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THE CORPORATE VEIL: EXPLORING CORPORATE CRIMINAL LIABILITY IN INDIA THROUGH JUDICIAL PRISMS

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Abstract

Complexity of Corporate Criminal Liability in India is explored in this article via examples of veil piercing and reverse veil piercing. It examines the intricacies of holding businesses liable while analyzing legal precedents, taking into consideration elements like mens rea and limitations of responsibility. Examining the justifications for breaching the corporate veil, examples of tax evasion, unified entities, public interest, and fraud prevention are provided. The changing picture is underscored by cases where the corporate veil was removed to impose criminal culpability. The paper also examines the distinctive method used by Indian courts to implement the idea. Although reverse piercing is rarely employed, its possible effects are considered. To balance corporate responsibility and legal requirements, the paper concludes that consistent regulations are necessary.

Introduction

Corporate Criminal Liability is being scrutinized on a global scale for keeping businesses accountable. In India, discussions about prosecuting companies, lifting the veil, and a novel idea of reverse piercing are sparked by this difficult issue. This article explores Indian Corporate Criminal Liability by examining significant instances, grounds for veil piercing, and reverse piercing. Through a legal analysis, it reveals how corporate accountability is changing. It identifies legislative obstacles and suggests fixes, particularly for environmental justice, while promoting all-encompassing corporate responsibility improvement.

Literature Review and Research Methodology

“Piercing the corporate veil to subject corporations to criminal liability” - WordPress the debate about unveiling the corporate veil and corporate criminal culpability is clear and explores the conflict between a corporation's identity and avoiding criminal accountability.¹ Similar to this, the research “Corporate Criminal Liability - A Critical Legal Study”- Acclaims explores how to hold corporations responsible.² India's corporate veil theory is examined in “Pardey ke Peechey kya hai” by Kunal Bhardwaj and Tharun Chowdhary (Manupatra), which supports acknowledging reverse piercing.³ To fill up gaps in empirical understanding, the research uses data collecting and quantitative analysis as its technique.

Corporate Criminal Liability in India

Criminal responsibility for corporate acts and those of its personnel is referred to as corporate criminal liability.⁴ While detractors claim that penalizing businesses for crimes is ineffectual since people are responsible for the crimes⁵ and stakeholders bear the responsibility, court instances show the intricacies.⁶

In Maharashtra High court held it is impossible to prosecute businesses for crimes that carry a risk of physical harm or incarceration since such a sentence cannot be properly inflicted on a business.⁷

In *Velliappa Textiles Ltd. Case*, Court used legal maxims “Lex non cogit ad impossibilia” and

¹ (No date) Piercing the corporate veil to impose criminal liability on Corporations. Available at: <https://indiancaselaws.files.wordpress.com/2014/04/piercing-the-corporate-veil-to-impose-criminal-liability-on-corporations.pdf> (Accessed: 17 August 2023).

² (No date) Corporate criminal liability a critical legal study - pen acclaims. Available at: <http://www.penacclaims.com/wp-content/uploads/2019/03/V-Vijaya-Lakshmi.pdf> (Accessed: 17 August 2023).

³ Manupatra (no date) Manupatra, Articles. Available at: <https://articles.manupatra.com/article-details/Pardey-ke-Peechey-kya-hai-A-Comprehensive-Analysis-of-the-Evolution-of-the-Corporate-Veil-Doctrine-in-India> (Accessed: 17 August 2023).

⁴ Suri, P. (2022) The changing face of corporate crime liability - directors and officers - India, The Changing Face Of Corporate Crime Liability - Directors and Officers - India. Available at: <https://www.mondaq.com/india/directors-and-officers/1235108/the-changing-face-of-corporate-crime-liability> (Accessed: 17 August 2023).

⁵ (No date) Corporate criminal liability a critical legal study - pen acclaims. Available at: <http://www.penacclaims.com/wp-content/uploads/2019/03/V-Vijaya-Lakshmi.pdf> (Accessed: 17 August 2023).

⁶ (No date a) Critical analysis of doctrine of corporate veil - JETIR. Available at: <https://www.jetir.org/papers/JETIR2207472.pdf> (Accessed: 17 August 2023).

⁷ State of Maharashtra v. Syndicate Transport, 1963 Bom. L.R, 197.

“Impotentia excusat legem”⁸ to decide that the business could not be punished under particular ITA portions demanding both a fine and incarceration. Court was unable to order detention since it lacked a physical body. When there are several viable readings, the court emphasized giving preference to those that prevent penalty.⁹

In *Khosla v. Venkatesan*, both the were indicted with fraud. This case shows that showing “mens rea” and having the authority to execute an imprisonment sentence are requirements for corporate prosecution.¹⁰

Allahabad Court ruled, a corporation shall not be imprisoned since it is a juristic person, although it can be penalized if both punishments are mandated. Excess is prohibited, but under-prescription might not necessarily be; the legal sentence corresponds to the recommended punishment.¹¹

According to *Iridium Telecom Ltd v. Motorola Co.*, companies can be held criminally accountable for crimes committed in the course of conducting business by those in charge of them, giving them the ability to “think and act” on their behalf.¹²

The Supreme Court rejected the idea that such offences insulate corporations from prosecution in *Standard Chartered Bank and Ors. case* clarifying that companies can be penalized for offences requiring imprisonment and fine.¹³

In conclusion, Corporate Criminal Liability involves holding corporations accountable for their actions,¹⁴ considering legal complexities, such as the inability to imprison a company¹⁵ and the

⁸ Assistant Commissioner v. Velliappa Textiles Ltd, (2004) 1. Comp. L.J. 21.

⁹ Assistant Commissioner v. Velliappa Textiles Ltd, AIR 2004 SC 86.

¹⁰ A.K. Khosla v. S. Venkatesan, Cr LJ. 1448, 1992.

¹¹ Oswal Vanaspati & Allied Industries V State Of Uttar Pradesh (1993) 1 Comp. LJ 172.

¹² Iridium India Telecom Ltd v. Motorola Incorporated Co, (2011) 1 SCC 74.

¹³ Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors , (2005) 4 SCC 530.

¹⁴ Chauhan, Madhvender, “Corporate Personality & Piercing of the Corporate Veil”, available at <https://articles.manupatra.com/article-details/To-Pierce-or-not-to-pierce-A-General-survey-of-Doctrine-of-piercing-the-corporate-veil> (Accessed: 17 August 2023).

¹⁵ Anonymous, “Behind the Corporate Veil: Using Corporate Entities For Illicit Purposes”, OECD REPORT ON THE MISUSE OF CORPORATE VEHICLES FOR ILLICIT PURPOSES (2001) at p.7 also available at <https://www.oecd.org/daf/ca/behindthecorporateveilusingcorporateentitiesforillicitpurposes.htm> (Accessed: 17 August 2023).

requirement of “mens rea.”¹⁶Courts recognize that corporations, through individuals in control, can be criminally liable and subject to fines for certain offenses.¹⁷

Grounds for Piercing of The Veil

Indian legal processes, notion of breaching corporate veil is governed by certain rules, but with a case-specific approach. There are several reasons to use this doctrine:

- **To combat evasion of tax:**¹⁸ The Supreme Court in *Sri Meenakshi Mills Ltd. Case*, supported the Income Tax department's right to expose business structures used for evasion of tax¹⁹ in *Vodafone International Holdings case*²⁰
- **Unified Entity of Associated Companies**²¹: *Renusagar Power Co case*, when related companies operate as one unit. For the purpose of changing the duty rate, two such corporations were regarded as one.²²
- **True Transaction Nature Revealed:**²³ Courts remove the curtain to reveal concealed transactions. Real parties to a sale were revealed in *Bharat Coking Coal Ltd case*²⁴. In *Vodafone International Holdings case* it was decided to lift the veil on tax fraud by abusing the judicial system.²⁵
- **Upholding Public Interest:**²⁶In instances involving the public interest, *Gotan Lime Stone case*, the theory combats corporate attempts to circumvent the law.²⁷

¹⁶ The doctrine of lifting the corporate veil and the judicial trend in determining the criminal liability of corporations (no date) Indore Institute Of Law. Available at: <https://thelegalvoiceofindiaail.com/volume-7/the-doctrine-of-lifting-the-corporate-veil-and-the-judicial-trend-in-determining-the-criminal-liability-of-corporations/> (Accessed: 17 August 2023).

¹⁷ Khanna, V.S., 1995. Corporate criminal liability: What purpose does it serve. Harv. L. Rev., 109, p.1477.

¹⁸ Tim Prudhoe and Jessica Notebaert, Piercing the Veil-An American Introduction, Trust & Trustees, Vol. 16, No. 9 (2010).

¹⁹ Commissioner of Income Tax v. Sri Meenakshi Mills Ltd., Madurai, MANU / SC / 0138 / 1966, Paragraph 13.

²⁰ Vodafone International Holdings BV v. Union of India, MANU/SC/0051/2012, Paragraphs 167, 168.

²¹ Banks To File Objections To Heineken Impleadment Plea, NDTV, June 22, 2016, <https://www.ndtv.com/business/banks-to-file-objections-to-heineken-impleadment-plea-1421817> Accessed: 17 August 2023).

²² State of UP v. Renusagar Power Co, MANU/SC/0505/1988, Paragraph 68.

²³ im Prudhoe and Jessica Notebaert, Piercing the Veil-An American Introduction, Trust & Trustees, Vol. 16, No. 9 (2010).

²⁴ Subhra Mukherjee v. Bharat Coking Coal Ltd, MANU/SC/3328/2000, Paragraphs 10,11.

²⁵ Vodafone International Holdings BV v. Union of India, MANU/SC/0051/2012, Paragraphs 167, 168.

²⁶ Home (2023) Journal on Contemporary Issues of Law. Available at: <https://jCIL.lsyndicate.com/> (Accessed: 17 August 2023).

²⁷ State of Rajasthan and Ors. vs. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and Ors, MANU/SC/0058/2016, Paragraph 26.

- **Preventing fraud:**²⁸ In *Skipper Construction Company case*, to hold people accountable when a corporate name conceals fraud.²⁹ Shell company status was rejected in *OIS Advanced Technology Pvt. Ltd. case*, which placed responsibility on the controlling persons.³⁰
- **Government corporation Violations**³¹: Bihar high court, held that the veil is breached when a government corporation opposes the public interest.³²
- **Contempt of court:**³³ Corporate identity is utilized improperly to disobey court orders, as was the case in *Kanwaljit Kaur Bhasin and Ors. case*³⁴

These examples demonstrate how the concept, with its application suited to specific case circumstances, plays a part in maintaining fairness and openness in company operations.³⁵

Cases Where the veil was Lifted to impose Criminal liability

Criminal responsibility for dishonest business practices is enforced under Section 542 of the 1960 Companies Act. This clause enables the personal liability of wrongdoers for their corporate conduct. In the famous case of In *Re:Shri Ambica Mills Ltd. case*, court could reveal the genuine nature of business fraud, this idea was affirmed.³⁶ This idea was mirrored in a recent decision, *Nutritek case*, emphasized, piercing corporate veil allows for remedies against the firm, even if alternative remedies are available.³⁷ Criminal culpability may be imposed in addition to civil or administrative sanctions when it comes to criminal infractions.³⁸

²⁸ Naman Kamdar & Akash Srinivasan, Solving the Bad Loan Crisis in the Unconventional Way: Is Reverse Piercing the Corporate Veil a Solution? 12 NUJS L. Rev. 2 (2019).

²⁹ Delhi Development Authority v. Skipper Construction Company (P) Ltd. and Ors, MANU/SC/2416/1996, Paragraph 27.

³⁰ OIS Advanced Technology Pvt. Ltd. v. State of NCT of Delhi, MANU/DE/0167/2020, Paragraphs 24,25.

³¹ Suri, P. (2022) The changing face of corporate crime liability - directors and officers - India, The Changing Face Of Corporate Crime Liability - Directors and Officers - India. Available at: <https://www.mondaq.com/india/directors-and-officers/1235108/the-changing-face-of-corporate-crime-liability> (Accessed: 17 August 2023).

³² Kapila Hingorani v. State of Bihar, MANU/SC/0403/2003, Paragraphs 25,26,27,30,31.

³³ (No date) Corporate criminal liability a critical legal study - pen acclaims. Available at: <http://www.penacclaims.com/wp-content/uploads/2019/03/V-Vijaya-Lakshmi.pdf> (Accessed: 17 August 2023).

³⁴ Jyoti Limited vs. Kanwaljit Kaur Bhasin and Ors, MANU/DE/0038/1987, Paragraph 21,22,30.

³⁵ Nicholas B. Allen, Reverse Piercing of the Corporate Veil: A straightforward path to justice, Number 3 Volume 85 Article 6, St. John's Law Review (Summer 2011), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=5588&context=lawreview>.

³⁶ In Re: Shri Ambica Mills Ltd., Ex ... vs Unknown, 1986 59 CompCas 368 Guj

³⁷ VTB Capital v. Nutritek, [2012] EWCA Civ 80.

³⁸ Niranjana V., "VTB Capital: The Consequences of Lifting the Corporate Veil", available at <https://indiacorplaw.in/2012/09/vtb-capital-consequences-of-lifting.html>

Due to courts' considerable discretion in this evolution, there is ambiguity in the requirements for veil piercing. Although ideas such as group firms, shell corporations, and alter ego are suggested, their practical applications are unclear.³⁹

Peculiar Approach of Indian Courts

The notion of breaching the corporate veil has been inventively applied in Indian legal situations: Delhi Court in *Prem Lata Bhatia case* held, when a single proprietorship had become a private business transferred leased property. Eviction was refused notwithstanding conversion since possession essentially remained with the same person.⁴⁰

In *Singareni Collieries case*, Indian subsidiary utilized the expertise of its overseas parent to satisfy tender requirements.⁴¹ The Hyderabad Court cut through the subsidiary's facade to determine the parent's qualifying experience by citing *New Horizons Limited v. UOI*.⁴²

The case of *J.B. Exports Ltd. v. Rajdhani Power Ltd* expanded the scope of veil piercing in situations that support growth. the Delhi High Court found JB Exports and BVM to be one, exempting BVM from subletting costs.⁴³

Reversal of Veil Piercing in India

This theory is seldom ever used in India.⁴⁴ As seen in *NEPC India v. SEBI*, where (SAT) accepted concerns regarding reverse piercing but did not address them⁴⁵, courts have abstained from considering it. Reverse piercing has, however, occasionally been vehemently argued⁴⁶, notably in the case of *SBI and others v. Kingfisher Airlines* and others, when a group of banks tried to collect debt from Vijay Mallya. Mallya's controlling interests as the principal promoter, according to IDBI, made

³⁹ Harff v. Kerkorian, 324 A.2d 215, 200 (Del. Ch. 1974).

⁴⁰ Prem Lata Bhatia v. Union of India, MANU/DE/8446/2006, Paragraphs 23,24,25.

⁴¹ Prasad - Sushee Jnt. Venture vs. Singareni Collieries Co. Ltd, M.D., Khammam and Ors, MANU/AP/0585/2015, Paragraph 35.

⁴² New Horizons Limited v.UOI, MANU / SC / 0564 / 1995, Paragraph 43.

⁴³ J.B. Exports Ltd. v. BSES Rajdhani Power Ltd, MANU/DE/0880/2006, Paragraphs 23,26.

⁴⁴ 12 NUJS L. Rev. 2 (2019), NUJS Law Review <http://nujslawreview.org/wp-content/uploads/2019/12/12-2-Naman-Kamdar-Akash-Srinivasan-1.pdf> (Accessed: 17 August 2023).

⁴⁵ NEPC India Ltd. v SEBI (SAT, Mumbai), MANU/SB/0050/2003, Paragraph 20.

⁴⁶ Koh Kim Teck v Credit Suisse Ag, (2015) SGHC 52 (Singapore).

it appropriate to attach his assets.⁴⁷ Reverse piercing finds indirect use in the determination of criminal responsibility attribution despite the absence of formal Supreme Court instructions.⁴⁸ The Supreme Court impliedly applied it in *Iridium India Telecom Ltd. case*, allowing a person's mens rea, if they acted as an alter ego, to be attributed to a company.⁴⁹ *Aneeta Handa & Ors v. God-father Travels* reaffirmed, by stating that a company may be subject to prosecution if the individuals in control of its operations have criminal intent. Although criminal responsibility is established, Indian legal system still lacks an acknowledgement of reverse piercing.⁵⁰

Conclusion and suggestions

Intricate legal considerations including mens rea, limited responsibility, and breaching corporate veil are involved in holding companies criminally liable. To hold corporations accountable, courts rely on principles like identification theory and alter ego, are supported by pertinent case law. To ensure remuneration and corporate responsibility, parent businesses be held accountable for subsidiary acts. ⁵¹“Piercing the corporate veil” is used frequently, yet there aren't any established norms, indicating necessity for uniform rules. ⁵²Collaboration on a global scale helps harmonies methods. The development of corporate liability law depends on finding a balance between responsibility and legal certainty.

⁴⁷ SBI v. Kingfisher Airlines (DRT, Bangalore), MANU/DR/0004/2017.

⁴⁸ Banks To File Objections To Heineken Impleadment Plea, NDTV, June 22, 2016, <https://www.ndtv.com/business/banks-to-file-objections-to-heineken-impleadment-plea-1421817>.

⁴⁹ Iridium India Telecom Ltd. v Motorola Incorporation and Others, (2011) 1 SCC 74 at paragraph 38.

⁵⁰ Aneeta Hada & Ors v. God-father Travels, MANU/SC/0335/2012, paragraphs 23, 25.

⁵¹ Cassels, Jamie, “The Uncertain Promise of Law: Lessons from Bhopal”, 29 OSGOODE HALL L. J. 1 1991 at p.20.

⁵² Chauhan, Madhvender, “Corporate Personality & Piercing of the Corporate Veil”, available at <http://jurisonline.in/?p=6237>