, connivance or

²⁷ *SEBI v. Gaurav Varshney*, (2016) 14 SCC 430

neglect. Any attempt to prosecute them would therefore amount to retrospective attribution of criminal liability and would thus be liable to be rejected at the threshold.

Viewed holistically the hypothetical illustrates the calibrated architecture of director liability under Indian regulatory law. Liability does not follow designation, numerical strength of the board or presence at the time of prosecution but it follows time, functional control and statutory responsibility at the time of the offence. Applied correctly this framework permits prosecution of Directors A, B, and C subject to proof of role and statutory defences while insulating Directors E and F from criminal liability.

Conclusion

The legal framework regarding the criminal liability of directors of a company under Indian regulatory law reveals a consciously restrained model of accountability. Rather than treating directorship as a proxy for guilt a framework that links criminal liability to real decision making power, functional responsibility and temporal involvement in the offence has been created by court. This approach reflects an understanding that indiscriminate prosecution weakens regulatory credibility by combining governance roles with culpability. The law at the same time does not allow the corporate form to become a shield for wrongdoing, thus statutory vicarious liability operates as a targeted corrective measure if control and participation are established. By coupling substantive thresholds with procedural safeguards courts have preserved the integrity of criminal law while enabling effective regulation. The result is a system that promotes responsible corporate governance without eroding the foundational principle that criminal liability must remain personal, precise and justified.