

INDEPENDENT DIRECTORS AND CHEQUE BOUNCE: REVISITING LIABILITY THROUGH RECENT JUDICIAL LENS

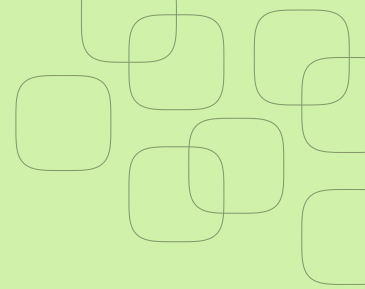
INTRODUCTION

A cheque bounce, governed by Section 138 of the Negotiable Instruments Act, 1881, constitutes a criminal offence triggered when a cheque is returned unpaid due to insufficient funds or other reasons, such as the account being closed. The provision aims to uphold the sanctity of commercial transactions by ensuring that commitments made through cheques are honoured. To widen the accountability net, Section 141 extends this liability to companies and their officers, including directors, by holding them vicariously liable for offences committed by the company. However, this expansion has raised significant concerns, particularly in the case of Independent Directors.

Independent Directors, appointed under the Companies Act, 2013, are meant to act as neutral overseers, ensuring better corporate governance without being involved in the company's day-to-day affairs. Their role is advisory and supervisory in nature, and they are often appointed to fulfil regulatory requirements. Yet, the blanket implication of all directors, including independent ones, in cheque dishonour cases has led to undue harassment and litigation burdens on individuals not directly responsible for financial transactions. In light of this, the courts have increasingly emphasized the need to distinguish between executive and non-executive roles, especially when deciding criminal liability.

Addressing the liability of Independent Directors in such matters is crucial not only to uphold justice but also to preserve the integrity and willingness of qualified professionals to accept such roles. As judicial trends evolve, the legal position must strike a balance between accountability and protection from unwarranted prosecution.¹

¹ Maheshwari, Co-Akhand Pratap Singh Chauhan and Sachin Sharma, 'Understanding Director Liability in Cheque Bounce Cases under the Negotiable Instruments Act' (Lexology, 24 March 2025).



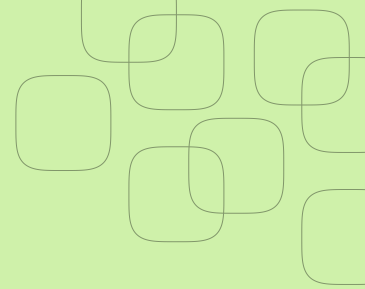
Statutory Framework

Section 141 of the Negotiable Instruments Act, 1881, establishes the doctrine of vicarious liability in the context of corporate offences under Section 138. It provides that where an offence is committed by a company, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence. This provision operates on the presumption that those in positions of control over the company's affairs should bear responsibility for its actions.

For directors, liability under Section 141 is not automatic or by virtue of designation alone. The Supreme Court, in *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* (2005)², clarified that a mere bald assertion that a director was in charge of the company's business is insufficient. There must be specific averments and material to show the role and responsibility of the individual in the day-to-day functioning of the company. This principle is particularly crucial in the case of Independent Directors, whose role by nature is non-executive.

Under the Companies Act, 2013, Independent Directors are entrusted with the task of ensuring corporate governance, ethical compliance, and acting in the best interests of stakeholders. Section 149(6) lays down strict criteria for their independence, barring them from having any material pecuniary relationship with the company. Further, Schedule IV to the Act outlines their duties, which are largely supervisory and advisory. Importantly, Section 149(12) of the Act provides a conditional immunity to Independent Directors, stating that they shall be held liable only for acts of omission or commission that occurred with their knowledge, attributable through board processes, and with their consent or connivance, or where they failed to act diligently.

² (2005) 8 SCC 89; AIR 2005 SC 3512.



Despite this statutory safeguard, Independent Directors have often been made parties in criminal complaints under Section 138, solely based on their board membership. This creates a situation where persons who neither signed the cheque nor participated in the transaction are forced to face criminal prosecution, which undermines the intent of their appointment and discourages professionals from accepting such positions. Recognizing this, courts have increasingly adopted a strict approach in interpreting Section 141. In *Sunil Bharti Mittal v. CBI* (2015)³, the Supreme Court emphasized that there must be sufficient evidence of active role or criminal intent before implicating high-ranking individuals like directors.

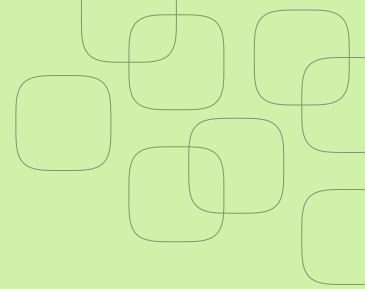
Moreover, the judiciary has repeatedly highlighted that the liability of an Independent Director cannot arise merely from holding office. There must be a clear demonstration of their involvement in the transaction that led to the dishonour of the cheque. This is consistent with the principle that criminal liability must be based on personal culpability rather than position.

Judicial Interpretation: Recent Trends

The evolving jurisprudence surrounding the liability of independent and non-executive directors in cheque dishonour cases under Sections 138 and 141 of the Negotiable Instruments Act, 1881, has seen significant developments. Courts have increasingly emphasized the necessity of establishing direct involvement of such directors in the company's financial affairs to hold them vicariously liable. A foundational case in this context is *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* (2005)⁴, where the Supreme Court clarified that mere designation as a director is insufficient to attract liability under Section 141. The Court held that there must be specific averments in the complaint indicating that the director was in charge of and responsible for the conduct of the company's business at the time the offence was committed.

³ (2015) 4 SCC 609; AIR 2015 SC 923.

⁴ (2005) 8 SCC 89; AIR 2005 SC 3512.



Further reinforcing this stance, the Supreme Court in *Sunil Bharti Mittal v. CBI* (2015)⁵ underscored that criminal liability cannot be fastened on individuals solely based on their corporate positions. The Court emphasized the need for specific allegations demonstrating active role or criminal intent, thereby protecting individuals from being prosecuted merely due to their official designation.

Similarly, in *Rajesh Viren Shah v. Redington (India) Limited* (2024)⁶, the Supreme Court held that directors who had resigned before the issuance of the dishonoured cheque could not be held liable, as there was no evidence of their involvement in the company's business at the relevant time.

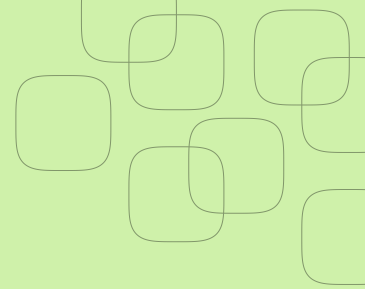
These judicial pronouncements collectively underscore a consistent approach: liability under Sections 138 and 141 of the Negotiable Instruments Act requires clear and specific allegations demonstrating an individual's active role in the company's financial affairs. Merely holding a position as an independent or non-executive director does not suffice to attract criminal liability. This evolving jurisprudence aims to balance the need for accountability in corporate operations with the protection of individuals who are not directly involved in the day-to-day management of the company.

Key Criteria for Liability

The liability of directors, particularly Independent Directors, under Section 141 of the Negotiable Instruments Act, 1881 hinges on the crucial legal test of being "in charge of and responsible for the conduct of the business of the company" at the time the offence under Section 138 was committed. This statutory phrase has received consistent judicial scrutiny, with courts drawing a clear line between mere association with a company and active involvement in its day-to-day functioning. It is now settled law that vicarious liability cannot be presumed solely on the basis of one's designation as a director.

⁵ (2015) 4 SCC 609; AIR 2015 SC 923.

⁶ MANU/SC/0108/2024.



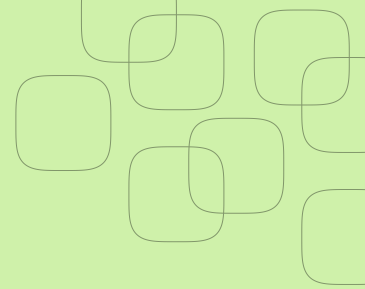
The Supreme Court in *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* laid down that the complaint must contain specific averments stating how and in what manner a director was responsible for the conduct of the business of the company. In the absence of such assertions, criminal proceedings cannot be maintained against them. The Court stressed that a bald statement in the complaint is not enough—some evidence or prima facie indication of the role played is essential. This test is particularly significant for Independent Directors, who are typically non-executive and not involved in day-to-day operations.

Courts have consistently applied this principle in interpreting liability. In *Sunil Bharti Mittal v. CBI*, the Supreme Court reiterated that criminal liability must be based on personal involvement and cannot be fastened mechanically on the basis of position. Likewise, in more recent decisions, including *Sunita Palita v. Panchami Stone Quarry*⁶, the apex court quashed proceedings against non-executive directors, emphasizing that there was no material on record to show that the directors were in control or had participated in the transaction leading to the dishonour of the cheque.

To implicate an Independent Director, therefore, two key elements must be demonstrated: first, that the individual was in charge of and responsible for the business of the company; and second, that such responsibility can be reasonably inferred from documentary or circumstantial evidence, such as board minutes, specific authorizations, or direct involvement in the financial decision in question. Without these elements, courts have increasingly been inclined to quash criminal complaints against such directors to prevent misuse of the law.

However, the ground reality is more complex. Despite the safeguards in place, Independent Directors often find themselves entangled in legal proceedings due to the mechanical inclusion of all directors in complaints under Section 138.

⁶(2022) 8 JT 113.



The sheer initiation of criminal proceedings brings reputational damage, legal expense, and personal distress, even if eventual acquittal or quashing is likely. The procedural delay in filtering out such cases at the preliminary stage undermines the statutory protection promised under the Companies Act.

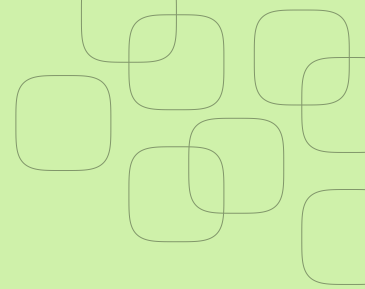
This leads to the question: is the current legal position protective or perilous for Independent Directors. On paper, it is protective—the law offers both statutory and judicial safeguards. In practice, however, the inclusion of Independent Directors in criminal complaints, often as a matter of routine, exposes them to significant hardship. The absence of a mandatory pre-summoning inquiry or a screening mechanism before issuing process against directors further aggravates the issue. While courts have quashed such complaints upon challenge, the burden of litigation remains significant.

A more robust application of existing protections and judicial directives at the stage of cognizance—before issuance of summons—could go a long way in addressing these practical challenges. Magistrates should be directed to carefully scrutinize the nature of allegations and supporting material before proceeding against non-executive directors. Additionally, complainants must be compelled to demonstrate, with clarity, how an Independent Director participated in the transaction or failed to exercise due diligence.

The law as it stands offers a fair degree of protection to Independent Directors against unwarranted prosecution under the Negotiable Instruments Act. Nonetheless, procedural inefficiencies and a lack of enforcement at the preliminary stages continue to place them at risk. Bridging this gap between law and practice is essential to ensure that Independent Directors can perform their governance role without the constant threat of criminal liability for actions beyond their control.⁸

⁸ 'LIABILITY OF NON-EXECUTIVE DIRECTORS FOR BOUNCED CHEQUES' (BCAJ)

<<https://bcajonline.org/journal/liability-of-non-executive-directors-for-bounced-cheques/>>
accessed 29 April 2025.



Conclusion and Way Forward

The emerging judicial stance on the liability of Independent Directors in cheque dishonour cases under Section 138, read with Section 141 of the Negotiable Instruments Act, is increasingly cautious and balanced. Courts have consistently held that criminal liability cannot be imposed merely by virtue of one's position as a director. The requirement of proving that a person was "in charge of and responsible for the conduct of the business" at the relevant time has been reiterated as a necessary condition. This shift in interpretation, particularly visible in rulings such as *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* and *Sunil Bharti Mittal v. CBI*, reflects a growing judicial sensitivity towards the limited and non-executive role of Independent Directors.

However, despite these safeguards, Independent Directors continue to face routine inclusion in criminal complaints, often without specific allegations or evidence of wrongdoing. This not only undermines their intended role in ensuring better corporate governance but also discourages capable professionals from accepting such positions due to fear of litigation.

To address this gap between legal protection and practical application, there is a pressing need for regulatory clarity.

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