

ANALYSIS OF LIFTING OF CORPORATE VEIL
UNDER COMPANY LAW

A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE
AWARD OF DEGREE OF MASTER OF LAWS

Submitted By

SHREE RASTOGI
1200990025
School of Legal Studies
BBDU, Lucknow

UNDER THE GUIDANCE
OF

DR. GUNJAN SRIVASTAVA
Assistant Professor
School of Legal Studies
BBDU, Lucknow



BBD UNIVERSITY

SESSION 2020-21

CERTIFICATE

This is to certify that the dissertation titled, “Analysis of Lifting of Corporate Veil under Company Law” is the work done by Shree Rastogi under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her success in life.

Date: 20-06-2020

Place- Lucknow

Dr. Gunjan Srivastava
(Assistant Professor)
School of Legal Studies
BBDU, Lucknow

DECLARATION

Title of Dissertation “**Analysis of Lifting of Corporate veil under Company Law**”. I understand what plagiarism is and am aware of the University’s policy in this regard.

Shree Rastogi

I declare that:

- (a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of **Master of Laws**.
- (b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments, and ideas have been appropriately acknowledged.
- (c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.
- (d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date: 20-06-2021

Place- Lucknow

SHREE RASTOGI

1200990025

LL.M. (2020-21), (CCL)

School of Legal Studies

BBDU, Lucknow

ACKNOWLEDGEMENT

Undertaking this LLM has been a truly life-changing experience for me, and it would not have been possible to do without the support and guidance that I received from many people.

First of all, I bow in reverence to the Almighty for blessing me with strong will power, patience and confidence, which helped me in completing the present work.

I would first like to thank my supervisor, Dr Gunjan Srivastava from the department of School of legal studies at Babu Banarsi Das University for your patience, guidance, and support. I have benefited greatly from your wealth of knowledge and meticulous editing. I am extremely grateful that you took me as a student and continued to have faith in me over months.

It would never have been possible to complete this study without an untiring support from my family. This research work bears testimony to the active encouragement and guidance of friends and well-wishers.

I am greatly indebted to the various writers, jurists and all others from whose writings and work I have taken help to complete this dissertation. Thank you all once again!!!

SHREE RASTOGI

1200990025

LL.M. (2020-21), (CCL)

School of Legal Studies

BBDU, Lucknow

ABSTRACT

Business activities can be run through the medium of various forms of business organizations one of which is a company or a corporation. According to the *Salomon v. Salomon and Co. Ltd.* instance, a company is the legal person distinct from company's members. This concept is referred as a 'Veil of incorporation' of the company. Generally, the courts of law found themselves bounded by this belief.

The consequence of this matter is that there is the fictional veil that exists between the corporation and members. This means that the company possesses a personality (i.e., corporate personality) is separated from its members. But, in wide array of circumstances, the Courts pierces or lifts up the veil of corporate or ignores it, so that the court can get the person behind the veil or to reveal the true character of company. The sense behind this is that the law may not permit the corporate entity to be misused or exploited. Under such type of circumstances if the Court considers that the corporate entity is being abused or misused, it can pull over the corporate veil and expose the genuine character and the nature of the company disregarding the *Salomon* theory. Generally, there are two categories of requisites for the lifting of the Corporate Veil- Statutory Provisions and Judicial Provisions. Judicial Legal Provisions that include Protection of revenue, Fraud, Character of the Company, etc. Whereas Legal Statutory Provisions include the fraudulent conduct of business, misdescription of the name, etc. Afterwards the chapter of introduction, this dissertation first introduces to the basic foundations of this doctrine, then it explains the meaning and concept of the term- 'Lifting of Corporate Veil', then later it points out the Statutory Legal provisions as well as the judicial provisions(interpretations) for the concept of Lifting up of a Corporate Veil and it also discuss about the concept of criminal liability on corporates with the help of various relevant case-laws.

TABLE OF CONTENT

ACKNOWLEDGEMENT	I
ABSTRACT	II
LIST OF CASES	IV
ABBREVIATIONS	VII
1.INTRODUCTION	1
1.1 INTRODUCTION.....	1-2
1.2 STATEMENT OF PROBLEM.....	3-4
1.3 RESEARCH PROBLEM.....	4
1.4 AIMS AND OBJECTIVES.....	4.
1.5 METHODOLOGY OF STUDY.....	5
1.6 SIGNIFICANCE OF STUDY.....	5
1.7 REVIEW OF LITERATURE.....	6-8
1.8 SCOPE AND LIMITATION.....	8
1.9 STRUCTURE OF THE DISSERTATION.....	9
2. FOUNDATIONS OF THE DOCTRINE	10
2.1 HISTORY AND DEVELOPMENT OF DOCTRINE.....	10-15
2.2 MEANING/CONCEPT OF CORPORATE.....	15-16
2.3 SEPARATE LEGAL ENTITY.....	17-21
2.4 LIMITED LAIBILITY.....	21-24
3. LIFTING OF CORPORATE VEIL	25
3.1 MEANING AND CONCEPT OF DOCTRINE.....	25-27
3.2 NEED AND ITS RELEVANCE IN CURRENT TIME.....	27-41.
3.3 APPROACHES OF DOCTRINE.....	41-45
3.4 ESSENTIALS OF PEIRCING CLAIM.....	45-48
4. LEGAL STANDARDS AND CRIMINAL LAIBILITY	49
4.1 STATUTORY PROVISIONS.....	49-53
4.2 JUDICIAL INTERPRETATIONS.....	53-65
4.3 CONCEPT OF CORPORATE CRIMINAL LAIBILITY	65-78
5. COCLUSION AND RECOMMENDATION	79
5.1 CONCLUSION.....	79-83
5.2 RECOMMENDATIONS.....	83-85
BIBLIOGRAPHY	87

LIST OF CASES

- A. K. Khosla v. S. Venkatesan* (1992) Cr.L.J. 1448
- Adams Vs. Cape Industry Plc* (1990) Ch 433, at 539D
- Andhra Pradesh State Road Transportation vs The Income-Tax Officer and Anr* 1964 AIR (SC) 1486
- Antonio Gramsci Shipping Corp v Stepanovs* [2011] EWHC 333 (Comm)
- Bank voor Handel en Scheepvaart N.V. v Slatford* [1953] 1 QB 278
- Ben Hashem v. Ali Shayif and another* [2008] E.W.H.C. 2380 (Fam.) (U.K.)
- Bhopal Gas Tragedy or Union Carbide Corporation vs Union of India* 1990 AIR 273, 1989 SCC (2) 540.
- CBI v. M/s Blue-Sky Tie-up Ltd and Ors* (2011) 15 SCC 144
- Chamundeswari v. CTO, Vellore Rural* [2007] 78 SCL 151 (Mad.).
- CIT v. Sri Meenakshi Mills Ltd* AIR 1967 SC 819\
- Commissioner of Inland Revenue v His Grace the Duke of Westminster* (1935) All ER 259 [HL]
- Commissioner of Land Tax v Theosophical Foundation Pty Ltd* 1966) 67 SR (NSW) 70
- Cotton Corporation of India Ltd. v G.C. Odusumathd* [1999] 22 SCL 228
- Dadourian Group International Inc v Simms* [2006] EWHC 2973 (Ch).
- Daimler Co Ltd v Continental Tyre & Rubber Co. (GB) Ltd.* [1916] 2 AC 307
- Delhi Development Authority v. Skipper Construction Company (P.) Ltd* [1996] 4 SCALE 202
- Deputy Commissioner v. Cherian Transport Corporation* (1992) 74 Comp. Case 563 (Mad)
- DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852
- Dimbley & Sons Ltd v National Union of Journalists* [1984] 1 All ER 751.
- Estate Officer v. Esys Information* (2016)12SCC582
- Gallagher v. Germania Brewing Company* [1893] 53 MINN. 214
- Gilford Motor Co Ltd v Home* [1933] Ch 935
- Gorton v Federal Commissioner of Taxation* [1965] HCA 1; 113 CLR 604
- Harff v. Kerkorian*, 324 A.2d 215, 200 (Del. Ch. 1974)
- Hendon v. Adelman* (1973) New LJ 637

- In Re Kondoli Tea Co. Ld* (1886) ILR 13 Cal 43
- In Re Shri Ambica Mills Ltd.* 1897 AC 22
- In Re, Bedrock Ltd* [1998] 17 SCL 385 (Bom.)
- In Re, Dinshaw Maneckjee* AIR 1927 Bom. 371
- In Re. Augustus Barnett & Sons Ltd* [1986] B CLC 170 Ch. D.
- In Re: Flextronics Technologies (India) Private Limited* (2010)
- Inalsa Ltd. v. Union of India* [1996] 87 Comp. Cas. 599 (Delhi).
- Iridium India Telecom Ltd. v. Motorola Incorporated and Ors* , AIR 2011 SC 20
- J.B. Exports v BSES Rajdhani Power Ltd* [2007] 73 SCL 133 (Delhi)
- Jones v Lipman* [1962] 1 All ER 442
- Jones v. Lipman* [1962] 1 All. ER 442
- Jyoti Limited v. Kanwaljit Kaur Bhasin* [1987] 62 Comp. Cas. 626 (Delhi)
- Kalpanath Rai v State (Through CBI)* (1997) 8 SCC 732
- Kartick Chandra v. Harsha M. Dasi*, AIR 1943 Calcutta 35
- Kotak Mahindra Bank Limited v Subhiksha Trading Services Limited* 2010 Crim WP 523
- Lee v Lee's Air Farming Co. Ltd* [1961] A.C. 12
- Life Insurance Corporation of India v. Escorts Ltd* AIR 1965 SC 40
- Littlewoods Mailstores Vs. IRC* (1969) 1 WLR 1241
- Macaura v Northern Assurance Co. Ltd* [1925] A.C. 619.
- Merchandise Transport Limited v. British Transport Commission* [1982] 2 QB 173
- Miheer H. Mafatlal v Mafatlal Industries Ltd.* (1997) 1 SCC 579.
- Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 268 (D. Del. 1989)
- MV Javali v. Mahajan Borewell & Co and Ors* AIR 1997 SC 3964
- Nathulal v. State of M.P* A.I.R. 1966 S.C. 43
- New Horizons Ltd. v. Union of India* [1995] 1 Comp. LJ 100 (SC)
- Ord & Anor v Belhaven Pubs Ltd* [1998] BCC 607
- Pankaj Aluminium Industries Private Limited v Bharat Aluminium Company Limited* (Delhi High Court, 23 March 2011).
- PNB Finance Limited v. Shital Prasad Jain* [1983] 54 Comp. Cas. 66 (Delhi)
- Prem Lata Bhatia vs. Union of India* [2006] 71 SCL 142 (Delhi).
- R v London County Council, ex p London & Provincial Electric Theatres Ltd.* [1915] 2 KB 466

- Ram Saroop Gupta v. Major Sp Marwah RC.REV. 179 OF 2011*
- Rasila S. Mehta v Custodian, Nariman Bhavan, Mumbai, (2011) SC*
- Richter Holdings Ltd. v The Assistant Director of Income Tax (2011) HC Karn
ataka.*
- S. Sukumar v. Institute of Chartered Accountants of India (2018)14SCC360*
- S.A.E. (India) Ltd. v. E.I.D. Parry (India) Ltd [1998] 18 SCL 481 (Mad.).*
- Salomon v. Salomon and Co. Ltd. (1897) A.C 22*
- Santanu Ray v. Union of India [1989] 65 Comp. Cas. 196 (Delhi)*
- Sesa Industries Limited v Krishna H. Bajaj and other (Supreme Court of India,
7 February 2011).*
- Smith, Stone and Knight v. Birmingham Corporation [1939] 4 All ER 116 (KB)*
- Standard Chartered Bank and Ors. v. Directorate of Enforcement, (2005) 4 SCC
530.*
- State of Maharashtra v. Mayer Hans George A.I.R. 1965 S.C. 722*
- State of Rajasthan v. Gotan Limestone (2016)4SCC469*
- State of U.P. v. Renusagar Power Co [1991] 70 Comp. Cas. 127*
- Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors AIR 1965 SC 40*
- The Assistant Commissioner, Assessment- II, Bangalore and Ors. v. Velliappa
Textiles Ltd. and Ors. AIR 2004 SC 86*
- Tolaram Relumal and Anr. v. The State of Bombay, 1955 (1) SCR 158*
- Trustor v Smallbone [2011] EWHC 3107 (Ch).*
- Union Carbide Corporation v. Union of India (M.P.H.C.) 1992 AIR 248, 1991
SCR Supl. (1) 251.*
- United States v. Best foods 524 US 51 (1998)*
- United States v. Milwaukee Refrigeration Transit Company 142 F.247 (1906).*
- Vodafone International Holdings v. Union of India (2012) 6 SCC 613.*
- VTB Capital plc v Nutritek International Corp [2011] EWHC 3107 (Ch)*
- Weeks v. Propert [1873] L.R. 8 C.P. 427*
- Woolfsan Vs. Strathelyed (1978) SLT 159*
- Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.
[1986] 59 Comp. Cas. 134*
- WT Ramsay v Inland Revenue Commissioner (1981) 1 All ER 865*
- Zee Telefilms Ltd. v. Sahara India Co. Corp. Ltd., (2001) 3 Recent Criminal
Reports 292.*

ABBREVIATIONS

Mad.	Madras
SCC	Supreme Court Cases
SC	Supreme Court
Del.	Delhi
Pvt.	Private
Ltd.	Limited
Corp.	Corporation
M P	Madhya Pradesh
Ors	Others
HC	High Court
WLR	Weekly Law Report
UKHL	United Kingdom House of Lords
L J	Legal Journal
AIR	All India Reports
p.	Page Number
EWHC	England and Wales High Court
NSW	New South Wales
Rev.	Review
Ed.	Edition
AC	Appeal Cases
LIC	Life Insurance Corporation
CLC	Civil Law Cases
Cr.Case	Criminal Cases
Bom.	Bombay
FERA	Foreign Exchange Regulation Act
Anr	Another
CBI	Central Bureau of Investigation
CID	Crime Investigation Department
US	United States
CEO	Chief Executive Officer
SEBI	Security Exchange Board of India

CHAPTER 1

1.1 INTRODUCTION

“The judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation’s wrongful acts.”¹

- **Black Law’s Dictionary**

This definition reveals the main soul of lifting the veil of the company. A veil of a corporate is the curtain that separates the company from its members permitting the company to rest in front of the curtain whereas its members sit behind the curtain. This intangible curtain curtails the feasibility of anyone looking behind the company and therefore, making the concept concrete that the members and the company does not seem to be similar². When the court disregards the statutory limits of corporate liability, it may hold personally liable different members of the company, such as the directors, the shareholders, and corporate officers of the company (either natural or legal persons). Hence, the scope of possible liable persons is wide-ranging.

One of the fundamentalistic characteristics of the company law is the modest fact that a company possess a separate legal entity, distinct from its members. After the company get incorporated, it is treated as the separate legal entity distinct from its promoters, directors, members, employees; and shareholders, etc, and it has an independent existence or the individuality. Hence, for the acts or actions performed by one person, others cannot suffer or be held liable. It is mostly said that "members may come and go, but the company remains forever", this statement has thrown the light on one of the characteristics of the company, i.e., perpetual succession. A company being the artificial person or having a separate legal entity leads that it can purchase, enjoy, and sell a property. The owner of such property will be the company itself and not the members of the company and therefore it can sue and be sued in its name.

¹ Piercing the corporate veil, BLACK’S LAW DICTIONARY, (9th ed. 2009).

² Wibberley, J., Chambers, G. and Gioia, M.D., 2017. Lifting, Piercing and Sidestepping The Corporate Veil. *Guildhall Chambers*.

Assets of the natural persons or the members of a company cannot be carried to sale for the wrongful actions or acts of a 'separate legal entity ', not like the partnership or a partnership or sole proprietorship which are not the incorporated entities. The exception was shaped when the legal Courts have decided that in certain cases the members can be held personally liable for any wrongful or illegal activity which affects the company at large, then the concept of 'separate legal entity ' can be done away to make that individual member held liable for such a wrongful act committed by him/her.³ However, the doctrines of separate legal personality (that is the separate and distinct existence of the company from that of its members) and limited liability may be disregarded and the company is considered as a collection of persons instead of a collection of capital in certain circumstances including when the legal personality is used for improper conduct which is detrimental to third parties⁴.

Lifting of corporate veil assists in discovering the economic realities behind the company's legal facade and prohibiting the indiscriminate malpractice of individual members entrusted with the personal economic interests⁵.

Veil of a corporate is a legal concept which comes under a scanner whenever there is a suspicious attempt performed by the company. In such circumstances the natural person responsible behind such fraudulent action will be exposed to which the court removes the veil to view the individuals involved in the company. This can be achieved under various circumstances, which include fraud, tax evasion, statutory violations, and breach of agreement, etc.

The central idea of this research is to examine the concept and its relevance in the current scenario and the legal standards when the corporate veil shall be

³ Manish Kumar singh, 'Analysis of lifting of corporate veil' [2020] 6(2) International Journal of Law <<http://www.lawjournals.org/archives/2020/vol6/issue2/6-2-17> > accessed on: 13 May 2021, <http://www.lawjournals.org/download/635/6-2-17-453.pdf>

⁴ Ottolenghi, S., 'From Peeping behind the Corporate Veil, to Ignoring it Completely', the Modern Law Review, Vol. 53, No. 3, Blackwell publishing, 1990, p..338

⁵ H.K. Saharay, Company Law (5th edition, Universal Law Publishing Co., 2008) 12.

lifted by the courts and also corporate criminal liability in regard to piercing the veil of the corporate along with various important cases.

1.2 STATEMENT OF PROBLEM:

The problem of lifting the veil of the corporate has been replicated by the judiciary and have commented on for several years and there are cases where the courts have negated the application of this principle. The doctrine of lifting the veil has been established to maintain business efficiency. The law goes behind the veil or checks between the corporate and its members, to find out the person behind the mask for the only reason that is to make the offender personally liable by applying this doctrine.

As above stated, a company is an entity relatively separate and distinct from the individuals and hence the members will not be responsible for the debts of the company as long as they have contributed their subscribed shares. Although limited liability is an advantage for the individual members, it may significantly affect the traditional debtor-creditor relationships. Limited liability may have an adverse effect on creditors in several different ways. It opens opportunities for both express as well as tacit misrepresentation in deals with creditors. Shareholders that employ the company form through which it deals with others may misrepresent the assets within the company and merely just walk away if the business fails to operate. And a business is the engine of an economy. It is a commercial activity which generates most of the wealth of the nation, generates jobs, and provides most of the funds that get on the path to government spending.

A crystal clear understanding of the doctrine of the lifting of the corporate veil is very significant and a rich understanding of corporate personality and addition to this limited liability is also necessary along with the provisions regarding the lifting veil of the company under the statute of Companies Act, 2013. The elements of the lifting/piercing claims and legal standards under which the veil is lifted can be easily identified through important leading case laws and judgment passed by the courts. A detail study was not have been carried out so far to examine the above controversial issues in relation to the

doctrine of piercing the corporate veil. Therefore, this study tries to exhaustively examine the relevance and legal standards dealing with the doctrine of “piercing the corporate veil”. The researcher effort is to study, review, and analyse the doctrine of lifting the corporate veil.

1.3 RESEARCH QUESTIONS:

To achieve the purpose, the research questions are designed as follows:

- ❖ What are the basic foundations of this doctrine and how this doctrine is an exception of these foundation concepts?
- ❖ Under what grounds the veil is lifted? And why its relevance in present era?
- ❖ Whether provisions under the Companies Act 2013 are sufficient or not for a lifting of the corporate veil?
- ❖ What are the issues surrounding the imposition of criminal liability on corporates?

1.4 AIMS AND OBJECTIVES:

1.4.1. General Objective

The main objective of the study is to exhaustively examine the concept, its relevancy, and legal standards of the doctrine of “lifting the corporate veil” in Indian company law.

1.4.2 Specific Objectives

The study is designed to achieve the following specific objectives:

- ❖ To study and analyse the concept of the lifting of corporate veil along with the provisions under the Companies Act, 2013.
- ❖ To know why this doctrine is the exception of separate legal entity and limited liability concepts.
- ❖ To analyse the issues surrounding the imposition of criminal liability.
- ❖ To know when it evolved and the applicability of this doctrine in India.
- ❖ To study the elements of piercing claims and instances under which the veil is lifted.
- ❖ To analyse the relevance and development of the doctrine lifting of the corporate lift.

- ❖ To know the issues surrounding the impositions of corporate criminal liability.

1.5 METHODOLOGY OF STUDY:

For analysing answers to the above stated questions, the qualitative methodology has been used. The researcher prefers this methodology as it is the most suitable for addressing the questions of research in this study, as it has high level of flexibility.

- ❖ Analysed legal provisions of the Companies Act, 2013 and other laws related to the topic.
- ❖ The information has been reviewed from other published and unpublished literatures, journals, relevant cases, books, etc.

Finally, the information has been gathered through the secondary sources such as internet and other sources, it is being compiled in such a way in which it is easy to manage, interpreted and analysed qualitatively. Efforts were made to update every aspect with the support of relevant cases accordingly to bring good response.

1.6 SIGNIFICANCE OF THE STUDY

This research is deemed to have its own legal and academic significance: it is to be expected that it would initiate further research on the subject matter. Furthermore, it will help in aiding or suggestions to the legislator to provide enough statutory provision related to the lifting of corporate veil and exception to the doctrine of separate legal personality and limited liability as both these defences the company's human constituents from responsibility in respect of the corporate debt's payments and the judiciary to play a pro-active role and follow the doctrine of lifting the corporate veil as a guideline, to guard the interests of third-party creditors when individuals' members improperly practice the corporate shield.

1.7 REVIEW OF LITERATURE:

Priya, R. J., Susmitha, S., & Thenmozhi, B. (2018). A Descriptive Study on the Doctrine of Lifting of Corporate Veil. International Journal for Advance Research and Development, 3(3), 6-9⁶.

This research study deals with the meaning and circumstances of lifting of corporate veil in descriptive manner. Corporate is a legal person distinct from its members, which is well known as the “Veil of incorporation” opted in the case of Salomon v. Salomon and Co. Ltd. (1897) A.C 22. The courts think themselves bound by this principle. The impact of this rule is that there is an imaginary veil between the corporation and its members. Specifically, the corporate has its own personality that is different from its members. But, under certain circumstances, the Court will lift the veil of the corporate or ignore the corporate veil to get the person behind the curtain or to reveal the true and real character of the company.

Macey, J., & Mitts, J. (2014). Finding order in the morass: The three real justifications for piercing the corporate veil. *Cornell L. Rev.*, 100, 99⁷.

In this Article it is sought to create a rational structure for conceptualizing the conditions in which it is suitable and in accordance with the public policy to pierce the veil of corporate. This research talks about the corporate veil will be lifted if, and only if, doing so is necessary for any one of the three reasons discussed in this study. Piercing of veil is done to attain three discrete public policy aims, each is consistent with economic efficiency:

- (1) achieving the purpose of an existing statute or regulation.
- (2) preventing shareholders from obtaining credit by misrepresentation; and
- (3) promoting the bankruptcy values of achieving the orderly, efficient resolution of a bankrupt's estate.

⁶ Available at <http://www.wijarnd.com/manuscripts/V3i3/V313-1142.pdf>

⁷ Available at <http://www.diva-portal.org/smash/get/diva2:1185706/FULLTEXT01.pdf>

Harshit Saxena, Lifting of Corporate Veil. 2010, pp.1-24⁸

This research paper discussed the concept along with the circumstances under which the corporate veil is lifted and elements of piercing the claim. Courts have been trying for many years to develop and enhance their assessment of these claims. Though, every new conduct creates a totally different set of facts and the circumstances in the equation and a distinct resolve must be made about whether the plaintiff has submitted an adequate proof of controlling and domination, improper purposes, or usage and causing damage.

Ottolenghi, S. (1990). From peeping behind the corporate veil, to ignoring it completely. *The modern law review*, 53(3), 338-353⁹.

This study deals with the different approaches which can be taken by the courts while deciding the lifting of veil of corporate. This research is suggesting that the four categories as discussed in this study may help to deliver a clearer insight into the statutory law and judicial procedure of veil lifting, because every type would have its own suitable set of factors and explanations.

Devang Gautam, [2014] 'Corporate Personality and Lifting of the Corporate Veil', *Indian Journal of Research* 3(1).

This document has delivered an insight of the idea of corporate veil, and it has analysed how the different Courts have construed this idea over the period of years. This paper later investigates several attributes of corporate personalities and analysed each one of them. The paper along with describing the characteristic of corporate personality also analysed why and when the Courts may lift the corporate veil. This paper provided description on provisions of Statutes under which veil of a corporate can be lifted.

Manish Kumar Singh, 'Analysis of lifting of corporate veil' [2020] 6(2) *International Journal of Law*.

⁸ Saxena, H., 2010. Lifting of Corporate Veil. Available at SSRN 1725433.

⁹ available at <http://www.lawjournal.org/archives/2020/Vol6/issue2/6-2--17>

This article first presents the concept of “Veil of Incorporation” then it describes the meaning of the doctrine lifting of corporate veil, later it draws attention to the Judicial in addition to the statutory provisions for lifting of the veil of corporate along with the various case laws. The Courts in some exceptional situations may ignore the theory of 'separate legal entity' and will investigate who are the real individual persons behind a particular act and will ensure that they are liable, rather than the business.

Masoom Agrawal and Vaidehi Pareek, 'Piercing through the Corporate Veil' [2019] 2(2) International Journal of Law Management & Humanities 1-11.

The researchers aim to draw information regarding how the changes developed from the traditional to the modern frauds. The challenges and solutions regarding the same topic have been emphasized. The researchers have also highlighted the traditional and modern cases laws decided and assessed to determine whether the past precedents are sufficient to respond to the modern technical corporate crimes.

1.8 SCOPE AND LIMITATION OF THE STUDY

The primary focus in this research is on the relevance and legal standards related to the doctrine. Separate legal entity and limited liability defences the company's human constituents from responsibility in regard of the corporate debt's payments. The assessment of these approaches is made to decide which approach might be effective in solving the corporate issues related to this study. In the appropriate time of the study, encountered various difficulties and obstacles. These obstacles, include shortage of time and budget. Not in-depth but detailed assessment has been made related to the topic of lifting of corporate veil. However, the research considers that the cases attached and analysed in this study can illustrate a particular picture regarding the role and stands of courts or legislatures in the issue at hand.

1.9 STRUCTURE OF DISSERTATION

This study comprises of *five chapters* including the introductory chapter.

Chapter 2 deals with the basic foundations of the doctrine which includes its origin and history, meaning of corporation along with its characteristic features, the concept of separate legal entity and limited liability and how this doctrine of lifting of corporate veil became the exception of these two foundations (i.e., separate legal entity and limited liability).

Chapter 3 of this research discusses the concept and meaning of the doctrine, its need, approaches that can be taken by the courts while dealing with the cases of lifting of corporate veil and elements of piercing claim.

Chapter 4 deals with the legal standards under which the corporate veil is lifted that includes the statutory provisions and judicial interpretation under which the corporate veil can be lifted. This chapter also analyses the statutory recognition of this doctrine and deal with the issues regarding the corporate criminal liability.

Chapter 5 of this research deals with the conclusion and recommendations

CHAPTER- 2

FOUNDATIONS OF LIFTING OF CORPORATE VEIL

For clarity in the concept of ‘lifting of the corporate veil’, the origin and development, the meaning of the word corporate/company, a separate legal entity of the company, and the Limited liability of its member are required to be understood properly.

2.1 HISTORY AND DEVELOPMENT OF THE DOCTRINE

In earlier times corporations were not meant for business and trading, but they were formed, in the middle age of Europe, for religious and church institutions. These institutions got their authority through charters granted by local lords and kings for the purpose to hold property. This ability of an institution to hold property in their name assured that the property held by such institution is the sole property of that very institution and not of those individuals or their legal heirs who control such institution.¹⁰

Later in the 16th century, hospitals, universities, colleges, etc were also granted charters as the range was extended. The purpose of those incorporations was a perpetual succession and that succession of different individuals to be recognized as a single legal person. However, until that time the corporations were not intended for commercial or business purposes.¹¹

In the 17th century for the first time in England, charters were issued to trading companies for commercial purposes¹². Trading companies were contractual partnerships recognized at common law and did not require a charter. By the end of the 17th century, several companies were established. There are four

¹⁰ Waqas, M. and Rehman, Z., 2016. Separate Legal Entity of Corporation: The Corporate Veil. International Journal of Social Sciences and Management, 3(1), pp.1-4.

¹¹ Ron, H., 2000. Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844

¹² Blair MM (2012) The Four Functions of Corporate Personhood. Vanderbilt University - Law School, Research Paper No. 12-15.

means through which the personhood of a corporation can be established¹³: *Continuity, Identifiable Persona, Specification of Assets (Limited liability principle), Self-Governance.*

Several judgments have been passed from the 17th century onward, in establishing the legal existence of a corporation as a separate legal entity or legal personality of a corporation.

In 1844, the Incorporation of a company through legal process was introduced and in 1855, the concept of limited liability was tracked. Once the registration of a company is done, it will be recognized as a legal entity distinct from its members since the day of its incorporation. In England, the legal personality of a company was recognized in *the Kandoli Tea Company Case (1886)*¹⁴, the court of law after full scrutiny of the record accessible gave the verdict that as the company is a separate legal entity and therefore the property is transferred to the name of the company, so the same property should be treated as transferred and the petitioners are not liable to any kind of tax.¹⁵

But it had been strongly established within the case of *Saloman v. Saloman & Co. Ltd.*¹⁶ in 1897. It had been determined by the House of Lords that by refusing or rejecting to allow the primary shareholder to be accountable or responsible for the debts of the (insolvent) company, by this means the pronouncement passed by the Court of Appeals had existed overturned, and it gave judicial appreciation that incorporation bestows upon the company a separate independent personality of its shareholders, which may not be considered as acting as an agent for them¹⁷.

From 1966 to 1989, it was the time when the rules of the House of Lords took place in Solomon's case has been changed, and the lifting of the veil was

¹³ supra note 7.

¹⁴ In Re Kondoli Tea Co. Ld (1886) ILR 13 Cal 43

¹⁵ Waqas, M. and Rehman, Z., 2016. Separate Legal Entity of Corporation: The Corporate Veil, International Journal of Social Sciences and Management, 3(1), pp.1-4.

¹⁶ (1897) A.C. 22, [1896] UKHL 1

¹⁷ Lifting of Corporate Veil: Indian Scenario by Ashu Bala. <http://www.legalservicesindia.com/article/1876/Lifting-of-Corporate-Veil:-Indian-Scenario.html>. [Accessed: 10.05.2021]

encouraged¹⁸. In the matter of *Littlewoods Mailstores Vs. IRC*¹⁹ Lord Denning stated that "the doctrine laid down in Solomon's case has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can, and often do, pull off the mask."²⁰

But from 1989, The doctrine of corporate veil piercing started to be disfavoured by the foreign courts in this period. The best classic example of disregarding is the cases of *Woolfsan Vs. Strathelyed*²¹ the Regional Council under which the Lord Keith specified that the only situation or condition where the veil of corporate can be lifted was that when there are some special circumstances signifying that the corporate is a 'mere facade concealing the true facts.' So, the English court had initiated to take a exact narrow sight of this doctrine and the decision of the court of appeal in²² the matter of *Adams Vs. Cape Industry Plc*²³ stated that there are three circumstances under which the corporate veil can be pierced. They are as follows:

- 1) If the court of law has interpreting a statute of law or any other document and statute is ambiguous, it will permit the court of law to treat the group as a single entity.
- 2) If there is special circumstance and it is indicating that this is a mere a facade concealing the true or real facts, the court may lift the corporate veil.

Whether or not the corporate veil of the company is pierced depends on the facts of each case. There cannot be a rigid formula or test based on which it can be decided.²⁴

¹⁸ Banoo, S., 2018. Lifting of the Corporate Veil: Decoding the Doctrine of Separate Legal Personality. Available at SSRN 3609245.

¹⁹ (1969) 1 WLR 1241

²⁰ Supra Note 8

²¹ (1978) SLT 159

²² <http://jceil.lsyndicate.com/wp-content/uploads/20017/06/Trishla-Devanshi-corporate-veil.pdf>

²³ (1990) Ch 433, at 539D

²⁴ Popat, S. (2021). Swaraj: An abandoned concept in independent India.

In India, the principle of Salomon has been duly acknowledged as a straightforward canon of company law, both by the legislators as well as by the judiciary, with the doctrine of the corporate veil.²⁵

In India, most of the company laws are taken from English law. In the same manner, this doctrine is also recognized in India by the Indian Courts in several cases. The Supreme Court held that:

*“The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own names and has a seal of its own; its assets are separate and distinct from those of its members, the liability of the members of the shareholders is limited to the capital invested by them, similarly, the creditors of the members have no right to the assets of the corporation.”*²⁶

In *Life Insurance Corporation of India v. Escorts Ltd*²⁷, Justice O. Chinnapa Reddy had highlighted that the corporate veil of a company should be lifted wherever the associated companies are intimately connected as to be, a part of one concern. It was one of the first Indian cases that dealt with the concept of piercing of the Corporate Veil. This is the landmark judgement in which, the court held that the corporate veil of any company can be pierced only in the exceptional cases.

The court also set forth various conditions under which the veil or mask can be lifted. Such circumstances consist of fraud, improper conduct, evasion of taxing or a beneficent statute.

Over the past few years, the applicable law concerning the piercing of the corporate veil has developed but then not deviated from what had been initially declared by the Supreme Court.

²⁵Understanding Corporate Veil and Its Implications in The Indian Context Acknowledgements
By Arushi Sharma.

https://www.academia.edu/34984711/UNDERSTANDING_CORPORATE_VEIL_AND_ITS_IMPLICATIONS_IN_THE_INDIAN_CONTEXT_ACKNOWLEDGEMENTS [Accessed: 10.05.2021].

²⁶ Tata Engineering Locomotive Co. Ltd. v. State of Bihar and others, AIR 1955 SC 74, available at <https://www.lawcolumn.in/lifting-of-corporate-veil-in-India-on-judicial-grounds/>

²⁷ AIR 1965 SC 40

In the case of *New Horizons Ltd. v. Union of India*, the court has held that the veil of a corporate can be lifted wherever the concept of corporate legal personality is beating the delivery of justice.²⁸

In the matter of *Bhopal Gas Tragedy or Union Carbide Corporation vs Union of India*²⁹ the Court decided that the veil of the (Union Carbide India Limited) Indian company-UCIL, can be lifted and its real face could be seen, the case concerned mass disaster and involved the assets of a subsidiary company which was insufficient to meet the just claims to the victims of the disaster. The court observed that it would fail in its duty if it did not apply the “lifting of corporate veil” doctrine in this case.

Afterwards the case of Bhopal Gas leak disaster, the lifting of the corporate veil has been spiralled. This doctrine helped the courts to see beyond the veil of the company and resolve the matter by lifting it.

Another landmark judgment was the *Vodafone International Holdings v. Union of India*³⁰, in which the Apex Court pronounced that “once the transaction is shown to be fraudulent, sham, and circuitous or a device designed to defeat the interests of the shareholders, investors, and parties to the contract and also for tax evasion, the Court can always lift the corporate veil and examine the substance of the transaction”³¹.

Exception to this rule of corporate identity has made it possible for the Courts to hold the individuals who are perpetrating the fraud under the brand name of their company.

In *State of Rajasthan v. Gotan Limestone*³², it was held by the court that the corporate veil could also be pierced in circumstances where the public interest exists at stake and wherever the incorporation of a corporate is being used to take on illegal practices.

In 2016 year, the case of *Estate Officer v. Esys Information*³³, was of great importance, the court ruled that veil of the corporate may be lifted by the court

²⁸ 1995 SCC (1) 478.

²⁹ 1990 AIR 273, 1989 SCC (2) 540

³⁰ (2012) 6 SCC 613.

³¹ <https://www.lawcolumn.in/lifting-of-corporate-veil-in-India-on-judicial-grounds/>

³² (2016)4SCC469

³³ (2016)12SCC582

of law, when the corporate is going to be used for the purpose to commit any fraudulent activity or tax evasion.

All Along with the same thing, in matter of *S. Sukumar v. Institute of Chartered Accountants of India*³⁴, it was held that the veil of corporate could be lifted, if the corporate body is used to avoid the legal obligations that the corporate companies are subjected to.

Thus, it can be observed that even if the legislation has not been changed or altered over many years, but it has been significantly developed based on the different facts and circumstances of every single case.

2.2 MEANING OF CORPORATE/ COMPANY

Generally, a company may be described as forming a voluntary association of persons who have come together for carrying on some business and sharing the profits³⁵ therefrom. The word 'company' is derived from the Latin word (*Com-with or together & panis-bread*), and it originally referred to an association of persons who took their meals together.³⁶ According to The Companies Act, 2013 a "company" means a company incorporated under this Act or under any previous company law.³⁷ Does it is also known as a body corporate because incorporating a company means to cloth it with legal personality? The word 'corporation' is derived from the Latin term '*corpus*' which means '*body*'³⁸. According to Black's Law Dictionary, the word 'corporate'³⁹ ' means 'belonging to a corporation, as a corporate name, incorporated, as a corporate body. "Body corporate' or 'corporation' includes a company incorporated outside India but does not include— (a) a co-operative society registered under any law relating to co-operative societies; (b) any other body corporate not being a company

³⁴ (2018)14SCC360.

³⁵ <https://lawtimesjournal.in/lifting-of-corporate-veil-of-company-under-company-law/>

³⁶Executive Programme Company Law.
<https://www.icsi.edu/media/webmodules/FinalCompanyLawBook22092020.pdf> [Accessed: 10.05.2021]

³⁷ Section 2(20) of the Companies Act, 2013

³⁸ Kapoor, G. K., and Sanjay Dhamija. "Company Law and Practice: A Comprehensive Textbook on Companies Act-2013." (2017).

³⁹ Black's Law dictionary, page 264, June 2000 publication

which the Central Government may, by notification in the Official Gazette, specify in this behalf.”⁴⁰

The expression ‘corporation’ or ‘body corporate’ is, thus, wider than the word company⁴¹.

The act does not outline the clear meaning of a company. So, some authorities defined the term company These are:

According to Prof. Haney - “*a company is an artificial person created by law, having separate entity, with a perpetual succession and common seal*”.⁴² Here the artificial person means a company is created with the sanction or creation of law and it is not a human being⁴³. Therefore, it is termed as artificial and it is clothed with specific rights and obligations, it is called a person.

According to Chief Justice Marshall - “*a corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence*”.⁴⁴

Through these definitions, it may be ascertained that the company has some special characteristics as it cannot be found under the Companies Act, these are:

Incorporation (Incorporation of a company involves registration of formal documents with the Registrar of Companies), ***Separate legal entity*** (a legal entity and its constituent members are distinct and separate), ***limited liability*** (This is a privilege and an advantage, in as much as the liability is limited to the extent of the shares held by the shareholders and no liability arises beyond this. The members are not the owners of the company and are not liable to its debts. The company is independent and meets its obligations)⁴⁵, ***perpetual succession*** (the company formed or incorporated by law never dies, except wound up as per the law), ***separate property*** (A company is a legal person it holds and owns property in its name.), ***transferability of shares*** (the company is separate from its members it facilitates the transfer of members’ interest, shares of a are transferable in the way provided under companies Articles), ***common seal***

⁴⁰ Section 2(11) of the Companies Act, 2013

⁴¹ Supra note 20.

⁴² Ibid.

⁴³ Supranote 36.

⁴⁴ Supranote 20.

⁴⁵ <http://msrlawbooks.in/>.

(official signature of a company)⁴⁶, *capacity to sue and to be sued* (after incorporation of a company, it can sue or be sued in its name as distinct/separate from its members). The foremost important characteristic features are 'separate legal entity' and in most of the cases 'limited liability' of its members in a company.

The most essential characteristic features are the 'separate legal entity' of the company and in most cases 'limited liability' of its members in a company⁴⁷. These two concepts also play a major role in the doctrine of lifting the veil of the company.

2.3 SEPARATE LEGAL ENTITY

A company becomes in the eye of the law, a different person completely from the member who constitutes it. Thus, an incorporated company has a legal distinct personality from its members from the day of its incorporation⁴⁸.

After the registration, the association of persons becomes a body corporate under the name contained in the Memorandum. The most significant case in the history of a company through which the company enhances its authority as a separate legal person is the *Salomon v Salomon Co. Ltd case*.

*Salomon v Salomon Co. Ltd*⁴⁹

For several years, the saloman had carried on a wealthy business i.e., a leather merchant and boot manufacturer. Salomon established a limited company consisting of himself, his four sons, his daughter, and his wife, as the shareholders, all of them subscribed to 1 share each in such a manner as to the actual cash paid as capital was £7. Salomon sold his business, which had been

⁴⁶ The Companies (Amendment) Act, 2015 coming into force the common seal is no more mandatory, it has become optional.

⁴⁷ Kapoor, G.K. and Dhamija, S., 2019. Company Law and Practise 24th ed.

⁴⁸ Devang Gautam, 'Corporate Personality and Lifting of the Corporate Veil' [2014] 3(1) Indian Journal of Research

<https://www.worldwidejournals.com/paripex/recent_issues_pdf/2014/January/January_2014_1389889190_5b59f_27.pdf> accessed 13 May 2021.

⁴⁹ (1897) A.C. 22

completely solvent at that time, to the Company created by him for an amount of £38,782. The nominal capital of the company was £40,000 in £1 shares. In partial payment of the purchase money for the business sold out to the company, debentures of the amount of £10,000 secured by a floating charge on assets of the company were issued to Salomon, he also applied for and received an allotment of 20,000 £ 1 fully paid shares. The remaining sum of £8,782 was paid to Salomon in cash. The managing director was also Salomon and two of his sons were other directors. The company soon bumped into difficulties, then debenture holders appointed a receiver and the company moved into liquidation. The company's total assets were £6050, its liabilities stayed to £10,000 secured by debentures, £8,000 due to unsecured trade creditors, who claimed the whole of the assets of the company, viz., £6,050, on the ground that, the company was a mere 'alias' or agent for Salomon, they were entitled to payment of their debts in the priority to debentures. They were additionally pleaded that Salomon, as a principal beneficiary, was ultimately accountable for the debts incurred by his agent or trustee on his own behalf⁵⁰. The Lordships of the House of Lords observed:

*"...the company is a different person altogether from the subscribers of the memorandum; and though it may be that after incorporation the business is precisely the same as before, the same persons are managers, and the same hands receive the profits, the company is not, in law, their agent or trustee. The statute enacts nothing as to the extent or degree of interest, which may be held by each of the seven or as to the proportion of interest, or influence possessed by one or majority of the shareholders over others. There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or that they or any of them should take a substantial interest in the undertakings, or that they should have a mind or will of their own, or that there should be anything like a balance of power in the constitution of the company."*⁵¹

⁵⁰ <https://www.icsi.edu/media/webmodules/FinalCompanyLawBook22092020.pdf>

⁵¹ (1897) A.C. 22

Similarly, in the matter of *Macaura v Northern Assurance Co. Ltd* (1925)⁵²

The decision has been made in this case, by the House of Lord, which made it clear that insurers were not liable under insurance contract on a property that has been insured by the plaintiff but owned by the company in which the plaintiff held all the fully paid shares. It was held that merely the company as the separate legal owner of the property, and not the plaintiff, had the necessary insurable interest. The plaintiff, being a shareholder, did not possess any legal or beneficial interest in that property just because of his shareholding. A separate personality principle has been expanded in the case, *Lee v Lee's Air Farming Co. Ltd* (1960)⁵³, the court held that the company must be treated distinctly by the people in the company. Further, the court expressed the view that they may have different capacities and need to be taken as a separate entity from each other⁵⁴.

The Supreme Court in this instance of *Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors*⁵⁵ stated that a corporation in law is equal to a natural person having a legal entity of its own which is separate from its shareholders. The corporation has its name, seal, and separate assets from its respective members. The member's liability extends to only the share capital invested by them, likewise, the creditors of the members might also do not have the authority over the assets of the corporation.⁵⁶

*Chamundeswari v. CTO, Vellore Rural*⁵⁷, the court strongly held that debt of a company to be merely recoverable from the company, but not from any of the company's directors whatsoever.

A separate legal entity is a person recognized by law, hence a "legal person". The entity has its own legal rights and obligations, separate and different from

⁵²Macaura v. Northern Assurance Co. Ltd. [1925] A.C. 619.

⁵³Lee v. Lee's Air Farming [1961] A.C. 12.

⁵⁴Richard Meeran, Lifting the Corporate Veil, (March 15, 2020), <http://www.ais.up.ac.za/health/blocks/HET870/Corporateveil.pdf>.

⁵⁵ Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors. AIR 1965 SC 40

⁵⁶ Trisha & Devanshi Brahmhatt, The Doctrine of Lifting the Corporate Veil and The Judicial Trend in Determining the Criminal Liability of Corporations, Journal On Contemporary Issues Of Law, 3 (5), ISSN 2455-4782

⁵⁷ Chamundeswari v. CTO, Vellore Rural, [2007] 78 SCL 151 (Mad.).

those owning and running the entity. A company is a distinct entity and is independent of its members controlling it. The separate legal entity authorizes a company to own property and to deal with it the way it likes. No member can claim the right of ownership in the assets of the company through its existence or in the winding-up process. Only the company will be responsible to repay creditors and getting sued for its deeds. The members either individually or jointly cannot be sued for the actions carried out by the company. Similarly, the company is not liable to pay the personal debts of the members.

EXCEPTION TO THE SEPARATE ENTITY PRINCIPLE

The lifting of the corporate veil is the exception to the principle of a separate entity concept. As soon as Salomon, judgments have indicated potential exceptions to the separate entity conception. Lord Halsbury has acknowledged the separate entity providing that there was "no fraud and no agency and if the company was a real one and not a fiction or myth."⁵⁸

Lord Denning observed that incorporation does not fully: "*cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind.*"⁵⁹

Similarly, in the early decision in the *United States v. Milwaukee Refrigeration Transit Company*⁶⁰, the Circuit Court (E.D. Wisconsin) decided:

"A corporation will be looked upon as a legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime the law will regard the corporation as an association of persons."

Through these cases, there are general reasons why exceptions to the separate entity principle exist that may be identified.

Firstly, though a company is a legal person, it is not possible to always "be treated like any other independent person." For instance, a corporation is

⁵⁸ Retrieved on <http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/45/1/Harshit%20Saxena%20-%20Lifting%20the%20Corporate%20Veil.pdf>.

⁵⁹ Littlewoods Mail Order Stores Ltd. v. IRC [1969] 1 W.L.R. 1241, 1254

⁶⁰ United States v. Milwaukee Refrigeration Transit Company 142 F.247 (1906).

incapable of committing a tort or a crime requiring the proof of mens rea unless courts disregard the separate entity principle and determine the intention conveyed by the directors and/or shareholders of the company.⁶¹ *Secondly*, stringent recognition of the principle may lead to an unfair or misleading result if concerned parties can "hide" behind the limited liability shield. Additionally, the analysis suggests that these two reasons can be summed up within the one: that judicial discretion and legislative action permits the separate entity to be disregarded wherever some injustice is intended, or would result, to a party either internal or external to the corporate with whom the company is dealing⁶². The separate legal personality of the corporation operates as a shield. The courts will not ordinarily look beyond the company's façade to the shareholders who constitute it. In simple terms means disregarding the corporate/separate personality and looking behind the person who is working in the company and in which, a dishonest or fraudulent use is made of the entity, the individuals involved will not be permitted to take shelter behind the corporate personality.⁶³ In this regard, the court will break down the corporate veil. It is reasonable to have exceptions to the principle of separate legal entity because a company cannot always be considered as separate from the owner as to when the offense has been committed, the courts will be required to look at the intention of its shareholders. if there were no exceptions to this principle, then the shareholders will be able to easily hide under the name of the company and commit offenses without being held liable.

2.4 LIMITED LIABILITY

⁶¹ An investigation of cases where this exception has been relied upon indicates that the decisions made are consistent with the courts' desire to ensure that no injustice results from the existence of the corporate form. *H.L. Bolton (Engineering) v. T.J. Graham & Sons Ltd.* [1956] 3 All E.R. 624, *Whitford Beach Pty. Ltd. v. FCT* (1982) 150 C.L.R. 355, *Re Chisum Services Pty. Ltd.* (1982) 1 A.C.L.C. 292 and *Daimler Company Ltd. v. Continental Rubber and Tyre Co. (Great Britain) Ltd.* [1916] 2 A.C. 307.

⁶²<http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/45/1/Harshit%20Saxena%20-%20Lifting%20the%20Corporate%20Veil.pdf>.

⁶³ <http://www.legalservicesindia.com/article/article/lifting-of-corporate-veil-indian-scenario-1876-1.html>

A company, being a separate entity, is the owner of its assets and bound by its liabilities. Company because it is a separate entity, its members are not as such liable for its debts.

In the situation of a company limited by shares, the member's liability is limited to the unpaid value of shares owned by them. Therefore, if the shares are fully paid up, the member's liability will be nil. Though, a company may be established with unlimited liability of members. In the situation of unlimited liability, members should continue to be liable until every single paise has been paid off. The company, if limited by the guarantee, each member's liability shall be decided by the guaranteed amount, i.e., the person will be held liable to contribute up to an amount guaranteed by him. Though, if the guarantee company having a share capital, the liability will be limited to the total of the remaining sum unpaid on the shares owned by a member and the sum guaranteed by him.⁶⁴

One of the main incorporation advantages and the recognition at law that a company is a separate person so that the company's debts are not those of its members.

As a shareholder, the liability of a member extends to the contribution to the company's capital up to the nominal value of the shares held and not paid by him. Members are neither the owners of the company's undertakings and nor liable for its debt obligations. In other terms, a shareholder will be liable to pay the remaining balance, if there are any, due on the shares held by him when called upon to pay for and nothing more, even though the company's liabilities far exceed its assets. This implies that the liability of a member of a company is limited.

In the case of a limited liability company, all the shareholders or members of the company have limited liability in the direction of the company. It means that they are liable only within the scope of their investment in the company and nothing beyond that. The "veil of corporate" is a metaphorical reference to the company's limited liability, based on the main rule that when the corporate formalities are detected, initial financing is suitable, and the company is not designed to defraud creditors or other third parties, the corporate form must be

⁶⁴ Kapoor, G. K., & Dhamija, S. (2019). *Company Law and Practise* 24th ed.

respected, and shareholders must be respected and they will not be responsible or liable for the debts and liabilities of a corporate.⁶⁵ Hence, when this corporate veil is lifted, the distinction between the company and its member is set aside and the shareholders will be held liable for their actions in the company. Lifting the corporate veil aids in detecting the economic reality behind the legal façade and it also helps in prohibiting the indiscriminate malpractice of individual members vested with personal economic interests.

The member's liability is limited in the company to their contribution, the creditors of the company cannot expand their hand over to the personal property of the shareholders. Therefore, due to the shield it offers to the shareholders, the attribute of limited liability of a company is known as the shell or veil of incorporation. Reason for this is that this attribute covers the shareholders within a corporate veil and prevents them from the reach of outsiders (creditors). The shell or veil is the corporate personality of the company, and the shareholders are under the incorporation veil.

Still, even though limited liability is a benefit for shareholders, it may have a significant impact on a traditional debtor-creditor relations. Limited liability can have a negative impact on creditors.

It is opening opportunities for both explicit and implicit misrepresentation in transactions in dealing with the creditors. Shareholders who employ the corporate all the way through which to contract with the others might misrepresent the assets of a company and merely walk away in cases where the business fails.⁶⁶

Limited liability makes it feasible and occasionally it is attractive to move the assets away of the corporation when a creditor extended the corporation's credit. It will be easy for shareholders to allocate assets to their own- especially in the case of one-person and family companies-while leaving the debts or liabilities with their company in violation of 'right of the creditors. Shareholders or

⁶⁵ H.K. Saharay, *Company Law* 12 (Universal Law Publishing Co., 5th edition, 2008).

⁶⁶ Allen, W. T., Kraakman, R. H., & Khanna, V. (2021). *Commentaries and cases on the law of business organization*. Lippincott Williams & Wilkins.

directors may carry out highly risky investments or a rise in leverage to shift the unpaid risk on towards the shoulders of creditors.⁶⁷

All the above-mentioned resourceful moves, though, would lose very much of their appeal unless the shareholders did not possess the protection of limited liability to safeguard their individual assets from the implications of relating to the contractual default in the part of the company.

Hence, the doctrine of lifting the veil of the corporate involves disregarding the characteristic of separate legal personality of a corporation and getting to the shareholders and other individuals participating in the management of a corporation who find themselves protected by the veil. The meaning and the concept of the doctrine of lifting of the corporate veil is discussed in the next chapter.

⁶⁷ Ibid.

CHAPTER-3

THE CONCEPT OF LIFTING OF CORPORATE VEIL

3.1 MEANING AND CONCEPT

The concept of corporate personality and limited liability of the corporates are summed up in the metaphor of the “corporate veil” between a corporate and its members.

A corporate veil or veil of incorporation is the legal assumption that the actions of a corporation are not the actions of its managers, shareholders, and directors, so they are exempt from liability for the actions of the company.⁶⁸ The screen that separates the company from its members, shareholders, and directors is often referred to as the veil of incorporation or corporate veil.

The terms as “lifting the veil”, “breaching the wall of incorporation”, “dislodging the corporate veil” or “piercing the corporate veil” are all legal terms used to denote the same matter (i.e., the denial of the separate privilege of legal personality of the company and limited liability of its members)⁶⁹. The veil is serving as the partition or curtain between the corporation and its members, and it is considered as advantage for the shareholders because it protects them from the risk of unlimited liability for the company’s debt.⁷⁰

By taking advantage, the members might use the company as a mask for illegal or fraudulent activity. In a case like this, the court will pierce or lift the veil to know the reality. This doctrine is viewed as a veil or curtain between the company and its members. This protection may be enjoyed by the members for

⁶⁸ Bello, S. A., & Michael, O. C. (2014). Piercing the Veil of Business Incorporation: An Overview of what Warrants It. *Review of Contemporary Business Research*, 3(2), 117-138.

⁶⁹ Chon E. J and Simitis, C., ‘Lifting the veil in the company laws of the European continent’, *International and Comparative Law Quarterly*, Vol. 12, No. 1, Cambridge University press, 1963, p. 190

⁷⁰ Bagrial, Ashok K., *Company Law*, (12th revised ed.), Vikas Publishing House Pvt. Ltd., New York, 2007, p.34.

the liability. Therefore, when there is an unjust or illegal activity by the members, they may escape liability, but the company would be liable in any way. At this point, the Court will pierce or lift the screen (veil) to see and know the transactions within the screen. In such cases the protection is given to Director or individual member is taken away and the person becomes liable for their acts.

In the definitive analysis, some persons are the true beneficiaries of the corporate advantages, “for a while, by a fiction of law, a corporation is a distinct entity yet in reality, it is an association of persons who are the beneficiaries of the corporate property” - *Gallagher v. Germania Brewing Company case*.⁷¹

It may, consequently, happen that the company’s corporate personality is used to do improper or frauds or illegal acts. Because an artificial person is incapable of doing anything fraudulent or illegal, then the facade of corporate personality might need to be removed to identify the guilty persons. This concept is known as ‘lifting the corporate veil’.

Generally, the courts do not interfere and go by the principle of a separate legal entity as laid down in Solomon’s case and recognised in many other cases, it might be in the interest of the members or in the public interest to identify and punish the persons who misuse the medium of corporate personality.

The worth noting observations of the Supreme Court as related to when the corporate veil shall be lifted, is in the case of *Life Insurance Corporation of India v. Escorts Ltd*⁷², while it is established ever since in *Solomon v. Solomon & Co. Ltd.*, that a company is an independent and legal personality distinct from the persons who are its members, it has been held that a corporate veil may be lifted, and the corporate personality may be ignored, and the individual members recognized for who they are in certain exceptional circumstances. Generally, the corporate veil may be lifted wherever the statute itself considers lifting the veil

⁷¹ [1893] 53 MINN. 214.

⁷² [1986] 59 Comp. Cas. 548

or improper conduct or fraud is intended to be prevented, or statute of taxation or a beneficent statute is required to be evaded or where associated companies are intimately connected as to be a part of one concern.

Once again, in the *State of U.P. v. Renuagar Power Co.*⁷³, the Supreme Court observed the court held that the concept of lifting the corporate veil is a changing concept. Its frontiers are unlimited. Though, it depends mainly on the realities of the situation. In the *Deputy Commissioner v. Cherian Transport Corporation*⁷⁴ case the court held that a company is a legal person distinct from its members. It can enjoy rights and subject to duties that are not the same as those borne or enjoyed by its members. In some exceptional cases, the court is entitled to lift the corporate veil of the entity and to pay concerning the economic realities behind the legal façade. The veil of the corporate has been lifted by the courts and legislatures both in the interests of justice, equity, and good conscience.

The effect of this concept is to eventually hold the shareholders or directors of the company liable for the debts incurred by the company because of such members.⁷⁵

One conclusion that can explicitly be sketched, is that this concept is a remedy that necessitates creating accountability and preventing abuse of the corporate structure, which can be used to hide wrongs and be abused to gain a personal advantage and benefit from the company.⁷⁶

3.2 NEED OF LIFTING THE VEIL AND ITS RELEVANCE IN CURRENT TIME

Once incorporation is done, a company turns into a legal person separate and distinct from its members. It has its rights, liabilities and duties separate from its members. Hence, the veil of incorporation or corporate veil exists between the company and its members and as a result, a company is not recognized by its members. To safeguard themselves from the company's liabilities, its

⁷³ [1991] 70 Comp. Cas. 127

⁷⁴ (1992) 74 Comp. Case 563 (Mad)

⁷⁵ Liew, A. (2014). Three Steps Forward, Three Steps Back: Why the Supreme Court Decision in *Prest v Petrodel Resources Ltd* Leads Us Nowhere. *King's Student L. Rev.*, 5, 67.

⁷⁶ Fox, E. (1993). Piercing the veil of limited liability companies. *Geo. Wash. L. Rev.*, 62, 1143.

members tend to take shelter from the veil of corporate. Occasionally this corporate veil is being used as a vehicle of fraud or tax evasion and statutory provisions. To prevent unfair and fraudulent actions, it is necessary to lift the veil of the company and disregard the corporate personality concept to examine the realities behind the legal facade and to hold the company's members liable for its acts or liabilities.⁷⁷

In Andhra Pradesh State Road Transportation Case⁷⁸ the Supreme Court pointed that a company that has a separate legal entity that is so firmly rooted in our philosophies derived from common law that is hardly necessary to deal with it elaborately.

The observation is that the doctrine of piercing the corporate veil is not only a doctrine at all, but it is a remedy. Like any decent remedy, the corporate veil is lifted to achieve discrete, specific policy objectives. As such, our task is to find out and articulate what those policy aims are. Our taxonomy contains the list of the policy objectives that justify ignoring the corporate form. In the case of piercing, one reason that confusion and incoherence reigns is that the corporate veil is pierced to accomplish three separate and largely unrelated, albeit legitimate, policy objectives⁷⁹.

Piercing cases can be elucidated as judicial efforts to remedy one of the three following difficulties. Though some of these problems previously have been recognised, this is the first research to identify all the economic and policy related problems. This is primary to present a taxonomy that can describe all the decisions in this field, and it can be used methodologically to evaluate the quality of the decisions of piercing.⁸⁰

First, the court of law pierces the corporate veil as an instrument of statutory application, that piercing the veil of corporate is done to bring corporate actors'

⁷⁷ Priya, R. J., Susmitha, S., & Thenmozhi, B. (2018). A Descriptive Study on the Doctrine of Lifting of Corporate Veil. *International Journal for Advance Research and Development*, 3(3), 6-9.

⁷⁸ AIR 1998 SC 54

⁷⁹ Macey, J., & Mitts, J. (2014). Finding order in the morass: The three real justifications for piercing the corporate veil. *Cornell L. Rev.*, 100, 99.

⁸⁰ Ibid.

behaviour into conformity with a particular statutory scheme, such as state unemployment compensation schemes or social security. For example, sometimes the court ignores the corporate form to achieve the specific legislative aim of a government benefit program that differentiates between owners and person's working in a corporate. And sometimes the court will esteem the corporate form were doing so is necessary to grasp a result that is reliable with a particular state or federal statutory scheme.

Second, the courts also lift the veil to remedy what seems to be the fraudulent activity that does not satisfy the stringent elements of the common law related to fraud. Precisely, courts pierce it as a remedy for "the constructive fraud" in the contractual situation. Basically, if a court becomes convinced that a shareholder or other member has, by actions or words, led a counterparty to a contract to consider that an obligation or liability is a personal liability rather a corporate debt, then courts will practice this theory to impose liability on the individual member rather than a fraud philosophy. The court famously has detected, "fraud or something like it is required" to pierce the corporate veil whether under federal, Delaware, or Oklahoma common law.⁸¹

Third, the courts pierce the corporate veil that is identified is the promotion of the term accepted "bankruptcy values." Courts will disregard the corporate form to prevent fraudulent preferential transfers and conveyances. The objective of corporate bankruptcy law is to enlarge the value of an insolvent company for the benefit of the creditors of the company.⁸² A vital element in achieving this goal is to resolve the collective action problem facing by a creditor of the corporation, in the absence of such rule as the automatic stay, that prevents creditors from grasping the assets of a corporates after filing for the bankruptcy, have incentives to race for relief to get a jump on other creditors.⁸³

It will help in protecting the corporate creditors regarding compensation for them. Piercing of the corporate veil operates the compensatory function to creditors of the corporates. Creditors who get compensated through this doctrine

⁸¹ Mobil Oil Corp. v. Linear Films, Inc., 718 F. Supp. 260, 268 (D. Del. 1989)

⁸² See Jackson, T. H. (2001). *The logic and limits of bankruptcy law*. Beard Books.

⁸³ Macey, J., & Mitts, J. (2014). Finding order in the morass: The three real justifications for piercing the corporate veil. *Cornell L. Rev.*, 100, 99.

could be either voluntary (contractual) and involuntary (tort) creditors.⁸⁴ With respect to the contract or voluntary creditors, the doctrine helps to restore the full compensation effects of the underlying contractual damages that otherwise would have been curtailed by limited liability⁸⁵.

When a contractual creditor performs with a company, one of the implied terms or conditions in the contract is the integrity and autonomy of the corporation will need to be respected, and that the corporation shall not be used for improper purposes (the contractual relation requires good faith and fair or just use of the corporate). Through this sense, veil lifting (which is used when the company is used for improper actions) can be viewed as judicial enforcement of the implied terms or conditions of the contract (enforcement of the violation of the implied terms of good faith and fair or just use of the corporate)⁸⁶. For instance, lifting of veil is based on shareholders misappropriation of assets of the company, it can be seen as imposing the implied contractual term that the shareholders would not participate in the opportunistic behaviour.

Hence, it helps the parties to depend upon the courts to supplement their contracts. By lifting the veil, courts would appear to be filling out the gaps in the contract and inserting terms that parties would have preferred to include and safeguard the creditor who have not had the bargaining power.

This doctrine will help in preventing the shareholder's unjust enrichment. Unjust enrichment is the consequence that can result if separate personality of a corporate is strictly complied with (i.e., it is enrichment at the expense of another). In simple words, unjust enrichment is the equitable principle by which person, who has been enriched at the expenses of another person, whether by mistake, or any other factor, is under an obligation to give back what he has received from the company or its value to the other⁸⁷.

The benefits received by a company includes the proceeds of a loan or purchase money for corporate bonds. To such an extent that the corporation, and by

⁸⁴Cheng, T. K. (2010). Form and substance of the doctrine of piercing the corporate veil. *Miss. LJ*, 80, 497...

⁸⁵ Ibid, p.510

⁸⁶ Ibid, p.531

⁸⁷ Ibid, p. 542

extension the shareholders of the company, receive these advantages without making the full payment for them and the default risks have not been completely compensated for, the shareholders could be said to have been enriched.⁸⁸

It is quite clear how shareholders are enriched in the case that these benefits have not been fully paid for. Enrichment of shareholder's only becomes unfair if the conditions in which it occurs can be deemed to be unjust under notions of natural justice or equity.⁸⁹

Therefore, the veil of corporate compels the shareholders, who have unjustly taken advantage from the protection of limited liability, to give back the benefit to the creditors on the grounds of fairness.

This doctrine will provide deterrence for future improper conduct. The kinds of conduct that be qualified as improper conduct, the law would like to deter include misrepresentation, fraud, misappropriation of assets, avoidance of a statutory prohibition or other cases of injustice or wrong. There have been a lot of situations in which the courts combined corporate veil lifting with punitive damages with the express purpose to achieve deterrence.⁹⁰

Over the past few years this doctrine of lifting of corporate veil has achieved sufficient usage and importance. With an increase in matters related to the companies, the significance of the principle of lifting of corporate veil has grown over the years. With the growing acquisitions and mergers, and as well as additional risks of efforts being made towards the tax evasions, they constitute the most striking of these issues, at the same time as everyone else included the demand for public interest⁹¹, improper conduct⁹², cases of fraud⁹³, and violation of statutory obligations⁹⁴ etc. that are mentioned in chapter IV of this research.

Anyways, this doctrine not only been used for the fixing liability on the company's shareholders but then also to alleviate from the liability as it was set

⁸⁸ Ibid, p.545

⁸⁹ Ibid.

⁹⁰ Ibid. p.509.

⁹¹Daimler Co Ltd v Continental Tyre & Rubber Co. (GB) Ltd. [1916] 2 AC 307.

⁹² Gilford Motor Co Ltd v Home [1933] Ch 935 (Court of Appeal).

⁹³ Jones v Lipman [1962] 1 All ER 442.

⁹⁴ LIC v Escorts (1986) 1 SCC 264.

forth in the recent case of *Premlata Bhatia v Union of India*⁹⁵. Likewise, the court suggested the doctrine of lifting of the veil of corporate “to find out who are the persons playing behind the curtain”. It is an example of reverse piercing, which can be called as the voluntary piercing. Under this concept the veil of corporate is referring to an attempt or efforts initiated by the company’s shareholders, or by the company itself, to pierce the veil of corporate existing in between the corporate and its shareholders⁹⁶.

In an ordinary piercing situation, forwards the piercing is done, wherein the shareholders are being held liable or accountable for the “debts” of the corporate.⁹⁷ The claim is spontaneous because it is filed by the creditor or by the outsider of a corporate, and the shareholders were subjected to the liability against their own will.⁹⁸

Doctrine has additionally witnessed implementation in the matter of *J.B. Exports v BSES Rajdhani Power Ltd*⁹⁹ where the sub-letting charges have not been paid by the corporate whose shares were bought by another company, since both seemed to be exactly the same entity, which had been realised after lifting up the veil of corporate.

In the current case of *Kotak Mahindra Bank Limited v Subhiksha Trading Services Limited*¹⁰⁰, Kotak Mahindra Bank was demanding for the winding up of Subhiksha after when it was failed to repay the loan of Rs 35 crore along with interest. Because Subhiksha had failed to prove that how it experienced losses of Rs 800 crores because of the global financial crunch, counsel of Kotak, Mr. H. Karthik Seshadri, submitted that, the behaviour or conduct of Mr. R.

⁹⁵ [2006] 71 SCL 142 (Delhi).

⁹⁶ See Fletcher, W. M. (1920). *Cyclopedia of the law of Private Corporations* (Vol. 9). Callaghan as cited in Gaertner, M. J. (1989). Reverse Piercing the Corporate Veil: Should Corporation Owners Have It Both Ways? *Wm. & Mary L. Rev.*, 30, 667.?” 30 William & Mary L. Rev. 667

⁹⁷ Elham Youabian, “Reverse Piercing of the Corporate Veil”: The Implications of Bypassing “Ownership” Interest” (2004) 33 Sw. U. L. Rev. 573, 577 as cited in Thomas K. Cheng, “The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines”(2011) 34 Boston College International & Comparative Law Review 329, 372.

⁹⁸ Ibid

⁹⁹ [2007] 73 SCL 133 (Delhi)

¹⁰⁰ (Madras High Court 29 February 2012).

Subramanian (he was the Managing Director of Subhiksha) necessary to carry out a detailed investigation by lifting the veil of corporate as there had been a reasonable ground that he had “willfully” transferred the assets of the company to the entities such as the Cash and Carry Wholesale Traders Pvt. Ltd., the Pentagon Trading Services, the Custodial Services India, the Shevaroy Holiday Resorts and the Triad Trading Services, that are controlled by Mr. Subramanian(59%) along with a few others individuals.¹⁰¹ The Court rightly upheld the winding up request submitted by the Kotak and it is a suited case of lifting of the veil because of fraudulent conduct or behaviour of Mr.Subramaniam which was intentionally accomplished with knowledge and intention to defraud the creditors of the company by not making the payment of borrowings and loans.

Another recent case¹⁰², the company named, Shri Lal Mahal Ltd. (formerly referred to as Shivnath Rai Harnarain (India) Company Ltd.) has been incorporated by three individuals with the alleged object of taking over the asset, liabilities, and the business, of another; it proved to be “created only with a view to defeating the award and consequently the decree under execution by the decree holder.”

The landmark court case of the *Vodafone International Holdings BV v Union of India*¹⁰³ proved to be the reconciliation of cases of the *Commissioner of Inland Revenue v His Grace the Duke of Westminster*¹⁰⁴ and *WT Ramsay v Inland Revenue Commissioner*¹⁰⁵ which established that if the taxpayer has been using resorted to dubious methods or colourable devices to minimize the taxation, subsequently the revenue authorities are perfectly entitled to lift the corporate veil of the company. Tax authorities of India had raised up a \$2.2-billion bill on Vodafone, the British company of mobile after Hutch is on, a joint venture company in India along with the Essar sold shares in the company (the foreign

¹⁰¹ Sahu, S. (2012). Piercing the Corporate Veil: A Necessity Today in India and Abroad. Available at SSRN 2352489.

¹⁰² Glencore Grain Rotterdam B. V. v Shivnath Rai Harnarain (India) Company, (Delhi High Court, 6 February 2012).

¹⁰³ (Supreme Court, 20 January 2012)

¹⁰⁴ (1935) All ER 259 [HL].

¹⁰⁵ (1981) 1 All ER 865

company), Cayman Islands Co. to the Vodafone co., on the grounds that the company would have required to pay a capital gains tax as deal-making engaged an asset of India.¹⁰⁶

Ultimately, on an appeal, the Supreme Court of India ruled in the favour of Vodafone, interpreting the present law the conclusion that the law of income tax does not use the term '*indirect transfers*' and, therefore, it could not be interpreted to cover such transfers of capital assets or the property situated in India¹⁰⁷. In the paragraph 66 of Vodafone case, the Chief Justice also suggested the lifting of the veil of corporate wherever and whenever it is possible. He stated that "*a subsidiary and its parent are totally distinct taxpayers*"¹⁰⁸ and that might hold good even though a parent company exercises substantial control over the subsidiary company's affairs. Further than in the paragraph 67 of the Vodafone case, he also given the exceptions in matter in which the decision-making is a "*fully subordinate*" to the holding corporate or if the parent company creates the "*indirect transfer all through the abuse of legal form and without a reasonable purpose of business*".¹⁰⁹

Even Sudhir Chandra, the Former Chairman of Central Board of Direct Taxes, agreed that the case of Vodafone was characteristically the right case for lifting up of the "*corporate veil*,"¹¹⁰ for the matters of levying taxes. A response to the case of Vodafone, there were several retrospective amendments in the Finance Bill, 2012 were triggered, to handle or manage the taxation of the international transactions linked to the Indian assets. It had been given rise to such a scenario that a retrospective amendment is vital and fair in such situations. If the corporate had done legitimate planning of taxes, then it is unjust to hold it illegal or illegitimate or impermissible only because the tax is minimized. Additionally, it has remained held that wherever the taxpayer has organized its matters of affairs all through the use of by resorting to dubious methods or colourable

¹⁰⁶ Hema Ramakrishnan, "Post Vodafone verdict, India should spearhead debate on tax laws", The Economic Times (26 January 2012), supra note 94

¹⁰⁷ Ibid

¹⁰⁸ (Supreme Court, 20 January 2012)

¹⁰⁹ (Supreme Court, 20 January 2012)

¹¹⁰ Sudhir Chandra, "Is it fair to frame tax laws on overseas buys of Indian assets retrospectively?" Business Standard (21 March 2012), supra note 94.

device or and tricks to minimize tax then the authorities of revenue have each and every right to lift up the corporate veil¹¹¹.

Another latest instance where the veil of the company was lifted was the case of *Richter Holdings Ltd. v The Assistant Director of Income Tax*¹¹², in which the High Court had directed or ordered to the tax authorities for lifting the corporate veil or mask to determine the very essence of a transaction, in the event that there is any potential evasion of tax. Further than, it was laid down that:

*“It may be necessary for the fact-finding authority to lift the corporate veil to look into the real nature of transaction to ascertain virtual facts. It is also to be ascertained whether petitioner, as a majority shareholder, enjoys the power by way of interest and capital gains in the assets of the company and whether transfer of shares in the case on hand includes indirect transfer of assets and interest in the company.”*¹¹³

In the matter of *Pankaj Aluminium Industries Private Limited v Bharat Aluminium Company Limited*¹¹⁴, the veil of corporate was not lifted¹¹⁵, so as the petitioner and its group companies had represented themselves to be the single economic entity all that period and the Memorandums of Understanding (MOU) clearly demonstrated the execution between a respondent and the petitioner along with the other group companies on the other.

In the recent cases of *Antonio Gramsci Shipping Corp v Stepanovs*¹¹⁶ and *VTB Capital plc v Nutritek International Corp*¹¹⁷ have been created a transformation in the application of this doctrine in United Kingdom.

¹¹¹ This conclusion was reached after the successful reconciliation of the earlier Supreme Court decisions in *Commissioner of Inland Revenue v His Grace the Duke of Westminster*, 1935 All ER 259 and *WT Ramsay v. Inland Revenue Commissioner* (1981) 1 All ER 865.

¹¹² (High Court of Karnataka, 24 March 2011)

¹¹³ *Richter Holdings Ltd v The Assistant Director of Income Tax*, (High Court of Karnataka. 24 March 2011).

¹¹⁴ (Delhi High Court, 23 March 2011).

¹¹⁵ *Kopran Limited v Commissioner of Central Excise, Raigad*, (Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (Court no. 1), 1 March 2011)

¹¹⁶ [2011] EWHC 333 (Comm)

¹¹⁷ [2011] EWHC 3107 (Ch)

In the matter of the *VTB Capital Plc v Nutritek International Corp*¹¹⁸, the claimant asserted a fraud committed by the defendants. VTB had been entered in the agreement of loan with the RAP in connection with the purchase of nine companies from Nutritek international corp. After when RAP was unsuccessful to pay the loan amount, the VTB purported that the Nutritek had been made the fraudulent misrepresentations in the order in which to induce VTB to be entered into the agreement of loan. The defendant no. 4 was the citizen of Russia, living in Moscow, who had been claimed to be a principal beneficial controller and owner of the both Nutritek and RAP. VTB capital plc desired to pierce the veil of the corporate to hold each one of the other defendants may severally and jointly be held liable along with the RAP for a default made on the loan¹¹⁹ and stayed of the view that the piercing the corporate veil of the company is the '*convenient label which is used to identify cases in which the courts have granted relief which involves, or perhaps more accurately appears at first blush to involve*'.

In this matter, it was discovered that:

“It was inappropriate to allow the doctrine to be used to make a contractual claim against the controller of a company in respect of his or her wrongdoing, primarily because it was fundamentally inconsistent with a fraud allegation to claim damages for breach of contract. The company would be jointly liable where the wrongdoer concealed his or her involvement, but not when he or she did not do so, for example, where the wrongdoer was a duly appointed director of the company. The important issue was whether the company was being used as a sham at the time of the relevant transaction, rather than the purpose for which the company was established. He also cited with approval the view in Dadourian¹²⁰ case that piercing the corporate veil would occur only to provide the claimant with an effective remedy where the interposition of the sham

¹¹⁸ Ibid.

¹¹⁹ Abigail Silver, “Piercing the corporate veil - is it enough to pull the strings?” *International Law Office* (20 March 2012) <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=43d497ce-48bf-4e12-ab06-06a7ac7ba371>, supra note 94.

¹²⁰ *Dadourian Group International Inc v Simms* [2006] EWHC 2973 (Ch).

*company would, if successful, deprive the claimant of that remedy. Therefore, leave to amend the particulars of claim was denied.”*¹²¹

Under this matter, there was much stress provided to the circumstances based on which the veil of corporate may be lifted as opposed to the case of *Antonio Gramsci Shipping Corp v Stepanovs*¹²² in which Burton J held that the veil of corporate might be pierced, and the claim for damages can be made, if the conditions in the case of *Trustor v Smallbone*¹²³ were fulfilled that constitute: a wrongdoing committed 'dehors' the company and fraudulent misuse of the structure a company. In the case of VTB, the Arnold J has believed that the lifting the veil of corporate to be 'inappropriate', to enable the contractual claims against an individual who is the controller of the corporate.¹²⁴

In *Trustor AB v Smallbone*¹²⁵ case, in which Mr Smallbone had transferred the amount from Barclays Bank to himself and the corporate owned and operated by him, the judge of the court held that:

*“In my judgment the court is entitled to 'pierce the corporate veil' and recognise the receipt of the company as that of the individual(s) in control of it if the company was used as a device or façade to conceal the true facts thereby avoiding or concealing any liability of those individual(s).”*¹²⁶

Despite the numerous advantages as the concept of piercing of the veil of corporate offers, many individuals still criticize this doctrine. Those individuals who had criticized this concept had called it to be the 'incoherent and unprincipled'.¹²⁷ It is due to the lack of strict rule of this doctrine it must be applied or not, it had confronted a lot of criticism. It depends on the basis of facts and circumstances of each and every case and on the discretion of the

¹²¹ Supra note 113,

¹²² [2011] EWHC 333 (Comm).

¹²³ [2001] WLR 1177.

¹²⁴ [2011] EWHC 3107 (Ch).

¹²⁵ [2001] 1 WLR 1177.

¹²⁶ Ibid.

¹²⁷ Farrar, J. H. (1989). Fraud, fairness and piercing the corporate veil. *Can. Bus. LJ*, 16, 474.

judges in law to determine whether the veil of corporate will be pierced or not. Henceforth, the courts have a very wide discretionary powers in this case.

Some criticism made under this doctrine. In the early 1960s and 1970s this conception of lifting the corporate veil had gained enough attention which progressively decreased after *DHN Food Distributors Ltd v Tower Hamlets London Borough Council*¹²⁸ and the trend returned to the *Salomon* case¹²⁹.

In the case of *Dimbley & Sons Ltd v National Union of Journalists*¹³⁰, it was decided that in nonappearance of required clear language of treating separate legal entities as a single entity for the purposes of the Employment Act 1980, the court would not comprise in veil lifting.¹³¹

Later, in *Ord & Anor v Belhaven Pubs Ltd*¹³², it was found that original company had not been a mere concealment for the holding company, nor vice versa, besides, the company had not been created as a bona fide to avoid some liability, thus, there had been no element of asset shedding and so the veil should not be lifted.

There has been no moving or regular application of the lifting of the corporate veil yet. Herron CJ, in the matter of *Commissioner of Land Tax v Theosophical Foundation Pty Ltd*¹³³, described the “lifting the corporate veil” as an “esoteric” label and further added that:

“Authorities in which the veil of incorporation has been lifted have not been of such consistency that any principle can be adduced. The cases merely provide instances in which courts have on the facts refused to be bound by the form or

¹²⁸ [1976] 1 WLR 852 (Court of Appeal).

¹²⁹ *Salomon v A. Salomon and Co. Ltd* (1897) AC 22 (HL).

¹³⁰ [1984] 1 All ER 751.

¹³¹ Alan Dickman, *Hicks & Goo's Cases and Materials on Company Law* (7th edition, Oxford University Press, 2008) 113.

¹³² [1998] BCC 607.

¹³³ (1966) 67 SR (NSW) 70.

fact of incorporation when justice requires the substance or reality to be investigated...”¹³⁴

The concept of penetrating the corporate veil has been described as “incoherent and unprincipled by some.”¹³⁵ Owing the fact that there is no harsh scope for its applicability. Thus, it depends on the judges concerned; consequently, they exercise strong freedom of choice in such cases. Moreover, there is lack of predictability. Frequently courts are ill-advised or without guidance, deliver judgments which subject business owners to devastating liabilities because the corporation did not perceive irrelevant procedures enacted only to defend shareholders or because owners work out control over corporations commensurate with their ownership interest.¹³⁶ Lord Devlin rightly noted that:

“The legislature can forge a sledgehammer capable of cracking open the corporate shell; and it can, if it chooses demand that the courts ignore all the conceptions and principles which are at the root of company law.”¹³⁷

In order to determine the real purpose and scheme, Court, if necessary, can pierce the veil of actual corporate purpose essential to the scheme and can judiciously X-ray the same, as laid down in *Miheer H. Mafatlal v Mafatlal Industries Ltd.*,¹³⁸ and later stated in *Sesa Industries Limited v Krishna H. Bajaj and others*¹³⁹ and *In Re: Flextronics Technologies (India) Private Limited (2010), Represented by its authorized signatory, Ashok Dhawan*. The rule of

¹³⁴ (1966) 67 SR (NSW) 75 as cited Ramsay, I., & Noakes, D. B. (2001). Piercing the corporate veil in Australia. Available at SSRN 299488, 19 Company and Securities Law Journal 253.

¹³⁵ Farrar, J. H. (1989). Fraud, fairness and piercing the corporate veil. *Can. Bus. LJ*, 16, 474, 478.

¹³⁶ Matheson, J. H., & Eby, R. B. (2000). The Doctrine of Piercing the Veil in an Era of Multiple Limited Liability Entities: An Opportunity to Codify the Test for Waiving Owners' Limited-Liability Protection. *Wash. L. Rev.*, 75, 147.

¹³⁷ *Bank voor Handel en Scheepvaart N.V. v Slatford* [1953] 1 QB 278 as cited in Park, W. W. (1978). Fiscal Jurisdiction and Accrual Basis Taxation: Lifting the Corporate Veil to Tax Foreign Company Profits. *Columbia Law Review*, 78(8), 1609-1662.

¹³⁸ *Miheer H. Mafatlal v Mafatlal Industries Ltd.* (1997) 1 SCC 579.

¹³⁹ (Supreme Court of India, 7 February 2011).

veil piercing has been called “vague and illusionary”¹⁴⁰ and the actual judicial application of the standards has been analogized to “rare, severe, and unprincipled”.⁹⁸

Windeyer J, in *Gorton v Federal Commissioner of Taxation*¹⁴¹, stated that this approach had led the law into “unreality and formalism.”¹⁴² It has been observed by many that the vital problem with the decision in *Salomon*¹⁴³ case is not the principle of separate legal entity, but that the House of Lords gave no signal of: “What the courts should consider in applying the separate legal entity concept and the circumstances in which one should refuse to enforce contracts associated with the corporate structure.”¹⁴⁴

The idea of corporate entity was evolved to encourage and promote trade and commerce but such entities are misrepresented to commit illegalities or to defraud people; where corporate veil is lifted to look at reality behind the veil by ignoring the corporate character.¹⁴⁵ But the use of the concept is poses issues in the present world as it is not any “open sesame”.¹⁴⁶ The average justification for veil piercing argues that it serves as a safety valve allowing courts to address cases in which the externalities associated with limited liability seem excessive.¹⁴⁷ Substitutions for corporate veil piercing can be sought after

¹⁴⁰ Orhnia, T. (Ed.). (1982). *Limited liability and the corporation*. Taylor & Francis. as cited in Vandervoort, J. K. (2004). Piercing the Veil of Limited Liability Companies: The Need for a Better Standard. *DePaul Bus. & Comm. LJ*, 3, 51.

¹⁴¹ Supra note 127.

¹⁴² (1965) 113 CLR 627.

¹⁴³ *Salomon v A. Salomon and Co. Ltd* (1897) AC 22 (HL).

¹⁴⁴ Whincop, M. Overcoming Corporate Law: Instrumentalism, Pragmatism and the Separate Legal Entity Concept’ (1997). *Company and Securities Law Journal*, 15, 411-420, as cited in, supra note 127.

¹⁴⁵ *Rasila S. Mehta v Custodian, Nariman Bhavan, Mumbai*, (Supreme Court of India, 6 May 2011).

¹⁴⁶ Whincop, M. Overcoming Corporate Law: Instrumentalism, Pragmatism and the Separate Legal Entity Concept’ (1997). *Company and Securities Law Journal*, 15, 411-420.

¹⁴⁷ William L. Cary and Melvin Aron Eisenberg, *Cases and Materials on Corporations* (7th edition, Foundation Press, 1995) 191 as cited in Bainbridge, S. M. (2005). Abolishing LLC Veil Piercing. *U. Ill. L. Rev.*, 77.

especially in cases like those of tax evasion. But before this, tax planning ought to be renowned from tax evasion. Even before lifting the corporate veil, if done so, the difference must be clarifying as the separate corporate entity will be unheeded only where it serves as a shield for tax evasion. The Government, naturally enough, will not prefer schemes due to which it would have to suffer because of tax avoidance or evasion.¹⁴⁸

In addition, such revenue leakages can be avoided by incorporation of General Antitax Avoidance Rules (GAAR), which was considered as a choice for which tax office has to first establish that a holding structure has been set up for a fake transaction, and then lift the corporate veil to take a close look at the deal.¹⁴⁹ Another option can be summary of "accrual basis" tax regimes that disregard the company's separate legal personality for the purpose of taxing shareholders on company income before it is distributed as a dividend; under such tax regimes the accrual of profits to a corporation, rather than their distribution as a dividend, triggers imposition of an income tax on some or all of its shareholders.¹⁵⁰

3.3 APPROACHES FOR LIFTING OF CORPORATE VIEL

Depending on the situation, the veil can be peeped behind, penetrated, extended or ignored, which is done in the most extreme cases The Prof. S. Ottolenghi characterized the judicial actions in the cases of the "corporate veil" to be of four types which the court of law uses while determining different cases.¹⁵¹ The author has discussed each of the approach with the help of cases, in what circumstances which method does the court uses¹⁵².

1. Peeping behind the veil:

148 Robert R Pennington, *Pennington's Company Law* (8th edition, Oxford University Press, 2006) 43.

149 Hema Ramakrishnan, "Post Vodafone verdict, India should spearhead debate on tax laws" *The Economic Times* (26 January 2012)

<http://articles.economictimes.indiatimes.com/2012-0126/news/30666661_1_tax-laws-avoidance-capital-gains-tax> accessed 30 January 2012.

150 William W. Park, „Fiscal Jurisdiction an Accrual Basis Taxation: Lifting the Corporate Veil to Tax Foreign Company Profits“ (1978) 78 *Columbia Law Review* 1611.

¹⁵¹ Ottolenghi, S. (1990). From peeping behind the corporate veil, to ignoring it completely. *The modern law review*, 53(3), 338-353

¹⁵²Ibid.

it is used by the courts to deal with the relevant information as to who are the shareholders of the company, what is the proportion of their holdings of the company, who are the controllers, and what is their inter-relationship regarding the control of the company. Later knowing the information, the veil is pulled down and the company again turns into a separate legal entity¹⁵³. The most prominent case in this respect is the “Daimler company case”.¹⁵⁴The question arose that whether the defendant a British company, should pay out to the plaintiff, a British incorporated company, though all the directors and shareholders of the British registered company were German residents¹⁵⁵. The lower courts decided in favour of the plaintiff in accordance with the Proclamation against Trading with the Enemy Act, 1914 stipulated that 'in the case of incorporated bodies, enemy character affixes only to those incorporated in an enemy country. The House of Lords, though, allowed the appeal on a point of fact that is to acknowledge the character of the company.¹⁵⁶

2. *Penetrating the veil:*

In this approach the courts reach through the veil and find or get hold of the controlling shareholders personally.¹⁵⁷ The purpose of this approach is to impose liability or responsibility on the shareholders for the company's acts and to establish their direct interest in the assets of the company.¹⁵⁸ The example of the shareholder's direct interest is taxation and other example tendency of war.¹⁵⁹ In *R v London County Council*¹⁶⁰ case, a local authority rejected to renew a cinematograph license convened by the company incorporated in England, for the reason that a considerable majority of its shares had been held by the German nationals and its three out of six directors were Germans. The court upheld the

¹⁵³ Ibid

¹⁵⁴ *Daimler company ltd. v Continental Tyre and Rubber Company (Great Britain)*, [1916] 2 AC 307

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Supra note 144.

¹⁵⁸ ibid

¹⁵⁹ ibid

¹⁶⁰ *R v London County Council, ex p London & Provincial Electric Theatres Ltd.* [1915] 2 KB 466

rejection, taking the view that the control or at least the influence which enemy nationals might use over the company's activities in exhibiting films was relevant matter during wartime.¹⁶¹ Bray, J. observed that it is 'clearly permissible for the council to consider, when a company is the applicant, who are the persons who control the company. The approach here is to consider the situation as if the company's shareholders were to acquire the license in their personal capacity and then to determine whether the company must obtain it in its name.'¹⁶²

3. *Extending the veil:*

the third method of lifting the corporate veil is by its extension so that it supports a bunch of companies.¹⁶³ When a group of legal entities is conducting a common activity or performance, so instead of referring to each one separately, one may be able to regard them all as a single entity, in accordance with the one extended veil of incorporation.¹⁶⁴ The example is in the case of *DHN Food Distributors Ltd. v London Borough of Tower Hamlets*¹⁶⁵, the company demanded compensation for the disruption owing to an expropriation of land although the land used to belong to another company, the shareholders of that were identical to those of the two others.¹⁶⁶ Lord Denning emphasized that:

"This is especially the case when a parent company owns all the shares of the subsidiaries ... These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says ... The three companies should, for present purposes, be treated as one."¹⁶⁷

It is important to mention the various approaches taken by the court as discussed above. The first step was the peeping behind the veil to have a look at the shareholdings of the three companies at stake.¹⁶⁸ It disclosed that the

¹⁶¹ *ibid*

¹⁶² *Ibid*

¹⁶³ Ottolenghi, S. (1990). From peeping behind the corporate veil, to ignoring it completely. *The modern law review*, 53(3), 338-353.

¹⁶⁴ *Ibid*

¹⁶⁵ *DHN Food Distributors Ltd. v London Borough of Tower Hamlets* [1976] 1 WLR 852

¹⁶⁶ *ibid*

¹⁶⁷ *Ibid*

¹⁶⁸ *Ibid*, 156

shareholders and directors of all three were identical and this represents a penetration of the veil of the company that leads to the second step by recognizing the direct interest of each of the components within the assets of the enterprise¹⁶⁹. Then it went on to penetrate the veil, by implementing the partnership approach.¹⁷⁰ The third step is the extension of the veil of the corporates to cover the entire group, realizing it as one, comprehensive entity.¹⁷¹ It was eventually held that the companies as a group are entitled to compensation not just for the value of the land but also entitled to the compensation for disturbance¹⁷².

4. *Ignoring the veil:*

It is a most extreme kind of lifting the veil. This approach is carried by the court when they believe that the corporate was not founded for the commercial or other sound reasons, but just to defraud or defeat creditors or to sidestep laws¹⁷³. Courts use such an approach as a sanction.¹⁷⁴ Though, not only it is against the legal system but also deprives the courts of the possibility of issuing orders against the corporate as such when they consider fit.¹⁷⁵

The courts approach to ignore the company does not always carry out justice, particularly when other parties are affected.¹⁷⁶ Under such circumstances, a remedy can be discovered to nullify the hurtful action.¹⁷⁷ For example, where a contracting party tries to avoid the execution of the contracts, maintaining that a corporate is the owner of the land, the court may order it as the controlling shareholder to have the resolutions that are required to complete the sale passed

¹⁶⁹ Supra note 161.

¹⁷⁰ Ibid

¹⁷¹ ibid

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Ibid

by the authorities of the company.¹⁷⁸ Through following a different remedy, the court need not to ignore the company's separate legal entity concept.¹⁷⁹

Penetrating the veil is the most commonly used belief, in this the court determines to hold or not to hold the individual person liable who has committed an offence using the name of the corporation. This principle goes on and this is the most widely used principle in the world of modern era.

Penetrating the veil law in the present time is an indication of risks that the investors who are the shareholders in the company ought not to be held obligated for the liabilities or obligations of their organization preceding the estimation of their speculation.¹⁸⁰

Hence, when the corporate veil is lifted and the court leaves the company and makes the member held liable for the act committed by them under the name of the company. "It is difficult to determine the factors that operate to break down the corporate insulation."¹⁸¹ The case mainly depends on the extent to which the discretion of the court in addition to, it depends also on "the underlying social, economic and moral factors as they operate in and through the corporation."¹⁸²

3.4 ELEMENTS OF PIERCING CLAIM

This prong of the three-part test measures the relationship between the shareholder and the corporation.¹⁸³ For piercing claim, the complainant must prove components to pierce the corporate veil. There are three elements for piercing the claims these are: (1) control and domination, (2) improper purpose

¹⁷⁸ Supra note 161.

¹⁷⁹ Ibid

¹⁸⁰ <http://www.tygarlaw.com/doctrine-of-separate-legal-entity-and-its-exception/>

¹⁸¹ Warner Fuller, *The Incorporated Individual: A Study of One-man Company*, (1938) 51 Harv LR

¹⁸² *Tata Engineering Locomotive Co v. State of Bihar* AIR 1965 SC 40

¹⁸³ Saxena, H. (2010). *Lifting of Corporate Veil*. Available at SSRN 1725433

or use, and (3) resulting damage or harm¹⁸⁴. In practicality, these concepts are sometimes hard to apply¹⁸⁵.

1. *CONTROL AND DOMINATION:*

Mostly, mere majority stock ownership will be insufficient to satisfy this component. On The Contrary, one must demonstrate "complete domination, not just of finances, but of policy and corporate practice with regard to the transaction attacked so that the company's corporate entity as to that transaction has no distinct mind, existence or will of its own."¹⁸⁶

To establish whether "complete domination" is in existence or not, the courts usually require the plaintiff to produce evidence¹⁸⁷. A non-exhaustive list of commonly relied upon circumstances used to establish the requisite degree of control includes Inadequate capitalization or undercapitalization, Failure to follow corporate formalities; Sole or majority stock control; Identity of directors and officers; Commingling of funds; Sharing of corporate employees; Parent finances subsidiary,¹⁸⁸etc.

The control element is definitely the focus of most veil-piercing claims. The inquiry is fact a particular, but even though one or more of the issues are present, the court might still find insufficient evidence that a parent company (or other insider) exercised the necessary degree of control in such a manner that "complete domination" existed. Though, whenever one or more of the factors is discovered, the court is expected to continue with its analysis of the second element of the claim, improper purpose.¹⁸⁹

2. *IMPROPER PURPOSE OR USE:*

The second prong of the piercing test necessitates the claimant to express that the control exercised by the parent corporation or dominant stockholder was "used by the defendant to do wrong or fraud, to perform the violation of a

¹⁸⁴ *Morris v. Department of Taxation & Fin.*, 623 N.E.2d 1157, 1160-61 (N.Y. Ct. App. 1993); *Belvedere Condominium Owners' Ass'n v. R. E. Roark Cos.*, 617 N.E.2d 1075, 1086 (Ohio 1993)

¹⁸⁵ Saxena, H. (2010). *Lifting of Corporate Veil*. Available at SSRN 1725433.

¹⁸⁶Supra note 178.

¹⁸⁷ Ibid

¹⁸⁸ ibid

¹⁸⁹ ibid

statutory law or other positive legal duty, or unjust and dishonest act in contravention of legal right of the plaintiff."¹⁹⁰

The illegal purpose element frequently lies at the heart of the plaintiff's core liability claim. Proof of the fundamental cause of action, thus, might be able to assist in establishing the second part of the piercing test. The illegal purpose can be taken in the form of statutory law violations, fraud, commissions of torts, or, under some circumstances, a court might find that the conduct was merely "inequitable" Or "unjust". Though, the claimant still must prove causation.¹⁹¹

3. RESULTING DAMAGE:

The claimant, ultimately, must demonstrate that the defendant's control, used in an illegal, or fraudulent, or otherwise unfair manner, it caused the damage that suffered. Say differently, the claimant must prove that, unless the veil of corporate is pierced, it will get been dealt with unfairly by the defendant's exercise of control and unlawful use of the corporate form and, by doing so, suffer damages. This component may simply be satisfied by the company's creditor that, once it demands payment or tries to execute on a judgment, realizes that the formerly accessible assets have proved to be spirited away by the owner to avoid collection.¹⁹²

Though, whenever the claimant's damage does not arise from either conduct by the defendant corporation, the claimant has failed to meet its burden. The mere fact that the veil of corporate might be overlooked for certain purposes and that this does not mean that it must be disregarded for all intents and purposes. Not every single case justifies disregard of legitimately existing corporations. The courts need to exercise treatment to strike a balance between the competing goals of incorporation and protecting creditors. Finally, the claimant must

¹⁹⁰ Collet v. American Nat'l Stores, Inc., 708 S.W.2d 273, 284 (Mo. Ct. App. 1986). Pauley Petroleum, Inc. v. Continental Oil Co., 239 A.2d 629, 633 (Del. Super. Ct. 1968); Hickman v. Hyzer, 401 S.E.2d 738, 739- 40 (Ga. 1991); Swall v. Custom Automotive Servs., Inc., 831 S.W.2d 237, 241 (Mo. Ct. App. 1992); J. L. Brock Builders, Inc. v. Dahlbeck, 391 N.W.2d 110, 115 (Neb. 1986)

¹⁹¹ Saxena, H. (2010). Lifting of Corporate Veil. Available at SSRN 1725433

¹⁹² Ibid

demonstrate that the control and actions complained of blended at the same time as the harm.¹⁹³

This chapter gives idea about the concept of the doctrine, its need, approaches taken by the courts (i.e., 'Peeping behind the Veil', 'Penetrating the Veil', 'Extending the Veil' and 'Ignoring the Veil') and element which must be present for the claim of piercing veil. These elements are difficult in practicality.

¹⁹³ Ibid

CHAPTER -4

LEGAL STANDARDS UNDER WHICH THE CORPORATE VIEL IS LIFTED AND CONCEPT OF CORPORATE CRIMINAL LAIBILITY

The corporate veil may be lifted in cases where the statute itself compel the lifting the veil or improper conduct or fraud is intended to be prevented . *“It is either necessary nor desirable to enhance the classes of cases where lifting the veil is permissible, that must necessarily depend upon the relevant statutory or on the other provisions relating to it, the object must be achieved, the implied conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc¹⁹⁴”*.

When the court ignores the company and concerns itself directly with the members or the managers then also it is said that the veil of company is lifted. The issue is mainly in the discretion of the courts and will rely on “the underlying social, economic and moral factors as they operate in and through the corporation.”¹⁹⁵

There are certain circumstances under which the corporate veil may be lifted can be categorized broadly into two following heads:

1. Statutory Provisions
2. Judicial interpretation

4.1 STATUTORY PROVISIONS:

The corporate personality veil can be lifted under certain circumstances or pierced as per the expressed provisions of the Companies Act, 2013. In other terms, the superiority of ‘distinct entity’ and ‘limited liability may not be permitted to be enjoyed in certain circumstances. The Companies Act, 2013 itself provides for certain cases in which the directors or members of the company can be held liable personally. In such instances, while the separate

¹⁹⁴ . Life Insurance Corporation of India v. Escorts Ltd. [1986] 59 Comp. Cas. 548

¹⁹⁵ Tata Engineering Locomotive Co v. State of Bihar AIR 1965 SC 40

entity of the company is maintained, the directors or members are held personally liable along with the company.¹⁹⁶ Such circumstances are:

MIS-STATEMENTS IN PROSPECTUS [SECTIONS 34 & 35]

In the event of any misrepresentation in a company's prospectus, the company and all promoter, director, specialists, and all other persons working for the company, those who have authorised that issue of prospectus shall be liable for damages or losses to each and every person who had subscribed for shares on the faith of untrue statement (under Section. 35). These individuals may also be punished with imprisonment for a term not less than six months, but which may extend up to ten years and shall also be subject to fine not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud (Section 34 and Section 447 read together). However, an individual can escape the above-mentioned conviction in the case proving that such omission or statement was irrelevant or that person had reasonable grounds for believing and did up to the time of issue of the prospectus believe, that the statement was true, or the omission or insertion was required¹⁹⁷.

MISDISCRIPTION OF NAME

According to section 12, a company shall have its name printed on promissory notes, hundis, bills of exchange and such other documents as might be prescribed. Therefore, where an official of a company signs on behalf of a company any contract, promissory note, bill of exchange, hundi, or cheque or order for money, that person will be personally accountable or liable to the holder if the company's name is either not stated or is not properly mentioned. In the case of *Hendon v. Adelman* on a cheque, the company name was written as "LR Agencies Limited" and the real name of the company, was "L&R Agencies Ltd", the signatory directors had been held personally liable¹⁹⁸.

FAILURE TO RETURN APPLICATION MONEY [SEC. 39]

¹⁹⁶ Kapoor, G. K., & Dhamija, S. (2019). Company Law and Practise 24th ed.

¹⁹⁷ Supre note 189.

¹⁹⁸ (1973) New LJ 637

In the event of the company issues shares to the public, if the minimum subscription, as detailed in the prospectus has not received within 30 days of the issue of prospectus or any other period specified by the SEBI, then as per Rule 11 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the application money shall be refunded within fifteen days(from the closure of the issue) and if any such payment are made at that time period, the company's directors who are in default shall together and individually be liable to repay such money with the interest of at the rate of fifteen percent per annum.

In the event of failure, the company and its officer who is in default will be liable to pay one thousand rupees for each day in the event of such failure or rupees one lakh, whichever is less.¹⁹⁹

PUNISHMENT FOR CONTRAVENTION OF SECTION 73 OR SECTION 76 [SECTION 76A]²⁰⁰-

Where the company accepts or allows or invites or causes any other person to invite or accept on its behalf any deposit in contrary to the procedure or the conditions prescribed under section 73 or section 76 or if the company fails to pay the deposit or part thereof or other interest payable for the period specified as under section 73 or section 76 or the rules made under it or such additional time as may be permitted by the Tribunal under section 73, besides a company that shall be punishable with fine not less than one crore rupees, merely which may extend to ten crore rupees; every defaulting company official shall be liable to imprisonment which may extend for a term not exceeding seven years or with fine not less than twenty-five lakh rupees but which can be extend to two crore rupees, or both. Additionally, if it is proved that the company's officer who is in default, knowingly and intentionally has violated such conditions under the provisions with the intent to deceive a company or shareholders or creditors or tax authorities or depositors, shall also be liable for their acts under section 447.

FACILITATING THE TASK OF AN INSPECTOR APPOINTED TO INVESTIGATE THE AFFAIRS OF THE COMPANY

¹⁹⁹ Supra note 191.

²⁰⁰ Section 76A has been inserted vide the Companies (Amendment) Act, 2015

Section 219 of the Act provides that if an inspector appointed under section 210 or section 212 or section 213 to investigate the affairs of a company that considers it necessary for purposes of the investigation, and also investigates the affairs of— (a) any other body corporate which is or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company.

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company,

(c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(d) any person who is or has at any relevant time been the company's managing director or manager or employee,

he must, with the prior approval of the Central Government, investigate and report on the affairs of another body corporate or of its managing director or manager, in so far as he or she considers the results of his investigation that are relevant to the affairs of the company for which he or is appointed.²⁰¹

FOR INVESTIGATION OF OWNERSHIP OF COMPANY

Under section 216, the Central Government may appoint one or more inspectors to investigate and report on the membership of any company for the purpose of determining the true or genuine persons who have financial interests in the company and who control its policy or influence materially.²⁰²

FRAUDULENT CONDUCT [SEC. 339] –

Where in the event of winding-up of the company it seems that any business of a company has been carried on with intent to defraud company's creditors or any other individual, or for any purpose of fraud, those who are knowingly engage to such business conduct may, if the Tribunal deems it appropriate to do so, be made personally liable without any limitation as to liability for all or any debts or other company liabilities. A liability under this section²⁰³ may be

²⁰¹ Ibid

²⁰² Ibid

²⁰³ The corresponding section under the Companies Act, 1956 was section 542.

imposed only if it is proved that the company's business has been conducted for the purpose of defrauding the creditors – in the matter of *In Re. Augustus Barnett & Sons Ltd.*²⁰⁴

LIABILITY FOR ULTRA VIRES ACTS

Directors and other company officers will be personally held liable or responsible for all those actions which they have performed on the behalf of a corporate, if the same is the ultra vires of the company. The company's director of railways, which had completely drained its borrowing strength, and advertised for the money to be lent on security of the debentures, 'W' lent £500 in accordance with the faith of advertising and obtained a debenture. It was held that the debenture was null and void, but 'W' can sue the company's directors for breach of warranty of authorization (because they had by means of advertisement warranted that they had the authority to borrow which is in the fact that they did not have) - *Weeks v. Propert*²⁰⁵.

LIABILITY UNDER OTHER STATUTES

Outside the provisions of this Act, directors and other company officers or members may be held liable personally under other statute of law. For instance, under the Income-tax Act, where any private company is wound-up and if corporate tax arrears in regard of any income of any previous year cannot be recovered, every individual who was director of such company at any time during the relevant previous year will be jointly and individually liable for the tax payment. Likewise, under Foreign Exchange Management Act, 1999, directors and other corporate officers may be prosecuted separately or jointly for the violations of Act.²⁰⁶

4.2 JUDICIAL INTERPRETATIONS OF LIFTING OF CORPORATE VIEL:

It is hard to deal with all the matters where the courts have lifted or may lift the veil of corporate. Some of the famous cases in which the incorporated veil was

²⁰⁴ [1986] B CLC 170 Ch. D.

²⁰⁵ [1873] L.R. 8 C.P. 427

²⁰⁶ Ibid

lifted through judicial decisions might be discussed to form an idea or opinion as to the nature of circumstances in which the facade of corporate legal personality will be removed or the corporate members behind the corporate entity recognised and penalised, if required.

The jurisprudence on the veil of corporate, is settled: individual persons should not be allowed to benefit from the protection of the shell that the companies separate legal personality presents to its members. The application of the idea involves an inquiry into the number of such factors as the control of respondent, improper purpose and harm caused. The application of all these factors might be different and one needs to dwell into the circumstances and facts in the present matter.²⁰⁷

Indian courts accepted the six principles that have already been laid down in matter of Ben Hashem²⁰⁸ case as follows: -

- (i) ownership and control of a company make sure not suffice,
- (ii) the veil of corporate cannot be pierced simply because the interests of justice make this necessary,
- (iii) that there must be a case of impropriety,
- (iv) the abovenamed impropriety should be connected to the exploitation of the nature of a corporate in order to avoid of any responsibility or liability,
- (v) to justify the piercing of the veil of corporate, that there must be the presence of impropriety and control, in such a manner as to employ the corporate as a tool to provide a protection cover to such act of impropriety.²⁰⁹; and
- (vi) Regardless of the original intent of the incorporation of a corporate, the corporate use has been made as a 'façade' to further an illegitimate transaction in a present case.²¹⁰

Even earlier than these Ben Hashem principles, the court of law followed to the similar jurisprudence in determining the circumstances or situations when the veil must be lifted. The discussion that followed includes an enumeration of

²⁰⁷ <https://doij.org/10.10000/IJLMH.11800>

²⁰⁸ Ben Hashem v. Ali Shayif and another [2008] E.W.H.C. 2380 (Fam.) (U.K.)

²⁰⁹ Ibid.

²¹⁰ Ibid

several judicial tendencies in the development of the notion of corporate veil that illustrate how the jurisprudence on the corporate veil took the form.

Protection of revenue –

In *Sir Dinshaw Maneckjee Petit, Re*²¹¹, the assessee was a millionaire earning an enormous income by way of interest and dividend. He established four private companies and transferred his investments to each of these companies in exchange of their shares. The dividends and interest income obtained by the company were handed back to Sir Dinshaw as a pretended loan. It was held that the corporate was established by the assessee purely and merely as a means of avoiding tax and the company was nothing more than assessee himself. It did no business although was created merely as a legal entity to apparently receive the interest and dividend and to hand over to the assessee as a pretended loan. Likewise in the matter of *CIT v. Sri Meenakshi Mills Ltd.*²¹², where the veil had been used for the tax evasions and duties, the court held that the piercing of the veil to look at the real transactions.²¹³

Prevention of fraud or improper conduct

The corporate presence should not be used as vehicles of fraud. Where the existence of corporate is used for the purpose fraudulent conduct as to defraud creditors or to avoid legal obligation or liabilities, the courts may lift the veil of company to view the actual situation behind it and strike down the transaction.²¹⁴

²¹¹ AIR 1927 Bom. 371

²¹² AIR 1967 SC 819

²¹³ Ibid

²¹⁴ *Priya, R. J., Susmitha, S., & Thenmozhi, B. (2018). A Descriptive Study on the Doctrine of Lifting of Corporate Veil. International Journal for Advance Research and Development, 3(3), 6-9.*

Wherever the means of a company has been intended for committing improper conduct or fraud, the courts have pierced the corporate veil and looked at the realities of the situation.

In *Gilford Motor Company v. Horne* [1933] 1 CH 935, 'Horne' got employed by the company under the agreement that he will not solicit the customers of the entity or compete with it for a specific period after leaving its employment. After terminating to be employed by the plaintiff, Horne established a corporate which took on a competing business and caused the whole of its shares to be allotted to his wife and an employee of the company, who were appointed to be its directors. It was held that since the defendant (Horne) in fact controlled the company, its formation was a mere 'cloak or sham' to enable him to break his agreement with the plaintiff. Consequently, an injunction had been issued against him and the company, he had constituted restraining them from soliciting the plaintiff's customers.

Similarly, in *Jones v. Lipman*²¹⁵, seller of a land wanted to escape specific performance of an agreement for the sale of the land by transmitting the land to a corporate which he founded for the purpose. At first the company was established by third parties, and the vendor purchased its whole shares from them, had the shares registered in the name of himself and a nominee, and the nominee appointed directors. It was held that the specific performance of the contract cannot be resisted by the vendor by conveyancing of the land to the company which was a simple 'facade' for the avoidance of contract of sale and specific performance of a contract was therefore ordered against the vendor and the company.²¹⁶

Determination of the enemy character of a company

The Corporate veil has been lifted by the courts to determine the enemy character of a company at a time of war. The purpose of courts will for lifting the veil of a corporate to finding out the individual who controls the company's affairs and if the affairs of the company are found to have been brought under

²¹⁵ [1962] 1 All. ER 442

²¹⁶ Ibid,207

control by enemy aliens, it may assume the enemy character.²¹⁷ Corporation being an artificial person cannot be a friend or enemy. Though, during the war, it becomes necessary to lift the veil of corporate and look at the individuals behind as to whether they are friends or enemies. This is due to the fact that, a company enjoys a distinct legal entity, and its affairs are essentially managed by individuals.

In *Daimler Company Ltd. v. Continental Tyre & Rubber Co. Ltd.*²¹⁸, a company was in London for the purpose of selling tyres manufactured in Germany by a German company. Companies' majority shareholders and all directors were Germans. Upon declaration of war between England and Germany in 1914, it had been held that since both the decision-making bodies, the general body of shareholders and the board of directors were controlled by Germans, the company was a German company and hence, an enemy company. Appropriately, the suit filed by a corporate to recover a debt of trade was dismissed on a ground that such payment would amount to trading with the enemy.²¹⁹

Formation of subsidiaries to act as an agent.

In *Merchandise Transport Limited v. British Transport Commission*²²⁰, a transport company needed to acquire licences for its vehicles but could not do so if it applied in its own name. Therefore, created a subsidiary company and the application for licences were made in the name of the subsidiary company. The vehicles were transferred to the subsidiary. It was held, that a parent and subsidiary company were one commercial entity and the application for licences had been rejected. In an Advance decision was issued by the Authority for the Advance Rulings, it was stated that when a U.S. based company permits stock option to the employees of its wholly owned Indian subsidiary company at a predetermined price lesser than the market price involved of the concerned security, it amounts to be the monetary advantage given by the subsidiary

²¹⁷ Priya, R. J., Susmitha, S., & Thenmozhi, B. (2018). *A Descriptive Study on the Doctrine of Lifting of Corporate Veil. International Journal for Advance Research and Development*, 3(3), 6-9.

²¹⁸ [1916] 2 AC 307

²¹⁹ *ibid*

²²⁰ [1982] 2 QB 173

company, therefore it is taxable as salary. However, the offer is made from the U.S. based holding company, by piercing the veil of corporate of that entity, it is the Indian subsidiary that stands out as the businesses of both the entities are to be regarded as only one [Advance Rulings Petition No. 15 of 1998, In re [1999] 102 Taxman 74 (AAR)].

Similarly, in the State of U.P. v. Renusagar Power Co.²²¹ the Supreme court found that where the holding enterprise retains 100% shares in a subsidiary enterprise and the latter is created solely for the purpose of the holding company, veil of corporate can be lifted.

Again, where small scale industries were given certain exemptions and the company owning an industry was not controlled by any group of persons or companies, it was held that it was permitted to lift the company's veil to view that whether such company was the subsidiary of another company and, thus, it does not entitle to the proposed exemptions in the matter of Inalsa Ltd. v. Union of India²²².

In Smith, Stone and Knight v. Birmingham Corporation.²²³, the following criteria was set forth for the purpose of deciding whether or not the business of a subsidiary company is the business of a parent company:

- (i) Were profits treated as the profits of the parent company?
- (ii) Was the individual conducting the business is appointed by a parent company?
- (iii) Was a parent company is supposed to be the head and brain of the trading venture?
- (iv) Did the parent corporate govern the venture, and decide what must be done and what capital must be set out on the venture?
- (v) Did a parent company earn the profits by its own direction and skills?
- (vi) Was a parent company in efficient and constant control?

The mere fact that the holding company has a subsidiary company it does not imply that whenever claims are made against the subsidiary company, the veil of corporate is to be pierced to held liable to the holding company for the debts

²²¹ [1991] 70 Comp. Cas. 127

²²² [1996] 87 Comp. Cas. 599 (Delhi).

²²³ [1939] 4 All ER 116 (KB)

incurred in connection with the subsidiary company. The ordinary rule is that the company's independent legal personality is to be preserved and respected. The holding company shall, though, be liable if it provides a guarantee for repayment of the debts borrowed by its subsidiary company. Though, the burden or liability under these circumstances appears due to the fact of 'guarantee' and it does not appear to be the 'holding - subsidiary' relationship - S.A.E. (India) Ltd. v. E.I.D. Parry (India) Ltd²²⁴.

In *J.B. Exports Ltd. v. BSES Rajdhani Power Ltd.*²²⁵, the appellant No. 1 company has purchased the whole share capital of the appellant No. 2 company, which had been a registered consumer of electricity connection approved at its factory premises and on discovering that electricity was being consumed by the appellant No. 1, Electricity Board passed impugned order asking sub-letting charges from the appellant No. 2, the court held that by implementing the doctrine of piercing of the corporate veil, both corporates seemed to be the same entity and, hence, there was absolutely no question of sub-letting.

Where a company acts as an agent for its shareholders

In *Smith Stone and Knight v. Birmingham Corpn.*²²⁶, it was noticed, the simple fact that a person holds all the shares in the company does not make the business carried on by that company and his business, neither does it make the company his authorized agent for the carrying on of the business activity. This is just as true as if the shareholder is in itself a limited company. It was also nicely settled that there could be such an arrangement between both the shareholders and the company as it will constitute the company an agent of shareholder for the purpose of carrying on the business activity and make a business, the business of shareholders. Therefore, where there is an arrangement, as aforementioned, prevails, the individual shareholders can be identified for fixing their liability.

In case of economic offences

²²⁴ [1998] 18 SCL 481 (Mad.).

²²⁵ [2007] 73 SCL 133 (Delhi)

²²⁶ [1939] 4 All ER 116 (KB)

In *Santanu Ray v. Union of India*²²⁷, in this situation, it was held that a court will be entitled to lift the corporate's veil and compensate with respect to the economic realities behind their legal facade. In this matter, it was claimed that the corporate had violated the section 11(a) of the Central Excises and Salt Act, 1944. The Court ruled that the corporate entities veil could be lifted by adjudicating authorities thus to determine as to which of the directors was concerned with the excise duty evasion by the reason of concealment, fraud or suppression of facts or wilful misstatement or contravention of the legal provisions of such Act and the rules thereunder.

Where company is used to avoid welfare legislation

Where it was discovered that the only purpose for the establishment of the new company was to utilize it as a device to reduce the sum which is to be paid by the way of bonus to workmen's, the Supreme Court held that the piercing of the corporate veil is used to look at the real situation or transactions in the matter of *Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.*²²⁸. The facts of the discussed case are interesting and might be noted with the advantage. 'A limited' had bought shares of 'B limited' by investing an amount of Rs. 4,50,000. It used to be getting annual dividends regarding these shares and the sum that received was displayed in the company's profit and loss account year after year. It was considered that for the purpose of determining the bonus payable to the company's workmen. Sometime in the year 1968, the company transferred the shares of 'B limited', held by it to 'C limited', a subsidiary company wholly owned by it. 'C limited' had no other capital except the shares of 'B limited' transferred to it by the 'A limited'. It had no other entity or income source of any kind except collecting the dividend on the shares of the company 'B limited'. The dividend income from the shares of 'B limited' was not transferred to the 'A limited' and, therefore, it did not find place in the profit and loss account of a company with the outcome that accessible surplus for the purposes of payment of the bonus to the company's workmen had been reduced. On an industrial dispute raised by the workmen for including the dividend in the

²²⁷ [1989] 65 Comp. Cas. 196 (Delhi)

²²⁸ [1986] 59 Comp. Cas. 134

profits of 'A limited', the Industrial Tribunal and later the High Court held that 'A limited' and 'C limited' were two independent companies with separate legal existence and, therefore, the profits made by 'C limited' could not be treated as profits of 'A limited'.

The Supreme Court held that it has been true that in the eyes of law 'A limited' and 'C limited' were distinct entities have their separate existence, but then, that could not have been an end of the issue. Here the new company was formed which was fully owned by the principal company and with no assets of its own except those which were transferred to it by a principal company, with no business entity or income of its own except receiving or collecting dividends from shares transferred to it by a principal company and served no purpose of any kind except to lessen the principal company's gross profits. Such facts expressed for themselves. There cannot be a more direct evidence to show that the second company was established as a device to reduce the principal company's gross profits for whatever purpose. An apparent purpose that has been served and which gazed one in the face was to reduce the sum to be paid by means of bonus to workmen of the company. The sum of dividend was received by 'C limited', hence, it is to be taken into consideration in computing the profits of 'A Ltd.' that are available to bonus.

Where company is used for some illegal or improper purpose

Courts have shown themselves willing to lift the veil where device of incorporation is used for some illegal or improper purpose. In *PNB Finance Limited v. Shital Prasad Jain*²²⁹, pursuant to a request made by 'S', the financial advisor of the financing public limited company, granted a loan of Rs. 50 lacs to the 'S' on his representation that he would utilise the supposed amount for the buying of immovable property in Delhi and the directors of the company as plaintiff sanctioned a loan amount, inter alia, on the condition that the loan can be secured by deposit of the title deeds of the property of the company. A promissory note about the same was also executed by 'S'. Though, 'S' has not pay anything either towards both the principal amount and towards interest.

²²⁹ [1983] 54 Comp. Cas. 66 (Delhi)

Instead, he deflected the sum of loan to the three public limited companies proposed by him and his son. These businesses, in turn, utilized the amount of loans so diverted in purchasing of the immovable properties at New Delhi. The question that arose was whether the defendants ('S' his son and the three public limited companies) could be restrained from alienating the properties purchased. The court awarded relief to the plaintiff by restricting the defendants from any transfer, alienation, encumbering or disposal of the properties in question.

To punish for contempt of Court

In *Jyoti Limited v. Kanwaljit Kaur Bhasin*²³⁰, a two-partner firm agreed to sell two floors to parties, but the agreement was cancelled. The lawsuit was followed, and the High Court restricted the firm from selling the property. In the meantime, a private company was proposed by two partners only who have been the two shareholders became the managing director and the chairman respectively and the assets was transferred to the company. Despite the High Court's restraint order, the company sold off both the floors. In responding to the contempt proceedings, the firm partners had taken the plea that the selling had been made by the company itself and thus the firm had not disobeyed the order of court.

It was held that, once the veil of corporate is lifted or removed, it is noticeably clear that the court's orders had been disobeyed by the respondents. The company was only admittedly promoted by the respondents. They were its sole directors and shareholders. One of the respondents was firm's chairman and the other respondent, Managing Director. The whole interest in the company was belonged to the respondents. Therefore, the court order was not obeyed by the respondent.

For determination of technical competence of the company

The Supreme Court in one of its most recent decisions delivered a fascinating and very substantial judgment regarding the lifting of corporate veil. The case

²³⁰ [1987] 62 Comp. Cas. 626 (Delhi)

remark is that instance in *New Horizons Ltd. v. Union of India*²³¹; The facts of the case are as follows :

Department of Telecommunications, Telecom Region, Hyderabad has invited the sealed tenders of binding, printing and supply of telephone directories; the condition of being tenderer should have experience in references for supplying such directories to telephone systems with capacity to more than 50,000 lines. The appellant a joint-venture company, New Horizons Ltd. (NHL), and the Respondent No. 4 and others submitted their tenders, which were considered by the Tender Evaluation Committee. The respondent No. 4's offer was accepted. The decision was challenged by the NHL in the High Court stating that its offer cannot be denied on the hyper-technical plea, that NHL itself had no experience. NHL pleaded that it is both Indian and the foreign collaborators that had experience in such related field. The High Court dismissed the plea of NHL on the ground that itself NHL had no experience. There was a question before the Supreme Court that whether, in fact, the telephone authorities have been justified in not taking into consideration the tender presented by NHL on the basis that they did not comply with the requirements about qualification for the award of the contract. The Supreme Court held that the lifting of the corporate veil was required and for the purpose of assessing whether NHL has the necessary experience as envisioned in the document of tender, the experience of the NHL constituents had also to be taken into consideration. The aforementioned NHL experience had been ignored by the Tender Evaluation Committee on an erroneous view. Piercing through the veil covering NHL the Court disclosed that both the groups of joint venture had made a contribution to the venture resources in the form of equipment, machines and expertise. Hence, in respect of such joint venture company, the company's experience would include the experience of the constituents of the joint venture also.

The Supreme Court decided that the refusal of Tender Evaluation Committee to consider the NHL tender and the subsequent acceptance of the Respondent No. 4 tender which suffered from the vice of irrationality and arbitrariness.

²³¹ [1995] 1 Comp. LJ 100 (SC)

Where company is a mere sham or cloak

In the case of *Delhi Development Authority v. Skipper Construction Company (P.) Ltd*²³², the Supreme Court held that the company's director and members of his family had created numerous bodies it did not prevent the court from treating all as one entity owned and controlled by the director and his family if these corporate entities were found to be mere cloaks and that the device of incorporation was really a trick adopted to do illegalities and/or to defraud person.

Fraudulent scheme of compromise or arrangement

A veil of corporate may be pierced while taking into account a scheme of compromise/arrangement under the provision of the Act (section 391), if the Court is convinced that the proposed scheme is fraudulent and has a completely different purpose than the one stated - *In re, Bedrock Ltd*²³³.

Conversion of sole proprietorship into a company –

If a person takes over a premise on rent and converts his or her sole proprietorship into a private limited company under which that person has interest of controlling in it, he will not be evicted from the premise on the ground that he handed over the possession to another person, as the same individual will remain in the possession of premise however officially the corporate now runs the business- *Prem Lata Bhatia vs. Union of India*²³⁴

Trustees

Generally, a company does not hold on to its property on trust for its officers or for another company, except in some exceptional matters the court avoids the general rule and held the company functioning as a trustee for its members or

²³² [1996] 4 SCALE 202

²³³ [1998] 17 SCL 385 (Bom.)

²³⁴ [2006] 71 SCL 142 (Delhi).

any for other company. Hence, the concept of trust has also applied by the courts as a tool to lift the veil of corporation.²³⁵

Determination of Residence for Tax Purposes

The determination of a corporate's residency is vital for the purpose of tax, as the assessment is usually done on the basis of residential status of the company. A company is often believed to be residing at the area or place where the central management and control of the company is situated. The court may pierce the veil to find the place where its control and central management is sited and usually the place will be where the Board of directors meeting are held.

Pursuant to the S.6 (3) of the Indian Income Tax Act, 1961, a company is said to be the resident in India, in any of the previous year if: (i) It is an Indian entity, or (ii) In that year, the control and management of its affairs are situated entirely in India. In order to achieve this purpose, the term "control and management" refers to the de facto control and management and place of the control and management of the corporate affair is the meeting place of the directors are held.

²³⁵ Supra note 227.

4.3 THE CONCEPT OF CORPORATE CRIMINAL LIABILITY

With the expansion of the business through the provision of information, globalization, and technological development, and innovation have led to the development of the doctrine of corporate criminal liability. The crime level may be remarkably high due to power and extend of these corporates as opposed to a crime perpetrated by a single individual. When it is discovered that a corporation has been committed a criminal offence, the following question is whether corporations can be captured guilty of such crimes.²³⁶

The basic foundation of the criminal liability lies in two elements:

- I. Actus reus - It means guilty act or omission.
- II. Mens rea - It means prohibited state of mind or guilty mind.

Criminal Liability is connected to only those activities in which there is violation of Criminal Law i.e., to have said that there can be no liability without the criminal law which forbids certain acts or omissions.

Fundamental rule of criminal liability rotates around the Latin maxim *actus non facit reum, nisi mens sit rea*. It means that in order to make one liable or accountable it must be shown that acts or omissions has been conducted which had been forbidden by the law and has been done with guilty mind.²³⁷ Therefore every single crime has two elements one is physical known as actus reus and the other one is mental known as mens rea. In technical sense, this is the rule of criminal liability but in general sense the principle upon which responsibility is prefaced is the autonomy of the individual, which states that imposition of responsibility upon an individual person flows naturally from the freedom to make rational choices with regard to actions and behaviour²³⁸.

²³⁶ <https://www.researchgate.net/publication/341105952>

²³⁷ Sahu, M. (2012). Criminal liability of corporation: an Indian perspective. Available at SSRN 2192308.

²³⁸ A. Ashworth, Principles of Criminal Law p. 79-81 (Oxford: Clarendon Press, 1991) cited by Fisse, Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault, and Sanctions, 56 S. Cal. L. Rev. 1141 11 Assn. of Victims of Uphaar Tragedy v. UOI, 104 (2003) DLT 234, Rylands v. Fletcher, (1868), L.R. 3 H.L. 330.

Though the general rule as mentioned above is applicable to all the criminal cases, but in criminal law jurisprudence it has been spotted one exception to the above stated concept in the form of doctrine of strict liability in which individual may be held liable in absence of any person's guilty state of mind. This is done in the cases of mass destructions via pollution or gross negligence of the corporates causing widespread damages or injuries like in the Bhopal Gas tragedy, etc.

In the matter of *The Assistant Commissioner, Assessment- II, Bangalore and Ors. v. Velliappa Textiles Ltd. and Ors.*²³⁹, B.N. Srikrishna J. said that the criminal liability of corporate it is not possible to be imposed without creating subsequent legislative changes. For instance, the imposition of fine in lieu of imprisonment is necessary to be introduced in various sections of the penal statutes. The Court view was that the corporate could be prosecuted for offence concerning rupees one lakh or less and be punished as the choice is given to the law court to impose imprisonment or fine, while in the case of an offence or wrongdoing involving a sum or value exceeding to rupees one lakh, the court had not specified a discretion to impose a sentence of imprisonment or fine and thus, the corporate cannot be held liable as the custodial sentence cannot be imposed on it.

The legal hurdle arises from out of the above-mentioned situation, it was observed by the Law Commission in its 47th Report in paragraph 8(3), the Law Commission suggested an amendment under Section 62 of the Indian Penal Code by adding up the following lines²⁴⁰:

In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws.

²³⁹ AIR 2004 SC 86

²⁴⁰https://www.academia.edu/6415279/Criminal_Liability_of_Corporation_An_Indian_Perspective

We, therefore, recommend that the following provision should be inserted in the Penal Code as, say, Section 62.²⁴¹

*“In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.”*²⁴²

Currently, all the provisions of various statutes comprise only fine as a way of punishment that may be imposed on a corporate. So is the case for judicial pronouncements upon the facet of sentencing. As a supplement to this, the Law Commission in its 47st Report also is talking of introducing merely fine as an additional punishment that is to be imposed on the corporations in lieu of fines. This type of restrictive thought process, according to the Courts that are based on the maxim *lex non cogit ad impossibilia*, that tells us that the law does not contemplate something which cannot be done.²⁴³ This logic demonstrates that the law is lacking in non-holistic perspective under the corporate criminal liability concept. Courts have completely no doubt efficiently in developing the concept of corporate criminal liability and imposed the same thing on the convicts but then the only possible way of punishing them, is by way of fines. It is now for the legislative body to develop new methods of punishments and integrate them in the criminal justice system.

Criminal Liability of Corporations: [Pre-Standard Chartered Bank Case Law]
Earlier, the courts in India were of the view that the company could not be criminally prosecute for the acts as offences that requires *mens rea*, as they have been incapable of having it which is the essential element for the vast majority of offenses that may result in the imprisonment or other penalties. Indian courts considered that the corporation/company might not be prosecuted for the

²⁴¹ <http://www.legalserviceindia.com/legal/article-6069-analysis-of-white-collar-crimes-in-india.html>.

²⁴² Ibid

²⁴³ Kartick Chandra v. Harsha M. Dasi, AIR 1943 Calcutta 35 at 354; Edmund N. Schuster v. Assistant Collector of Customs, New Delhi, AIR 1967 Punjab 189; State of Maharashtra v. Syndicate Transport, AIR 63 (1966) Bom 197; Knightsbridge Estates Trust Ltd. v. Byrne and Ors. 1940 (2) All ER 401.

offenses that would require a mandatory punishment of imprisonment for the straightforward reason that the company could not be get imprisoned.²⁴⁴

In the *A. K. Khosla v. S. Venkatesan*²⁴⁵ case, the two corporations were charged for committing fraud under the laws of Indian Penal Code. Against the corporations the Magistrate issued proceedings. In this instance the court has underlined the fact that there have been two pre-requisites for the prosecution of the corporate entities, the first one was being that of mens rea and the other one being the ability to impose the compulsory sentence of imprisonment. A corporate entity could not be believed to have the necessary²⁴⁶ element of mens rea, nor is it possible to it be sentenced to imprisonment because it does not have a physical body.

In *Kalpanath Rai v State (Through CBI)*²⁴⁷, a company accused and prosecuted under the TADA Act (Terrorists and Disruptive Activities Prevention), it was claimed to have harbored terrorists. In the trial court the company was convicted for the offense being punished under section 3(4) of the TADA Act. On the appeal, the Supreme Court of India discussed the definition of the word "harbor" as provided in Section 52A of the Indian Penal Code and pointed that there was nothing in TADA Act, either implied or express, to show that the element of mens rea had been excluded from the offense punishable under Section 3(4) of the TADA Act.

The Supreme Court of India referred to its earlier decisions in *State of Maharashtra v. Mayer Hans George*²⁴⁸ and *Nathulal v. State of M.P.*²⁴⁹ and it was observed that there was a plenty of decisions by the courts of India which established the legal proposition that unless the statute of law crystally excludes the mens rea element in a commission of the offense, it must be treated as the essential ingredient of the acts in order to be punishable with imprisonment

²⁴⁴ Trisha & Devanshi Brahmhatt, The Doctrine of Lifting the Corporate Veil and The Judicial Trend in Determining the Criminal Liability of Corporations, Journal On Contemporary Issues Of Law, 3 (5), ISSN 2455-4782.

²⁴⁵ (1992) Cr.L.J. 1448, <https://lawoctopus.com/academike/corporate-viel-2/>

²⁴⁶ <https://pdfcoffee.com/company-law-8-pdf-free.html>

²⁴⁷ (1997) 8 SCC 732

²⁴⁸ A.I.R. 1965 S.C. 722

²⁴⁹ A.I.R. 1966 S.C. 43

and/or fine. There is uncertainty regarding whether the company may be able to be convicted for an offence in which the punishment specified by the statute of law is imprisonment and fine.

This controversy was firstly addressed within the case of *MV Javali v. Mahajan Borewell & Co and Ors*²⁵⁰ in which the Supreme Court of India held that the mandatory sentence of imprisonment and fine is intended to be imposed wherever it may be imposed, but where it cannot be imposed, namely on the company so fine is going to be the only punishment.

In *Zee Tele films Ltd. v. Sahara India Co. Corp. Ltd*²⁵¹, the court dismissed the complaint brought against the Zee under Section 500 of the Indian Penal Code in which it was alleged that the Zee had been telecasted a false programme through which it had defamed the Sahara India. The court of law had observed that mens rea turned out to be one of the essential elements for the commission of a criminal defamation offence, it absolved a company of liability under section 500 of Indian Penal Code and the ground was that the corporations could not have the necessary mens rea.

It is evident from the above stated matters that Indian courts had never thought about the inclusion of a company on the certain criminal liabilities. But what happens if a company stands accused of violating the statute of law that mandates imprisonment for violation?

STANDARD CHARTERED BANK CASE LAW

This turned out to be the landmark case where the Apex court overruled the other principles that had been laid down in which the company might not be liable criminally for offences. In this landmark case, Standard Chartered Bank was had being prosecuted for the violation of some provisions under the Foreign Exchange Regulation Act, 1973.²⁵² The Supreme Court held that the company could potentially be prosecuted and punished, with fines, irrespective of the mandatory punishment required under the respective statute.

²⁵⁰ AIR 1997 SC 3964

²⁵¹ Zee Telefilms Ltd. v. Sahara India Co. Corp. Ltd., (2001) 3 Recent Criminal Reports 292

²⁵² Standard Chartered Bank and Ors. v. Directorate of Enforcement, (2005) 4 SCC 530

The Court did not move by the literal interpretation and strict interpretation rule necessary for the penal statutes and proceeded on to provide complete justice by way of imposing the fine on the corporate.²⁵³ It was held that the law courts in the cases of penal statutes should only sight that the thing charged as offence within the plain meaning of the words be used and it must not strain the words on any view that there has a slip and that the thing is clearly within the mischief that it should have intended to be included and would have included if thought of²⁵⁴.

The Supreme Court also observed that, in respect to the criminal liability, the statute of FERA cannot create any distinction between the natural person and the corporations and according to FERA, corporations/companies are vulnerable to criminal prosecution, and permitting corporations to escape liabilities is on the basis of difficulty in sentencing that will result in grave injustice to the legal statutes. Furthermore, the Criminal Procedure Code, does not extend to any of the provision for the exemption of corporations from the prosecution on ground that it would be difficult to sentence in accordance with the statute. The Court, though, has not made its reasoning far and wide enough so as to specifically hold that the company is capable of producing the element mens rea and acting pursuant to it. Nevertheless, Court held that the corporations would be liable criminally for the offences and thus, it could be punished and prosecuted, at least with fines. Subsequently, several of the offences, punishable with fines, possess the mens rea as a prerequisite element of an offence, therefore, it could be implied that from the post Standard Chartered decision, corporations are capable of holding the crucial requisite mens rea²⁵⁵.

CORPORATE CRIMINAL LIABILITY: POST-STANDARD CHARTERED BANK CASE LAW

In the case of *Iridium India Telecom Ltd. v. Motorola Incorporated and Ors.*²⁵⁶, the Supreme Court of India held that the corporation is nearly in the same

²⁵³ Ibid

²⁵⁴ Tolaram Relumal and Anr. v. The State of Bombay, 1955 (1) SCR 158

²⁵⁵ Ibid

²⁵⁶ *Iridium India Telecom Ltd. v. Motorola Incorporated and Ors* , AIR 2011 SC 20

position as any individual and might very fit to be convicted under the common law as well as the statutory offences including those that require mens rea. By Way Of relying on the proportion of *Standard Chartered Bank Case*, the court considered that the criminal liability of the corporate would arise when there is commission of offence regarding the business of a corporation by an individual or body of individuals in control of its affairs.

Further the court held that the corporations have been no longer privy to immunity from criminal prosecution on grounds that corporations are incapable of holding the requisite of mens rea for commission of the criminal offences.²⁵⁷ In the other decision of *CBI v. M/s Blue-Sky Tie-up Ltd and Ors.*²⁵⁸, the Apex Court reaffirmed the status of law and held that corporations can be liable to be prosecuted for criminal offences and as well as for fines.

*Satyam scandal lifting of corporate veil.*²⁵⁹

This principle of lifting of corporate veil is used to identify the actual people who committed crime and claim the immunity by way of using the company's name. The court may not allow to the use of corporate name, and it would go through the process of a lifting of the corporate veil where all the names of the directors, shareholders or other members must be identified, and they will be prosecuted accordingly. The doctrine is categories into two theories: alter ego and instrumental theories. The alter ego theory provides that the distinction exists between the company and its shareholder while the instrumental theory discovers that the methods in which the company's shareholders uses company for their personal benefits or advantages. The court will not easily issue orders or commands to remove the veil of corporate and only does when it becomes necessary.

Case and Judgement

In India the Satyam Computer Services was fourth largest software company prior to its most notorious scandal. The infamous Satyam Scan first turned out to be visible to the public via a letter from the CEO on his own to SEBI and later on investigated in further detail by the CID and other departments. It was

²⁵⁷ Supra note 247

²⁵⁸ *CBI v. M/s Blue-Sky Tie-up Ltd and Ors.*, (2011) 15 SCC 144

²⁵⁹ <https://www.researchgate.net/publication/341105952>

disclosed that the on Sept. 30, 2008 the balance sheet, was severely manipulated and was carrying the fictitious cash and bank balance which did not exist. The books were overstated by rs.5000 to 6000 crores leading up to the inflated stocks which helped the management gain money. After this revelation, Ramalinga Raju had been taken into the police custody and the Raju brothers together with the CFO of the company, Srinivas Vadlamani had been arrested.

The above-named cases demonstrates that the crimes which the corporates are committing and how much this is influencing the society at large mostly in the most negative way and violating the system of law. Also, how the court faced or facing the difficulty in attributing and determining the criminal liability on the corporations, as they observe that the individual person or corporates can merely be held liable or responsible if there is sufficient evidence of active role of the criminal intent and second was when the statute of law specifically imposes such liability. The court mainly attribute the corporate criminal liability based on principle of the vicarious liability and use the instrument of actus rea and mens rea.

When it comes to the element mens rea, the courts have used extensively the “identification doctrine” to fasten the liability on corporates. The doctrine is the legal fiction where the courts try to identify “the actions of the "directing mind" of the corporation and merges individual and corporate persons in order to assign criminal liability to the latter.”²⁶⁰

With the most current matters of Vodafone International Holdings ²⁶¹ and Ram Saroop Gupta v. Major Sp Marwah,²⁶² the principle even takes the ground to discover the true identity of the company.

Hence, it is observed that the lifting up of the corporate veil in conjunction with the identification doctrine, have become known as the key mechanisms for the courts to enforce criminal liability on corporates even though the corporates per se, won't be able to have the mens rea.

²⁶⁰ Department of Justice, Canada, Discussion Paper on Corporate Criminal Liability (2002), available at <http://www.justice.gc.ca/eng/dept-min/pub/jhr-jdp/dp-dt/iss-ques.html>

²⁶¹ Vodafone International Holdings B.V. v. Union of India & Anr. [S.L.P. (C) No. 26529 of 2010]

²⁶² RC.REV. 179 OF 2011

RELEVANT CASES UNDER WHICH THE CORPORATE VEIL WAS PIERCED TO IMPOSE THE CRIMINAL LIABILITY ON CORPORATIONS²⁶³

In the past the courts have pierced the corporate veil by applying this doctrine to tax underlying assets of a corporates in cases of , fraud, tax avoidance, sham etc²⁶⁴. In *the Vodafone International Holdings v. Union of India* ²⁶⁵case, there was a presentation of the matter of misuse or mistreated of a corporate structure for the avoidance of taxes. The apex court has observed in this case that – “Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interests of the shareholders, investors, parties to the contract and also for tax evasion, the Court can always lift the corporate veil and examine the substance of the transaction.”²⁶⁶ Accordingly in this case the court has held that the Income Tax Office had been entitled to pierce the veil of corporate in India order to establish whether the corporate entity was a resident of Mauritius and if it had been paying the income tax in Mauritius or not²⁶⁷. Likewise in the instance of the *Commissioner of Income Tax v. Sri Meenakshi Mills Ltd., Madurai (1967)*²⁶⁸, is the other case under which the Court noted that the veil of corporate may be lifted to guise into an economic reality behind the company's legal facade.

In another case of *Life Insurance Corporation of India v. Escorts Limited and Others*²⁶⁹, the Court had indicated the four key instances under when the veil of corporate can be pierced –

- (a) where a statute itself contemplates the lifting of veil of the corporate,
- (b) where there is improper conduct or fraud meant to be prevented,
- (c) where a statute of tax or a beneficial statute is sought to be avoided, or

²⁶³ Manish Kumar Singh,(2020) Analysis of lifting of corporate veil 6(2), International Journal of Law of Law

²⁶⁴ <http://www.lawjournals.org/archives/2020/Vol6/issue2/6-2-17>

²⁶⁵ [S.L.P. (C) No. 26529 of 2010]

²⁶⁶ Ibid, at para 75.

²⁶⁷ Ibid, at para 94.

²⁶⁸ AIR 1967 SC 819 , Supra note 261.

²⁶⁹ (1986) 1 SCC 264

(d) where associated companies are inextricably as to be there, part of one concern.

In India, the provision of section-542 of The Companies Act, 1960 gives feasible scope for the piercing of the corporate veil to impose the criminal liability for any type of fraudulent conduct or behaviour of the business by making the defaulter personally liable for the wrong committed by him, and without any limitation of liability.

In the oldest cases of *Shri Ambica Mills Ltd., Re*²⁷⁰, the court pointed out that in the cases of criminal acts or actions of fraud committed by its member/officers, the court of law has the ability to pierce the veil/mask of the company to reach the very essence of the matter.

Another significant matter which came up was the *VTB Capital v. Nutritek*²⁷¹ wherein the dispute occurred out of fraudulently received the loan. In this case, the court of appeal has made two crucial observations:

Firstly, it said that - “lifting the corporate veil” does not ignore the presence of a company but enables the court to deliver a remedy which would otherwise be made available only against the company (against the controller or vice versa)²⁷².

Secondly, it also said that there is absolutely no requirement that the veil of corporate can be lifted only when there's no other remedy accessible²⁷³.

Following two key points, as applied to the criminal case matter of default by the companies, implies that the imposition of the criminal liability can extremely well be considered as a remedy still when if there are additional remedies accessible. This is considerable development for the reason that, this enables the piercing of the veil of corporate to impose criminal liability on corporates despite the fact that the issue can be resolved by the simple imposition of administrative or civil liability.

²⁷⁰ 1897 AC 22

²⁷¹ [2012] EWCA 808

²⁷² Niranjan V., (2012)“VTB Capital: The Consequences of Lifting the Corporate Veil”, available at last accessed: 05/06/2021

²⁷³ Ibid

Hence, it can be observed that the courts have exercised extremely wide discretion to decide whether to pierce the corporate veil or not in a particular case to impose criminal liability. Being aware of the reality that the primary goal of the corporate law should be certainty and predictability²⁷⁴, this has resulted in uncertainty and a lack of predictability concerning legal standards for the lifting of corporate veil. The judges of the court can select any theory of their own choice or occasionally even can invent a theory to attach the liability on the corporations on reasonable grounds. Consequently, It can be notice that although the courts have again and again made references to the theory of group of companies, shell companies, alter ego theory as well as other similar legal principles or standards, they had frequently used them without too much decisiveness or clarity.

One more the most significant legal issue linked to the fixing of imposition of criminal liability on corporates is whether or not a parent corporate or its subsidiary must ultimately be held liable for the commission wrongful acts of the subsidiary.

Firms can keep strategic control from a distance but then strategically leave behind safety and operations require into the hands of the local managers and the host government. In this manner, the control can be maintained, whilst liability is evaded.²⁷⁵ As a general rule, a parent company cannot be held liable for the actions of its subsidiary company. The report of the CIME (Committee²⁷⁶ on International Investment and Multinational Enterprises) had highlighted the fact that a liability on the parent company for criminal activities performed by a subsidiary could not be recognized even within the member states of the OECD²⁷⁷.

²⁷⁴ Harff v. Kerkorian, 324 A.2d 215, 200 (Del. Ch. 1974)

²⁷⁵ Cassels, J. (1993). *The uncertain promise of law: Lessons from Bhopal* (p. 43). Toronto: University of Toronto Press., 29 OSGOODE HALL L. J. 1 1991 at p.20

²⁷⁶ OECD had created this Committee for review and improvement of the OECD Guidelines.

²⁷⁷ Therefore, it is the widely accepted practice in the member states of the OECD “not to 'pierce the corporate veil' unless special conditions justify such an extraordinary step; Responsibility of Parent Companies for their Subsidiaries, OECD Publications, 1980; See also Cohn, E. J., & Simitis, C. (1963). Lifting the veil in the company laws of the European Continent. *Int'l & Comp. LQ*, 12, 189.

Furthermore, the “Corporate Veil” as a principle has thus far, were not applied in the situations of an extraordinary environmental hazard caused by the subsidiary one of a parent corporates²⁷⁸. Moreover, the Courts of India have also interpreted in such a statute as the "cracking open the corporate shell" only when obliged to do so in accordance with the obvious mandates of the statute. Indeed, they think of taken additional precaution to prevent such construction wherever possible...²⁷⁹.

Though, the U.S. Supreme Court in the case of United States v. Best foods²⁸⁰ has pointed out that the Court of law may pierce the veil of corporate to hold the parent entity be liable for the behaviour or conduct of its subsidiary, if the corporate entity is abused to achieve the wrongful purposes or objects, most especially, the fraud on shareholder’s behalf and a parent entity is directly is being a participant in such wrong complained of²⁸¹.

In Indian matter of the Bhopal Gas case, it is considered to be one of the most appropriate instances where the question was arising as whether the parent corporate or its subsidiary corporate will be liable or responsible for the environmental hazard. There were two legal issues implicated in the Bhopal case²⁸² were-

- Firstly, whether or not there is a direct duty of the parent corporate to manage its subsidiaries in a competent manner and,
- secondly, whether the parent corporate may vicariously be held liable or accountable for the acts of its subsidiary entity.

The most suitable answer to these legal issues involved lies in the fact that the “persons harmed by criminal acts of a multinationals corporation are not in a

²⁷⁸ Kolvenbach, W. (1986). European reflections on Bhopal and the consequences for transnational corporations. *Int'l Bus. Law.*, 14, 357.

²⁷⁹ Even looking from the American perspective, the judiciary must have compelling reasons to ignore the limited liability rule in order to impose liability on shareholders; Ramaiya, A., GUIDE TO THE CORPORATE ACT (8th edn, 1977), at p. 108

²⁸⁰ 524 US 51 (1998) also available at <http://www.law.cornell.edu/supct/html/97-454.ZO.html>

²⁸¹ Ibid.

²⁸² Union Carbide Corporation Etc. v. Union of India Etc. (M.P.H.C.) 1992 AIR 248, 1991 SCR Supl. (1) 251.

position to isolate which unit of the enterprise caused the harm, yet it is evident that the multinational enterprise that caused the harm is liable for such harm.”²⁸³

Keeping the parent company liable is an efficient and effective measure in order to ensure the full compensation to the victims of criminal wrong and to make up such corporates accountable. In the Bhopal case, Justice Seth has also pointed out that the veil of corporate may also be pierced even solely on the equitable considerations, when confronted with situations of mass hazardous disaster and the assets of the subsidiary entity being grossly deficient to satisfy the just or fair claims of the victims.²⁸⁴

He further noted that the fundamental principle that a company has a separate legal identity of its very own is not the absolute principle and has considerably been diluted with the increasing number of cases of exceptions since *Salomon v. Salomon*²⁸⁵.

It can be discussed that principally the decision of court simplifies the criminal liabilities position of a corporate and prospect of criminal intent, the promoters for the criminal acts of the corporate or the prosecution of officers of the corporate will basically depend on the facts and the circumstances of each and every case and it is likely to be applied widely²⁸⁶.

This chapter dealt with the legal standard under which corporate veil can be pierced or lifted up by way of making judicial interpretations as above mentioned or by statutory law, i.e., the Companies Act, 2013 itself covers certain provisions [Sections 7(7), 251(1) and 339] this lifts the veil of corporate to propose a barrier for companies to access actual circles of action. Section 7(7) states punishment for incorporation of the company for furnishing false information; Section 251(1) talks about the liability for the making of fraudulent

²⁸³ [1897] AC 22, Supra note 261.

²⁸⁴ Manish Kumar Singh, (2020) Analysis of lifting of corporate veil 6(2), International Journal of Law

²⁸⁵ [1897] AC 22

²⁸⁶ Dinesh BabuEedi, Doctrine of attribution in corporate criminal liability, LAKSHMIKUMARAN AND SRIDHARAN ASSOCIATES)
<https://www.lakshmisri.com/News-andPublications/Publications/Articles/Corporate/Doctrine-of-attribution-in-corporate-criminal-liability>

application for the removal of the company's name from the register of companies and Section 339 deals with the obligations for conducting fraudulent business/es during the winding up time of a company. This chapter also discussed about the concept and legal issues of corporate criminal liability in lifting the corporate veil doctrine.

CHAPTER -5

CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

In the present time, there is no fixed principle/ rule on the basis of which the veil of corporation is lifted. It directs to poor decision making and inconsistent results. Though, there is no reforms instituted in order to modify the current system and implement a better system for further reliable and consistent results. The court of law have a very wide discretionary power or authority when it goes to whether the veil of corporate should be lifted or not. For well over a decade, currently the courts are struggling to decide or determine the same thing but not anything concrete decision has been made upon. This is mostly due to the different facts and the circumstances of each and every case that makes it harder for the experts to find out a permanent test on the very foundation of which it could be decided. However, in an absence of such a test, the judges have certainly come a long way off in determining the veil of a company should be lifted or not. In all the situations under which the court of law has taken the decision to pierce the corporate veil, the very foundation of their decision has been taken grave abuse of power by the company's shareholder which resulted in the piercing of the corporate veil. This is done in order to ensure that the public will be saved from getting exploited by the hands of the shareholders of the company or any person who is perpetrating crimes under the name of the corporate entity.

Karnataka High Court in the matter of the *Cotton Corporation of India Limited v/s G.C. Odusumath*²⁸⁷ held that the canon of the lifting of the veil of a company as a rule is not permissible in law if otherwise stated in the clear words of the statute of law or by extremely convincing reasons as for example wherever trading with enemy company is sought to be defeated or the fraud is necessarily to be prevented.²⁸⁸ Some of the most fundamental cases in which the companies curtain/veil may be lifted up are: for the determination of the

²⁸⁷ [1999] 22 SCL 228

²⁸⁸ A.K. Majumdar and G.K. Kapoor, Taxmann's Company Law Practice (16th edition, Taxman Publications P. Ltd. 2011) 19.

enemy character of the company ,at a time of war²⁸⁹, in instances where the company was established for a fraudulent purpose; as between the holding company and its subsidiaries; and in revenue cases etc.²⁹⁰ The veil can be pierced or lifted when the policies in the wake of the belief of limited liability and corporate independence are overshadowed by the policy justifications for ignoring the corporate form.²⁹¹ Separate corporate personality is one of the most remarkable characteristics of a corporate which should not have to be taken away but in the extraordinary circumstances. The ‘veil of incorporation’ of a company must be lifted or pierced where the business entity is a façade concealing the true or real facts²⁹² or where two companies have been used as a cloak for criminal liability and fraudulent conduct.²⁹³ It is definitely true and established that this principle of lifting of corporate veil relevance has been growing today along with the rise in the complications with regards to companies. The truth is that the company, holding specific rights and duties, as it is a “legal person”. Though, assigning the legal capacities to the corporates is different from treating it as taking the “human characteristics”. Such a rule of veil lifting must be used efficiently and scrupulously, wherever it will be necessary, so as to ensure that it is used in the best possible manner.

The Courts have tried for many years to develop and enhance their analysis or examine these types of claims. However, every new single action forms a different set of facts and circumstances inserted in the equation and a distinct determination will have to be made within regard to whether the plaintiff has presented the sufficient evidence of the improper purposes, or control and denomination, or practice and resulting damage. The ruling is that whether to pierce or lift the veil of corporate can be aided, best in part is that it is depending on the opinion expressed by the of qualified experts or professionals. Expert’s

²⁸⁹ <https://www.ijarnd.com/manuscripts/v3i3/v313-1142.pdf>

²⁹⁰ Northey & Leigh, Introduction to Company Law (4th edition, Lexis Nexis, 1987) 20.

²⁹¹ Presser, S. B. (1992). Thwarting the Killing of the Corporation: Limited Liability, Democracy, and Economics. *Nw. UL Rev.*, 87, 148., Rev. 155 as cited in Bainbridge, S. M. (2005). Abolishing LLC Veil Piercing. *U. Ill. L. Rev.*, 77., 94

²⁹² *Trustor AB v Smallbone* [2001] 2 BCLC 436 (Chancery Division).

²⁹³ *H and Others (Restraint Order: Realisation Property)*, Re [1996] 2 All ER 391 (Court of Appeal (Civil Division))

testimony would be useful or suitable for the trier of the facts in deciding the matter of whether the enterprise has been adequately capitalized it for the purpose intended. Eventually, the ruling whether to disregard the corporate entity or not will be based on the balance of different factors of all or any part of which are needed but not enough to pierce or lift the corporate veil.

The researcher observes that imposition of criminal liability on company includes several legal issues, most particularly, mens rea, separate legal personality, limited liability, piercing or lifting of the corporate veil, liability of a parent company for the actions of its subsidiary company. In India, the courts and some other jurisdictions had again and again relied on specific legal principles such as the sham to perpetrate a fraud, alter ego, single business enterprise theory, the identification doctrine, etc. to pierce or lift the corporate veil of a company and to recognize the “directing mind” to impose corporate criminal liability.

These principles along with relevant case laws have helped the courts to fasten criminal liability on corporations. The relevant case laws also point towards the fact that imposing criminal liability can be an effective remedy even when there are other remedies available.

The current legal standards concerning piercing or lifting the corporate veil have offered the very wide discretion to the judges of the court to make a decision depending on whether to pierce the veil to hold company criminally liable or not. This has resulted in substantial uncertainty and lack of predictability concerning the relevant considerations or factors for the veil lifting.

When it comes to the liability of the parent entity for the criminal activities of its subsidiaries, the author’s opinion is that holding the parent company liable is an efficient and effective measure in order to ensure full compensation for the victims and make such entities held accountable. If it has been said that the parent company cannot be held responsible for the criminal actions of the subsidiaries, this could continue to encourage corporation’s irresponsibility. Corporates can keep strategic control from a distance but purposefully depart the operations and safety directives into the hands of the host government and

local managers. This path, control may be maintained, while the obligation is evaded.²⁹⁴

To sum up, the veil of corporate can be pierced in all situations including criminal instances, depending on the factors such as, relevant legal statutory or other provisions of law, impugned conduct, object sought to be achieved, involvement of the public interest, and the interest of affected parties.²⁹⁵

Hence, the researcher is in complete accord with the doctrine of lifting of the veil of corporate for as very much as the veil is essential, so is to penalize the wrongdoers who hide themselves behind the corporate veil of a company to collect excessive benefits. In conclusion, the legislations have consistently maintained that nobody should be benefitted from its own wrong, and consequently, here's the doctrine serves as a check on anybody gaining out of their wrong actions.

The Criminal Responsibility or liability is affixed just the ones that actions where there is contravention of Criminal Law, specifically to be said that there can be no liability without having a criminal law which forbids certain actions or omissions.

The simple rule rotates around the Latin Maxim *actus non facit reum, nisi mens sit rea*. It implies that “to make one liable, it must be shown that act or omission has been done which was forbidden by law and has been done with guilty mind”. To the extent that the current state of the principle of Corporal Liability, is concerned, the latest landmark court decision of Apex Court in the case of *Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors. etc.* this case had made the situation transparent. It overruled the earlier opinions about the Criminal Liability on corporates and had been given a new touch to this doctrine.

²⁹⁴ Cassels, J. (1993). *The uncertain promise of law: Lessons from Bhopal* (p. 43). Toronto: University of Toronto Press., 29 OSGOODE HALL L. J. 1 1991 at p.20

²⁹⁵ Chauhan, Madhvender, “Corporate Personality & Piercing of the Corporate Veil”, available at https://www.academia.edu/9453267/PIERCING_THE_CORPORATE_VEIL_TO_IMPOSE_CRIMINAL_LIABILITY_ON_CORPORATIONS

Failure on the part to prove or identify the intention of a corporate. Traditionally, the criminal legislations have been reserved for the intentional legal violations. However, corporate prosecutions had been noticeable by the efforts to recognize the intention of the fictitious entities.

Another problem has been concerning the sanctions. In a supplement to the proof of intention, a significant distinctive feature of the law of criminal has proved to be the danger of imprisonment. It has been stated that the corporates will not be able to be imprisoned; the criminal law is not a suitable vehicle for controlling the corporation's conduct. The hurdle was the courts correct understanding of criminal legal procedure; for instance, the judges require the accused to be delivered physically before the court of law.

5.2 RECOMMENDATION

The provided legal statutory grounds for piercing/lifting the corporate veil of a company under the company law of India are limited in numbers. Judiciary can only interpret the law and legislature makes the law so, it is recommended that, the legislative reform must be taking into account and provide additional grounds for in accordance with which the veil of corporate may be lifted up so that it might be easier for the courts to see beyond the curtain and find the real culprit. In India there is a wide discretion in the hands of the courts. The extremely purpose of the legal courts is to deliver justice, they should have a broad discretion to pierce or lift the corporate veil on the grounds more than those provided by statutory law if doing such a way that serves the end of justice. Therefore, it is recommended that the courts should exercise the doctrine of piercing whenever public policy or justice so require; and where the rights of innocent parties or individuals are prejudiced; whensoever one in control of the company uses that corporate asset or uses control to his/her own personal interests or gain. The other recommendation is that this doctrine must be given a workable interpretation or understanding – one that is predictable practical, effective in its functioning. The matter of deciding when this doctrine will be applicable has remained a common loop throughout the precedent at the common law.

A corporate gets a legal personality though defectively formed, for as long as it is correctly published or registered. Nevertheless, to the extent that such defective establishment is harmful to the best interests of shareholders or creditors, the court can order the dissolution of a corporation in accordance with the application of the former. Even though the applicable law is not obvious as to the obligation or liability of its shareholders in accordance with the dissolution of something like this defectively formed share corporate, the rationale for ordering the company's dissolution by the courts is to protect or guard the very best interest of creditor of the company. Though, the dissolution of an entity alone will not completely safeguard the best interests of creditors. Hence, to completely protect the interests of creditors of the company, the lawmaker must provide a statutory structure to pierce or lift the corporate veil of the company, as a supplement to the dissolution, to make it to persons responsible or accountable for defective formation- i.e., founding fathers of the company or all the shareholders in the event that of a closely convened share company- be held liable for the debts of the corporation. As an alternative, the courts must be guided by the principle of piercing or lifting the corporate veil to completely preserve the interests of creditors in this context. Unless this doctrine is supported in such a situation, the company's founders may move their personal responsibility, which would otherwise have stayed imposed upon them unless the company fails to get corporate legal personality.

To safeguard the abusive conducts of the parent entity and eventually to preserve the interests of the creditors of its subsidiaries, the various countries' company laws provide an adequate ground for piercing or lifting the corporate veil of the parent company. Some countries, as a supplement to piercing/lifting the corporate veil rule, also stipulates some special regime for regulating the group companies to protect creditors by providing the creditors of subsidiaries the right to proceed against its parent entity without any need to prove any abusive action of its parent entity. In India, alone providing a special regime for governing the group companies, the existing legislation does not provide enough grounds for piercing or lifting the corporate veil of the parent company.

It is also recommended that the court of law must refrain from heavily depend on the case laws that has preceded the instances before in the attempt of

unpacking and in applying the relevant principles but there should rather be a set of principles or rules that they can be apply their mind in addition to the discretion they have been provided. Even though each and every case differs factually, there could be injustice or unfairness to the parties or individuals if the courts does not follow the consistent methodology or the floodgates for mentioning the remedy could be increased. In persistence of the aim of the research, hopefully the legislature or the courts soon may bridge this gap to promote certainty and deliver a sustainable solution to this problem. The formulation of such kind of guiding core principles will basically act as a solution and bring in about the transparency with regard to what conduct, or behaviour may fall inside the scope of this remedy.

BIBLIOGRAPHY

JOURNALS AND RESEARCH MATERIALS:

Wibberley, J., Chambers, G., & Gioia, M. D. (2017). Lifting, Piercing and Sidestepping The Corporate Veil. *Guildhall Chambers*. [Online] Available from: <https://www.guildhallchambers.co.uk/uploadedFiles/PiercingtheCorporate%20Veil.JW,MDG.pdf> [Accessed on: 18/05/20].

Priya, R. J., Susmitha, S., & Thenmozhi, B. (2018). A Descriptive Study on the Doctrine of Lifting of Corporate Veil. *International Journal for Advance Research and Development*, 3(3), 6-9.

Macey, J., & Mitts, J. (2014). Finding order in the morass: The three real justifications for piercing the corporate veil. *Cornell L. Rev.*, 100, 99.

Devang Gautam, [2014] 'Corporate Personality and Lifting of the Corporate Veil' *Indian Journal of Research*, 3(1).

Waqas, M. and Rehman, Z., 2016. Separate Legal Entity of Corporation: The Corporate Veil. *International Journal of Social Sciences and Management*, 3(1), pp.1-4.

Ron, H., 2000. *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844*

Blair MM (2012) The Four Functions of Corporate Personhood. Vanderbilt University - Law School, Research Paper No. 12-15.

Banoo, S., 2018. Lifting of the Corporate Veil: Decoding the Doctrine of Separate Legal Personality. Available at SSRN 3609245.

Popat, S. (2021). Swaraj: An abandoned concept in independent India.

Richard Meeran, Lifting the Corporate Veil, (March 15, 2020), <http://www.ais.up.ac.za/health/blocks/HET870/Corporateveil.pdf>.

Trisha & Devanshi Brahmhatt, The Doctrine of Lifting the Corporate Veil and The Judicial Trend in Determining the Criminal Liability of Corporations, *Journal On Contemporary Issues Of Law*, 3 (5), ISSN 2455-4782

Fox, E. (1993). Piercing the veil of limited liability companies. *Geo. Wash. L. Rev.*, 62, 1143.

Manish Kumar singh, [2020] 'Analysis of lifting of corporate veil', *International Journal of Law* 6(2) <<http://www.lawjournals.org/archives/2020/vol6/issue2/6-2-17> >

Ottolenghi, S.” From Peeping Behind the Corporate Veil to Ignoring it Completely” (1990). *MLR*, 53, 338.

Saxena, H., 2010. Lifting of Corporate Veil. Available at SSRN 1725433.

Allen, W. T., Kraakman, R. H., & Khanna, V. (2021). *Commentaries and cases on the law of business organization*. Lippincott Williams & Wilkins.

Cohn, E. J., & Simitis, C. (1963). Lifting the veil in the company laws of the European Continent. *Int'l & Comp. LQ*, 12, 189.

Jackson, T. H. (2001). *The logic and limits of bankruptcy law*. Beard Books.

Cheng, T. K. (2010). Form and substance of the doctrine of piercing the corporate veil. *Miss. LJ*, 80, 497.

Fletcher, W. M. (1920). *Cyclopedia of the law of Private Corporations* (Vol. 9). Callaghan.

Gaertner, M. J. (1988). Reverse Piercing the Corporate Veil: Should Corporation Owners Have It Both Ways. *Wm. & Mary L. Rev.*, 30, 667.

Youabian, E. (2003). Reverse Piercing of the Corporate Veil: The Implications of Bypassing Ownership Interest. *Sw. UL Rev.*, 33, 573.

Sahu, S. (2012). Piercing the Corporate Veil: A Necessity Today in India and Abroad. Available at SSRN 2352489.

Farrar, J. H. (1989). Fraud, fairness and piercing the corporate veil. *Can. Bus. LJ*, 16, 474.

Ramsay, I., & Noakes, D. B. (2001). Piercing the corporate veil in Australia. Available at SSRN 299488.

Matheson, J. H., & Eby, R. B. (2000). The Doctrine of Piercing the Veil in an Era of Multiple Limited Liability Entities: An Opportunity to Codify the Test for Waiving Owners' Limited-Liability Protection. *Wash. L. Rev.*, 75, 147.

Park, W. W. (1978). Fiscal Jurisdiction and Accrual Basis Taxation: Lifting the Corporate Veil to Tax Foreign Company Profits. *Columbia Law Review*, 78(8), 1609-1662.

Bainbridge, S. M. (2005). Abolishing LLC Veil Piercing. *U. Ill. L. Rev.*, 77.

Vandervoort, J. K. (2004). Piercing the Veil of Limited Liability Companies: The Need for a Better Standard. *DePaul Bus. & Comm. LJ*, 3, 51.

Whincop, M. Overcoming Corporate Law: Instrumentalism, Pragmatism and the Separate Legal Entity Concept'(1997). *Company and Securities Law Journal*, 15, 411-420.

Horder, J. (2016). *Ashworth's principles of criminal law*. Oxford University Press.

Niranjan V., (2012)“VTB Capital: The Consequences of Lifting the Corporate Veil”, available at <https://indiacorplaw.in/2012/09/vtb-capital-consequences-of-lifting.html+&cd=1&hl=en&ct=clnk&gl=in> accessed: 05/06/2021

Cohn, E. J., & Simitis, C. (1963). Lifting the veil in the company laws of the European Continent. *Int'l & Comp. LQ*, 12, 189.

Kolvenbach, W. (1986). European reflections on Bhopal and the consequences for transnational corporations. *Int'l Bus. Law.*, 14, 357.

Bainbridge, S. M. (2005). Abolishing LLC Veil Piercing. *U. Ill. L. Rev.*, 77.

WEBSITES:

Lifting of Corporate Veil: Indian Scenario by Ashu Bala.
<http://www.legalservicesindia.com/article/1876/Lifting-of-Corporate-Veil:-Indian-Scenario.html>. [Accessed: 10.05.2021]

Understanding Corporate Veil and Its Implications In The Indian Context
Acknowledgements By Arushi Sharma.
https://www.academia.edu/34984711/UNDERSTANDING_CORPORATE_VEIL_AND_ITS_IMPLICATIONS_IN_THE_INDIAN_CONTEXT_ACKNOWLEDGEMENTS [Accessed: 10.05.2021]

<https://www.icsi.edu/media/webmodules/FinalCompanyLawBook22092020.pdf> [Accessed: 10.05.2021]

<http://msrlawbooks.in/>.

<http://dspace.jgu.edu.in:8080/jspui/bitstream/10739/45/1/Harshit%20Saxena%20-%20Lifting%20the%20Corporate%20Veil.pdf>.

<http://www.legalservicesindia.com/article/article/lifting-of-corporate-veil-indian-scenario-1876-1.html>

<http://www.legalserviceindia.com/legal/article-6069-analysis-of-white-collar-crimes-in-india.html>.

<http://www.tygarlaw.com/doctrine-of-separate-legal-entity-and-its-exception/>

<https://doij.org/10.10000/IJLMH.11800>

<https://www.researchgate.net/publication/341105952>

https://www.academia.edu/6415279/Criminal_Liability_of_Corporation_An_Indian_Perspective

<http://www.justice.gc.ca/eng/dept-min/pub/jhr-jdp/dp-dt/iss-ques.html>

<http://www.law.cornell.edu/supct/html/97-454.ZO.html>

<https://www.lakshmisri.com/News-andPublications/Publications/Articles/Corporate/Doctrine-of-attribution-in-corporate-criminal-liability>

https://www.academia.edu/9453267/PIERCING_THE_CORPORATE_VEIL_TO_IMPOSE_CRIMINAL_LIABILITY_ON_CORPORATIONS

BOOKS AND LEGISLATIONS:

The Companies Act, 2013, Bare Act.

The Income Tax Act 1961, Bare Act.

Law-Commission of India, The Trial and Punishment of Social and Economic-Offences, (Report No. 47), para 8(3).

Piercing the corporate veil, BLACK'S LAW DICTIONARY, (9th ed. 2009)

H.K. Saharay, Company Law (5th edition, Universal Law Publishing Co., 2008)
12.

Kapoor, G. K., and Sanjay Dhamija. "Company Law and Practice: A Comprehensive Textbook on Companies Act-2013." (2017).

Bagrial, Ashok K., Company Law, (12th revised ed.), Vikas Publishing House Pvt. Ltd., New York, 2007, p.34.

Dignam, A., & Hicks, A. (2011). *Hicks & Goo's cases and materials on company law*. Oxford university press, USA.

Robert R Pennington, *Pennington's Company Law* (8th edition, Oxford University Press, 2006) 43

Cassels, J. (1993). *The uncertain promise of law: Lessons from Bhopal* (p. 43). Toronto: University of Toronto Press.

Ramaiya, A., GUIDE TO THE CORPORATE ACT (8th edn, 1977), at p. 108

Northey & Leigh, Introduction to Company Law (4th edition, Lexis Nexis, 1987) 20.

K. Majumdar and G.K. Kapoor, Taxmann's Company Law Practice (16th edition, Taxman Publications P. Ltd. 2011) 19

