

## PIERCING OF CORPORATE VEIL: AN OVERVIEW

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### INTRODUCTION

"The word 'company' is derived from the Latin word (Com=with or together; panis =bread), and it originally referred to an association of persons who took their meals together. Merchants used to use festive gatherings to discuss commercial problems in the past. "The word 'company' has no strictly technical or legal meaning. In terms of the Companies Act, 2013 (Act No. 18 of 2013) a "company" means a company incorporated under this Act or any previous company law [Section 2(20)]<sup>1</sup>. So, in a practical sense, we can say that a company denotes an association of like-minded persons formed to carry on some business or undertaking. A company under the law is a corporate body and a legal person with status and personality distinct and separate from its members. These companies have a few very striking characteristics and of which is that it is a corporate personality.

### DOCTRINE OF SEPARATE LEGAL ENTITY

This corporate identity means that a business incorporated under the Act has its name, acts under its name, may have its seal, and its assets are separate and distinct from those of its members. It differs from the members who make it up. As a result, it can own property, borrow money, open a bank account, hire employees, enter contracts, and sue or be sued in the same way as an individual can. Its shareholders are its notional owners; they own nothing in it other than the shares issued, and they can also be its creditors. Even though he owns nearly the whole share capital, a shareholder cannot be held accountable for the company's actions.

The case of *Salomon v A Salomon & Co Ltd* (1896)<sup>2</sup> established the principle that once a company is validly formed under the Companies Act, it becomes a legal person distinct from its members, and that it is immaterial whether any member holds a large or small proportion of the shares, and whether he holds those shares beneficially or as a mere trustee. Solomon had been a successful leather merchant as a sole trader for many years. In 1892, he decided to transform it into a limited company, and *Salomon & Co. Ltd.* was formed with members

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<sup>1</sup> Wpsadmin. (n.d.). About MCA. Ministry Of Corporate Affairs - Government of India. Retrieved October 16, 2022, from <https://www.mca.gov.in/Ministry/pdf/>

<sup>2</sup> Wikimedia Foundation. (2022, August 18). *Salomon V A Salomon & Co Ltd*. Wikipedia. Retrieved October 16, 2022, from [https://en.wikipedia.org/wiki/Salomon\\_v\\_A\\_Salomon\\_%26\\_Co\\_Ltd](https://en.wikipedia.org/wiki/Salomon_v_A_Salomon_%26_Co_Ltd)

Solomon, his wife, five of his children, and Solomon as managing director. The company bought the business as a going concern for £39,000, which represented the expectations of a devoted owner rather than anything resembling business-like or a reasonable estimate of value. The price was paid in cash, £10,000 in debentures with a charge over all of the company's assets, and £20,000 in completely paid £ 1 shares. As a result, Solomon held 20,001 of the 20,007 shares issued, while the remaining six shares were held by a member of his family, presumably as a nominee for him. The company quickly ran into problems, and only a year later, the then-holder of debentures appointed a receiver, and the company went bankrupt. Its assets were sufficient to pay off the debenture, but there was nothing left for the unsecured creditors. Under these conditions, Vaughan Williams J. and a strong Court of Appeal ruled that the entire transaction violated the real intentions of the Companies Act and that the company was a sham, an alias, trustee, or nominee for Solomon, who remained the true proprietor of the business. As a result, he was obligated to indemnify the company for its trading debts. However, the House of Lords unanimously overturned this decision. They ruled that the company was validly formed because the Act only required seven members to each own at least one share. As a result, the company owned the business, not Solomon, and Solomon served as its agent. Thus, this case established that if the Act's formalities are followed, a company will be validly incorporated, even if it is a "one-person company," and courts will be hesitant to hold a shareholder personally liable for the company's debts by piercing the corporate veil. As a result, the court determined that there was no fraud because the shareholders were fully aware of what was going on.

*Lee v Lee's Air Farming Ltd* [1960]<sup>3</sup> This case illustrates the application of the principles established in Salomon's case (supra). The petitioner was the widow of Mr. Lee, the respondent's sole director and owner of 2,999 of the 3,000 shares. He was also employed by the company. He died in the course of his work in an accident. The question of whether he was a "worker" for the corporation under New Zealand worker compensation legislation emerged. His spouse was entitled to be compensated by the corporation in this case. The appeal was granted. Contractual relations between the dead Mr. Lee and the company were an inevitable consequence of the firm's separate legal personality. As a result, the court determined that they

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<sup>3</sup> Wikimedia Foundation. (2021, December 21). *Lee V Lee's Air Farming Ltd*. Wikipedia. Retrieved October 15, 2022, from [https://en.wikipedia.org/wiki/Lee\\_v\\_Lee%27s\\_Air\\_Farming\\_Ltd](https://en.wikipedia.org/wiki/Lee_v_Lee%27s_Air_Farming_Ltd)

were two independent legal organizations and that there was nothing to preclude the person having exclusive control of a company from also being hired by the firm.

In *Re: The Kondoli Tea Co. Ltd. vs Unknown* on 3 April 1886<sup>4</sup> recognized the principle of the separate legal entity even much earlier.

In *New Horizons Ltd. v. Union of India and others*<sup>5</sup>, the experience of a firm's shareholder can be seen as the experience of the company. The Tender Evaluation Committee rejected the tender of New Horizons Ltd. for the publication of the telephone directory because the company had nothing on record to indicate that it possessed the necessary qualifications. Technical experience is essential to qualify for the tender. The tender was rejected on appeal. The Delhi High Court upheld the ruling. The Delhi High Court's decision was overturned by the Supreme Court, which stated: "Once it is held that NHL (New Horizons Ltd.) is a joint venture, as claimed by it in the tender, the experience of its various constituents, namely, TPI (Thomson Press India Ltd.), LMI (Living Media India Ltd.), and WML (World Media Ltd.), as well as IIPL (Integrated Information Pvt. Ltd.), had to be taken into consideration if the Tender Evaluation Committee had adopted the approach of a prudent businessman.

*Shiromani Gurudwara Prabandhak ... vs Shri Som Nath Dass & Ors* [ 29 March 2000]<sup>6</sup> A juristic person has legal rights and obligations and is dealt with by the law. In other words, the entity operates like a natural person, but only through a designated person, whose actions are subject to legal scrutiny. This corporate identity has a direct relationship with the corporate veil. The primary benefit of incorporation, out of which all others flow, is the company's separate legal entity. However, the legal person's business is always performed by and for the interest of some individuals. In the end, certain people are the true beneficiaries of corporate benefits: "although by the illusion of law, a firm is a distinct entity, in reality, it is an organization of persons who are the practical proprietors of all corporate property."

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<sup>4</sup> *In re: The Kondoli Tea Co. Ltd. on 03 April 1886 - Judgement*. LawyerServices. (n.d.). Retrieved October 15, 2022, from <https://www.lawyerservices.in/In-Re-The-Kondoli-Tea-Co-Ltd-1886-04-03>

<sup>5</sup> *New Horizons Ltd vs Union of India on 9 November, 1994 - Indian kanoon*. (n.d.). Retrieved October 15, 2022, from <https://indiankanoon.org/doc/1736797/>

<sup>6</sup> *Shriomani Gurudwara Prabandhak ... vs Shri Som Nath Dass & Ors on 29 ...* (n.d.). Retrieved October 15, 2022, from <https://indiankanoon.org/doc/1478973/>

## DOCTRINE OF LIFTING OR PIERCING OF CORPORATE VEIL

Black Law's Dictionary<sup>7</sup> defines piercing of corporate veil as follows: "the judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts"

Owners have from the liabilities of their business Corporate Veil is a legal term to describe the protections that businesses have. Limited liability is a fundamental principle of corporate law because it precludes creditors from holding a company's shareholders and officials liable for losses or liabilities incurred by the company. This idea, in turn, decreases the associated risk in a corporation and allows company founders to access cash from both public and private markets. The corporate veil notion stems from the limited liability principle because it isolates the corporation, i.e., the entity, from its shareholders, workers, and executives. It grants the corporation a "personhood" distinct from that of its officers, which means creditors cannot sue a business's employees and officers for obligations and losses. The corporate veil also allows employees and officers of a company to receive government benefits, such as unemployment insurance, in the event of bankruptcy or other unfortunate circumstances. They would be held accountable for company losses if the corporate veil did not exist, and they would lose eligibility for such benefits.

A company's separate personality is a statutory privilege that must be used for legitimate business objectives alone. Individuals who make fraudulent and dishonest use of the legal company will not be able to hide behind the corporate personality. The Court will pierce the corporate shell and apply the principle of corporate veil lifting. The Court will look behind the corporate entity and act as if no corporation separate from the members existed, holding the members, or controlling people accountable for the company's debts and obligations.

### WHEN IS THE CORPORATE VEIL PIERCED?<sup>8</sup>

- If a company fails to follow applicable rules and keep its business in good standing with the state in which it is incorporated. For example, it could have failed to file for incorporation in the state where it operates, or it could have submitted insufficient or erroneous information during the incorporation process.

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<sup>7</sup> *Lifting of corporate veil - consultease.com.* (n.d.). Retrieved October 15, 2022, from <https://www.consultease.com/wp-content/uploads/2020/03/Brief-Note-on-Lifting-the-Corporate-Veil.pdf>

<sup>8</sup> *Corporate veil made easy: Definition, explanation, & examples.* Finance Strategists. (2022, September 12). Retrieved October 17, 2022, from <https://learn.financestrategists.com/finance-terms/corporate-veil/>

- If a company does not retain enough funds on hand to keep its operations running smoothly. While there are no legal minimum capital requirements, firms should have enough money to cover their tax responsibilities and operational expenses.
- If a company fails to separate its corporate identity, or the identity of the company as a legal person, from the identity of its owner. A business owner blending personal and corporate identity is an example of this by using company funds for personal spending.

If a company uses the corporate veil to deceive its shareholders and customers. For example, to obtain capital from investors, senior leaders within a company may choreograph their operations and accounting to indicate profits when none exist. It is also possible that a business may not exist despite getting cash from investors. Alternatively, despite earning profits, it may fail to pay dividends or make distributions to shareholders.

The circumstances in which the Courts may lift the corporate veil can be generally classified into two categories:

#### **[A] Under statutory provisions**

- Failure to refund application money (Section 39)<sup>9</sup>: If a firm issues shares, whether to the public or through rights, and the minimum subscription mentioned in the prospectus is not received, directors are personally accountable to refund the money with interest if the application money is not repaid within the prescribed period.
- Misrepresentation in the prospectus (Sections 34<sup>10</sup> and 35<sup>11</sup>): In the event of a prospectus misrepresentation, every director, promoter, and anyone else who permits the distribution of the prospectus is liable to individuals who subscribed for shares based on the false statement. Furthermore, these individuals may be charged criminally and fined up to Rs. 50,000 or imprisoned for up to two years, or both fined and imprisoned.

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<sup>9</sup> Section 39. allotment of securities by company.: Companies act integrated ready reckoner: Companies act 2013: Cairr. Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR. (n.d.). Retrieved October 17, 2022, from [https://ca2013.com/allotment-of-securities-by-company/#:~:text=\(1\)%20No%20allotment%20of%20any,company%20by%20cheque%20or%20other](https://ca2013.com/allotment-of-securities-by-company/#:~:text=(1)%20No%20allotment%20of%20any,company%20by%20cheque%20or%20other)

<sup>10</sup> Section 34. criminal liability for Mis-statements in prospectus.: Companies act integrated ready reckoner: Companies act 2013: Cairr. Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR. (n.d.). Retrieved October 17, 2022, from <https://ca2013.com/criminal-liability-for-mis-statements-in-prospectus/>

<sup>11</sup> Section 35 of companies act, 2013 – civil liability for Mis-statements in prospectus. Corporate Law Reporter. (n.d.). Retrieved October 17, 2022, from [http://corporatelawreporter.com/companies\\_act/section-35-of-companies-act-2013-civil-liability-for-mis-statements-in-prospectus/#:~:text=\(b\)%20that%20the%20prospectus%20was,without%20his%20knowledge%20or%20consent.](http://corporatelawreporter.com/companies_act/section-35-of-companies-act-2013-civil-liability-for-mis-statements-in-prospectus/#:~:text=(b)%20that%20the%20prospectus%20was,without%20his%20knowledge%20or%20consent.)

- Fraudulent conduct (Section 339<sup>12</sup>): If, during the process of winding up a company, it is discovered that any company was brought on with the intention of defrauding the firm's creditors or any other person, or for any other unlawful purpose, the individuals who were intentionally parties to the contract of carriage on of the business in an aforesaid manner shall be legally responsible for all or by any of the business's debts or any other liabilities, as the court may direct.
- Holding Subsidiary companies (section 212<sup>13</sup>): A holding company is required to disclose the accounts of its subsidiaries to its members. Every holding company is required to attach copies of the balance sheet, profit and loss account, directors' report, and auditors' report, among other things, to its balance sheet for each subsidiary company. It is equivalent to removing the corporate veil since, in the perspective of the law, a subsidiary company is a separate legal entity, and its identity is revealed through this process.
- Illegal use of Name (Section 147 (4)<sup>14</sup>): provides that an officer of a company who signs any Bill of Exchange, Hundi, Promissory note, or cheque in which the name of the company is not mentioned in the prescribed manner shall be personally liable to the holder of such Bill of Exchange, Hundi, Promissory note, or cheque unless it is duly paid by the company.

These are a few provisions relating to related to the piercing of the veil under THE COMPANIES ACT, of 2013.

### [B] Under Judicial Interpretations

- Protection of revenue: The assesses in Sir Dinsaw Maneckjee Petit were wealthy and earned a large income from dividends and interest. He established four private corporations and transferred his investments to each of them in exchange for shares.

<sup>12</sup> Section 339. liability for fraudulent conduct of Business: Companies Act Integrated ready reckoner: Companies act 2013: Cairr. Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR. (n.d.). Retrieved October 17, 2022, from <https://ca2013.com/339-liability-for-fraudulent-conduct-of-business/>

<sup>13</sup> Section 212. investigation into affairs of company by serious fraud investigation office: Companies act integrated ready reckoner: Companies act 2013: Cairr. Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR. (n.d.). Retrieved October 17, 2022, from <https://ca2013.com/212-investigation-into-affairs-of-company-by-serious-fraud-investigation-office/>

<sup>14</sup> Section 147. punishment for contravention: Companies act integrated ready reckoner: Companies act 2013: Cairr. Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR. (n.d.). Retrieved October 17, 2022, from <https://ca2013.com/punishment-for-contravention-2/#:~:text=Provided%20that%20if%20an%20auditor,than%20one%20lakh%20rupees%20but>



The company's dividends and interest income were returned to Sir Dinshaw as a fictitious loan. It was determined that the assessee founded the firm solely to avoid paying taxes and that the companies constituted were nothing more than the assessee himself. It had no business and was formed as a formal organization solely to make fictitious loans to Sir Dinshaw. In the case of *CIT v. Sri Meenakshi Mills Ltd.*<sup>15</sup>, when the veil was employed to conceal a tax evasion scheme, the court upheld the piercing of the veil to examine the true transaction.

- Prevention of fraud or improper conduct: Where a company's medium has been used to commit fraud or unlawful conduct, courts have lifted the veil and examined the facts of the case.

In the *Gilford Motor Co Ltd v Horne* [1933]<sup>16</sup> case, Mr. Horne was a former employee of The Gilford Motor Company, and his employment contract prohibited him from soliciting the company's clients. To avoid this, he formed a limited company in his wife's name and sought the company's customers. The corporation filed a lawsuit against him. The Court of Appeal determined that "the corporation was constituted as a device, a stratagem, to conceal Mr. Horne's effective carrying on of business." In this case, it was evident that the major reason for forming the new corporation was to commit fraud." As a result, the court of appeals dismissed it as a farce to conceal his wrongdoings.

In the case of *Jones v. Lipman*<sup>17</sup> a man contracted to sell his land and thereafter changed his mind to avoid an order of specific performance he transferred his property to a company. Russell J specifically referred to the judgments in *Gilford v. Horne* and held that the company here was "a mask which (Mr. Lipman) holds before his face in an attempt to avoid recognition by the eye of equity" he awarded specific performance both against Mr. Lipman and the company.

- Determination of the enemy character of a company: In times of war, the court is willing to lift the corporate veil and identify the nature of shareholding, as it did in *Daimler Co. Ltd. v. Continental Tyre and Rubber Co*<sup>18</sup>., in which a business was formed in London

<sup>15</sup> *The commissioner of income-tax, ... vs Sri Meenakshi Mills Ltd. & Ors ...* (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/503166/>

<sup>16</sup> Wikimedia Foundation. (2022, April 16). *Gilford Motor Co Ltd v horne*. Wikipedia. Retrieved October 17, 2022, from [https://en.wikipedia.org/wiki/Gilford\\_Motor\\_Co\\_Ltd\\_v\\_Horne](https://en.wikipedia.org/wiki/Gilford_Motor_Co_Ltd_v_Horne)

<sup>17</sup> Wikimedia Foundation. (2022, April 16). *Jones v Lipman*. Wikipedia. Retrieved October 17, 2022, from [https://en.wikipedia.org/wiki/Jones\\_v\\_Lipman](https://en.wikipedia.org/wiki/Jones_v_Lipman)

<sup>18</sup> Wikimedia Foundation. (2022, August 15). *Daimler Co Ltd v continental tire and Rubber Co (GB) ltd*. Wikipedia. Retrieved October 17, 2022, from [https://en.wikipedia.org/wiki/Daimler\\_Co\\_Ltd\\_v\\_Continental\\_Tyre\\_and\\_Rubber\\_Co\\_\(GB\)\\_Ltd](https://en.wikipedia.org/wiki/Daimler_Co_Ltd_v_Continental_Tyre_and_Rubber_Co_(GB)_Ltd)

to sell German tires manufactured by a German company. All its directors and primary stockholders were German. When the curtain was lifted, the English courts declared it to be an enemy company, and transacting with it was trading with the enemy.

- Group enterprises: In the event of a group of firms, the Solomon principle may not be followed, and the court may lift the curtain to examine the group's economic realities.

In the case of *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976]<sup>19</sup>. It has been stated that the courts have the authority to dismiss Solomon's case anytime it is right and equitable to do so. The court of appeals determined that the current case was appropriate for lifting the corporate veil. In this case, the three subsidiary companies were part of the same economic unit or group and were entitled to compensation. According to Lord Denning, "a group of firms is regarded jointly for accounts, balance sheets, and profit and loss accounts in many ways." The nature of shareholding and control would indicate whether the corporate veil would be pierced by the court. In this instance, the House of Lords stated that "it is appropriate to pierce the corporate veil only where special circumstances exist suggesting that it is a mere facade masking the underlying facts." Facade, in the figurative meaning, describes an exterior appearance, particularly one that is false or misleading and implies deception and concealment. The fact that the incorporator has entire control of the corporation is insufficient to qualify the company as a mere facade; rather, the phrase implies in this context the deliberate concealing of the corporation's identity and activities. While a "practical note," the company's unique legal identity is a question of substance and actuality., and the incorporator should not be relieved of the disadvantageous consequences of an arrangement voluntarily entered into by the corporation for reasons considered by the corporation to be advantageous to him on every occasion. The concept of "the group enterprise" must be strictly circumscribed, such that enterprises seeking the benefits of independent corporate identity must generally accept the related liabilities and constraints.

- Where a company acts as an agent for its shareholders: When a firm works as an agent for its shareholders, the shareholders are liable for the company's actions. In each scenario, whether the firm is functioning as an agent for its shareholders is a question of fact. There may be an express agreement to this effect, or it may be implied by the facts of each situation.

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<sup>19</sup> Wikimedia Foundation. (2022, April 16). *DHN Food Distributors Ltd v tower hamlets LBC*. Wikipedia. Retrieved October 16, 2022, from [https://en.wikipedia.org/wiki/DHN\\_Food\\_Distributors\\_Ltd\\_v\\_Tower\\_Hamlets\\_LBC](https://en.wikipedia.org/wiki/DHN_Food_Distributors_Ltd_v_Tower_Hamlets_LBC)



- In the case of R.G. Films Ltd., an American corporation financed the production of a film in India under the guise of a British corporation. The head of the American corporation owned 90% of the capital of the British corporation. The British Picture Board refused to register the film as a British film. The ruling was upheld since the British business was only acting as the American corporation's nominee.
- In case of economic offenses: In the case of Santanu Ray v. Union of India,<sup>20</sup> It was decided that in the event of economic crimes, a court has the authority to raise the veil and consider the economic reality hidden behind the legal façade.
- Where the Company is a ruse or a disguise: When the court determines that the firm is only a cloak or sham and is being utilized for illegal or improper purposes, the veil may be lifted.

In the landmark case of P.N.B. Finance v. Shital Prasad<sup>21</sup>, when a person borrowed money from a corporation and invested it in three different companies, the lending company was recommended to pool the assets of all three firms since they were set up to defraud the lending company.

Diplock LJ defined a "sham" in *Snook v London and West Riding Investments Ltd*<sup>22</sup>. as follows: "it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.... but...for acts or documents to be a "sham",

### **HOW CAN THE CORPORATE VEIL BE MAINTAINED?**

Numerous ways help the company not violate corporate law. Here are some points mentioned:

- Keep personal and business spending separate: Most corporate veils are pierced in cases where the owner(s) may have used funds intended for the business for personal or illegitimate purposes. This is referred to as the "commingling" of funds and is a serious

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<sup>20</sup> *Santanu Ray vs Union of India on 12 August, 1988 - Indian kanoon*. (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/352132/>

<sup>21</sup> *Punjab National Bank Finance ... vs Shital Prasad Jain and ors. on 19 ...* (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/509381/>

<sup>22</sup> *Snook v London and West Riding Investments Ltd*. vLex. (n.d.). Retrieved October 16, 2022, from <https://vlex.co.uk/vid/snook-v-london-and-792813337>

offense. Having distinct bank accounts and financial accounting for personal and business use is good practice and will help you manage your expenses on both fronts.

- Maintenance of necessary documents: Running a business necessitates extensive documentation to demonstrate that you have the legal authority to operate in a specific jurisdiction. This includes everything from articles of incorporation to business licenses and permits. Check to see if you have applied for or been authorized for these licenses
- Keep up to date on statutory requirements: As previously stated, cases that involve corporate veils are usually resolved on a case-by-case basis, with the majority of the time being determined by state laws and business requirements. If your company operates in multiple jurisdictions, you may be responsible for adhering to multiple legal requirements.

## INTERNATIONAL CONTEXT

- Germany

A fundamental principle of German law is *societas delinquere non potest*, which implies that an enterprise body cannot be held criminally liable. The argument is that the human element is missing and that the establishment and operation of slush funds, as well as the payment of bribes, are all human acts, not acts of the company. However, Germany has created a complex system of administrative sanctions that includes provisions for corporate criminal liability. Administrative bodies issue these so-called *Ordnungswidrigkeiten*. Section 30<sup>23</sup> of the *Ordnungswidrigkeitengesetz*, which calls for the issuance of fines on corporate entities, is the key provision for sanctioning the corporation.

- Australia

The criminal penalties are severe, and a company's criminal liability is recognized by Australian law. Furthermore, the Australian legislature has made directors criminally liable.

- France

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<sup>23</sup> Markus Wagner, "Corporate Criminal Liability National and International Responses", Background Paper for the *International Society for the Reform of Criminal Law 13th International Conference Commercial and Financial Fraud: A Comparative Perspective Malta*, 8-12 July 1999 available at <http://www.icclr.law.ubc.ca/publications/reports/corporatecriminal.pdf> accessed on 15th October, 2022

Since the French Revolution, France has not recognized corporate criminal liability; however, section 121(2)<sup>24</sup> of the new Code Penal of 1992 expressly mentions this concept. The opposition to not including corporate criminal liability in the criminal code grew over time, and the "Conseil Constitutionnel" clarified in 1982 that the French Legislation did not prohibit the imposition of fines on corporations.

- The United States and the United Kingdom

For more than half a century, most criminal law and corporate scholars in the United States have argued that corporate criminal liability should be removed or severely limited. Corporates can be found criminally responsible in the United States and the United Kingdom.

### IN INDIAN CONTEXT

In *Santanu Ray v. UOI*<sup>25</sup>, the court concluded that in cases of economic offenses, the court has the authority to uncover the corporate veil and consider the actual realities hidden behind the legal facades. The court found that the adjudicating authorities might lift the corporate veil to discover which of the directors was involved in the evasion of excise duty through fraud, deception, or deliberate misstatement or infringement of the Act's requirements.

In the case of *India Waste Energy Development Ltd v. Government NCT of Delhi* (2003)<sup>26</sup>. A corporation shifted its business to another company that was not taxed, but the company was engaged in other taxable operations. Even the devoid of any statutory requirement, the corporation was nonetheless required to pay the tax relevant to such operations, and lifting of the Corporate Veil was permissible.

In *Vodafone International Holdings BV v. UOI Hutchinson International*<sup>27</sup> (non-resident company), *Hutchinson International* (non-resident company) held 100% of CGP Investments Holdings Ltd. (non-resident company), which in turn held 67% of the Indian business

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<sup>24</sup> Stessens, Guy. "Corporate Criminal Liability: A Comparative Perspective" *International and Comparative Law Quarterly*, v. 43, July 1994, p.501

<sup>25</sup> *Santanu Ray vs Union of India on 12 August 1988 - Indian kanoon*. (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/352132/>

<sup>26</sup> *India Waste Energy Development ... vs govt. of NCT of Delhi and ANR. on ...* (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/1671235/>

<sup>27</sup> *Vodafone International Holdings ... Vs Union of India & ANR on 20 ...* (n.d.). Retrieved October 16, 2022, from <https://indiankanoon.org/doc/115852355/>

Hutchinson-Essar. The issue was whether the income earned by Hutchinson as a result of the transaction may be deemed to accrue or arise in India under Section 9 of the Income Tax Act.

The High Court resolved all issues raised by Vodafone. However, final, and definite conclusions cannot be formed because the judgment did not address the transaction's taxability.

## **CONCLUSION**

This piercing of the corporate veil is an exception to the general rule of corporate personality and the act of breaching the corporate veil is still one of the most contentious topics in corporate law. Fraud, agency, sham or facade, injustice, and group enterprises are thought to be the most unusual grounds on which the Law Courts would break the corporate veil. However, these categories are only recommendations and are far from exhaustive.

