



LIFTING THE CORPORATE VEIL CORPORATE CRIMINAL LIABILITY

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Abstract

The concept of corporate criminal liability has gained a socio-economic relevance in today's world, as governments over the world increasingly turn to companies to boost their GDPs. Along with the increasingly free rein given to companies comes an increased responsibility towards the society that is a major stakeholder in their business, and consequently increased liability on the company in cases of breach. The question then arises before the courts: how should a company be punished for criminal acts?

This paper seeks to answer this question by first explaining a company's special status in law, then comparing the concepts of lifting the corporate veil and corporate criminal liability while giving a brief idea of the legal development of each, and then examining how judges have dealt with this dichotomy. It then goes on to propose the concept of joint liability as a measure of punishment that would effect punishment upon the company as well as its members.

I. Introduction

A company as a juristic person receives most of the rights of a natural person: Indian law recognises a "person"¹ to mean a company as well. Hence, logically, it must be made to receive the same punishment as a natural person when it commits an act that

would make a natural person criminally liable. However, the caveat is the word "most" used above: a juristic person cannot practically be given the exact punishment as a natural person for certain offences, and hence the imposition of criminal liability upon offender companies becomes an area of law with much controversy.

II. Company as a Legal Entity

It all began in 1897 in the landmark case of *Salomon v. Salomon & Co.*², in which the House of Lords held that because they were two separate legal entities, the debts of the corporation were not the debts of Mr. Salomon himself. The court held that once the juristic person has been created, "*it must be treated like any other independent person with its rights and liabilities appropriate to itself.*" Lord Macnaghten explained,

"The company is at law a different person altogether from the subscribers to the memorandum, and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them."

The House of Lords used the same principle in *Macaura v. Northern Assurance Co. Ltd.*³ and held that the required insurable interest lay with only the company, as the

¹ Section 11, Indian Penal Code, 1860.

² *Salomon v. Salomon & Co. Ltd.*, (1897) A.C. 22.

³ *Macaura v. Northern Assurance Co. Ltd.*, (1925) A.C. 619.



legal owner of the property insured, and not the plaintiff, who held all the fully-paid shares of the company and who had insured the property in his own name. The plaintiff did not have any legal or beneficial interest in the property of the company merely because he was a shareholder.

Then, in the case of *Lee v. Lee's Air Farming*⁴, the Privy Council held that Lee, as a distinct legal entity from the company in which he was the majority shareholder, could be an employee of that company, and allowed Lee's wife to claim damages under the Workers' Compensation Act when her husband died in the course of employment. Even in the case of holding and subsidiary companies, the sanctity of the separate legal entity concept is preserved. In the case of *Industrial Equity v. Blackburn*⁵ this principle was used to stop a holding company from considering the profits of a wholly-owned subsidiary as its own.

The Supreme Court of India also stated that a corporation in law is equivalent to a natural person having a legal entity of its own, which is completely separate from that of its shareholders. The corporation has its own name and seal, and separate assets from its members.⁶

III. Lifting of the Corporate Veil

Black's Law Dictionary says that, "*piercing the corporate veil is the judicial act of imposing liability on otherwise immune corporate officers, Directors and shareholders for the corporation's wrongful*

acts".⁷ The concept of lifting of the corporate veil only came into being once the need was felt for the courts to look past the artificial façade of the separate legal personality of the offender company in order to affix liability on the natural person or persons who were responsible for the offence being committed.

The basic principle behind this is that a creditor should not be made to incur more liability for the debts of the company than his investment value. Judicial discretion and legislative action allows the separate entity principle to be disregarded where some injustice is intended, or would result, to a party, either internal or external to the company, with whom the company is dealing.⁸

III.A. Development of the concept in USA and UK

In 1906, the Circuit Court in Wisconsin, USA, held that "*a corporation will be looked upon as a legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime the law will regard the corporation as an association of persons.*"⁹

In the case of *Sea-Land Services v. Pepper Source*¹⁰, the plaintiff sought to pierce the corporate veil in order to hold the sole shareholder and other corporations he

⁴Lee v. Lee's Air Farming, (1961) A.C. 12.

⁵Industrial Equity v. Blackburn, (1977) 52 ALJR 89.

⁶Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors., AIR 1965 SC 40.

⁷Black's Law Dictionary 1168 (7th ed. 1999).

⁸Harshit Saxena, *Lifting the Corporate Veil*, JJBR (2010).

⁹United States v. Milwaukee Refrigeration Transit Company, 142 F 247 (1906).

¹⁰Sea-Land Services v. Pepper Source, 941 F.2d 519 (CA7, 1991).



controlled personally liable. The American courts relied on their decision in *Van Dorn Co. v Future Chem. & Oil Corp.*¹¹, and decided in favour of the plaintiff by disregarding the corporate personality.

In the USA, the simple principle was developed that if the shareholder has complete domination over the corporation used to commit fraud, which becomes a proximate cause of a plaintiff's injury, the veil will be pierced. This principle is applied keeping in mind the different complications arising in every case.¹²

In England, in the case of *Daimler Company Ltd. v. Continental Tyre & Rubber Co.*¹³, the House of Lords said that the corporate veil must be lifted to look at the realities of the situation and to verify the bona fide intention for its incorporation. The German company was managed and owned by German nationals, and as this would amount to trading with an enemy, the lifting of the corporate veil was justified in this case.

In 1969 Lord Denning commented that the process of incorporation does not "cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind."¹⁴ In *Woolfsan v. Stratheclye*¹⁵, it was held the corporate veil could be lifted where there are special circumstances

indicating that the company is a mere facade.

In *Creasy v Breachwood Motors Ltd*¹⁶, it was held that,

"The power of the court to lift the corporate veil exists. The problem for a judge of first instance is to decide whether the particular case before the court is one in which that power should be exercised recognising that this is a very strong power which can be exercised to achieve justice where its exercise is necessary for that purpose, but which misused would be likely to cause not inconsiderable injustice."

In 2011, the defendant was director of an English company and chief executive officer of a Swiss company, both of which were used to carry out a fraudulent scheme. The defendant gave false financial statements and did not disclose his criminal record to the investors. By undertaking fraudulent trading and other statutory offences, he was sentenced to seven years of imprisonment.¹⁷

In 2015, in the case of *Prest v. Petrodel Resources Ltd. & Ors.*¹⁸, the court differentiated between piercing the corporate veil and peeking behind the corporate veil. While peeking, the economic characteristic of a company may be looked at without lifting the corporate veil. However, when piercing the veil, the standard is much higher, for example, when a company acts

¹¹ *Van Dorn Co. v Future Chem. & Oil Corp.*, 753 F.2d 565, 569-70 (7th Cir. 1985).

¹² *Walkovsky v Carlton*, 18 N.Y.2d 414 (1966).

¹³ *Daimler Company Ltd. v. Continental Tyre & Rubber Co.*, (1916) 2 AC 307.

¹⁴ *Littlewoods Mail Order Stores Ltd. v. IRC*, (1969) 1 WLR 1241, 1254.

¹⁵ *Woolfsan v. Stratheclye*, (1978) SLT 159.

¹⁶ *Creasy v Breachwood Motors Ltd.*, (1992) BCC 639.

¹⁷ *R. v Terrence Freeman*, (2011) EWCA Crim 2534.

¹⁸ *Prest v Petrodel Resources Ltd. & Ors.*, (2013) AC 415.



fraudulently. The court further distinguished between two principles called the concealment principle and the evasion principle, to determine what a ‘relevant wrongdoing’ could mean. When using the concealment principle, Lord Sumption argues that the corporate veil is not pierced at all. In fact, it is just the concealment of the real actors in a company that the Court tries to unravel. The evasion principle, on the other hand, uses the piercing of the corporate veil to ascertain whether there exists a legal right or obligation on part of the member or the shareholder independent of the company.¹⁹

III.B. Development of the concept in India

The Supreme Court has stated that, “*the doctrine of lifting of the veil postulates the existence of dualism between the corporation or company on the one hand, and its members or shareholders on the other.*”²⁰ Therefore, lifting of the corporate veil is an exception to the separate legal identity of the company.²¹

The Indian courts also applied this doctrine to prevent fraud. It has been held that a company cannot be used for illegal or improper purposes.²² The veil can be lifted in cases where the company has been used

to evade taxes²³ or to violate welfare legislations²⁴ so as to hold those responsible for such transgressions. The Court has the “*power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligations*”.²⁵ In the case of *CIT v. Sri Meenakshi Mills Ltd.*²⁶, it was laid down that in matters relating to economic offences, courts can use this doctrine to shed light on the economic realities behind the shadows of the legal façade. This principle was also applied, in the case of *Santanu Ray v. Union of India*²⁷ to prevent tax evasion of any form. Courts could only lift the corporate veil if the tax departments could prima facie establish that the corporation was a sham, and did not fall within the purview of the law.²⁸

In 2015, in the case of *Sunil Bharti Mittal*²⁹, the court observed that the directors could be prosecuted for an offence committed by the company only in two circumstances: there should either be active involvement and sufficient evidence to adduce the criminal intent of that person, or the legislation should itself impose the liability

¹⁹Sumedha Kamra & Harshita Iyer, *Piercing The Corporate Veil in Matters of Taxation: The Search for Uniformity*, THE WORLD JOURNAL ON JURISTIC POLITY (2017).

²⁰Tata Engineering & Locomotive Company Ltd v. State of Bihar, AIR 1965 SC 40.

²¹CR Datta, *The Company Law* (ed. 6th, 2008).

²²PNB Finance Limited v Shital Prasad Jain, (1983) 54 Comp.Cas. 66(Delhi).

²³Sir Dinshaw Maneckjee Petit, Re, AIR 1927 Bom.371.

²⁴Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd., (1986) 59 Comp.Cas. 134 (SC).

²⁵Deputy Commissioner v. Chetan Transport Corp. Ltd., (1992) 74 Comp.Cas. 563 (Mad.)(DB).

²⁶Commissioner of Income Tax v. Sri Meenakshi Mills Ltd.63 ITR 609 (SC).

²⁷Santanu Ray v. Union of India, (1989) 65 Comp.Cas. 196 (Delhi).

²⁸Vodafone International Holdings BV v. Union of India (UOI), Ministry of Finance and Asst. director of Income Tax (International Taxation), (2009) 311 ITR 46 Bom.

²⁹Sunil Bharti Mittal v. Central Bureau of Investigation and Ors., AIR 2015 SC 923.



on the director or person in charge of the affairs of the company.

IV. Corporate Criminal Liability

There are two basic models of corporate criminal liability. The doctrine of identification holds the corporation directly liable only for the acts of its Directors or other senior officers, as they represent the corporation and are its “directing mind”³⁰, while the doctrine of vicarious liability holds it derivatively liable for the acts of anyone acting on its behalf.³¹ Identification liability differs from vicarious liability in that it does not cause the shift of liability from one person to another; instead, because the directing mind is equated to the corporation itself, the two persons are deemed to be merged.³²

IV.A. Development of the concept in UK, USA and Canada

English courts did not initially recognise the concept of corporate criminal liability at all, based on three grounds. Firstly, as a corporation is a legal fiction, it can do only such acts as it is legally empowered to do, as per the *ultra vires* rule. Secondly, a corporation could not possess the required *mens rea*. Thirdly, it was difficult to devise an alternate punishment for corporations. Apart from these theoretical objections, practical difficulties hampered the imposition of criminal sanctions. Personal

appearance was required at the Crown Courts or assizes, which was impossible for a corporation. A second practical difficulty arose with regard to punishment: as all felonies were at one time punished by death or deportation, it was simply not legally possible to punish a company.³³

Corporate criminal liability began as a punishment imposed upon quasi-public corporations, such as municipal corporations, for nonfeasance that resulted in public nuisance.³⁴ Then, as the corporate footprint grew, the scope of liability for companies was increased to all crimes that did not involve the mental element of *mens rea*, the reasoning being that a company could not think on its own. In 1842, a company was held liable for breach of statutory duty.³⁵ Subsequently, Lord Denman in *Queen v. Great North of England Railways Co.*³⁶ held that corporations could be held guilty for misfeasance³⁷ as well, which came to be followed by American courts³⁸ as well.

Until previously, a corporation could only be held liable to pay compensation under the law of torts. Then in 1909, in the case of *New York Central & Hudson River Railroad*

³⁰ Sumit Baudh, *Corporate Criminal Liability: A Review in Light of Tata-ULFA Nexus*, STUDENT ADVOCATE VOL.10(1998).

³¹ Guy Stessens, *Corporate Criminal Liability: A Comparative Perspective*, THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, VOL. 43, NO. 3 (Jul., 1994), pp. 493-520.

³² *Tesco Super Markets Ltd. v. Nattrass*, (1972) App. Cas. 153.

³³ J. C. Smith & B. Hogan, *Criminal Law*, (1992).

³⁴ *People v. Corporation of Albany XII Wendell* 53 (1834); *The King v. Inhabitants of Lifton*, 101 ER 280 (KB 1794); *R. v. Inhabitants of Great Broughton*, 9B ER 418 (KB 1771); *Case of Lanford Bridge*, 79 ER 919 (KB 1635).

³⁵ *Birmingham & Gloucester Railway Co.*, (1842) 3 QB.

³⁶ *Queen v. Great North of England Railways Co.*, 115 ER 1294 (QB 1846).

³⁷ *State v. Morris Essex Rail Road Co.*, 23 Zabinski's N.J.R. 360.

³⁸ *Commonwealth v. Proprietors of New Bedford Bridge*, 68 Mass (2 Gray) 339 (1854).



*Co. v. United States*³⁹, the court for the first time held that it could impute to a corporation the knowledge of unlawful conduct by its agents, acting within the scope of their designated authority, where their actions are towards the profit of the corporation; thus any criminal liability for such actions of the agents could also be attributed to the corporation itself. Corporations were subsequently convicted of theft by deception, unsworn falsification to authorities and deceptive business practices.⁴⁰ A company was held to be a person under a legislation criminalizing homicide, and was hence convicted for homicide.⁴¹ The Ford Motor Company was also indicted for criminal homicide as it had acted deliberately to endanger human life.⁴² In 1909, Canada introduced the concept of corporate criminal liability in the Canadian federal Criminal Code by providing that, when a corporation was found guilty, a fine could be substituted for the prescribed sentence of imprisonment. In 1941, a court fully acknowledged that a corporation could commit a crime.⁴³

In 1915, the House of Lords used the doctrine of identification to impose criminal liability on a company for an offence requiring *mens rea*. This received further approval in 1944, when this doctrine was

used in three landmark cases⁴⁴ to impose culpability on the company, where the *mens rea* of certain employees was considered that of the company itself. This opened the floodgates for companies to validly be held criminally liable.

Lord Denning in 1956 postulated the Organic Theory, likening a company to the human body: the servants and agents of a company who do its work are its hands, and the directors and managers represent the directing mind and will of the company. As the state of mind of the directors becomes the state of mind of the company as well, the fault of the directors becomes the fault of the company as well.⁴⁵

In *Tesco Supermarkets v. Natrass*⁴⁶, the court created an artificial distinction between members of the top echelons of the company, such as the board of directors, with whom the company is identified, and others who are mere servants and agents of the company. This received criticism as it was impractical to make culpable a director, who may have no direct connection with the offence, rather than the actual employees or agents involved in the commission of the offence.

American courts ignored the Tesco Supermarkets principle and said that a corporation is said to be liable if it placed the agent in a position of sufficient authority

³⁹New York Central & Hudson River Railroad Co. v. United States, 212 US 431 (1909).

⁴⁰ Commonwealth v. J.P. Mascaro & Sons Inc., 402 A. 2d 1050 (1979).

⁴¹ Commonwealth v. Mellwain School Bus Lines Inc., 423 A. 2d 413 (1980).

⁴² V.L. Swiggert & R.A. Farrell, Corporate Homicide: Definitional Process in the Creation of Deviance, 15 L. & Soc. Rev. 161.

⁴³R. v. Fane Robinson Ltd., (1941) 3 D.L.R. 40.

⁴⁴ Moore v. Bressler, (1944) 2 All E.R. 515; R. v. ICR Haulage Ltd., (1944) K.B. 551; DPP v. Kent and Sussex Contractors Ltd., (1944) 1 All E.R.

⁴⁵ Bolton Engineering Co. Ltd. v. T.J. Graham and Sons Ltd., (1956) 3 All ER 624 (C.A.).

⁴⁶ Tesco Supermarkets v. Natrass, (1971) 2 All ER 624 (C.A.).



with respect to only the particular business, operation or project he was engaged in, and not with respect to the entire corporation as a whole.⁴⁷ Corporations have even been convicted of crimes requiring knowledge on the basis of “collective knowledge” of the employees, though no single employee possessed sufficient information of the crime being committed.⁴⁸

IV.B. Development of the concept in India

The Indian judiciary was slow to recognise this area of jurisprudence, but the process here began in the same fashion as it did in the West⁴⁹, with imposition of criminal liability on corporates initially only for offences not requiring *mens rea*. In 1951, the Calcutta High Court held that a company can be held criminally liable only in cases where the culpable act is envisioned in the Charter or Articles of corporation as being capable of being performed by the corporation, or must be ultimately connected with its statutory or legal obligations; additionally, it must also be possible for the court to pass a sentence of fine.⁵⁰

Similarly, in *Ananth Bandhu v. Corporation of Calcutta*⁵¹, the Court observed that a limited company cannot be proceeded against if something in the definition or

context of particular section in the statute prevents the application of the section to it, or where it is physically impossible for a company to commit the offence. For example, rape cannot be committed by a limited company. The court also clarified that a limited company will not be tried for offences which require *mens rea* and where the only punishment prescribed is imprisonment, because it is not possible to send a corporation to jail.

Following this, the courts began to apply the doctrine of identification to companies. In the case of *State of Maharashtra v. Messrs Syndicate Transport Co. (P) Ltd.*⁵² the Court held that a corporate body acts through its senior officers like Managing Directors, Board of Directors or other authorised agents, and hence the criminal act or omission of such an agent, done in pursuance of the objectives of the company, including his state of mind, intention, knowledge or belief ought to be treated as that of the company as well. The Organic Theory proposed by Lord Denning was adopted in India in the case of *Gopal Khaitan v. State*⁵³.

Then in 1970, for the first time the Supreme Court of India in *Aligarh Municipal Board v. Ekka Zonga Mazdoor Union*⁵⁴ held that there is no doubt that a corporation is liable to be punished for contempt by imposition of fine and by attachment of assets for disobeying orders directed against them by the competent court. A command to the

⁴⁷ Commonwealth v. Beneficial Insurance Co., 360 Mass. 188 (1971).

⁴⁸ U.S. v. T.I.M.E. – D.C. Inc., 381 F. Supp. 730.

⁴⁹ Sumit Baudh, *Corporate Criminal Liability: A Review in Light of Tata-ULFA Nexus*, STUDENT ADVOCATE VOL.10(1998).

⁵⁰ Punjab National Bank v. A.R. Gonsalves, Bunder Inspector, Karachi Port Trust, AIR 1952 Cal 759.

⁵¹ Ananth Bandhu v. Corporation of Calcutta, AIR 1951 Sind 142.

⁵² State of Maharashtra v. Messers Syndicate Transport Co. (P) Ltd., AIR 1964 Bom 195.

⁵³ Gopal Khaitan v. State, AIR 1969 Cal 132.

⁵⁴ Aligarh Municipal Board and Ors v. Ekka Zonga Mazdoor Union, AIR 1970SC1767.



corporation is in fact a command to those who are officially responsible for conduct of its affairs. If they intentionally fail to comply with the court orders, they, along with the corporate body, are both guilty of disobedience and may be punished for contempt of court. However, even in the 1990s, courts were reluctant to impose criminal liability upon corporations for offences requiring *mens rea* due to their being legal persons.⁵⁵

After the development of the Tesco Supermarkets principle, the Supreme Court decided the Iridium case⁵⁶ based on two main points: firstly, that a company is capable of possessing requisite *mens rea*, and secondly, that the rigid test of identification of the directing mind of the company has to be followed in determining the requisite mental element.

However, it was held in the case of *Sunil Bharti Mittal*⁵⁷ that *mens rea* is attributed to the company on the principle of *alter ego* and it does not apply in reverse where vicarious liability is imputed on the persons dealing with the business of the company.

V. What punishment should be prescribed?

The courts had no trouble sentencing corporations for offences that prescribed a fine as punishment, especially where the offence did not require *mens rea*.⁵⁸ Where

the offence prescribed imprisonment, the courts used to take the easy way out and declare that a corporation could not even be tried for such offences.⁵⁹ The problem arose when a company was found guilty of offences mandating punishment as well as fine.

The courts have the prerogative to interpret statutes, but are not permitted to limit the minimum punishment provided for under the same. The rules of strict construction require the courts to decide in the favour of the accused when there are two possible absurd interpretations.⁶⁰ Hence, where the statute prescribes imprisonment as well as fine, the courts have chosen to impose lesser punishment and sentence the company only to a fine.⁶¹

Using the mischief rule of interpretation, the courts should construe provisions in a way that prevents the mischief and advance the remedy according to the true intention of the makers of the statute, which would be to impose punishment regardless of whether the offender is a juristic or natural person.⁶² If the rule of reading conjunctive words disjunctively is applied, “and” can be construed as “or” in cases where it would facilitate the intention of the legislature, especially when it would avoid absurd or impossible consequences or operate to harmonise the statute and give effect to all

⁵⁵Kalpanath Rai v. State (1998) CriLJ 369 (SC); A.K. Khosla v. T.S. Venkatesan (1992) CriLJ 1448 (Cal).

⁵⁶Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74.

⁵⁷Sunil Bharti Mittal v. Central Bureau of Investigation and Ors., AIR 2015 SC 923.

⁵⁸Modi Industries Ltd. v. B. C. Goel, (1983) 54 CompCas 835 (All).

⁵⁹Kusum Products Ltd. v. S.K. Sinha, (1980) 126 ITR 806 (Cal); Municipal Corporation of Delhi v. J.B. Bolting Company (P) Ltd., (1978) RLR 94 (Del).

⁶⁰Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr., AIR 2005 SC 2622.

⁶¹Oswal Vanaspati & Allied Industries v. State of U.P., (1992) 75 CompCas 770 (All).

⁶²Shivnarayan v. State of Madras, AIR 1967 SC 986.



its provisions.⁶³ This has been done in the case of criminal statutes as well.⁶⁴ Therefore, where the offence prescribes imprisonment *and* fine, the “and” can be read as “or”, and hence a punishment of only fine can be imposed upon a company. The court made the position on this clear in *Standard Chartered Bank and Ors v. Directorate of Enforcement*⁶⁵. The court explained that the intention of the legislature with regard to prosecuting a company could not be to prosecute corporations only for minor offences, which impose fine, and not for graver offences that require compulsory imprisonment, as companies cannot be jailed. It was held that companies could be tried and held liable for offences providing for compulsory imprisonment by simply imposing fines on them as sentence.

In order to simplify the task of the judiciary when it came to the question of what kind of punishment to impose, the Law Commission recommended that “*the following provision should be inserted in the Penal Code as, say, section 62:----*

(1) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.

⁶³ Earl T. Crawford, *The Construction of Statutes* (1940).

⁶⁴ *Williams v. State*, 137 SW 927; *People v. Lyttle*, 7 Ap. Div. 553.

⁶⁵ *Standard Chartered Bank and Ors v. Directorate of Enforcement*, (2005) 4 SCC 530.

(2) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.

(3) In this section, 'corporation' means an incorporated company or other body corporate, and includes a firm and other association of individuals.”⁶⁶

VI. Joint Liability

Instead of having to decide between using the principle of corporate criminal liability to hold the company liable for acts of its agents, or lifting the corporate veil to prosecute the human responsible for the corporate wrong, it is suggested that both be made liable where there is a collusion between the natural and juristic persons.

This concept has its roots in the sham principle, developed in the case of *Gilford Motor Co. v. Horne*,⁶⁷ and applied in *Jones v. Lipman*⁶⁸, in which the court regarded the company as “*the creature of the defendant, a device, a sham*”. However, instead of lifting the corporate veil, the court made the company a second defendant. Moreover, both defendants were obligated to complete the agreement between the claimant and the first defendant. This concept has been used even as recently as 2001⁶⁹.

⁶⁶ Law Commission of India, *47th Report: Trial and Punishment of Socio-Economic Offences*, para 8.3.

⁶⁷ *Gilford Motor Co. v. Horne*, (1933) Ch. 935.

⁶⁸ *Jones v. Lipman*, (1962) 1 WLR.

⁶⁹ *Trustor AB v. Smallbone*, (2001) 2 BCLC 436.



The concept of joint liability of company and its agents as discussed above was incorporated in S.93 of the Gold Control Act, 1968, which reads as follows:

93. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect of, any director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."(Emphasis supplied)

Though this Act was repealed in 1990, it is interesting to note that Indian legislators accepted the idea of joint liability.

The Law Commission of India, recognizing the problem of insufficient Indian jurisprudence on the topic, suggested the following:

Since a Corporation has no physical body on which the pain of punishment could be inflicted nor a mind which can be guilty of a criminal intent, traditional punishments prove ineffective, and new and different punishments have to be devised. The real penalty of a corporation is the diminution of respectability, that is, the stigma. It is now usual to insert provisions to the effect that the Director or Manager who has acted for the corporation should be punished. But it is appropriate that the corporation itself should be punished. In the public mind, the offence should be linked with the name of the corporation, and not merely with the name of the Director or Manager, who may be a non-entity. [...] it is necessary that there should be some procedure, like a judgment of condemnation, available in the case of an anti-social or economic offence committed by a corporation. This will be analogous to the punishment of



*public censure proposed for individuals.*⁷⁰

This concept was applied while imposing liability on the corporation responsible for the Bhopal Gas Tragedy.⁷¹

It is proposed that the punishment in such a scenario consist of monetary fine on the company, and imprisonment or fine on the agents of the company who were physically involved in the criminal act, as well as upon the senior employees or officers of the company on whose orders they acted. There can even be mandated issuance of the company's shares to the victim of the criminal act as a means of compensation for the losses they have suffered, which would lower the share value of the other shareholders⁷², and bring disrepute and loss of goodwill and business to the offender company, preventing them from enjoying any profits accrued from the criminal act. This punishment would act as sufficient deterrence.

VII. Conclusion

In order to ensure more effective deterrence by involving a human element, the courts have looked past the corporate veil to focus liability on individuals in charge of the affairs of a corporation.⁷³ This concept has also been incorporated into Indian legislations such as the Essential

Commodities Act⁷⁴, the Employees' Provident Fund Act⁷⁵, the Monopolies and Restrictive Trade Practices Act⁷⁶, the Foreign Exchange Regulation Act⁷⁷, and the Prevention of Food Adulteration Act⁷⁸, as well as the Companies Act⁷⁹.

As governments over the world increasingly offer benefits and incentives to foreign as well as local business houses in the hope that they will contribute positively to their GDPs, they must also recognise the threat that these corporations may pose to the society at large, and make provisions to safeguard it accordingly.

So far, the liability imposed on corporates has merely been a modification of what is imposed upon natural persons, in a clumsy attempt to fit them into the existing legal framework.⁸⁰ This has led to further complications due to a company's special status as a juristic person. It would be far more beneficial in the long run to formally amend existing provisions, or insert new provisions where required, in order to clearly lay down the extent of liability of a company for wrongs committed by it, instead of leaving it to the judiciary to develop the relevant jurisprudence on a case-to-case basis.

The spirit of justice demands that corporations be tried and punished as

⁷⁰Law Commission of India, *47th Report: Trial and Punishment of Socio-Economic Offences*, para 8.1.

⁷¹Union Carbide Corporation v. Union of India, AIR 1990 SC 273.

⁷²T.K. Bhaskar & V. Umakanth, *Corporate Criminality and Law*, SYMBIOSIS CONTEMPORARY LAW JOURNAL (2012).

⁷³U.S. v. Park, 95 SC 1903 (1975); U.S. v. Laffal, 83A. 3d. 71.

⁷⁴S. 10, Essential Commodities Act, 1955.

⁷⁵S. 14A, Employees' Provident Fund Act, 1952.

⁷⁶S. 52, Monopolies and Restrictive Trade Practices Act, 1969.

⁷⁷S. 68, Foreign Exchange Regulation Act, 1973.

⁷⁸S. 68, Prevention of Food Adulteration Act, 1954.

⁷⁹S. 5, Companies Act, 1956

⁸⁰T.K. Bhaskar & V. Umakanth, *Corporate Criminality and Law*, SYMBIOSIS CONTEMPORARY LAW JOURNAL (2012).



sincerely as human offenders in order to ensure equitable enforcement of equality, which would inspire more faith in the social, political and economic institutions of a country.

Bibliography

Statutes

1. Companies Act, 1956
2. Employees' Provident Fund Act, 1952.
3. Essential Commodities Act, 1955.
4. Foreign Exchange Regulation Act, 1973.
5. Indian Penal Code, 1860.
6. Monopolies and Restrictive Trade Practices Act, 1969.
7. Prevention of Food Adulteration Act, 1954.

Books

1. Black's Law Dictionary 1168 (7th ed. 1999).
2. CR Datta, The Company Law (ed. 6th, 2008).
3. Earl T. Crawford, The Construction of Statutes (1940).
4. J. C. Smith & B. Hogan, Criminal Law, (1992).

Case Laws

1. A.K. Khosla v. T.S. Venkatesan (1992) CriLJ 1448 (Cal).
2. Aligarh Municipal Board and Ors v. Ekka Zonga Mazdoor Union, AIR 1970 SC 1767.
3. Ananth Bandhu v. Corporation of Calcutta, AIR 1951 Sind 142.
4. Assistant Commissioner, Assessment-II, Bangalore & Ors. v.

- Velliappa Textiles Ltd & Anr., AIR 2005 SC 2622.
5. Birmingham & Gloucester Railway Co., (1842) 3 QB.
6. Bolton Engineering Co. Ltd. v. T.J. Graham and Sons Ltd., (1956) 3 All ER 624 (C.A.).
7. Case of Lanford Bridge, 79 ER 919 (KB 1635).
8. Commissioner of Income Tax v. Sri Meenakshi Mills Ltd. 63 ITR 609 (SC).
9. Commonwealth v. Beneficial Insurance Co., 360 Mass. 188 (1971).
10. Commonwealth v. J.P. Mascaro & Sons Inc., 402 A. 2d 1050 (1979).
11. Commonwealth v. Mellwain School Bus Lines Inc., 423 A. 2d 413 (1980).
12. Commonwealth v. Proprietors of New Bedford Bridge, 68 Mass (2 Gray) 339 (1854).
13. Creasy v Breachwood Motors Ltd., (1992) BCC 639.
14. Daimler Company Ltd. v. Continental Tyre & Rubber Co., (1916) 2 AC 307.
15. Deputy Commissioner v. Chetan Transport Corp. Ltd., (1992) 74 Comp. Cas. 563 (Mad.) (DB).
16. DPP v. Kent and Sussex Contractors Ltd., (1944) 1 All E.R.
17. Gilford Motor Co. v. Horne, (1933) Ch. 935.
18. Gopal Khaitan v. State, AIR 1969 Cal 132.
19. Harshit Saxena, *Lifting the Corporate Veil*, JJBR (2010).
20. Industrial Equity v. Blackburn, (1977) 52 ALJR 89.



21. Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74.
22. Jones v. Lipman, (1962) 1 WLR.
23. Kalpanath Rai v. State (1998) CriLJ 369 (SC).
24. Kusum Products Ltd. v. S.K. Sinha, (1980) 126 ITR 806 (Cal);
25. Lee v. Lee's Air Farming, (1961) A.C. 12.
26. Littlewoods Mail Order Stores Ltd. v. IRC, (1969) 1 WLR 1241, 1254.
27. Macaura v. Northern Assurance Co. Ltd., (1925) A.C. 619.
28. Modi Industries Ltd. v. B. C. Goel, (1983) 54 CompCas 835 (All).
29. Moore v. Bressler, (1944) 2 All ER 515.
30. Municipal Corporation of Delhi v. J.B. Bolting Company (P) Ltd., (1978) RLR 94 (Del).
31. New York Central & Hudson River Railroad Co. v. United States, 212 US 431 (1909).
32. Oswal Vanaspati & Allied Industries v. State of U.P., (1992) 75 CompCas 770 (All).
33. People v. Corporation of Albany XII Wendell 53 (1834);
34. People v. Lyttle, 7 Ap. Div. 553.
35. PNB Finance Limited v Shital Prasad Jain, (1983) 54 Comp.Cas. 66 (Delhi).
36. Prest v Petrodel Resources Ltd. & Ors., (2013) AC 415.
37. Punjab National Bank v. A.R. Gonsalves, Bunder Inspector, Karachi Port Trust, AIR 1952 Cal 759.
38. Queen v. Great North of England Railways Co., 115 ER 1294 (QB 1846).
39. R. v Terrence Freeman, (2011) EWCA Crim 2534.
40. R. v. Fane Robinson Ltd., (1941) 3 D.L.R. 40.
41. R. v. ICR Haulage Ltd., (1944) K.B. 551.
42. R. v. Inhabitants of Great Broughton, 9B ER 418 (KB 1771);
43. Salomon v. Salomon & Co. Ltd., (1897) A.C. 22.
44. Santanu Ray v. Union of India, (1989) 65 Comp.Cas. 196 (Delhi).
45. Sea-Land Services v. Pepper Source, 941 F.2d 519 (CA7, 1991).
46. Shivnarayan v. State of Madras, AIR 1967 SC 986.
47. Dinshaw Maneckjee Petit, Re, AIR 1927 Bom. 371.
48. Standard Chartered Bank and Ors v. Directorate of Enforcement, (2005) 4 SCC 530.
49. State of Maharashtra v. Messers Syndicate Transport Co. (P) Ltd., AIR 1964 Bom 195.
50. State v. Morris Essex Rail Road Co., 23 Zabriniski's N.J.R. 360.
51. Sunil Bharti Mittal v. Central Bureau of Investigation and Ors., AIR 2015 SC 923.
52. Tata Engineering Locomotive Co. Ltd v. State of Bihar & Ors., AIR 1965 SC 40.
53. Tesco Supermarkets v. Nattrass, (1971) 2 All ER 624 (C.A.).
54. The King v. Inhabitants of Lifton, 101 ER 280 (KB 1794);
55. Trustor AB v. Smallbone, (2001) 2 BCLC 436.
56. U.S. v. Laffal, 83A. 3d. 71.
57. U.S. v. Park, 95 SC 1903 (1975).
58. U.S. v. T.I.M.E. – D.C. Inc., 381 F. Supp. 730.

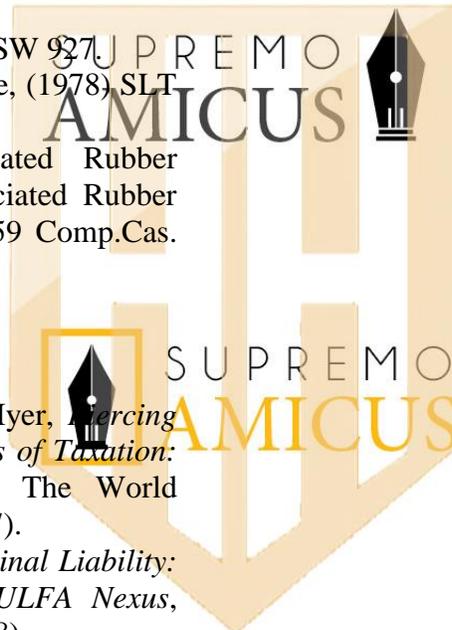


59. Union Carbide Corporation v. Union of India, AIR 1990 SC 273.
60. United States v. Milwaukee Refrigeration Transit Company, 142 F 247 (1906).
61. Van Dorn Co. v Future Chem. & Oil Corp., 753 F.2d 565, 569-70 (7th Cir. 1985).
62. Vodafone International Holdings BV v. Union of India (UOI), Ministry of Finance and Asst. director of Income Tax (International Taxation), (2009) 311 ITR 46 Bom.
63. Walkovsky v Carlton, 18 N.Y.2d 414 (1966).
64. Williams v. State, 137 SW 927.
65. Woolfsan v. Stratheclye, (1978), SLT 159.
66. Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd., (1986) 59 Comp.Cas. 134 (SC).

T.K. Bhaskar & V. Umakanth, *Corporate Criminality and Law*, Symbiosis Contemporary Law Journal (2012).

Other Authorities

Law Commission of India, *47th Report: Trial and Punishment of Socio-Economic Offences*.



Journal Articles

- Sumedha Kamra & Harshita Iyer, *Piercing The Corporate Veil in Matters of Taxation: The Search for Uniformity*, The World Journal on Juristic Polity (2017).
- Sumit Baudh, *Corporate Criminal Liability: A Review in Light of Tata-ULFA Nexus*, Student Advocate Vol.10 (1998).
- Guy Stessens, *Corporate Criminal Liability: A Comparative Perspective*, The International and Comparative Law Quarterly, Vol. 43, No. 3 (Jul., 1994), pp. 493-520.
- V.L. Swiggert & R.A. Farrell, *Corporate Homicide: Definitional Process in the Creation of Deviance*, 15 L. & Soc. Rev. 161.