
CORPORATE CRIMINAL LIABILITY, MENS REA, AND THE DOCTRINE OF ATTRIBUTION IN INDIA AFTER IRIDIUM INDIA TELECOM LTD. V. MOTOROLA INC.

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ABSTRACT

Whether an artificial legal person, a corporation, which has neither a soul nor physical body, can be criminally liable to commit a crime with a guilty mind has been a long-standing issue in courts in common law jurisdictions. In India, the case *Iridium India Telecom Ltd. v. Motorola Inc* (2011) provided a landmark ruling by the Supreme Court that clarifies the underlying inquiry: corporations are subject to prosecution as a result of committing a mens rea crime such as cheating and criminal conspiracy as addressed in the Indian Penal Code, 1860. This article explores the Iridium case as a legal precedent in the Indian law of corporate criminal liability. It follows the pre-Iridium jurisprudence *Velliappa Textiles to Standard Chartered Bank* that paved the way to the ultimate decision made by the Supreme Court. It examines the two main decisions of the judgment: (i) that a company can have mens rea under the doctrine of attribution; and (ii) non-disclosure or a misrepresentation in a private placement memorandum can be criminal cheating. The article subsequently discusses the ways in which *Sunil Bharti Mittal v. CBI* (2015) refined the doctrine of alter ego by concluding that the attribution of corporate mens rea to directors cannot be applied in reverse. The article is a critical evaluation of the nature of the Iridium ruling, especially the fact that it resorts to the anthropomorphic Tesco method without immersing into the more adaptable Meridian approach, and that India badly needs a legislative approach towards the attribution of criminal liability on companies to add sanity and predictability to this developing field.

Keywords: Corporate Criminal Liability, Mens Rea, Doctrine of Attribution, Alter Ego, Iridium, Tesco, Meridian, Section 420 IPC, Companies Act 2013.

I. INTRODUCTION

A Lord Chancellor of England in the eighteenth century is quoted saying that corporations have “no soul to be damned and no body to be kicked”.¹ The saying well sums up the main problem of the law of corporate crime, how does a criminal law system, which is structured around natural individuals, with their minds and bodies, deal with the non-existent legal entity of a corporation? When criminal liability is based on the fact that there is a guilty mind *mens rea* and a company has no mind, can a company be a criminal?

In a landmark decision that has become a staple of Indian corporate criminal law, the Supreme Court of India answered this question in the affirmative in the case of *Iridium India Telecom Ltd. v. Motorola Inc.* (2011)² under the doctrine of attribution that is, the imputation of the criminal intention of the directing minds of a company on to the company itself, a corporation may be prosecuted in any case that the decision, though, did not answer a number of important questions, the most important one being: how exactly, does corporate *mens rea* have to be demonstrated; and can the criminal intent of the company, when proved, be retroacted onto directors and officers?

The Supreme Court partially answered these residual questions in *Sunil Bharti Mittal v. Central Bureau of Investigation* (2015),³ that narrowed down the alter ego doctrine, but also revealed the ongoing inadequacy of the Indian legal system in applying the doctrine to corporations.

This article follows the entire line of this jurisprudence. Part II will look at the pre-Iridium law environment, such as the divergent views on corporate criminal liability adopted by the Supreme Court in *Velliappa Textiles* and *Standard Chartered Bank*. Part III gives the factual background of the Iridium case and how the Bombay High Court reasoned to quash the complaint. Part IV examines the two-pronged decision of the Supreme Court on corporate *mens rea* and on misrepresentation in securities offerings. Part V discusses the *Sunil Bharti Mittal* ruling and the directional boundaries that it imposed on the alter ego principle. Part VI will be a critique of the jurisprudence and developments in the legislation that have occurred since. Part VII concludes.

¹ John C. Coffee, Jr., “No Soul to Damn, No Body to Kick’: An Unscandalized Inquiry Into the Problem of Corporate Punishment,” 79 Mich. L. Rev. 386, 386 (1980).

² *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74.

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

II. THE PRE-IRIDIUM LANDSCAPE: FROM VELLIAPPA TEXTILES TO STANDARD CHARTERED BANK

Iridium was not the first to start the debate on corporate criminal liability in India. It had been boiling over decades, heated by a conflict between two competing propositions: that criminal law, in its focus on moral fault, cannot be logically applied to a being with no moral agency; and that the invitation to corporations to get away with crime on the ground of their artificial nature would give a perverse incentive to the organisation of criminality in corporate forms.

The initial reaction in common law was to restrict corporate criminal liability to strict liability offences, offences that did not necessarily involve a guilty mind or regulatory offences against which parliament had specifically made provision of corporate liability. It was a simple matter of reason: as a legal fiction, a company could not have intent. Crimes that involve knowledge, deceit, or dishonesty were believed to be inaccessible to corporate criminal law.

This repressive method was reflected in the decision of the Supreme Court of India in *Assistant Commissioner v. Velliappa Textiles Ltd. (2003)*⁴ in which a five-judge constitutional court determined that a corporation could not be charged with an offence that required a jail sentence as the main penalty because a corporation, being a non-physical person, could not be sent to jail. As most of the grave offences in the Indian Penal Code required imprisonment as the least sentence, Velliappa Textiles served corporations well in shielding them against the most serious criminal offences. It was a decision that was highly criticised and made a loophole that is large enough to swallow the doctrine of corporate criminal liability whole.

This anomaly was fixed at least to some extent by a seven-judge constitutional bench in *Standard Chartered Bank v. Directorate of Enforcement (2005)*.⁵ The Court overturned Velliappa Textiles and declared that corporations could be tried and convicted even of an offence that required imprisonment, by interpreting down a requirement of imprisonment when the offender was a company, the fine alone could be imposed by this was an important step. It implied that the type of crime against which a corporation might be criminally liable no longer was restricted to those crimes that directly established corporate liability through statute. But the Standard Chartered Bank case was one which involved strict liability under the Foreign Exchange Regulation Act, an Act that did not warrant a scrutiny of the mens rea. Whether or

⁴ *Assistant Commissioner v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405.

⁵ *Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC 530.

not a company could have mens rea to commit an offence that needed a guilty mind was a question that was left unanswered critically.

III. THE IRIDIUM CASE: FACTUAL MATRIX AND THE BOMBAY HIGH COURT.

A. Background and the Private Placement Memorandum

The major contractor in the Iridium satellite telephone project was Motorola Incorporated which intended to offer world wide mobile telephone connectivity utilizing a constellation of low earth orbit satellite. To fund the project, Iridium LLC, a Motorola-backed company, issued an institutional and sophisticated investor Private Placement Memorandum (PPM), to the Iridium India Telecom Ltd. (IITL), an Indian company, which contributed substantial funds to the Iridium project relying on the representations contained in the PPM.

Iridium project proved to be a spectacular commercial failure. In 1999, Iridium LLC was bankrupt in the United States. IITL, which lost its investment, made a criminal complaint, under Section 420 (cheating)⁶ read with Section 120B (criminal conspiracy)⁷ of the Indian Penal Code, 1860, before a Judicial Magistrate in Pune against Motorola Incorporated. It was claimed in the complaint that Motorola had engaged in false and misleading representations as to the technological and financial feasibility of the Iridium project, had concealed material information as to riskiness and true condition of the project and this misrepresentation had led to IITL investing in it and thus resulting in its wrongful loss.

B. The Bombay High Court's Reasoning

The complaint was presented before the Judicial Magistrate at Pune who issued process. Motorola sought to quash the proceedings of the Bombay High Court under Section 482 of the Code of Criminal Procedure, 1973⁸. The High Court allowed the petition and quashed the complaint.⁹

The logic behind this decision of the High Court was that a corporation being an artificial legal personality cannot have a guilty mind because a guilty mind in the offence of cheating under Section 420 IPC must have been induced in the complainant, which is only possible by a natural

⁶ Indian Penal Code § 420 (1860).

⁷ Indian Penal Code § 120B (1860).

⁸ Code of Criminal Procedure § 482 (1973).

⁹ *Iridium India Telecom Ltd. v. Motorola Inc.*, Criminal Appeal No. 688 of 2005 (Bom. H.C. Aug. 8, 2003).

person. The High Court also decided that the risk factors and warning in the PPM neutralized the claim of a false intent as the riskiness of the investment had been advised to the investors. Aggrieved by the same, IITL preferred an appeal to Supreme Court.

IV. THE TWO CORE HOLDING OF IRIDIUM BY THE SUPREME COURT.

A. First Holding: A Corporation can have a Capacity to hold mens rea.

The Bombay High Court order was struck down and the criminal prosecution of Motorola was allowed to go on by the Supreme Court in the first and most crucial determination that a corporate entity could have the mens rea¹⁰. Firms and corporate houses the Court declared categorically, could not seek immunity against criminal prosecution due to the argument that they did not have the capacity to commit the necessary mens rea within criminal offences.

To determine that a company has committed mens rea, the Supreme Court followed the House of Lords in *Tesco Supermarkets Ltd. v. Nattrass* (1972).¹¹ Based on *Tesco*, the Court ruled that individuals "specifically entrusted with powers and duties towards the company" those listed in the Memorandum of Association, Articles of Association, Board-appointed individuals, or general meeting-approved individuals represent the company's guiding principles.¹² The corporation may be held accountable for the illegal intent of such individuals. The Court reasoned that the legal fiction of corporate identity does not shield a business from the criminal repercussions of the dishonest actions of its directors and animators.

Notably, the Court did more than *Tesco* in one respect, namely it decided that it was open to the acts of any natural person, not just the persons mentioned in the constitutional documents, but any natural person who is in charge of the affairs of the company to incur criminal liability on the part of the company. This was a general statement of the attribution principle than the strict *Tesco* formulation, but the implications of this more general statement were not worked out by the Court.

In the boundaries of the powers of the High Court under Section 482 of the CrPC, the Supreme Court restated the longstanding common law principle of *State of Haryana v. Bhajan Lal*¹³ that

¹⁰ *Iridium India Telecom Ltd.*, supra note 2, ¶ 29.

¹¹ *Tesco Supermarkets Ltd. v. Nattrass*, [1972] AC 153 (HL).

¹² *Id.* ¶ 34.

¹³ *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) SCC 335.

the implied power to quash criminal proceedings should only be exercised sparingly, and that the High Court could not at the first instance stage of the case establish the facts of the case in detail.

B. Second Holding: Non-Disclosure in PPM Can be Criminal Cheating.

The second significant finding of the Court concerned the criminal liability of companies in regard to misstatements or non-disclosures in securities offering documents a matter of immediate direct importance to the law of prospectuses and of the private placement memoranda, in the Companies Act.¹⁴

The Bombay High Court had been convinced by the argument by Motorola that the high risk factors and disclaimers in the PPM did away with any accusation of deception. The Supreme Court dissented. It was held that a non-disclosure or presentation of a half-truth in an offering document might constitute misrepresentation, which was enough to constitute the criminal offence of cheating.¹⁵ The presentation of material information in an offering document concealed with the intent to induce a person to part with their money could make the corporate issuer criminally liable, and the presentation of risk factor disclosures would not be an automatic defence.

This decision has far reaching consequences on the regulation of capital markets and securities offerings in India. It is that the civil liability of misstatements in a prospectus under the Companies act is not a capping of the legal liability of the issuer, a parallel criminal charge under the IPC can still be pursued against the issuer in the event that the elements of dishonest inducement are established. The interplay between provisions of the prospectus liability under the Companies Act and the cheating provisions of the IPC thereby forms a twofold enforcement regime of corporate dishonesty in securities offerings.

V. SUNIL BHARTI MITTAL V. CBI (2015): THE ALTER EGO DOCTRINE IN REVERSE AND LIMIT.

When Iridium made it clear that a company may be criminally liable in the acts of its directing minds, the question that immediately occurred was, may it also be the reverse? Is it possible to

¹⁴ *Iridium India Telecom Ltd.*, supra note 2, ¶ 44.

¹⁵ *Id.* ¶ 44.

impose upon the directors and officers of a company, as its alter ego, the criminal intent of a company found guilty of a criminal act by a court? The decision of the Supreme Court in *Sunil Bharti Mittal v. CBI* (2015) stated that the answer to this question is in the negative.

A. Facts of the Case

The CBI pressed a charge-sheet against three telecommunications companies: Bharti Cellular Limited, Hutchison Max Telecom Pvt. Ltd. and Sterling Cellular Limited, in the context of the 2G spectrum allocation scandal, claiming that the companies had committed offences under the Prevention of Corruption Act, 1988. The Special Judge, as he took cognizance of the charge-sheet, also issued summons to Sunil Bharti Mittal (Chairman cum Managing Director of Bharti Cellular), Asim Ghosh (Managing Director of Hutchison Max Telecom) as well as Ravi Ruia (Director of Sterling Cellular) none of whom had been charged in the CBI charge-sheet.

His rationale as the Special Judge based upon *Iridium* was that these individuals were the directing minds of their respective companies, and as such, the criminal intent of the companies had to be imputed on them, and they could be called upon as accused.

B. The Decision of the Supreme Court: The Unidirectionality of Corporate Attribution.

The summons issued to the corporate officers was ordered by the Supreme Court to be set aside, and it was categorically declared that the principle of alter ego as stated in *Iridium* has a one-way street, which runs downwards, from the directing minds to the company.¹⁶

The Court held that the Special Judge had applied the alter ego principle ‘in an exactly reverse scenario’, since the company was the accused and the officers were its directing mind and will, the Special Judge concluded that the company's criminal intent could be imputed to the officers.¹⁷ The Supreme Court found this to be legally untenable. The rule of attribution, that the criminal intent of persons in control of the affairs of a company is attributable to the company, is inapplicable vice versa. The criminal intent of the company can not necessarily be traced back to the directors and officers.

The Court also concluded that where the company is the accused, the vicarious liability of

¹⁶ *Sunil Bharti Mittal*, supra note 3, ¶ 35.

¹⁷ *Id.* ¶ 36.

directors could not be assumed automatically in the absence of a particular statute creating such a liability (like section 141 of the Negotiable Instruments Act, 1881),¹⁸ or that there were specific factual statements contained in the complaint which had to demonstrate that the director was personally involved in and responsive to the criminal act. Even the mere designation of the director or the fact that the director is the directing mind and will is not in itself a sufficient fact to make the director lure criminal liability in case the company is the major offender.

The Sunil Bharti Mittal decision therefore established a definite and essential boundary of the doctrine of attribution. It averted the fact that the concept could be weaponised as a tool to automatically impose criminal liability on corporate officers in all situations where the company itself is found liable, without independent evidence of the criminal culpability of the officer.

VI. CRITICAL ANALYSIS: WHAT IRIDIUM GOT RIGHT, AND WHAT REMAINS TO BE SETTLED.

A. The Doctrinal Progress: An indispensable Measure.

The main point that Iridium was right about was that corporations could not go free of being prosecuted due to a mens rea offence. The alternative would have been unsustainable, a legal regime whereby sophisticated financial frauds, manipulations in the market and corporate conspiracies could be planned using a corporate vehicle with full immunity against criminal prosecution, as long as no single individual could be personally linked to the crime. This would have provided a strong incentive to corporate crime, and would have put India in conflict with the legal stance in the United Kingdom, in the United States, and in most of the larger common law jurisdictions.

The Iridium decision harmonizes the Indian law with the international trend of corporate criminal responsibility, a trend that has traversed, in different jurisdictions, a path of strict immunity to conditional liability. Its counterpart that addresses misrepresentation in securities offerings is equally significant, but takes the deterrence framework to a more particular setting of capital market transactions where the information asymmetry between corporate issuers and

¹⁸ *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661.

investors is the greatest.¹⁹

B. The Tesco Reliance: A Methodological Limitation.

The fact that Iridium solely relies on the Tesco theory of the directing mind and will without incorporating more amenable approach as expressed by the Privy Council in *Meridian Global Funds Management Asia Ltd. v. Securities Commission* (1995)²⁰ is the greatest doctrinal criticism to Iridium.

The Tesco style is anthropomorphic in nature, it recognizes certain senior individuals (those listed in the constitutional documents or, in particular, as referred to by the board) as the brain of the company, and projects will to the company. This strategy is inflexible and exclusive. It presents the danger that a company can avoid criminal responsibility about the actions of their employees not senior enough to qualify as the directing mind and will, even in cases where the employees are the direct perpetrators of fraud committed during their employment and in the best interests of the company.

Lord Hoffmann's approach in *Meridian* is far more subtle. Instead of posing a question about who the brain of the company is, *Meridian* poses a question about giving the specific rule of law in question its purpose, content, and context, whose act or knowledge should be attributed to the company? The response to this will differ depending on the rule at hand. In certain applications (e.g. corporate manslaughter) it will be necessary to have only the acts of the directing mind. In other cases (including securities disclosure obligations), the acts of any employee who has relevant authority can be adequate.²¹

By stopping at Tesco and not considering *Meridian*, the Supreme Court in *Iridium* left the process of establishing corporate mens rea in India in an unsatisfactorily incomplete form. The issue that lower courts that apply *Iridium* are left to guess on is whether it is only persons of the level of directing mind that can bring corporate liability, or whether it is open to the more contextual approach that is sensitive to the character of the particular offence. This ambiguity poses both under-enforcement (when the actual wrongdoers are below the directing mind threshold) and possible over-enforcement (where the principle is used to target senior

¹⁹ Companies Act §§ 34–36 (2013).

²⁰ *Meridian Global Funds Mgmt. Asia Ltd. v. Sec. Comm'n*, [1995] 2 AC 500 (PC).

²¹ Mihir Naniwadekar & Umakanth Varottil, *Corporate Criminal Liability and Securities Offerings: Rationalizing the Iridium-Motorola Case*, 23 *Nat'l L. Sch. India Rev.* 1 (2011).

individuals on the basis of their position alone).

C. The Sunil Bharti Mittal Correction: Necessary but Insufficient

The decision made by the Supreme Court in Sunil Bharti Mittal was a much needed correction. The application of the principle of alter ego in reverse by the Special Judge of the imputation of the criminal intent of the company onto the directors without any independent evidence as to the personal culpability of directors confused two different principles: the doctrine of attribution (which concerns the imputation of the intent of the company) and the doctrine of vicarious liability (which concerns the imputation of the liability of the company).

There is no symmetry in the doctrine of corporate criminal liability. The fact that the intention of the director can render the company guilty does not imply that the guilt of the company can render the director guilty of a crime. The second suggestion would effectively compromise the idea that criminal responsibility is individual and that it involves individual fault an idea that is the heart of the criminal law design of any liberal legal system.

Nonetheless, Sunil Bharti Mittal also has valid grounds to complain of impunity. When a company is convicted of a serious criminal offence and senior officers get off with it, by taking care to make sure that the acts that lead to the commission of an incriminating act are committed by employees who are below the directing mind threshold, or, due to the complexity of the corporate structure, by cutting the evidentiary linkage between the trespass and the boardroom, the deterring impact of corporate criminal liability is severely reduced.

D. The Legislative Response and the Need for a Statutory Framework.

The legislative response to the issues of corporate criminal liability in India has, so far, largely been more in decriminalisation than codification. Several procedural and technical offences under the Companies Act were decriminalised in the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 and translated into civil defaults²² in the Jan Vishwas Act, 2023 and the proposed Jan Vishwas Bill, 2025.²³

Although decriminalising minor procedural offenses is a good policy measure to ensure that companies and their officers are not harassed due to the criminal prosecution of technical

²² Companies (Amendment) Act, 2019; Companies (Amendment) Act, 2020.

²³ Jan Vishwas (Amendment of Provisions) Act, 2023.

default it is an attempt to cover the superficial issue, that India does not have a consistent statutory approach to attributing criminal liability to companies. In contrast to the United Kingdom where the Corporate Manslaughter and Corporate Homicide Act, 2007²⁴ was passed to specifically deal with the attribution issues arising in the context of gross negligence offences, Indian law still relies on the common law principles developed by judicial precedents, and which it adopted in a markedly different social and regulatory setting, to prosecute some of the most complex and impactful criminal wrongs.

The Companies Act, 2013 does have significant provisions that further the corporate criminal enforcement agenda most significantly Section 447 (punishment of fraud),²⁵ which is a broad definition of corporate fraud, and Section 212 (investigation by the Serious Fraud Investigation Office).²⁶ The Prevention of Money-Laundering Act, 2002 also creates a parallel criminal enforcement track.²⁷ However, these rules function independently. They do not form a cohesive framework that addresses the basic principles of corporate intent, responsibility, vicarious liability of officers, and fair sentencing for corporate offenders.

What India needs, and what Iridium and Sunil Bharti Mittal view as urgent, is a legal framework that:

- (i) clearly states that corporations can be held criminally responsible for mens rea offences;
- (ii) uses a flexible approach to attribution similar to Meridian;
- (iii) defines when corporate officers can be personally responsible for the company's criminal actions;
- (iv) allows for appropriate non-imprisonment penalties, such as fines, compliance orders, and corporate probation, for companies convicted of offences; and
- (v) harmonizes the overlapping enforcement systems under the IPC, the Companies Act, and special laws.²⁸

²⁴ Corporate Manslaughter and Corporate Homicide Act, 2007 (UK).

²⁵ Companies Act § 447 (2013).

²⁶ Companies Act § 212 (2013).

²⁷ Prevention of Money-Laundering Act § 3 (2002).

²⁸ G.K. Kapoor & Sanjay Dhamija, *Company Law and Practice* (2019).

VII. CONCLUSION

The history of the corporate criminal liability in India since the near-impunity of Velliappa Textiles, through a partial rectification of Standard Chartered Bank, to the ultimate decision of Iridium and the perfecting of Sunil Bharti Mittal is one of gradual judicial evolution in the face of a structural issue. The trend is actual: Indian law has now clearly provided that a corporation is not a refuge against criminal liability, and that the guiding minds of a corporation are not permitted to employ the veil of corporate personality to shield their malefaction against the criminal law.

But the advances are not complete. The fixed Tesco attribution model, without reference to the more open Meridian approach, by which Iridium is tied, has placed the exact mechanism of corporate mens rea proof in a condition of doctrinal uncertainty. The clarification by Sunil Bharti Mittal that the alter ego principle is one-way is doctrinally accurate, but may create accountability loopholes in the complicated cases of corporate fraud, whereby the misconduct of an individual is spread throughout with the ranks of corporate bureaucracy.

This article title has borrowed a phrase that was coined during a time when companies were small players in business. Corporations in the twenty-first century are economically powerful and can do harm that is no less harmful than that caused by nation-states, and their capabilities to do this are equally proportional to their size. The corporate criminal liability law should be adapted to this fact.

The decriminalisation of petty corporate crimes has been a justified move by the legislature of India in recent years. Building, instead of what has been eliminated, a coherent, principled and effective statutory framework to hold corporations accountable when they cause serious harm is the next step²⁹ that is not easy but equally necessary. Iridium has demonstrated that a company can be a criminal in the eyes of the law. The thing now is to guarantee the law that that possibility be rendered in practice as well as in theory, and not, as the old Lord Chancellor might have said, a question of judicial aspiration devoid of body and soul to enforce or accomplish.

²⁹ Patel Bimal N., Raval Dharmistha & Biswal Mamata, *The Companies Act, 2013 – Key Conceptual Transformation* (LexisNexis 2017).