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## DRACONIAN COMPANIES LAW IN INDIA

### ABSTRACT

The term "Company Law" can be described as a branch of law that governs corporations. The Companies Act of 1956 is India's most important piece of legislation governing businesses. Companies in our country have played, and continue to play, a significant part in our country's industrial and economic development. The Companies Act, 1956 has been revised from time to time to give more transparency in corporate governance and to protect the interests of small investors, depositors, and debenture holders, among other things, in response to the changing business environment.

As a result of deregulation and procedural simplicity of Company Law, corporate India has experienced enormous development and expansion since the reforms. As a result, India's Companies Act, 1956 is always one step ahead of other corporate and economic regulations when it comes to guaranteeing excellent corporate governance in the global economy.

This paper tries to show how this idea has challenged the jurisprudence while also enriching it. It also examines the circumstances in which raising the veil is justified for the sake of achieving justice's goals.

**Keywords:** Companies, Classification, Legislation, Regulate, Corporate Veil, Doctrine of Lifting of Corporate Veil, Separate Legal Personality, Solomon's Case

### INTRODUCTION

The term 'Company' has no technical or legal definition. <sup>1</sup>. The word '*Company*' is derived from the Latin words '*Com*', which means "together or together," and '*Pains*,' which means "bread." It originally referred to a group of people who shared their meals. A company is nothing more than a group of people who have come together or contributed money for a shared goal and have formed a separate legal entity in the shape of a company to achieve that goal.

In broad terms, a company is a legal entity that is founded and destroyed by the law. It is a group of people who have come together to form a company under legal supervision. The precise definition of a corporation differs per country. Companies, whether governmental or private, play a critical role in the economy. They are the methods by which a country develops and extends globally. Their performance is a key indicator of a country's economic health.

Lord Justice Lindley <sup>2</sup> has said the following about the term company "An association of numerous persons who contribute money or money's worth to a common stock and employ it

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<sup>1</sup> Buckley J in Stanley Re, (1906) 1 Ch 131,134

<sup>2</sup> He was a prolific author widely known for his work on Partnership and company.

in some trade or activity; and who share the profit and loss (as the case may be) coming therefrom," The money reflected by the common stock contributed represents the company's capital. Members are those who contribute to it or to whom it belongs. Each member's share is the amount of capital to which he is entitled.

According to the Companies Act of 1956, "Company" refers to a company that has been registered under this statute.<sup>3</sup> A company is a "legal person or 'legal entity' in common law, distinct from and capable of existing beyond the lifetimes of its members."<sup>4</sup>

## CLASSIFICATION OF COMPANIES

In order to respond effectively to the environment, the corporate structure might assume several forms. As a result, company law should recognise a variety of company classifications. The criteria for classification based on forms are clear, but they acknowledge that such classification will never be exhaustive.

**I. Basis of Mode of Incorporation,** Companies can be classified into three categories.

**Chartered Company:** Monarch grants a charter to a company, which is then established and governed by that charter. The charter that includes a chartered corporation defines its powers and type of operation. A chartered firm has extensive authority. It can manage its assets and enter into contracts in the same way that a regular person can. The Sovereign can revoke the latter and close the company if the company deviates from its business as stipulated by the Charter.

For example, the East India Company was established by the award of a Royal Charter. Currently, such companies do not exist in India.

**Statutory Company:** A corporation formed by a special act of the legislature and subject to the terms of such act. There is no memorandum or articles of association for such businesses. They are governed by the Acts that created them, and they have the same powers as corporations incorporated under the Companies Act. Legislative revisions can change the powers of such corporations.

These businesses are typically founded to satisfy societal needs rather than to make a profit.

For example, Statutory companies include the State Bank of India and the Industrial Finance Corporation of India.

**Registered Company:** A corporation formed by the filing of specified documents under the Companies Act of 1956. Only when a company is registered under the Act and a certificate of incorporation is issued by the Registrar of Companies does it become a legal entity. This is the most common method of forming a business.

On the basis of liability, registered corporations can be split into three groups.

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<sup>3</sup> Section 3(i) of Companies Act, 1956

<sup>4</sup> Salomon v. Salomon & Co., [1895-99] All ER Rep 33. See also, Graf Evans: what is a Company (1910) 26 LQR 259

**i) I Limited-Liability Corporations (LLCs):** The major feature that attracts investors to limited corporations is the limited liability of the shareholders. The liability does not change, but it is restricted to the unpaid value of the shares.

**ii) Limited-by-Guarantee Corporations:** These corporations may or may not have a share capital. If it has share capital, however, it is subject to the same restrictions on reductions as a company's capital restricted by shares. In the event of the company's liquidation, each member pledges to pay a predetermined sum of money stipulated in the Memorandum to cover the company's obligations and liabilities. 'Guarantee' refers to the sum he has pledged.

**iii) Unlimited Companies:** Section 12 allows the promoters to choose whether to incorporate a limited liability company or not.<sup>5</sup> An 'unlimited company' is one that has no limitations on its members' liabilities.<sup>6</sup> Limited liability is desirable, but it is not a requirement for incorporation. A share capital may or may not exist in an infinite company. It might be a public or private firm if it has a share capital. If the company has a share capital, the article must specify the amount of capital with which it will be registered. The number of members with whom an unlimited company must be registered must be specified in the articles of incorporation. Section 77 does not apply to an unlimited corporation.

The fundamental disadvantage of an unlimited corporation is that its members are liable for all of the business's trade debts without limit, just like partners in a firm. Nonetheless, creditors are unable to sue the members directly.

**II. On the basis of number of members** a company can be classified as:

**1. One-person company:** A corporation with only one member is known as a one-person company. It is a single-shareholder corporation with just the company's legal and financial responsibilities. A private limited company will be founded for the One Person Company.

When an OPC enters into a contract with the company's sole member who is also a director, the company should ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after the contract is entered into, and every such contract should be reported to the Registrar unless the contract is in writing.

**2. Private company :** A private company is one whose articles of association limit the number of members to fifty, excluding employees and ex-employees who were and are members; restricts the right of transfer of shares, if any; and prohibits any invitation to the public to subscribe for any of the company's shares or debentures.<sup>7</sup>

When two or more people own stock together, they are treated as if they are one individual. The minimum number of members required to start a private corporation is two, according to. The word "Pvt" must appear after a private company's name. When compared to public companies, private corporations represent a different set of connections in terms of ownership, risk, and profit.

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<sup>5</sup> Section 12 of Companies Act, 1956: Mode of forming incorporated company

<sup>6</sup> Section 12(c) of Companies Act, 1956

<sup>7</sup> Section 3(1) (iii) of Companies Act, 1956

Private companies can also be divided into two types: a) Pure private companies; and b) Private companies that are subsidiaries of non-private companies.

**3. Public companies:** A public company with a minimum paid-up capital of 5 lakh rupees or more, or a private business that is a subsidiary of a public company with a minimum paid-up capital of 5 lakh rupees or more.<sup>8</sup> A public company is defined as an association having at least seven members that is registered under the Companies Act and is not a private company under the Act's definition. A public company's shares and debentures may be listed on a Stock Exchange and sold to the general public.

In the event of a public firm, there are no restrictions on the transfer of shares. If a public company with a share capital has not issued a prospectus, it must file with the Registrar a statement in lieu of prospectus signed by all of the directors identified therein.<sup>9</sup> A public company cannot begin operations until the Registrar of Companies issues a certificate to do so in accordance with Section 149 of the Companies Act.

**III. On the basis of membership pattern and manner of access to capital, Public Companies can further be classified as:**

- 1. Listed Company:** If a company's shares may be traded on a stock exchange, it is called to be "listed," "quoted," or "have a listing." It must adhere to the exchange's listing standards, which may include the number of shares listed and a minimum earnings level. Following the change in the year 2000,<sup>10</sup> Every list company that makes an initial public offering of any security for a sum of rupees ten crores or more must do so exclusively in dematerialized form, in accordance with the Depositories Act, 1996. A listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, determine to be performed only by postal ballot, obtain any resolution passed by postal ballot rather than performing the business in the company's general meeting.<sup>11</sup>
- 2. Unlisted Company:** A publicly unlisted corporation is one that can raise capital from an unlimited number of shareholders for any commercial enterprise. Because their share capital structure makes it very easy to give their members financial gains, companies that are not publicly traded are more inclined to engage in profit-maximizing activities. Unlisted companies are usually too tiny to be listed on a stock exchange and do not advertise for investors. They are, nevertheless, larger than companies with a guarantee limit. Because they do not meet market capitalization standards, unlisted companies are relatively small and do not trade on an exchange. The Unlisted Public Firms Amendment Rules, 2011 were passed by the Indian government for preferred allotment in unlisted public companies.<sup>12</sup>

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<sup>8</sup> Section 3(1)(iv) of Companies Act, 1956

<sup>9</sup> Section 70 of Companies Act, 1956

<sup>10</sup> Insertion of Section 68 B in Companies Act, 1956

<sup>11</sup> Section 192 A of Companies Act, 1956: inserted by Companies (Amendment) Act, 2000 w.r.f 13-12-2000

<sup>12</sup> Unlisted Public Companies Amendment Rules, 2011 published in the Gazette of India, Extraordinary -PART I, SECTION-3, SUB SECTION (i) of dated the 14.12.2011)

**IV. On the basis of Control over the management,** Companies may be classified into:

**1. Holding Company:** If a firm has authority over another company, it is known as the holding company of that company. When a corporation has the power to control the composition of another firm's board of directors or owns a majority of its shares, it qualifies as a holding company. Even if one of the effects of disinvestment could have been the loss of position as a Holding company, a Holding Firm is not authorized to interfere in the disinvestment decision of a sub-subsidiary company.<sup>13</sup>.

A company can become a holding company of another company in one of three ways: A company can become a holding company of another company in one of three ways:

- a) By owning more than half of the normal value of the company's issued equity capital;
- b) By owning more than half of its voting rights; or
- c) By securing the right to appoint the majority of the other company's directors, either directly or indirectly.

**2. Subsidiary Company:** When the latter (called a holding company) exercises control over the former (called a subsidiary firm), the latter is referred to as a subsidiary. In two situations, a subsidiary company's separate identity may be lost to some extent. To begin, the Legislature may disregard legal procedures and order a group of firms to offer a joint picture. Second, the Court may decline to award a subsidiary corporation independent status based on the facts of the case.

**3. Associate Company:** Associate is used synonymously to describe a company whose parent only possesses a minority stake in the ownership of the company<sup>14</sup>.

**V. On the basis of Ownership of companies**

**a) Government Companies.** A Government Company is one in which the Central Government, State Governments, or Governments individually or together own not less than 51% of the paid-up capital.<sup>15</sup> A company that is a subsidiary of a government company is included. A government company's share capital may be entirely or partially owned by the government, but that does not make it an agency of the government.<sup>16</sup> Mahanagar Telephone Corporation Ltd., National Thermal Power Corporation Ltd., State Trading Corporation Ltd., Hydroelectric Power Corporation Ltd., Bharat Heavy Electricals Ltd., Hindustan Machine Tools Ltd., and others are examples of government corporations.

**b) Non-Government Companies.** Non-government corporations are all other businesses that aren't government-owned. They do not meet the above-mentioned qualities of a government corporation.

Non-government companies include Reliance Industries Limited, WIPRO Limited, and others.

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<sup>13</sup> BDA Breweries v. Cruickshonk & Co. Ltd, (1996) 85 Comp Cas 325 Bom.

<sup>14</sup> Id.

<sup>15</sup> Section 617 of the Companies Act, 1956

<sup>16</sup> Heavy Engineering Mazdoor Union v. State of Bihar, AIR 1970 SC 82; Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571: It was stated if there is an instrumentality of agency of the state which has assumed the garb of a Government Company, it does not follow that it thereby ceases to be an instrumentality of agency of the state.

## VI. On the basis of Nationality of the Company

**a) Indian Companies:** These businesses are incorporated in India and have a registered office there, according to the Companies Act of 1956. In such scenario, the members' nationality is irrelevant.

**b) Foreign Companies:** It refers to any firm formed outside of India that has a physical presence in India.<sup>17</sup> The Court has considered the amount of business that must be conducted in order to establish "a place of business" for the purpose of serving process within the jurisdiction.<sup>18</sup> In India, a corporation has an established place of business if it has a specific location where it conducts business, such as an office, a storehouse, or other premises with visible signs. Sections 592 to 602 of the Corporations Act, 1956 apply to foreign companies doing business in India.

Section 591 was reduced to Section 591(1) by the Companies (Amendment) Act of 1974, which also added a sub-section (2). The amendment has the effect of requiring a foreign corporation with a place of business in India to comply with such requirements of the Act as may be prescribed as if it were a company established in India if 51 percent of the paid-up share capital, whether preference or equity, is in Indian hands.

## VII. On the basis of size:

**Small companies :** A small company is defined as one that is not a public business and has a paid-up capital of not more than fifty lakh rupees or such greater amount as may be specified but not more than five crore rupees. Reduced financial reporting and audit standards, as well as simpler capital maintenance regimes, should apply to such businesses. Essentially, the small business regime should make it possible for them to attain transparency at a reasonable cost by simplifying regulations. Exemptions, unified in the form of a Schedule to the Act, could be used to apply such a framework to small businesses.<sup>19</sup>

**Other companies:** Other than small businesses, all other businesses are classified as other businesses. It makes little difference whether the companies in question are private or public, listed or unlisted, limited or unlimited, government or foreign.

## VIII. On the basis of business activities undertaken:

A company is a type of business organization in which individuals invest some of their own money. The Companies Act of 1956 divides businesses into private and public entities and establishes a regulatory framework based on that classification. However, as the economy grows and commercial operations become more complicated, the forms of corporate organizations continue to evolve. Companies can thus be classified in a variety of ways, and numerous classifications can be created.<sup>20</sup>

**1. Section 25 Companies:** Section 25 Companies are businesses established purely for the purpose of promoting art, commerce, science, literature, charity, religion, and other valuable goods. It must obtain a license from the central government that is recognized for this

<sup>17</sup> Section 591 (I) of Companies Act, 1956

<sup>18</sup> A.S. Dampskib 'Hercules' v. Grand Trunk Pacific Rly o. [1912] 1 KB 222.

<sup>19</sup> Clause 2(85) of Companies Bill, 2011

<sup>20</sup> Alok Patnia, "Section 25 Companies under Companies Act, 1956" available at <http://taxmantra.com/2012/05/section-25-companies-in-the-companies-act-1956/> accessed on 17<sup>th</sup> Nov, 2012

purpose. It must use its profits solely to promote its objectives and for other causes. It is not compelled to pay a dividend to its members from its profits. Section 25 corporations have the most stable and strongest organizational structure due to better laws.<sup>21</sup>

**2. Producer Companies:** The term "producer company" denotes that only specific types of people are allowed to hold such businesses. The members must all be 'primary producers,' which means they must be involved in or tied to primary product in some way. Primary Produce includes animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, beekeeping, and farming plantation products; produce of persons engaged in handloom, handicraft, and other cottage industries; and products arising from ancillary industries. A body corporate with the aims or activities listed in section 581B and registered as a Producer Company under the Companies Act, 1956 is referred to as a Producer Company.<sup>22</sup>

**3. Investment Companies** A corporation whose primary activity is the acquisition of shares, stock, debentures, or other securities is known as a broker-dealer. The Department of Company Affairs explained the position of an investment firm further, stating that whether a company is an investment company or not is an issue of fact that must be decided in respect to the company's actual operation. The phrase "whose primary business is the acquisition of shares" implies that the company in question is expected to keep the shares and other assets it has bought for a fair period of time. In essence, if the company's entire or virtually entire operation is related to shares, securities, stock, and debentures, it should be classified as an investment company.<sup>23</sup>

**4. FERA Companies:** The FERA Companies are the companies that operate in India under the Foreign Exchange Regulation Act of 1973. They are divided into three categories: Indian companies with no foreign interests or less than 40% foreign interest, Indian corporations with more than 40% non-resident interest, and foreign incorporated companies registered in India only for business purposes. Under Section 26 of the Foreign Exchange Regulation Act of 1973, the Central Government may place various restrictions on FERA Companies.<sup>24</sup>

**5. Chit Fund Companies:** A chit fund company is one that manages, conducts, or supervises chits in any capacity, as foremen, agents, or otherwise, as described in Section 2 of the Chit Funds Act, 1982. The main goal of the Chit Fund company is to carry on the business of conducting chits (auctions and other chits) daily, weekly, by-weekly, monthly, quarterly, and at such other intervals as the company may decide from time to time, and to lend money to the subscribers of the chits, either with or without security, on such terms and conditions as the company sees fit, and to guarantee the performance of the contract by any such person.<sup>25</sup>

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<sup>21</sup> Section 25 (1) (b) and 3 of Companies Act, 1956; also see *ADRBM Mandal v. Joint Charity Commr.*, (1973) 43 Comp Cas 361 Bom. Western UP Chamber of Commerce & Industry has been granted licence under this section.

<sup>22</sup> *Id.*

<sup>23</sup> Proviso to Section 372(10) of Companies Act, 1956

<sup>24</sup> Such companies were earlier known as "Foreign Controlled Companies".

<sup>25</sup> Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

**6. Non-Banking Finance Companies:** A non-banking financial firm is one that is incorporated and whose primary activity is to receive deposits under any scheme or arrangement or in any other form, or to lend in any manner.<sup>26</sup>

A 'non-banking financial company' is defined (in the RBI Act) as: (i) a financial institution that is a company; (ii) a non-banking institution that is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; (iii) any other non-banking institution or class of such institutions that the bank may, with the prior approval of the Central Government and by notification.

**7. Plantation Companies:** Plantation companies provide high-interest agro bonds and other deposit programs in exchange for the guarantee of producing and marketing plantation products. Plantation corporations have been operating in an unregulated environment for a long time. They raise funds for agriculture and associated activities.<sup>27</sup>

**8. Dormant Company:** A dormant company will benefit from a number of benefits, and they can apply to become a full-fledged firm at any time. Patents, trademarks, copyrights, designs, and other intellectual property can all be held by dormant companies. During a period when no accounting transactions are made, a firm is called dormant. When a company is formed and registered under the Act for the purpose of carrying out a future project or holding an asset or intellectual property but has no significant accounting transaction, the company, or an inactive company, may apply to the Registrar in the manner prescribed for obtaining dormant company status.<sup>28</sup>

**9. Nidhi Companies:** A company that has been incorporated as a Nidhi with the purpose of cultivating the habit of thrift and saving among its members, receiving deposits from and lending to its members only for their mutual benefit, and adhering to the rules set forth by the Central Government for the regulation of such a class of companies.

**10. Companies Regulated by Special Acts:** Companies governed by Special Acts, such as the Banking Companies Act, 1949; Insurance Companies governed by the Insurance Act, 1938; Electricity (Supply) Act, 1948; Food Corporation Act, 1964, etc., must be incorporated and registered under the Companies Act, and thus the provisions of the Companies Act, 1956, apply to them as if they were any other company, except to the extent that they are inconsistent with the Special Act that created them.

## CORPORATE VEIL

A corporate veil is an iron curtain that separates the company from its members, allowing the firm to rest in front of the curtain and the members to sit behind it. This intangible iron barrier prevents anyone from peeking behind the firm, so solidifying the idea that the members and the company are not one and the same.<sup>29</sup>

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<sup>26</sup> "Frequently Asked Questions on NBFCs" available at <http://www.rbi.org.in/scripts/FAQView.aspx?Id=71> accessed on 17th Nov,2012

<sup>27</sup> List of Plantation Companies are available at [http://www.mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Plantation\\_Companies.pdf](http://www.mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Plantation_Companies.pdf) Last updated on 16th Nov,2012

<sup>28</sup> Clause 455 of the Companies Bill 2011

<sup>29</sup> James Wibberley, & Michelle Di Gioia, *Lifting, Piercing and Sidestepping the Corporate Veil*, GUILDHALL CHAMBERS & GARDNER LEADER SOLICITORS, UK.

## **Lifting of the Corporate Veil: Meaning Decoded**

It claims that by lifting or piercing the aforementioned veil, one may see who is in charge of the company's management. That is to say, the company and its members are no longer recognised as different entities, which is a deviation from the normal rule that the company and its members are treated as separate entities, which was upheld in Solomon's case. By raising the iron curtain, the corporation and its members are forced to stand on the same footing when it comes to assuming responsibility. As a result, after the veil is removed, there is no discernible difference between them.<sup>30</sup>

## **FRAMEWORK OF LIFTING OF THE CORPORATE VEIL**

### ***Departure from the Principle of Separate Personality***

Simply lifting the corporate veil means ignoring the concept of a separate legal organisation. The notion of a separate legal entity is derived from the Solomon's case decision, which is still the law under business law. The court ruled that the corporation and its members should be treated as independent entities.

The law stipulates that at incorporation, the company is given a false legal identity that allows it to be sued in its own name and capacity.<sup>31</sup> wherein it was held that between the company and the shareholders i.e., the people behind the company there exist a veil of incorporation.<sup>32</sup>

In *Lee v. Lee's Air Farming Ltd.*,<sup>33</sup> the same concept was reaffirmed. In this decision, the court extended the separate personality principle, ruling that the firm should be treated separately from its employees. Furthermore, the court stated that they can have different capacities and must be treated as separate entities.

## **ISSUES BEFORE THE COURTS AND THE NEED OF LIFTING THE VEIL**

A corporation is considered an artificial person, or a juristic person, and a legal fiction. It exists in the eyes of the law, with its own set of rights and responsibilities. However, it also allows those behind it to engage in unlawful and inappropriate activities by utilising it as a ruse to achieve their incorrect goals without getting caught. It is also used to commit frauds with the goal of avoiding accountability that the perpetrators would not have had if they were acting in their individual capacity.

Thus, the doctrine of lifting the corporate veil witnessed the dawn of seeing the wrongdoers hiding behind the firm by shifting the iron curtain to punish those who misuse the law according to their convenience. Another argument to this effect is how reasonable it is to look outside the law and make decisions based on principles of equity and fairness when the law expressly states otherwise.

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<sup>30</sup> Harshit Saxena, *Lifting of the Corporate Veil*, SSRN (March 15, 2020), <http://dx.doi.org/10.2139/ssrn.1725433>.

<sup>31</sup> Kondoli Tea Co. Ltd., Re., ILR [1886].

<sup>32</sup> Shaneen Parikh, *LIC v. Escorts and Beyond – Lifting the Corporate Veil*, (March 15, 2020), INDIA CORPORATE LAW, A CYRIL AMARCHAND MANGALDAS BLOG,

<sup>33</sup> *Lee v. Lee's Air Farming Ltd.*, [1960] 3 All. ER 420 (PC).

Hence, in *Cotton Corporation of India Ltd. v. G.C. Odusumathd*<sup>34</sup> "Heaving of the corporate veil is not acceptable in law unless it is expressly provided by the Statute itself, or where the reasons are so impregnable that lifting of the corporate veil is a must in order to prevent a fraud or any kind of trading activities with an enemy company," the court concluded.

## INSTANCES WHEN THE CORPORAT VEIL CAN BE LIFTED

### A) UNDER STATUTORY PROVISIONS

The presumption under this heading is that culpability can be imposed on people if the statute clearly allows for director liability. Exempli gratia, the Companies Act of 2013 specifies circumstances in which the benefit of 'limited liability' cannot be used, and the company's members will be held personally accountable for their actions notwithstanding, and the concept of a 'separate entity' will not be recognised.<sup>35</sup>

*These instances are listed as follows-*

- 1. Misrepresentation in prospectus-** According to Sections 34 and 35 of the Companies Act of 2013, if there is any deception on the business's prospectus, the people who created the prospectus, not the company, would be held accountable. They will be accountable to anyone who has acquired or will buy shares based on a good faith belief that the information in the prospectus is accurate.<sup>36</sup>  
For example, if a company puts something on the prospectus and then subsequently does something else with the money, the directors and promoters will be held liable for the deception.
- 2. Failure to return application money-** Section 39 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 stipulates that if application money is not returned within a specified time, the money must be repaid within a specified time, which is a window of 15 days from the date of issue closure as specified in Rule 11 of the Companies (Prospectus and Allotment of Securities) Rules, 2014. In the event that no shares are available due to over-subscription, the entire money must be reimbursed. If some shares have been allocated, the remaining balance must be reimbursed. If the money is not repaid, the directors and other officers of the corporation may be held liable.<sup>37</sup>
- 3. Misdescription of name-** Section 12 of the Act states that if the business's name is misrepresented, the directors, officers, or any other company member who is complicit in the misrepresentation would be held personally accountable.

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<sup>34</sup> Cotton Corporation of India Ltd. v. G.C. Odusumathd, [1992] 22 SCL 228 (Kar.).

<sup>35</sup> Trisha & Devanshi Brahmhat, *The doctrine of Lifting the Corporate Veil and the Judicial Trend in Determining the Criminal liability of Corporations*, JOURNAL ON CONTEMPORARY ISSUES OF LAW , Volume 3, Issue 5, ISSN 2455-4782.

<sup>36</sup> Nikhil Singal and Aditya Bhattacharya, *Doctrine of Lifting of Corporate Veil Perspective in Taxation Cases*, (March 15, 2020), [https://www.lakshmisri.com/Uploads/MediaTypes/Documents/TOP\\_DISCUSSION\\_TAX\\_Direct%20Tax\\_Corporate\\_veil\\_nikhil.pdf](https://www.lakshmisri.com/Uploads/MediaTypes/Documents/TOP_DISCUSSION_TAX_Direct%20Tax_Corporate_veil_nikhil.pdf).

<sup>37</sup> E. L. Enyew, *The doctrine of piercing the corporate veil: Its legal and judicial recognition in Ethiopia*, MIZAN LAW REVIEW, Volume 6 No. 1, 2012.

For example, if 'A' is a limited liability business and the word 'Ltd' is not included, it will be considered as a public corporation, and the directors will be held culpable.<sup>38</sup>

4. **Non- failure of inspection-** Inspection, inquiry, and investigation are discussed in Chapter XIV of the Companies Act of 2013. Every company officer and director must applaud the examination and investigation of the company's offence. If you don't, you'll be held personally liable.
5. **Fraudulent conduct-** Section 339 states that if a firm is formed with the goal to defraud the public, the directors and promoters are accountable to the public.
6. **Under any other statutory provision-** If something needs to be done by a statute, failure to do so will result in the imposition of personal culpability. For example, if a check written in the company's name bounces, the company's directors are held accountable under the Negotiable Instruments Act of 1881.

## B) UNDER JUDICIAL INTERPRETATIONS

The court will consider whether the circumstances justify the lifting of the veil under this heading. Only when the uncovering of the corporate veil becomes required will a wrongdoer who is hiding behind the bogus corporate veil and reaping unfair benefits from the limited liability and distinct legal entity principles be punished.<sup>39</sup>

### Let us examine some circumstances when the corporate veil could be lifted-

1. **Protection of revenue-** Individuals behind the firm are held liable under this heading if illegal tactics are used to protect the company's earnings. In *Sir Dinshaw Maneckjee Petit, Re*<sup>40</sup> Sir Dinshaw, a wealthy, formed four corporations with the intention of avoiding taxes and invested the money in these companies. He was taking out a loan with this money and earning tax benefits on it because it was invested in the company. The court determined that this is a fair circumstance in which it is necessary to see who is behind the corporation, and that so removing the corporate veil is completely permissible in this situation in order to see the true transaction. As a result, the court lifted the veil, which is an exemption to the distinct personality principle, in order to discover the perpetrator.
2. **Prevention of fraud or improper conduct-** In *Gilford Motor Company v. Horne*<sup>41</sup> Horne set up a corporation in his wife's name in order to solicit business from Gilford Motors, with whom he had a contract prohibiting him from doing comparable work. Despite the fact that Horne had no shares and his wife was the sole shareholder, the court determined that he was the driving force behind the company. He was doing business under his wife's name, something he was not allowed to do otherwise. As a result, it was necessary to lift the curtain in order to see who was behind the company.

<sup>38</sup> *Hendon v. Adelman*, (1973) New Delhi LR.

<sup>39</sup> 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, ISSN 24554782, Volume 3 Issue 5.

<sup>40</sup> *Maneckjee Petit, Re*, AIR 1927, Bom. 371.

<sup>41</sup> *Gilford Motor Company v. Horne*, [1933] 1 CH 935.

Further, in *Jones v. Lipman*<sup>42</sup> the court allowed the corporate veil to be lifted in order to see why the company was formed in this way, treating the corporation and the person as one.

- 3. Determination of enemy character-** It is undeniable that a corporation is an artificial person, and as such, it cannot be viewed as either an enemy or a friend in its own right. However, it is occasionally critical to know who is in charge of a firm during a war to ensure the protection of one's country. As a result, lifting the iron curtain to discover who's behind the firm is justified during this moment.

In *Daimler Company Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.*

<sup>43</sup> Daimler was a corporation based in the United Kingdom, although its directors were all German citizens. Continental Tyre Co., as a British firm, sought to escape a deal with Daimler. The question here was whether or not a firm might be considered an adversary. According to the court, uncovering the corporate curtain is required to assess the corporation's nature, and only then can the minds behind the organisation be seen. Continental Tyre Co. may win the contract if it was discovered that the company's directors were German nationals after the court lifted the veil.

**Similarly**, there are many situations where the court can decide whether or not to lift the veil, such as when a company has incorporated subsidiary companies to act as their agents, cases involving economic offences, where a company is used to avoid welfare legislation, where the purpose of incorporating a company is found to be illegal, to punish for contempt of Court, where a company is a sham company, and so on, where the court can decide whether or not to lift the veil after a thorough investigation

## CONCLUSION

The company is a separate legal entity from the subscribers to the Memorandum, and while the business may be exactly the same after incorporation, with the same managers and profits going to the same hands, the company is not the agent or trustee for the subscribers. Subscribers as members are not accountable in any way, save to the extent and in the manner set forth in the Act.

However, as the economy grows and commercial operations become more complicated, the forms of corporate organizations continue to evolve. There is a need for the law to take into account the needs of various types of businesses and to establish universal rules to which all businesses can turn when establishing their corporate governance structure. Entrepreneurs' risk-taking endeavors are hampered by rigid institutions, superfluous restrictions, and laws. Private firms and small businesses that do not rely on public issues or deposits for their financial needs and instead rely on their own personal or in-house resources require flexibility and compliance at a cheap cost. Similarly, public firms that raise funds from the general public must adhere to a more stringent corporate governance code. The Company Law should ensure diverse classifications of corporations in order to provide a

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<sup>42</sup> Jones v. Lipman, [1962] 1 All. ER 442.

<sup>43</sup> Daimler Company Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd., [1916] 2 AC 307.

comprehensive framework for all types of corporate entities. It should also make it easier for businesses to transition from one category to the next.

Rather than attempting to regulate specific characteristics of each form, the law should endeavour to establish principles that allow for economic inter-action for the sake of wealth generation based on clear and broadly accepted principles.

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