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CRITICAL ANALYSIS OF DOCTRINE OF CORPORATE VEIL

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ABSTRACT

A firm is frequently described as a "person" in legal terms. A business is handled as though it were a unique species of human. It has been mandated to offer a variety of information, including meeting minutes, the number of directors, a summary of the purposes for which the company was founded, and others. It is a person, nevertheless, only in the eyes of the law. It must pass through a different level of inspection because it is a legal person rather than an actual person. This artificiality on the part of the business actually enhances its individuality. According to rumours, the company's personality differs from that of its promoters, directors, and other members. The practice of keeping a company's members separate from it in the eyes of the law is an exception to the lifting of the corporate veil. To hold the members personally accountable for any wrongdoing they perform in the company's name would mean rejecting the company's restricted liability. This is vital because powerful corporations have increasingly hurt many facets of society. This study will focus on businesses that commit severe environmental deterioration and where the courts have determined that punishing the subsidiary company alone is insufficient to undo the harm; those in charge of the business must also be held accountable.

The following paragraphs of this research paper will deal with the understanding and the analysis of the concepts separate legal entity and lifting of corporate veil with the help of instances.

INTRODUCTION

the Lifting of the corporate curtain principle only pertains to the corporate world, it is best for us to understand what a corporation is before learning about it. Actually, the word "company" is a translation of the Latin word "companies." If we split this word up, we get the words "com" and "panies," which both mean "bread." As a result, the word "companies" refers to a group of people who dine together. However, this was the traditional strategy, in which individuals gathered in groups solely for the sake of satisfying their stomachs. Today, a "business" is understood to be a group of people who collaborate for the goal of carrying out a commercial or industrial activity. The Companies Act of 2013's Section 2 (20) defines "Company" as a "company incorporated under this Act or under any earlier company law" in India. However, this is not an exhaustive list. The definition of a company according to Lord Justice Lindley is "an association of numerous persons who contribute money or money's worth to a common stock and employ it in some trade or activity, and who share the profit and loss ensuing therefrom." The claim that a company is thus an association or group of people working together to achieve legally recognized common aims with the motive of pursuing personal gain as opposed to public benefit may not be untrue. It must be understood that a corporation is merely a legal creation. Unlike humans, it is not a real person; rather, it is a fictional or juristic person. When authorized, it is legitimate to exist.

This is the fundamental tenet of company law and the primary justification for incorporation. A company must be incorporated in order to have a Separate Legal Personality and to be considered a legal entity, according to a ruling made by the British House of Lords in 1897. 1 However, in the years following industrialization, commercial decisions made by firms began to have an impact on society. The people responsible for the company's operation began abusing the privileges afforded to companies. Many created "shell" businesses where they were in charge of all the assets and properties but used the corporate identity of the business to conceal their illicit activities.

PIERCING OF CORPORATE VEIL

A company's corporate veil shields its liability from the liability of its shareholders. **Salomon v. Salomon case** is one of the most illuminating cases regarding a company's unique legal identity.
This served as the foundation for the veil doctrine.

FACT: Salomon created a corporation called "Salomon & Co. Ltd." in this instance, with himself, his wife, four sons, and one daughter as the seven subscribers. In addition to being a secured creditor, Salomon was a stockholder. There were other unsecured creditors. Later, after suffering losses, the business decides to close. The unsecured creditors asserted at the time of winding up that since Salomon was the owner of the company and was a secured creditor, they should receive payment before Salomon.

HELD: This case unequivocally demonstrated that a corporation has its own existence, and as a result, even though a shareholder essentially owns the entire share capital, he cannot be held accountable for the firm's actions.
The legal privilege of a company's independent legal entity must only be used for permissible reasons; nonetheless, there are drawbacks as well as benefits. In order to hold the members accountable for any fraudulent or dishonest use of the separate legal organization, the doctrine of lifting up or piercing of the corporate veil was established.

The individuals involved will not be permitted to hide behind the corporate personality if it is discovered that the members are abusing the statutory privilege. The principle or theory known as "lifting of or piercing the corporate veil" will be used by the court to pierce through the corporate veil. In situations where the company commits fraud, the court may mandate the lifting of the veil. Where the company is only represented on instruments, there is no physical presence. If the corporation has a negative reputation because of its ties to a hostile nation. if the name of the company conceals any illicit activity.

Evolution of the Concept

The doctrine emerged in 1897 from the Salomon Vs Salomon case and has been followed ever since. Since the Salomon decision, the courts have been faced with numerous situations in which they have been called upon to apply the principle of separate legal person in a variety of situations. Though not as a general rule, the courts were deviating from what had been

established in Salomon on various grounds whenever it seemed just to do so or when special circumstances demanded it. Thus, it leaves no room for doubt about the factum of identification and acknowledgement of the concept of 'lifting of corporate veil,' even though the recognition of a concept contrary to or anti-directional to the law as expounded by the House of Lords left room for various other contradictions and fogginess in the law.

Courts' explanations for adopting the theory of corporate veil lifting frequently resulted in problems. There have been numerous attempts to explain why courts may disregard the separate corporate entity when lifting the corporate veil. None of these, however, were particularly satisfying. Attempts have been made to categorize the various instances, such as when there is fraud, employment issues, impropriety issues, when the company is merely a sham or façade, or when a group of companies acts as a single economic entity, and in these cases, the courts may lift the veil to see what the realities are.

In 1990, Ottolenghi resorted to categorizing the various instances based on an approach that examined the trend of judicial intervention in such matters. Peeping occurs when the veil of incorporation is lifted to obtain member information. The veil had to be 'pierced' at times in order to disregard the concept of limited liability and impose liability on the members of the company. When a group of companies were to be treated as one legal entity, the term 'extending' was used, and 'ignorance' was used when a company was not recognized at all.

Alan and John trace the concept and examples of "lifting of the corporate veil" through three stages. Courts relied heavily on the Salomon ratio during the 'Classical Veil Lifting' (1897-1966). The House of Lords decision in Salomon dominated at the time, acting as a check on veil lifting. However, in order to address certain identified exceptional circumstances, the courts gradually began to lift the veil of incorporation. One of the earlier decisions in this regard was Daimler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd., in which the court lifted the veil to determine whether or not the company in question was a "enemy." Following Gilford Motor Co. Ltd. v. Horne, Re Bugle Press, and John v. Lipman decisions, façade and sham were identified as grounds for lifting the corporate veil. While the courts did lift the veil on occasion, it should be noted that this was not a common occurrence and was reserved for exceptional circumstances. The courts heavily relied on the Salomon decision and refused to abandon the principle of limited liability unless forced to do so by exigencies.

However, by the 1960s, the courts were increasingly demonstrating a desire to depart from old precedent, which they saw as increasingly unjust. This period (1966-1989), known as the 'Interventionist Years,' saw the highest rate of court intervention to treat companies' separate personalities as an initial negotiating position that could be overturned in the interests of justice. Courts frequently lifted or pierced the corporate veil, relying vehemently on the Littlewoods Mail Order Stores v. IRC decision, which established that the courts may do away with the Salomon rule to ensure justice and, as a result, look beyond the veil. It would not be incorrect to say that this created uncertainty regarding corporate personality law.

Adams v. Cape Industries Plc, decided by the Court of Appeal in 1990, finally put the matter to rest. It then debated the conflict between the classical and interventionist viewpoints, ultimately siding with the classical viewpoint. This 'Back to Basics' period (1989-present) reversed the classical view, holding that the Salomon rule cannot be ignored simply because it is required by justice. There may be well-established grounds for lifting the veil under statute or contract, or as identified by judicial interpretations; however, this cannot be regarded as a general rule. Furthermore, in *Woolfson v.* Strathclyde Regional Council, the court insisted that the rule be applied only in exceptional circumstances and where the motive is well established. As a result of Adams, courts' ability to lift the veil was significantly limited, whereas the Court of Appeal would lift the veil to achieve justice regardless of the legal efficacy of the corporate structure.

EXCEPTIONS

There are numerous exceptions to this rule, one of which is fraud, as explained in a landmark decision.

CASE : GILFORD MOTOR COMPANY LTD vs. MR. HORNE

So, whenever the court feels just and fair after considering the circumstances and facts of the case, and if it is satisfied that there was an act done by the directors or its shareholders, whoever may be according to the case, which falls under the purview of exception, it can hold the members of the company liable for the acts done, and they are treated as the same as a business entity and not separately, and in such cases, there is 'lifting of the corporate veil. 'It refers to a situation in which members of a company are held liable for the company's debts and other obligations despite the principle of separate legal entity and limited liability. This is applied by courts when shareholders or members engage in certain activities such as fraud, misrepresentation, trading with an enemy country, or tax evasion, so the answer to the above question is that there must be a lifting of the corporate veil because the directors have committed fraud. A jurist person is a company formed under the Companies Act of 2013, whether as a private or public limited company. Where the director or directors personally bind themselves, e.g. by signing personal guarantees, indemnities, etc.

THERE ARE TWO EXCEPTIONS

If a director induces a third party to act to his detriment by advancing a loan or money to the company on the third party proving such fraudulent misrepresentation, the director may be held personally liable to the third party for the tort of misrepresentation as well as inducing the third party to act to his detriment and part with money.
When it appears that fraud is or could be committed behind the corporate veil, the courts are more than willing to pierce it. The Salomon standard will not be used as a fraud engine by the courts. **Gilford Motor Company Ltd v. Horne and Jones v. Lipman** are two outstanding examples of the fraud exception .In the main case, Mr. Horne was a former employee of .

The Gilford Engine Company, and his business contract prohibited him from soliciting the company's clients. With a specific goal of crushing this, he formed a limited organization in his better half's name and solicited the organization's clients. The organization filed a complaint against him. The Court of Appeal determined that "the organization was shaped as a gadget, a stratagem, with the end goal of concealing Mr. Horne's viable carrying on of his business," and that "the primary reason for incorporating the new organization was to execute fraud.". Along these lines, the Court of appeal viewed it as a negligible sham to shroud his wrongdoings.
In the second case of **Jones v. Lipman**, a man contracted to offer his territory and then changed his mind in order to avoid an order of specific performance, and he transferred his property to an organization. In this case, the court determined that the organization was "a veil which (Mr. Lipman) holds before his face in order to maintain a strategic distance from recognition by the eye of equity." As a result, the court ordered specific performance against both Mr. Lipman and the organization.

CONCLUSION

The doctrine of "piercing the corporate veil," which is generally based on the facts and circumstances of each case, is not governed by any set rule. The seriousness of the issues at stake in each case is taken into consideration while making decisions.
In this way, it is abundantly clear that incorporation does not always and universally eliminate personal culpability. "Honest enterprise, by means of organizations, is allowed; but, people generally are protected against kiting and humbug." A separate entity's holiness is preserved only to the extent that it is consistent with the underlying ideas that give it life. However, the judiciary has developed a number of procedures and strategies over time to ensure that no one uses this protection to engage in immoral or corrupt actions. Different countries' legislatures have established appropriate penalties and sanctions for conducting various criminal acts in the company's name. It is true that the doctrine acts as a watchdog over businesses, barking at and biting anyone who tries to illegally enter the owner's property, even though it is still in its infancy.

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