



MEANING OF A COMPANY

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ABSTRACT

There is regularly discussing how an organization is a 'man' in eyes of law. An organization is dealt with as though it's its very own human kind. It is offered order to give different sorts of data, for example, minutes of gatherings, number of chiefs, rundown of items for what the organization is shaped and others. Be that as it may, it is a man in eyes of law as it were. It isn't a genuine individual however a juristic individual, and is under commitment to experience an alternate sort of examination. This phony of the organization is in truth an expansion to the identity of the organization. The organization's identity is said to be diverse to that of their chiefs, promoters and different individuals. Connection between identity of organization and identity of individuals is the additional assurance which the previous provides for the last mentioned. The organization's identity goes about as a window ornament to conceal the characteristics of its individuals, which is typically exploited to submit unlawful acts. Subsequently, this paper hopes to characterize, investigate and build up the different parts of the tenet of lifting the corporate shroud. The teaching is a device in hands of the Judiciary, that where this corporate identity perhaps overlooked with a specific end goal to locate the genuine guilty party and hold him at risk as opposed to holding the organization obligated.

1. INTRODUCTION

Industrial has revolution led to the emergence of large scale business organizations. These organizations require big investments and the risk involved is very high. Limited resources and unlimited liability of partners are two important limitations of partnerships of partnerships in undertaking big business. Joint Stock Company form of business organization has become extremely popular as it provides a solution to overcome the limitations of partnership business. The Multinational companies like Coca-Cola and, General Motors have their investors and customers spread throughout the world. The giant Indian Companies may include the names like Reliance, Talco Bajaj Auto, Infosys Technologies, Hindustan Lever Ltd., Ranbaxy Laboratories Ltd., and Larsen and Tubro etc.

Before learning about the principle of lifting the corporate veil, it is expedient for us to understand what a company is, as the principle applies only to the corporate world. The term 'company' is actually a derivative of Latin term 'compan is'. If we break this term, we get 'com' which means to 'together' and 'panis' which means 'bread'. Hence, the term company is means a number of persons who eat together. But this was the ancient approach, where people used to form groups, only for purpose of filling their bellies. Modern day recognizes 'company' as group of persons, working together for purpose of carrying out a commercial or industrial activity.

'Company' in India, is defined under Section 2 (20) of The Companies Act, 2013



(hereinafter referred as “The Act”), which defines it as, a “company incorporated under this Act or under any previous company law.” But this definition is not exhaustive. Lord Justice Lindley defines company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising there from.”

2. MEANING OF A COMPANY

The word company has its birthplace shape the old French military term *compaignie* which signifies "an assemblage of warriors". As it were company, is a lawful element made up of a relationship of individuals, be they regular, lawful, or a blend of both, for carrying on a business or mechanical venture. Organization individuals share a typical reason, and join so as to centre their different abilities and sort out there on the whole accessible aptitudes or assets to accomplish particular, announced objectives. Organizations take different structures, for example,

- voluntary affiliations, which may incorporate non-benefit associations
- business elements with a point of picking up a benefit
- financial elements and banks

An organization or relationship of people can be made at law as a lawful individual so the organization in itself can acknowledge constrained risk for common obligation and tax collection brought about as individuals perform (or neglect to release) their obligation inside the freely proclaimed "birth endorsement" or distributed approach. Company as lawful people may partner and enroll themselves on the whole as different

organizations – frequently known as a corporate gathering. At the point when an organization closes, it might require a "passing testament" to maintain a strategic distance from advance legitimate commitments.

According to *Section 3 (1) (i)* of the *Companies Act, 1956* defines a company as “a company formed and registered under this Act or an existing company”. Section 3(1) (ii) Of the act states that “an existing company means a company formed and registered under any of the previous companies laws”. This definition does not reveal the distinctive characteristics of a company. According to Chief Justice Marshall of USA

“A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation confers upon it either expressly or as incidental to its very existence”.

Lord Justice Lindley has also given the definition of a company which clearly define company as

“A company is an association of many persons who contribute money or money’s worth to a common stock and employs it in some trade or business, and who share the profit and loss (as the case may be) arising there from. The common stock contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer



them is often more or less restricted”.

3. HISTORY OF A COMPANY IN INDIA

The Company Legislation in India has nearly taken after the Company Legislation in England. The primary authoritative establishment for enrolment of Joint Stock Companies was passed in the year 1850 which depended on the English Companies Act, 1844. This Act perceived organizations as particular lawful elements however did not present the idea of restricted obligation. The idea of restricted risk, in India, was perceived out of the blue by the Companies Act, 1857 firmly following the English Companies Act, 1856 in such manner. The Act of 1857, nonetheless, kept the obligation of the individuals from keeping money organizations boundless. It was just in 1858 that the restricted obligation idea was reached out to managing an account organization too. From that point in 1866, the Companies Act, 1866 was passed for solidifying and altering the law identifying with consolidation, direction and ending up of exchanging organizations and different affiliations. This Act depended on the English Companies Act, 1862. The Act of 1866 was recast in 1882 to get the Indian Company Law similarity with the different alterations made to the English Companies Act of 1862. This Act proceeded till 1913 when it was supplanted by the Companies Act, 1913. The Act of 1913 had been passed following the English Companies Consolidation Act, 1908. It might be noticed that since the Indian Companies Acts intently took after the English Acts, the choices of the English Courts under the

English Company Law were likewise intently taken after by the Indian Courts. Till 1956, the business organizations in India were controlled by this Act of 1913. Certain corrections were, be that as it may, made in the years 1914, 1915, 1920, 1926, 1930 and 1932. The Act was widely corrected in 1936 on the lines of the English Companies Act, 1929. Minor changes were made various circumstances from that point.

Toward the finish of 1950, the Government of autonomous India selected a Committee under the Chairmanship of H.C. Bhaba to go into the whole inquiry of the update of the Indian Companies Act, with specific reference to its bearing on the improvement of Indian exchange and industry. This Committee inspected an expansive number of observers in various piece of the nation and presented its report in March 1952. Construct to a great extent with respect to the proposals of the Company Law Committee, a Bill to establish the present enactment, specifically, the Companies Act, 1956 was presented in Parliament. This Act, by and by to a great extent took after the English Companies Act, 1948. The real changes that the Indian Companies Act, 1956 presented well beyond the Act of 1913 identified with:

- (a) The advancement and arrangement of organizations;
- (b) Capital structure of organizations;
- (c) Company gatherings and methodology;
- (d) The introduction of organization accounts, their review, and the forces and obligations of examiners;
- (e) the examination and examination of the issues of the organization;



- (f) The constitution of Board of Directors and the forces and obligations of Directors, Managing Directors and Managers,
 (g) The organization of Company Law.

The Companies Act 1956 has been amended several times since then. The major amendments were introduced in the years 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1974, 1977, 1985, 1988 and 1991.

Indian Law gives two major sorts of relationship for such affiliations: association and companions'. Notwithstanding the way that the word association is casually associated with both, the Statute perspectives associations and companions law as specific from affiliations and affiliation law. Association law in India is orchestrated in the Partnership Act, 1932 and relies upon the law of office, every accessory transforming into an administrator of the others and it, thusly, bears a proper structure for a relationship of a little collection of individuals having trust and trust in each other. A more jumbled kind of relationship, with an extensive and fluctuating cooperation, requires a more itemized affiliation which ideally should exhibit corporate character on the association, that is, should see that it constitutes an unmistakable genuine individual; subject to legitimate commitments and fit the bill for legal rights disengage from those of its people. This can be gotten easily and monetarily by enrolling a relationship as an association under the Companies Act, 1956.¹

4. CHARACTERISTIC FEATURE OF A COMPANY

The most important characteristic feature of a company is “separate legal entity” of a company and in most cases it is “limited liability” of members of the company. The other features of a company are discusses below:

1. INCORPORATED ASSOCIATION:

A company is created when it is registered under the Companies Act. It comes into being from the date mentioned in the certificate of incorporation. It may be noted in this connection that Section 11 provides that an association of more than ten persons carrying on business in banking or an association or more than twenty persons carrying on any other type of business must be registered under the Companies Act and is deemed to be an illegal association, if it is not so registered.

For forming a public company at least seven persons and for a private company at least two persons are required. These persons will subscribe their names to the Memorandum of association and also comply with other legal requirements of the Act in respect of registration to form and incorporate a company, with or without limited liability [Sec 12 (1)]

2. ARTIFICIAL PERSON:

The company, though a juristic person, does not possess the body of natural being. It exists only in contemplation of law. Being an artificial person, it has to depend upon natural persons, namely, the directors, officers, shareholders, etc., forgetting its various works done. However, these individuals only represent the company and accordingly whatever they do within the scope of the authority conferred upon them



and in the name and on behalf of the company, they bind the company and not themselves.

3. SEPARATE LEGAL ENTITY:

A company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members. Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and nor for the personal benefit of the shareholders. On the same grounds, a member cannot claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up. At the same time the members of the company can enter into contracts with the company in the same manner as any other individual can. Separate legal entity of the company is also recognized by the Income Tax Act. Where a company is required to pay Income tax on its profits and when these profits are distributed to shareholders in the form of dividend, the shareholders have to pay income-tax on their dividend of income. This proves that a company that a company and its shareholders are two separate entities.

This principal was explained in the famous case *SALOMON v. SALOMON & CO.LTD.* The facts of the case were:

Mr. Saloman, the owner of a very prosperous shoe business, sold his business for the sum of \$ 39,000 to Saloman and Co. Ltd. which consisted of Saloman himself,

his wife, his daughter and his four sons. The purchase consideration was paid by the company by allotment of & 20,000 shares and \$ 10,000 debentures and the balance in cash to Mr. Saloman. The debentures carried a floating charge on the assets of the company. One share of \$ 1 each was subscribed by the remaining six members of his family. Saloman and his two sons became the directors of this company. Saloman was the managing Director.

After a short duration, the company went into liquidation. At that time the statement of affairs was like this: Assets: \$ 6000, liabilities: Saloman as debenture holder \$ 10,000 and unsecured creditors \$ 7,000. Thus its assets were running short of its liabilities by \$11,000.

The unsecured creditors claimed a priority over the debenture holder on the ground that company and Saloman was one and the same person. But the House of Lords held that the existence of a company is quite independent and distinct from its members and that the assets of the company must be utilized in payment of the debentures first in priority to unsecured creditors.

Saloman's case established beyond doubt that in law a registered company is an entity distinct from its members, even if the person hold all the shares in the company. There is no difference in principle between a company consisting of only two shareholders and a company consisting of two hundred members. In each case the company is a separate legal entity.

4. PERPETUAL EXISTENCE:



A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholder or director. Law creates it and law alone can dissolve it. Members may come and go but the company can go on forever. “During the war all the member of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed”. The company may be compared with a flowing river where the water keeps on changing continuously; still the identity of the river remains the same. Thus, a company has a perpetual existence, irrespective of changes in its membership.

5. COMMON SEAL:

A Company being an artificial person is not bestowed with a body of a natural being. Therefore, it does not have a mind or limbs of human being. It has to work through the agency of human beings, namely, the directors and other officers and employees of a company. But, it can be held bound by only those documents which bear its signature. Common seal is the official signature of a company.¹

6. LIMITED LIABILITY:

A company may be company limited by shares or a company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares. For example, if the face value of a share in a company is Rs. 10 and a member has already paid Rs. 7 per share, he can be called upon to pay not more than Rs. 3 per share during the lifetime of the company. In a company limited by guarantee the liability of members is limited to such amount as the member may

undertake to contribute to the assets of the company in the event of its being wound up.

7. TRANSFERABLE SHARES:

In a public company the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the article. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restriction on the right of members to transfer the shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in the case of private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition.

In order to make the right to transfer shares more effective, the shareholder can apply to the Central Government in case of refusal by the company to register a transfer of shares.

5. LIFTING THE CORPORATE VEIL

Puncturing the cover is corporate law's most generally utilized principle to choose when an investor or investors will be held at risk for commitments of the organization. It keeps on being a standout amongst the most prosecuted and most talked about tenets in all of corporate law. In spite of the fact that there is close unanimity among the pundits that the present standards neither guide great basic leadership nor deliver reliable or solid outcomes, and there are numerous recommendations for change or cancelation of the present law, one sees minimal discernable development for the situation law toward a superior approach.



Puncturing the shroud law exists as a beware of the rule that, by and large, financial specialist investors ought not be held at risk for the obligations of their company past the estimation of their venture. The cutting edge basis for giving individual financial specialists restricted obligation underlines taking out three kinds of exchange costs. In the first place are the expenses of individual investors or lenders checking the riches position of different investors, second, the expenses and different complexities of every investor or loan boss observing the dangers of administration activities? ¹ Third, restricted investor obligation makes it less expensive and less demanding for investors to broaden their ventures. The consequence of restricting these exchanges costs is that constrained risk both empowers speculation and encourages the operation of values markets. Moreover, Hansman and Kraakman have powerfully contended that restricted risk is a piece of a more extensive wonder of benefit apportioning which serves critical social premiums by ensuring lenders that business resources will likewise be shielded from financial specialists' loan bosses ¹. Notwithstanding, another accord is developing in the analysis that constrained risk may well not be legitimized in tort cases and, in spite of the fact that with less unanimity, additionally when the case depends on statutory obligations as opposed to precedent-based law commitments.

While conventional corporate law has not explained diverse guidelines for a parent organization in its part as an investor than for singular speculator investors, parent organizations in reality exhibit distinctive strategy issues and their constrained risk ought to be dictated by an alternate

examination. The center thought is that a parent organization as an investor in its auxiliary organizations is in a significant distinctive financial part and performs a significant diverse administration work than singular speculator investors, incorporating open investors in the parent organization itself. A parent organization makes, works and breaks up auxiliaries essentially as a major aspect of a business procedure in quest for the business objectives of the bigger undertaking, which the parent and every one of the backups are seeking after together. The parent isn't a free speculator. Whatever the corporate customs picked, the parent regularly has genuine control over the operations and choices of the auxiliary and the degree to which the parent practices that control depends on business system for the endeavour as opposed to significant division of the lawfully autonomous corporate substances. The different organizations in the corporate gathering are truly sections that all in all direct the incorporated venture under the coordination of the parent. Inside corporate gatherings, a large number of the contemporary monetary productivity avocations for constrained obligation don't have any significant bearing, and neither should the principles for applying that risk or deciding its external limit.

A choice by corporate law to permit investors constrained obligation is a choice to permit them, as financial specialists, to apportion a portion of the dangers of working together to outsiders. Puncturing the cloak rules are one of the customary ways that courts have directed that hazard distribution choice.



6. GROUND S UNDER WHICH THE VEIL IS LIFTED

The corporate veil is said to be lifted when the court ignores the company and concerns itself directly with the members or the managers. “It is impossible to ascertain the factors which operate to break down the corporate insulation.”¹ The matter is largely in the discretion of the courts and will depend upon “the underlying social, economic and moral factors as they operate in and through the corporation.”¹ It can be said “that adherence to the Solomon principle will not be doggedly followed where this would cause an unjust result”.¹ But the following grounds have become well-established for lifting of the veil of a corporate entity.

➤ **FRAUD:**

The courts have been more that prepared to pierce the corporate veil when it feels that fraud is or could be perpetrated behind the veil. The courts will not allow the Solomon principal to be used as an engine of fraud. The two classic cases of the fraud exception are *Gilford Motor Company Ltd v. Horne*²⁴ and *Jones v. Lipman*.¹

In the first case, Mr. Horne was an ex-employee of The Gilford motor company and his employment contract provided that he could not solicit the customers of the company. In order to defeat this he incorporated a limited company in his wife's name and solicited the customers of the company. The company brought an action against him. The Court of appeal was of the view that "the company was formed as a device, a stratagem, in order to mask the effective carrying on of business of Mr. Horne. “In this case it was clear that the

main purpose of incorporating the new company was to perpetrate fraud.” Thus the court of appeal regarded it as a mere sham to cloak his wrongdoings.

In the second case of *Jones v. Lipman* a man contracted to sell his land and thereafter changed his mind in order to avoid an order of specific performance he transferred his property to a company. Russel J specifically referred to the judgments in *Gilford v. Horne* and held that the company here was "a mask which (Mr. Lipman) holds before his face in an attempt to avoid recognition by the eye of equity" he awarded specific performance both against Mr. Lipman and the company. Under no circumstances will the court allow the any form of abuse of the corporate form and when such abuse occurs the courts will step in. The three aspects of fraud, which needs to be looked at before the corporate veil can be, lifted which are:

A) What are the motives of the fraudulent person relevant?

Regardless of whether some level of misdirection is essential should be resolved. On account of *Hilton v. Plustile Ltd.* the offended party and the litigant consented to utilize a medium of an organization in a tenure game plan keeping in mind the end goal to sidestep the use of the Rent Act, 1977. The court of Appeal held that the offended party was not qualified for lift the cloak since he had full information of the issue consistently. However another intriguing inquiry that emerges is the thing that the impact of duplicity on the other party is. The issue came up for exchange on account of *Adams v. Cape Industries Plc*¹. In considering whether the corporate shape has been utilized as a part of such a path as to



legitimize the lifting of the corporate shroud, the court expressed that the right test in connection to gatherings of organizations was whether the organization had been utilized as a "minor exterior hiding the verifiable certainties" applying this test Slade J. said that the "thought processes of the culprit might be exceptionally material" in both the great cases goal to delude the offended party was especially present anyway it was not so in *Adams v. Cape Industries*¹. So the indicate that requirements be resolved is whether thought process is fundamental for the extortion exclusion to exist. However to find any solution it is likewise critical to discover the idea of lawful right that is being denied to the offended party.

B) Is the character of the legal obligation being evaded relevant?

What the court needs is to keep restricted organizations from utilizing the corporate frame to dodge an authoritative or legitimate commitment. Be that as it may one needs to address whether the idea of this commitment will influence the capacity of the court to lift the corporate cover. In the great cases the litigants tried to keep away from the lawful commitments that existed before their fuse, the fundamental rationale of joining was to maintain a strategic distance from the execution of the lawful commitment. In *Adams v. Cape* there was some discourse about the need to enable the cover to be lifted keeping in mind the end goal to anticipate Cape maintaining a strategic distance from attention as to its contribution in the offer of asbestos to America and to keep Cape from having any common-sense advantage of the gathering's asbestos exchange the states without the chaperon

dangers of convoluted risk. However the convoluted risk was absolutely theoretical. For the misrepresentation exemption to exist the litigant must deny the offended party some previous legitimate right. On the off chance that no lawful right is existent the aim on part of the litigant to delude the offended party must be theoretical and consequently less significant in nature.

On the off chance that the legitimate right solidifies before the consolidation of the organization then the psychological component is fulfilled if however the turn around then inquiry emerges if whether in such conditions the psychological component can be fulfilled. An appropriate response to this is if the legitimate right solidifies after the joining however before the utilization of the corporate shape to avoid the lawful right, the misrepresentation special case ought to be fulfilled.

C) Is the timing of the incorporation of the device company relevant?

In *Creasey v. Breachwood Motors Limited*¹, the explanation behind the disappointment of the extortion special case was the planning of fuse of the sham organization. Here Mr. Creasey brought an activity against wrongful rejection against his managers BW. BW served a protection however after four months he was served a notice saying that the organization was indebted. BM assumed control over all the business with the exception of the offended party's claim. The offended party got a request for harms and intrigue however before he got anything. BW was disintegrated without going into liquidation. The offended party looked for a request substituting BM for BW on the grounds of equity. For this situation the realities may



seem to be like Adams v. Cape Industries however Richard Southwell sitting as recognized Judge alluded to Gilford v. Horne and Jones v. Lipman on the premise that in those cases the sham organizations are had been framed with the view to do the misrepresentation. In the present case the gadget organization BM was at that point in business and minding individually business. This an exceptionally dubious case and ought to have been settled based on the great cases as it ought not make any difference whether gadget organizations were made to maintain a strategic distance from the lawful commitment or whether they were in presence. Creasey ought to have been generally chosen perhaps on the grounds of equity.

➤ GROUP ENTERPRISES

Some of the time on account of gathering of undertakings the Solomon vital may not be clung to and the court may lift the shroud so as to take a gander at the financial substances of the gathering itself. On account of D.H.N. Nourishment items Ltd. v. Tower Hamlets London Borough Council¹ it has been said that the courts may slight Solomon's case at whatever point it is simply and fair to do as such. In the previously mentioned case the court of claim felt that the present situation where it was one reasonable for lifting the corporate cloak. Here the three auxiliary organizations were dealt with as a piece of the same financial substance or gathering and were qualified for pay.

Ruler Denning has commented that we realize that in numerous regards a gathering of organizations are dealt with together with the end goal of records, monetary record,

and benefit and misfortune accounts. Gower too in his book says, "There is proof of a general propensity to overlook the different lawful gathering". However whether the court will puncture the corporate cloak relies upon the certainties of the case. The idea of shareholding and control would be markers whether the court would puncture the corporate shroud. On account of Woolfsan¹ the place of rulers held that there was "no premise consonant with the guideline whereupon on the certainties of this case the corporate cloak can be punctured to the impact of holding Woolfsan to be the genuine proprietor of Campbell's business or the benefits of Solfred, "the two backup organizations that were mutually guaranteeing remuneration for the estimation of the land and unsettling influence of business. The House of Lords in the previously mentioned case had commented "legitimately connected the rule that it is proper to pierce the corporate cloak just where unique conditions exist showing that it is a negligible façade covering the verified actualities" In the metaphorical sense exterior indicates outward appearance particularly one that is false or misleading and imports falsification and disguise. That the corporator has finish control of the organization isn't sufficient to constitute the organization as a minor veneer rather that term recommends in the setting the think camouflage of the personality and exercises of the corporator. The different legitimate identity of the organization, despite the fact that a "specialized point" is regardless of frame it involves substance and reality and the corporator should not, on each event, to be mitigated of the disadvantageous results of a course of action deliberately went into by the corporator for reasons considered by



the incorporator to be of favorable position to him. Specifically "the gathering endeavor" idea should clearly be deliberately constrained with the goal that organizations who look for the upsides of independent corporate identity should for the most part acknowledge the relating weights and constraints.

At times the corporate cover has not been lifted prime cases of that are Adams v. Cape Industries. This was a body of evidence including a remote judgment against an organization. The court for this situation held that each organization in the gathering is a different substance. Be that as it may one region where the courts have been especially hesitant to perceive the idea of gathering substance is with connection with corporate obligations. Despite the fact that it isn't conceivable to without organization or trust to hold one gathering obligated for the obligations of another in America impartial precepts are connected and in New Zealand and Ireland there are statutory arrangements for pooling of benefits.

➤ AGENCY

On account of Solomon v. Solomon Justice Vaughan Williams communicated that the organization was only a specialist of Solomon. "That this business was Mr. Solomon's business and nobody else's; that he utilized as specialist a restricted organization; that he will undoubtedly repay that operator the organization and that this specialist, the organization has lien on the advantages... .." However on claim to the place of masters it was held that an organization did not consequently turn into an operator of the investor regardless of whether it was a one man organization and alternate investors were fakers.

An organization having energy to go about as an operator may do as such as a specialist for its parent organization or in fact for all or any of the individual individuals on the off chance that it or they approve it to do as such. On the off chance that so the parent organization or the individuals will be bound by the demonstrations of its specialist insofar as those demonstrations are inside genuine or clear extent of the expert. Be that as it may, there is no assumption of any such relationship without an express understanding between the gatherings it will be hard to build up one. In Cape case endeavor to do as such fizzled. In situations where the office understanding holds great and the gatherings concerned have explicitly consented to such an assention them the corporate shroud should be lifted and the vital might be subject for the demonstrations of the operator.

TRUST
The courts may penetrate the corporate cover to take a gander at the attributes of the investors. On account of Abbey and Planning the court lifted the corporate cover. For this situation a school was run like an organization yet the offers were held by trustees on instructive altruistic trusts. They penetrated the cloak with a specific end goal to investigate the terms on which the trustee held the offers.

➤ TORT

Usually the English courts have not lifted the veil on the ground of tort it is a phenomenon not witnessed in most common law jurisdictions apart from Canada.

➤ ENEMY CHARACTER



In times of war the court is prepared to lift the corporate veil and determine the nature of shareholding as it did in the Daimler case¹ where german shareholders held the shares of an English company during the time of World War I.

➤ TAX

On occasion charge enactments warrant the lifting of the corporate cloak. The courts are set up to ignore the different legitimate identity of organizations if there should be an occurrence of tax avoidances or liberal plans of expense shirking with no essential authoritative expert.

7. COMPANY VERSUS BODY CORPORATE

Body Corporate means a relationship of people which has been joined under some statute having never-ending progression, a typical seal and having a legitimate substance unique in relation to the individuals constituting it. Sub-area (7) of segment 2 of the Companies Act characterizes the articulation body corporate as takes after: 'Body corporate or partnership' incorporates an organization joined outside India however does exclude

- (a) A company sole;
- (b) A co-agent society enlisted under any law identifying with co-agent social orders;
- (c) Any other body corporate not being an organization which the Central Government may, by warning in the Official Gazette, indicate in this benefit.

It will additionally incorporate all open budgetary establishments specified in area 4A and in addition the nationalized banks joined under segment 3, sub segment (4) of

the Banking Companies (Acquisition and Transfer of Undertakings) Act.

It might be noticed that under proviso (c) of sub-segment (7) of area 2, the Central Government has maintained whatever authority is needed to proclaim any relationship of people as a body corporate. As needs be, Oil and Natural Gas Commission (ONGC) was announced as a body corporate.

In this way, the word 'body corporate' isn't identical to the words 'joined organization'. A fused organization is a body corporate however numerous bodies corporate are not joined organizations. *Madras Central Urban Bank Ltd. V. Partnership of Madras*¹ The articulation 'organization' or 'body corporate' is, along these lines, more extensive than the word 'organization'.

Is a Society enrolled under the Societies Registration Act, a body corporate? A general public enlisted under the Societies Registration Act has been held by the Supreme Court in *Board of Trustees Ayurvedic and Unani Tibia College, Delhi V. Territory of Delhi*¹ not to draw near the term 'body corporate' under this Act, however such a general public is a lawful individual equipped for holding property and turning into an individual from an organization. Comparative view had been held by the Department of Company Law organization in its correspondence No. 8/26/2(7)/63/PR dated thirteenth June, 1962 routed to Federation of Indian Chambers of Commerce. The Department saw as takes after:



As a rule, this Department would think about that as a body which has been or is joined under some statute and which has an interminable progression and a typical seal and is a lawful element separated from the individuals constituting it, will come surprisingly close to the term 'body corporate'. The term won't, be that as it may, incorporate a general public enrolled under the Societies Registration Act, 1860, or any of the bodies which have been particularly avoided by conditions (a), (b) or (c) of Section 2, sub-segment (7).

An examination from the above qualities of the organization viz, Legal element particular from its individuals, isolate property, manufactured individual, restricted obligation, isolate property, transferability of offers, never-ending progression and basic seal unmistakably demonstrates that organization has a different legitimate element not the same as its proprietors and the same is overseen by an arrangement of individuals who are not proprietors. It is this partition of proprietorship and control that offer importance to the part of Directors. The way that directors of an organization are not proprietors offered ascend to potential outcomes where such supervisors might be either thoughtless with other individuals' cash or mishandle power and position and data to advance their own closures at cost of organization or investors. To offset such inclinations idea of free executives appeared.

The Board of Directors of any organization is thought to be the foremost expert for an organization's administration, the structure and synthesis of the board would essentially affect the way in which the organization is represented. Among the different auxiliary

changes that have happened lately to enhance the manner by which organizations are administered, the presentation of the idea of a free chief possesses a conspicuous position. The ascent of autonomous executives in a model of company where scattered possession overwhelms is ordinarily comprehended to address administration investors office issue. —An dynamic and free directorate working for investors unmistakably would appear to profit the partnership by diminishing the misfortunes from misled 'office' characteristic in the division of proprietorship from control that is essential to the cutting edge organization¹.

Two models have been overwhelming the corporate administration on the planet One, untouchable model where organizations are dispersedly held, ordinarily found in US, the stress is that the administration of the firm might have the capacity to confiscate resources of the investors or carry on in an artful or non-esteem boosting way. Second, 'insider' show where organizations have a controlling investor, the key corporate law concern is that the controlling investor may have harming inclinations to the minority investors. For example, fakes like Enron and WorldCom where the administration and fakes like Parmalat and Satyam where the controller endeavored to distort money related execution or conceal confiscation. Laxity of evaluators and autonomous chiefs were observed to be factors in every one of these cases. Therefore, strikingly even where corporate administration models contrast, corporate cheats have shown a type of meeting standards.

8. PROCLAMATION OF PROBLEM



Indeed, even today, a greater part of Indian organizations, including organizations recorded on the stock trades, has a gathered proprietorship in the hands of privately-owned company gatherings. Now and again even where the controlling family may have just unobtrusive possession control, organizations in India remain family-oversaw and promoted. In the occasions of corporate fakes, for example, Satyam, it isn't just open investors yet in addition partners, for example, representatives, leasers, clients, industry in general that endures. A critical inquiry in Indian setting is with respect to organization issue between minority-greater part investor and that between the organization and partners other than investors. That autonomous executive's holds answer for these office issues particularly in Indian model of shut possession is a fundamental inquiry.

9. POINTS AND GOAL OF STUDY

In the midst of cases being made that autonomous executives, a transplanted idea, fundamentally intended to take care of first level of office issue i.e. the administration investor clashing intrigued, this investigation means to interpret how far this idea can resolve other related office issues. With regards to controlled or promoter-overwhelmed firms in India, this examination look to investigate what parts free chiefs play at such firms where office issues offer very complex circumstance of minority v. dominant part and friends v. partners. Advance in occasion of corporate fakes, for example, Satyam, how far autonomous chiefs and their usefulness can turn away such failures in future or if nothing else raise alert for speculators what's more, and controllers.

10. HYPOTHESIS

This investigation depends on the speculation that answers for the minority-larger part office issue too that between the organization and partners lies with free executives. The degree and elements of autonomous executives in the Board of Directors can be successfully extended in the statutory and administrative system to address the issues of minority investors against controlling investors as well as for alternate partners.

11. EXTENSION AND LIMITATION OF STUDY

The extent of this examination is to completely look at and comprehend the hypothetical and recorded foundation of the idea of autonomous chiefs and contextualize the same in the Indian situation where insider model of administration commands the corporate scene. The extent of research in this way reaches out to the nation of source United States and to some degree United Kingdom. In the process a few critical arrangements in pertinent statues, for example, Sarbanes Oxley and board reports have been considered. Likewise say that the legal reaction to autonomous executives particularly the one of Delaware Court has been investigated in more noteworthy points of interest. This is essentially because of the reason that Delaware Corporate law and the state itself is thought to be among the most dynamic and very powerful locales so far as organization law in US is concerned. The reception of this idea in India is to a great extent directed through a few board of trustees reports and suggestions and along these lines an investigation of the same is



made. Examinations have been drawn between the recent Company Act 1956 which has been supplanted with the Company Act 2013 while this investigation was all the while going on. Imperatively, Clause 49 of Listing Agreement of the Securities Exchange Board of India i.e., SEBI finds visit reference.

While there has been enormous measure of writing and exact research for the estimation of free chiefs, a similar inquiry is thought to be out of degree for this examination. So also the distinction between ideas of nonexecutive executives, outside chiefs has not been managed at more prominent length.

12. RESEARCH METHODOLOGY

This research embraces a doctrinal strategy and alluded to a few books, diaries, panel reports, Ministry sites, legal choices and so on. Promote a similar, chronicled, and basic and scientific method of investigation has been received.

