LIFITNG THE CORPORATE VEIL: A HISTORICAL AND JURISPRUDENTIAL ANALYSIS

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ABSTRACT
This paper primarily deals with the doctrine of corporate veil, and the circumstances within which it can be lifter or pierced. The paper also briefly discusses the development of the company law, and how this doctrine came into being in the first place in the English Law. Furthermore, it also discusses how the courts arrived at the conclusion that this veil ought not to be permanent in nature, and instead, must be scrutinised by law in order to determine whether such a principle is being wrongfully exploited. It discusses the evolution of this principle from the sixteenth century till the present day. Additionally, it focuses on landmark judgments and their impact on the decisions, principles and framework in today's company law. It also maps the development of this principle, its jurisprudence and critique across several nations to analyse its overall impact.

KEYWORDS: Corporate veil, lifting, precedents, company law, impact.

1. INTRODUCTION

One of the most essential principles of company law - "The Principle of Separate Legal Personality", has been developed over centuries to create a distinction between a person or a group of people, and the company that they are a part of. The process of forming it is called "incorporation", which grants it the identity of its own. This is a feature unique to this business model. Therefore, in the eyes of law, a company is separate from its members (in India, any company incorporated under the Companies Act 2013, or any other preceding act of such nature, is a company).[1] It incurs separate liabilities, assets, profits etc. Therefore, it is like an individual with a separate identity of its own in the eyes of law, but not a 'natural person'. Therefore the law recognises the fact that it cannot commit crimes as it has no *mensrea* neither can it commit torts, vote, hold a public office etc. which only a natural person born in this world can.[2]

The principle of a corporation being a separate legal entity was legally established in the case of *Salomon v. Salomon & Co Ltd.*[3] wherein the House of Lords overturned the decision of the Court of Appeal, stating that the company had been duly incorporated, and thus, Mr. Solomon was distinct from his company, even though he was the majority shareholder of the company, the other shareholders were his family members. Despite observing this fact, the House of Lords held that the company's identity was separate from that of Mr. Solomon, and thus, he could not be treated as though he was equivalent to the company, and could not be held liable to the creditors. Thus, the court, in its reasoning, introduced

[1] Companies Act 2013, No. 18, Acts of Parliament, 2013 (India).
[2] George F. Deiser, *Juristic Person*, 57 U. Pa. L. Rev. 300, 314 (1908).
[3] UKHL 1, AC 22.

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the concept of a 'corporate veil', or a distinction that separates the identity of a company from its shareholders, and Lord Halsbury stated that the company should be treated like an independent person with rights and liabilities. Therefore, this set a precedent for all the cases to come after 1897.[4]

However, this judgment received a lot of criticism for reasons that shall be discussed later in this paper. Nonetheless, it created a debate of whether a corporate body which had no mind of its own, and was merely a mechanism to execute the will of its owners/promoters/shareholders, could be exempted from the actions of such aforementioned persons, or vice versa. This debate has evoked an argument of whether a company with a separate legal personality could be equated with its owners. The "fraud exception" in which such a veil can be lifted or "pierced", has been deliberated upon. However, it's a tightrope walk that has been a point of deliberation and conflict for several jurists, as observed in on of *Creasey v. Breachwood Motors Ltd*.[5] where the veil was lifted because it was presumed that it would be necessary to lift the veil, but caused a conflict in the opinion of several jurists as to whether justice had been delivered or not.[6]

The notion of the veil is abstract, and is therefore highly volatile, subject to its use.To understand whether the veil is to be pierced, it is essential to understand the reason behind the formation of the corporation itself. There have been several case laws, which discuss whether such a distinction between a person and his corporation, the natural and the legal or artificial person, exists in the first place. To understand the logic behind the institution of this principle, it is essential to understand its history.

2. HISTORY OF THE CONCEPT OF A CORPORATE VEIL

To understand the distinction between a company and its shareholders, it is essential to understand the difference between a 'natural' person and an 'artificial' person, and ***why the need to incorporate an artificial person and recognize it by law existed in the first place.***

2.1. ORIGIN OF AN ARTIFICIAL PERSON

The corporate origins have been traced back to primitive and ancient times. Often, 'ties' were used to refer to bonds that formed between human beings. This included blood relations majorly. However, over time, such relationships came to be equated with bonds formed not because of consanguinity, but because of mutual associations. Primitive persons were occasionally allowed into kinship associations. Other bonds of different sorts led to the formation of bonds outside of kins, leading to the formation of artificially connected groups. Although Henry Maine, in his book- "*Ancient Law*"[7] perceived these corporate groups to be congruent to kinships, the juristic personalities we call

[4] Jane Bourne, *Lifting the Corporate Veil*, 10 JUTA'S BUS. L. 114, 116 (2002).
[5] [1993] B.C.L.C. 48.
[6] Jennifer Payne, *Lifting the Corporate Veil: A Reassessment of the Fraud Exception*, 56 CAMBRIDGE L.J., 284, 284-290(1997).
[7] Stephen Utz, *Maine's Ancient Law and Legal Theory*, 16 CONN. L. REV. 821(1984).

"companies" today, are far from that juristic perception.

These bonds grew slowly and eventually, and acquired a professional aspect to them. It evolved from more basic forms of associations, like partnerships, to joint stock companies. Companies were perhaps first formulated in their identifiable form in Italy before the 14th Century, by people who aimed at defraying the requisite expenses for conquering Greek islands. The holders of 100 lire shares were provided *dominium utile*, or absolute dominion or ownership. From Italy, this system spread to France, England, and Netherlands, after which it spread through trade routes and colonization.[8]

2.2. IDENTITY AS A SEPARATE LEGAL PERSONALITY

Until 6th century, the term "person" only denoted a man, or a natural person. However, after that, it became associated with any entity which had acquired any rights or liabilities. Thereafter, as law identified "natural" as well as "artificial" persons, both of which had rights and duties, widening the definition of "person" or "personality" with respect to legal connotations. In simple terms, it is the identity of a formal organization as a whole, metaphorically analogised with a natural person.

Salmond has presented his observation, stating that law, in creating a legal entity, always personifies something real. Therefore, the attributes contained by an artificial person are often associated with the real rights and duties vested in beings, as attributed by law. [9] Therefore, corporations came to be identified as artificial persons with a separate legal personality. This concept became conventional through its *Anglican* adaptation, which had primarily been borrowed from the Romans. It developed over a period and recognised that-

(i) Corporations and its members are separate entities.
(ii) Their properties were separate from each other; and
(iii) Neither of the properties were sizeable for the repayment of the debt of the other.

It developed primarily from trade and craft guilds that were recognized by charters from town authorities as corporations. The identity of such guilds as "separate legal personalities" came to be recognised as consisting of the following rights that became their identity by virtue of the Royal Charter of 1567-[10]

(i) A body corporate
(ii) Politic in perpetuity
(iii) Empowered to plead and implead
(iv) Hold/receive/dispose lands, hereditaments etc.

Therefore, these guilds were created as per a framework that eventually led to the formation of the modern corporations. In the aforementioned characteristics it is clearly observed that firstly, the guild had a power to initiate proceedings in its own name; secondly, to exist in perpetuity

[8] Charles Sumner Lobingier, *Natural History of the Private Artificial Person: A Comparative Study in Corporate Origins*, 13 TUL. L. REV. 41, 69 (1938-1939).

[9] Bryant Smith, *Legal Personality*, 37 YALE L.J., 283, 283-299(1928).

[10] *Supra* note 7.

irrespective of its members' life-span, unlike business models like a partnership, which is renewed every time a member dies/leaves; and lastly, it could hold resources in its own name, differing from what its members owned.

The identity of a body corporate is separated from its members by the virtue of the very fact that it differs in terms of its "life-span", its lack of self-reasoning capacity, but most importantly, due to its affiliation of ownership with multiple people. Therefore, its personality is not congruous to its members. *But how can an inanimate entity have any rights?*

Salmond and Gray have offered their jurisprudential analysis with respect to the same. According to Salmond, anything that can have its interests hindered upon by the acts of others, has a right. Similarly, anything that can act in a manner which may affect the interests of others, has a duty.[11] Clearly, corporations fall within the ambit of this definition. Gray, on the other hand, correlates any "interest", "duty" or "action" with *legal attribution*, without which a right cannot exist.[12] Once these rights, such as to sue and be sued, have a will and a name, capacity to contract and employ personnel etc. is acquired, by virtue of the ascribed interests, it can be deemed to be a legal personality, as stated by Justice Brown in *Tucker v. Alexandroff.*[13] Despite being an abstract entity, it thus assumes a separate legal identity of its own.

3. IMPLICATIONS OF A SEPARATE LEGAL IDENTITY

The principle of a company being a separate legal entity is one of the most essential principles of company law, and is perhaps one of the oldest principles as well. *But what are the implications of this principle being in place?* To understand that, what exactly is implied by this is a subject matter that must be dealt with in detail.

In simple terms, it embodies the rights and duties of a natural person in a manner that allows collective membership and ownership. Firstly, it provides the companies with the right to freedom of speech and expression, as provided under *Art. 10* of the *European Convention on Human Rights*.[14] However, a company cannot defame a person, as it does not express for itself, and any such expression or speech comes from its members. Therefore, a member of the company can be sued for defamation, but not the company itself. However, a company can sue for defamation, including criminal defamation in India.[15] However, the question of the statements made to and by the representatives of the company still pose a conflicting ground. In such cases, if the statements are made with respect to the organisation, it has the right to seek damages

[11] SIR J. W. SALMOND, SALMOND ON JURISPRUDENCE (1957).
[12] 2 GRAY, THE NATURE AND SOURCES OF THE LAW (1921).
[13] 183 U.S. 424 (1902).

[14] European Convention on Human Rights art. 10, Nov. 4 1950, 213 U.N.T.S 221.
[15] PriyaParameshwaran Pillai v. Union of India and Ors., WP(C) 774/2015 (India).

on behalf of the entire corporation.[16] A joint stock company also has the right to sue for defamation, even if the person defaming them is their shareholder, who has published an article alleging mismanagement, and impropriety in carrying out affairs, which consequentially led to the fall in its share prices.[17] Additionally, in India, Section 499 of the Indian Penal Code, in its explanation states that making false imputations against a company or an association *does* amount to defamation.[18] However, since a company does not have a *mensrea* of itself, it cannot defame someone, and any such statement made is deemed to be made in an individual capacity.[19] Each shareholder gets one vote per share. Therefore, multiple owners have multiple interests, and thus, they cannot be held accountable individually for the acts of one or a specific few.

Furthermore, another distinction arises between the rights and duties of a company and its members. Its revenues, assets, liabilities, taxes, etc. shall be distinct from its owners. The company may choose to distribute dividends from its profits or reserves, but the profits shall not be attributed to a person.[20] The liability of the shareholders is limited up to the value of investment in that particular company, or, if they have guaranteed a sum in case a liability arises, their liability would extend to that sum. In such a case, the floating charge cannot extend to the personal assets of such shareholders, such as the case may be in partnerships and sole proprietorship, wherein the liability is unlimited.[21]

The identity of a company cannot be associated with one person, as it exists in perpetuity. It remains in existence until it is officially wound up, or the purpose for which it was incorporated is fulfilled. New shareholders acquire the shares and the rights of the transferor. Therefore, its shares and organisational positions keep getting transferred. Thus, the members may change, but the company stays in perpetuity.

Therefore, the identity of the company in its entirety becomes different from its shareholders, and even promotes and directors. Although the *hoi polloi* might associate the company with its chairman or CEO, in the eyes of the law, there is a distinction, a corporate veil drawn between them which results in all the aforementioned distinctions.

4. LIFTING THE CORPORATE VEIL

We have discussed how the rights and liabilities, and the legal identity of a company is distinct from that of its members. We have also discussed how a company has no *mensrea* of its own, and

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[16] Fiona Patfield, *The Origins of a Company's Right to Sue for Defamation*, 45 N. IR. LEGAL Q. 233, 251 (1994).

[17] Metropolitan Saloon Omnibus Co. Ltd. *v.* Hawkins, (1859) 4 H&N 87.

[18] Indian Penal Code, 1859, No. 45, Acts of Parliament, 1859.

[19] KalpnathRai *v.* State, AIR 1998 SC 201; Zee Telefilms Limited *v.* Sahara India Commercial Corporation Limited, (2001) 1 CALLT 262 HC; Iridium India Telecom Ltd. *v.* Motorola Inc., (2011) 1 SCC 74.

[20] Daniel P. Dwyer, *Rights of Shareholders, Limited Partners and Non-Managing Limited Liability Company Members in Corporate Governance Disputes*, 84 PA. B. ASS'N Q. 48 (2013).

[21] Paddy Ireland, *Limited liability, shareholder rights and the problem of corporate irresponsibility*, 34 CAMBRIDGE JOURNAL OF ECONOMICS, 837, 838-841(2010).

thus is operating on the will of the persons exercising actions and making decisions and statements in its name. Therefore, the acts of the members become the acts of the company. Occasionally, this forces the courts to 'lift' or 'pierce' the veil in order to hold the persons accountable, although it may *prima facie* appear to be an act of the company. This equating of rights and duties of a company with the rights and duties of its members, is known as lifting or piercing the corporate veil.

The question arises, *when should the corporate veil be lifted?* This has been an interesting, albeit controversial question of law that has been answered differently through various case laws and juristic publications across the world. Some were so against the haphazard applications and interpretations of the Solomon case, that they advocated the principle itself to be abrogated through legislation. Professor Kahn-Freund was one of such proponents, who called the Solomon case "calamitous".[22] Therefore, it was felt that there needed to be specific criteria in case a veil was needed to be lifted, to introduce some objectivity to the principle, instead of its arbitrary application.

The objective was to formulate a method with which justice can be promoted and frauds which use the corporate veil as a shield, can be curbed. Some universal grounds that can be evoked to lift the corporate veil are as follows-

(a) <u>Fraud/inappropriate conduct</u>-

This ground can be evoked if it is shown that the veil is merely being used to prevent a fraud from being exposed, and is deceiving the people that the company is dealing with, causing grave injustice to them and skirting laws in the name of a separate legal identity. In *Jones v. Lipman*[23] a man entered a contract to transfer his property, but later, upon changing his mind transferred it to a company. Here, the court held that Mr.Lipman was merely using the veil to avoid the performance of said contract, and could not use the corporate veil to evade his responsibility.

(b) <u>Enemy Character</u>-

In cases where a country as at war with another, it is in the best interests of the companies and the nation to not enter into business-relations with corporations from the other nation in question. For instance, in *Daimler Co.Ltd V. Mainland Tire And Rubber Co. Ltd*[24]a company in UK with a German shareholding majority, was held as an enemy organisation in World War I due to the nationality of the persons holding the shares and the control of the corporation. This was because the persons in authority, and a majority of the shareholders were German, and since Britain was at war with Germany, the House of Lords, upon overruling the decision made by the Court of Appeal, held that the character and actions of the company were susceptible to acquire an enemy character.

(c) <u>Intention behind formation of a company</u>-

[22] Otto Kahn-Freund, *Some Reflections on Company Law Reform*, 7 MOD. L. REV. 54, 54–55 (1944).

[23] [1939]4 All ER 116.

[24] [1916] 2 AC 307.

The courts can analyse the intention with which the company was formed in the first place. If it was sincerely to conduct business, and from observing its business, it appears that it did engage in genuine transactions and carrying out regular activities, the doctrine of corporate veil remains in place. But if it engages in suspicious behaviour catering to the ulterior motives of its directors or shareholders, the court can hold them accountable for their actions by lifting the veil.

5. DEVELOPMENT THROUGH CASES

While the US law has remained consistent, mostly, with regards to this question, the rest of the common law countries, especially in the UK, the principle of lifting or piercing the veil has met with starkly contrasting opinions and judgments.[25]

5.1. Common law cases

It began with the Salomon case, in 1897,[26] after which, some criticised it thoroughly, while others stood in its support. But this principle could not withstand the staunch stance of the House of Lords with respect to separating the identities of the company and its members. House of Lords remained true to its verdict in the Solomon case. However, eventually, there was a wave of cases wherein the courts lifted the corporate veil. Most of these cases were decided in the first half of the 20th century, and dealt with companies with multiple shareholders. They included *Rainham Chemical Works, Ltd. v. Belvedere Fish Guano Co.,*[27] *Apthorpe v. Peter Schoenhofen Brewing,*[28] *Gilford Motor v. Horne,*[29] etc. It was a period of experimentation that lasted till the Second World War, and failed to provide any specific grounds for the application of the principle in the future.

In 1939, the *Smith Stone & Knight Ltd v. Birmingham Corporation*[30] case introduced six factors to be taken into account by a court in order to determine if the corporate veil should be lifted or not. In this case, a subsidiary company operated on a land owned by the parent company. Birmingham Corporation issued a compulsory purchase order for the land, and all companies which owned a part of the land would be compensated for it. Birmingham Corporation argued that the subsidiary couldn't claim compensation as it did not own the land. But the court held that the subsidiary was an agent of the parent company, and therefore, was entitled to be compensated. This company-agency theory was thus validated by law. The principles laid down were as follows-

(i) The subsidiary's profits must be treated like the profits of the parent company;
(ii) The persons operating the subsidiary company must be appointed by the parent company;
(iii) There must be no transfer of ownership to the subsidiary company;
(iv) The holding company must have the authority and decision making power, especially with regards to the company's capital;

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[25] Thomas K. Cheng, *The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines*, 34 B.C. INT'L & COMP. L. REV., 329, 330-343(2011).
[26] *Supra*, note 2.
[27] [1921] 2 A.C. 465 (H.L.).
[28] [1899] 15 T.L.R. 245.
[29] [1933] Ch. at 943.
[30] *Supra* note 22.

(v) The holding company's direction, management and skill must be the reason behind the profits; and

(vi) The holding company must be in effective and perpetual control.

However, these principles weren't essentially used as benchmarks of decision making as observed in *Jones v. Lipman*[31]and *In re FG (Films) Ltd.*[32]In a slightly different scenario in *Creasey v. Breachwood Motors Ltd.*[33]an ex-employee sought justice for his wrongful termination, and decided to sue Breachwood Welwyn Ltd. To avoid this claim, the manager, Creasey transferred the assets of this company to a new company called Breachwood Motors Ltd. The old company was wound up, and the claimant impleaded the substitution of the newly formed company. The court held that since the new company was formed with the intent to avoid the suit, it could be substituted and be made a party to the suit. However, only a dishonest act is not a ground for lifting the veil. As held in*Dadourian Group v. Simms*,[34] a contracting company's controller and co-owner misrepresented himself as an intermediary. Hence, although they were held liable for deceit, it was held that mere fraudulent activity is not a justification of piercing the veil.

Post World War II, this principle was used frequently, and the courts often used it, keeping in mind the Solomon judgement, but also peeling off the mask to hold the perpetrators responsible depending on the facts and circumstances of each case.[35] This era of flexibility is often termed to be the Golden Era of the English corporate veil doctrine. Thereafter, judges have judiciously incorporated this doctrine, and have continued to do so up until the present times.For instance, in *Beckett Investment Management Group v. Hall*[36]and in*Stone & Rolls v. Moore Stephens* the sole shareholder and director of a company defrauded huge sums of money from banks as a part of a fraudulent scheme, after which, when being liquidated, charges were brought against him for professional negligence. The question was whether the culpable intentions could be attributed to the company as well, considering there was only one shareholder. The House of Lords held that the veil needed to be lifted, as the person used the company for his fraudulent schemes, and could not make any claims against the auditors.[37]

There have been several more substantial developments in the recent times.In the case of *Ben Hashem v. Al Sharif*[38], the following six principles were laid down so as to determine when the veil was to be lifted-

(i) Ownership or control of a company weren't grounds to lift the veil.

(ii) The veil can only be pierced in case of impropriety.

(iii) This impropriety must be with respect to the usage of the company to avoid or conceal liability.

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[31][1962] 1 WLR 832.

[32][1953] 1 WLR 483.

[33] [1992] BCC 638.

[34] [2006] EWHC 2973.

[35] Lord Denning in *Littlewoods Mail Order Stores* v. *Inland Revenue Commissioners*, [1969] 1 W.L.R. 1241.

[36] [2007] EWCA (Civ) 613.

[37] [2009] UKHL 39.

[38] [2009] 1 FLR 115.

(iv) To pierce the veil, the company must be controlled by the wrongdoers, and the impropriety must be the usage of the company to conceal their wrongdoing.

(v) Even if the original intent of forming the company was not fraudulent, if the transactions or acts in question were done with an unlawful purpose, it is a ground for lifting the veil.

(vi) The court cannot lift the veil merely because it believes it to be in the interest of justice, even in the absence of third party interests in the company.

There is a far more judicious interpretation of this principle in the modern juristic sphere, including several judgements that have established strong precedents for the future jurists to rely on, because of which the decisions are comparatively less contentious, and prevent any schemes attempting to defraud the institution of a company.

5.2.Indian case laws

Indian courts too have developed this principle in their own way over the decades where company law has flourished. In *Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors* [39] the Supreme Court held that a company has a separate legal identity, and is equal to a natural person (except for a few cases). It acknowledged the principle that differentiated between a company and its shareholders, and that the shareholders were only liable up to the amount they'd invested in the company, or the amount guaranteed by them.

In *Life Insurance Corporation of India v. Escorts Limited and Ors.*[40] The Supreme Court laid down two grounds of lifting of the corporate veil-

(i) If there is a judicial ground available.

(ii) Wherein a statutory provision provides for it.

Judicial grounds are the aforementioned common grounds used internationally to lift the veil. Some of the statutory grounds unique to India are-

(a) <u>Failure to refund application money as per Section 39 of The Indian Companies Act, 2013</u>-

If the company fails to refund the application money within 30 days from the date of the issue of the prospectus, they are bound to reimburse it jointly and severally. Such refund must legally occur either within 30 days or any other period of time specified by the Securities and Exchange Board.[41]

(b) <u>Misrepresentation in the prospectus issued as per Section 34 and 35 of The Indian Companies Act, 2013</u>–

In case the prospectus issued contains any statements which may lead the society to believe something that is untrue, such misrepresentation would lead to every person who authorised the issuance of such a prospectus in addition to all the directors and promoters being personally liable to all the persons who subscribed the shares believing the statements to be true.[42]

[39] AIR 1965 SC 40.

[40] (1986) 1 SCC 264.

[41] Companies Act 2013, No. 18, Acts of Parliament, 2013 (India).

[42] *Supra* note 37.

(c) Liability for fraudulent conduct as per Section 339 of The Indian Companies Act, 2013–
As per this provision, if it is found while winding up the company, that it had been a part of any fraudulent schemes targeted at defrauding the creditors, or any other people, the liquidator may submit an application to the tribunal with regards to informing it of such acts and initiating legal action against them. Thereafter, the tribunal may inquire the director, manager, promoter or the liquidator, and upon procuring sufficient information, may direct such a person to repay or restore the sum or property due, with any interest amount that it may deem reasonable and necessary.[43]

(d) Incorrect usage of the company's name
A company's name is approved under Section 4 and printed under section 12 of the Companies Act. If a company's representative signs on behalf of the company, furnishing incorrect particulars, then he or she will be held liable personally.[44]

(e) Reduction in number of members as under Section 3Aof The Indian Companies Act, 2013–
In case the number of members of a company is reduced, and the total number of members falls below the requisite number (7 in case of a public company, and 2 in case of a private company) every person who remains a member after such a reduction and carries out business for more than half a year, they shall be jointly and severally liable to pay the whole of the company's debts at the time.[45]

Indian case laws with respect to parent and agent companies include *State of UP v. Renusagar Power Company*[46]wherein the Supreme Court lifted the corporate veil and held that Hindalco being the parent company was entitled to the Power Plant of Renusagar. In *LIC of India v. Escorts Ltd.*[47]the court held that the veil should be lifted when the parent and the agent company are intrinsically connected.
Some of the recent cases include *Kapila Hingorani v. State Of Bihar*[48] which held that the corporate veil that created a distinction between a corporation and the shareholders could be lifted, if it was found that it was "*opposed to justice, convenience and interest of the revenue or workman or against public interest*". In fact, the doctrine of corporate veil developed much more after the Bhopal Gas tragedy, and has been growing ever since. The courts have also adopted new methods to unearth the exploitation of the corporate veil, by way of tax assessment. In the case of *Vodafone International Holdings B.V. v. Union of India* [49] the company challenged the show cause notice by the revenue authorities. The notice was with respect to the indirect transfer of 67% of the shares of Hutchinson-Essar upon the purchase of 100% of the shares of another offshore company. This transaction required a capital gain tax of ₹12,000 croresto be paid. However, all the

[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] AIR 1988 SC 1737.
[47] AIR 1986 SC 1370.
[48] 2003 Supp(1) SCR 175.
[49] (2012) 6 SCC 613.

companies involved were incorporated abroad, and thus, Vodafone argued that the Indian Revenue Authorities had no jurisdiction over the transactions. However, Hutchinson-Essar is an Indian entity, and the aspect of multiple parties being involved was brushed aside, which is why such an elaborate and large-scale lifting of the veil took place. Bombay High Court upheld the lifting of the veil on the grounds that the transfer of shares of an Indian entity to a company incorporated abroad, amounted to a transfer of controlling stake. But the Supreme Court overturned the judgement and ruled in favour of the company. It held that it was a common practice for foreign investors to enter India through foreign holding companies, which is a lawful practice recognised by securities, corporate as well as tax laws. This judgement was a huge relief to the foreign entities investing in Indian markets. However, a careful balance must be established to ensure that this precedent is not used as a shield by corporations to protect themselves from reasonable scrutiny and even legal action.

The principle that the corporate veil could be lifted by the adjudicating authorities to determine culpability was established earlier in1988, in *Santanu Ray v. Union of India*[50]wherein the court lifted the veil to hold a director of the company liable for the violation of Section 11(a) of the Central Excises Act, 1944, [51] and for evasion of the excise duty by fraud, concealment or willful misrepresentation of facts. Therefore, it was laid down by the court that in order to lift the veil, it must be determine whether the company was acting as an agent of the managerial personnel or shareholders of the company to indulge in an illegal act.

With these judgements, the Indian judiciary explicated that with the privileges of being a member of a company, there is a corporate responsibility on them. Any of the impugned acts of the company must not be to a disadvantage of the creditors, shareholders, or any other third parties. At the same time, it is to be ensured that there is no excessive judicial intervention to the disadvantage of an independent market.

6. CONCLUSION

Company law isn't as new a field of jurisprudence as is wrongfully perceived by many. Centuries of developments, and deliberations upon doctrines have led to the world we know today. The concept of corporate veil is intricate and difficult to adjudicate upon. Even with precedents dating back to the nineteenth century, their conflicting nature, and almost contradictory rationale poses a difficult terrain to tread upon.

This is an ever expansive doctrine which cannot be confined to one jurisdiction, or a few cases.However, with years of juristic analysis and precedents mounting through various countries, the aforesaid principle has garnered its intended, if not perfected application. It is requisite for the doctrine to leave room for judicial discretion, without which its rigidity would stifle both justice and commerce. From trade guilds, to fishing and shipping associations concentrated in England, the concept has crossed oceans and bounds of restrictive

[50] 1988 (38) E.L.T. 264.

[51]Central Excises Act, 1944, No. 1, Acts of Parliament, 1944.

interpretation. The Salomon case, irrespective of its fading importance, can never permanently be erased from the legal archives. It still has a strong influence on judgements and academia. However, the world has come past the judgement, and has mended the loopholes in their own manner. The Indian statutory provisions go a step ahead and legislate a few more grounds based on which the interests of stakeholders and shareholders can be protected, and the institution of companies and their sanctity can be protected.

This brings us to a new era of company law, that is the flag bearer of ethical business-making in the globalised world today, wherein we not only share our products and investments, but our legal jurisprudence and precedents as well.

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