<u>COMPANY LAW</u>

UNIT-1

INTRODUCTION

1. MEANING OF A COMPANY

The word ‘company’ has no strictly technical or legal meaning (*Stanley, Re* [1906] 1 Ch. 131). It may be described to imply an association of persons for some common object or objects. The purposes for which people may associate themselves are multifarious and include economic as well as non-economic objectives. But, in common parlance, the word ‘company’ is normally reserved for those associated for economic purposes, *i.e.,* to carry on a business for gain.

Used in the aforesaid sense, the word ‘company’, in simple terms, may be described to mean a voluntary association of persons who have come together for carrying on some business and sharing the profits therefrom.

Indian Law provides two main types of organisations for such associations:

- ‘partnership’ and
- ‘Company’.

Although the word ‘company’ is colloquially applied to both, the statute regards companies and company law as distinct from partnerships and partnership law. Partnership Law in India is codified in the Partnership Act, 1932 and Limited Liability Partnership Act, 2008. Both these legislations are based on the law of agency, each partner becoming an agent of the other(s), and it, therefore, affords a suitable framework for an association of a small body of persons having trust and confidence in each other.

A more complicated form of association, with a large and fluctuating membership, requires a more elaborate organisation which ideally should confer corporate personality on the association, that is, should recognise that it constitutes a distinct legal person, subject to legal duties and entitled to legal rights separate from those of its members. This can be obtained easily and cheaply by registering an association as a company under the Act.

> **NOTE:- It should be noted that the Act even allows a company to be formed and registered for the promotion of commerce, art, science, sports, religion or charity, etc., for purposes other than profit making.**

2. DEFINITION OF A COMPANY

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The Act does not define a company in terms of its features.

Section 2(*20*) of the Companies Act, 2013 defines a company to mean a company incorporated under this Act or under any previous company law.

This definition does not clearly point out the meaning of a company. In order to understand the meaning of a company, let us see the definitions as given by some authorities.

2.1. Some popular definitions of a company

Lord Justice Lindley – "A company is an association of many persons who contribute money or monies worth to a common stock and employed in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute to it or to whom it pertains are members. The proportion of capital to which each member is entitled is his share. The shares are always transferable although the right to transfer is often more or less restricted."

Chief Justice Marshall – "A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence."

Prof. Haney – "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

The above definitions clearly bring out the meaning of a company in terms of its features. A company to which the Companies Act applies comes into existence only when it is registered under the Act. On registration, a company becomes a body corporate *i.e.,* it acquires a legal personality of its own, separate and distinct from its members. A registered company is, therefore, created by law and law alone can regulate, modify or dissolve it.

3. FORMATION OF A COMPANY

Modern-day business requires a large amount of funds. The competition and change in the technological environment are also increasing day by day. As a result, the company form of organization is being preferred by more and more business firms. The formation of a company involves several steps, that are required from the time a business idea originates to the time a firm is legally ready to commence business, also referred to as stages in the formation of a company. Those who are taking these steps and the associated risks are promoting a company and are called its promoters.

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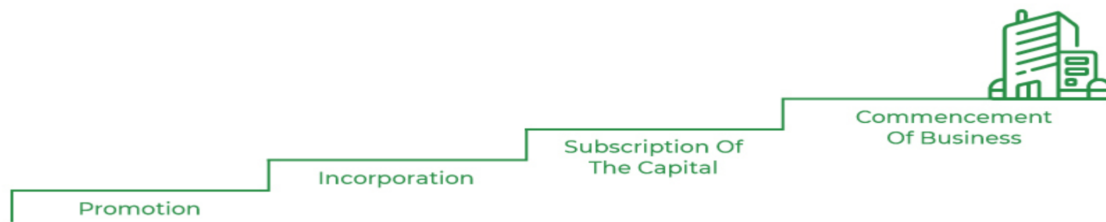

To fully understand the process we will divide the formalities into four distinct stages, which are:

- Promotion
- Incorporation
- Subscription of the Capital
- Commencement of Business

However, it must be noted that these stages are appropriate from the point of view of the formation of Public Ltd. Company. As far as the Private Ltd. Companies are concerned only the first two stages mentioned above are appropriate. A Private Co. can start its business immediately after obtaining the certificate of incorporation as it is prohibited to raise funds from the public.

A. Promotion of a Company

Promotion is the first stage in the formation of a company. It involves conceiving a business opportunity and taking the initiative to form a company so that practical shape can be given to exploiting the available business opportunity. Apart from conceiving business opportunities the promoters analyze its prospects and bring together the men, materials, machinery, managerial abilities, and financial resources and set the organization going.

B. Incorporation of a Company

After going through the above formalities the promoters of the company make an application for the Incorporation of the company. The application is to be filed with the Registrar of the Companies of the state within which they plan to establish the registered office of the company. The application for registration must be accompanied by certain documents which are as following.

I. **Memorandum of Association** duly stamped, signed, and witnessed.

II. **Article of Association** duly stamped, signed, and witnessed.

III. **Written Consent of the Proposed Directors**

IV. **Agreement**, if any, with the proposed Managing Director, Manager, etc.

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V. A copy of the **Registrar's Letter approving the Name of the Company.**

VI. **A Statutory Declaration** affirming that all legal requirements of registration have been submitted.

VII. Notice the exact **Address of the Registered Office.**

VIII. Documentary evidence of **Payment of Fees.**

A company is legally born on the date printed on the Certificate of Incorporation. It becomes a legal entity with perpetual succession on such a date. It becomes entitled to enter into valid contracts. On the date of issue of Certificate of Incorporation, a private company can immediately commence its business, it can raise necessary funds through a private arrangement, and proceed to start a business. A Public Company, however, has to undergo two more stages in its formation.

C. Subscription of the Capital

A Public Company can raise the required funds from the public using an issue of shares and debentures. For this purpose, it has to issue a prospectus which is a kind of invitation to the public to subscribe to the capital of the company and undergo various other formalities. The following steps are required for raising funds from the public-

- **SEBI Approval:** Securities and Exchange Board of India which is the regulatory authority in our country has issued guidelines for the discloser of information and investor protection. A company inviting funds from the general public must follow SEBI guidelines of discloser of all the adequate information.
- **Filing of Prospectus:** Prospectus is a document that includes any notice, circular, advertisement, or other documents inviting offers from the public for the subscription. It has to be filed with the Registrar of Companies.
- **Appointment of Bankers, Brokers, and Underwriters**
- **Minimum Subscription:** If Applications received for the shares are for an amount less than 90 percent of the issue size, the allotment cannot be made.
- **Application to Stock Exchange:** Application is to be made to at least one stock exchange for permission to deal its shares or debenture.
- **Allotment of Shares**

D. Commencement of Business

If the amount of minimum subscription is raised through the new issue of shares, a public company applies to the Registrar of Companies for the issue of Certificate of Commencement of Business. The following documents are required:

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- A declaration that shares payable in cash have been subscribed for and allotted.
- A declaration that every director has paid in cash, the application, and allotment money on his shares.
- A declaration that no money is payable or liable to become payable to the applicants.
- A statutory declaration that the above requirements have been complied with.

4. REGISTRATION AND INCORPORATION OF A COMPANY

A company comes into existence once it has been correctly incorporated under the provisions of the Companies Act 2013 or any earlier Companies Act that may apply. This initial step of incorporation is crucial for any company before it can engage in business transactions. During the incorporation process, several fundamental decisions need to be made, including whether the company will be classified as a private or public company, defining the company's objectives, determining the initial capital investment, and addressing various other important matters.

Section 7 of the Companies Act 2013 outlines the essential documentation required for the incorporation of a company. These documents need to be submitted to the Registrar of Companies, who will then conduct an inquiry to ensure that all the necessary paperwork has been correctly filed. Upon the registrar's satisfaction with the compliance of these requirements, they proceed to retain and register the company's memorandum of association, along with other pertinent documents. Subsequently, the Registrar of Companies issues a Certificate of Incorporation, which serves as the company's official "birth certificate." In addition to this certificate, the Registrar also assigns a corporate identity number, which bestows upon the company the status of a distinct legal entity.

In essence, the process of incorporation under Section 7 of the Companies Act 2013 honors the official birth of a company, with the Certificate of Incorporation serving as its

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legal acknowledgment of existence.

Registration involves the formal recognition of a business entity by the relevant government authorities. It provides the business with a unique identity and legal standing. The term "incorporation," on the other hand, specifically refers to the creation of a corporation, which is a distinct legal entity separate from its owners.

5. NATURE/ FEATURES/ SALIENT FEATURES OF A COMPANY :-

   1. **Incorporated association—** A company comes into operation after its registration under Companies Act. Without such registration no company can come into existence.
   2. **Separate legal entity –** A company has a separate legal entity and is not affected by changes in its membership. Therefore, being a separate business entity, a company can contract, sue and be sued in its incorporated name and capacity.
   3. **perpetual existence –** Since company has existence independent of its members, it continues to be in existence despite the death, insolvency or change of members.
   4. **common seal—**Company is not a natural person, therefore, it can not sign the document in the manner as a natural person would do. In order to enable the company to sign its documents it is provided with legal tool called 'common seal'.
   5. **Limited liability**--- The liability of every shareholder of a company is limited to the amount he has agreed to pay to the company on the shares allotted to him.
   6. **Distinction between ownership and management**:-- Since the number of shareholders is very large and may be distributed at different geographical locations, it becomes difficult for them to carry on the operational management of the company on day to day basis. This gives rise to the need of separation of the management and ownership.
   7. **Not a citizen—**A company is not a citizen in the same sense as a natural person is.
   8. **Transferability of shares**:- The capital is contributed by the shareholders through the subscription of shares. Such shares are transferable by its members except in case of a private limited company, which may have certain restrictions on such transferability.

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6. KINDS OF COMPANIES

There can be several factors that can affect the classification of the company such as size of the company, ownership structure, intended business activity, country of origin, and liability of owners.

A. Types of Company Under Companies Act, 2013

Different types of companies can be registered under Companies Act, 2013 in India to conduct their business and provide a legal structure for their business. The different types of companies are as follows:

1. One Person Company

- One Person Company (OPC) is a type of private company that has only one member. OPC was introduced with the main aim of promoting entrepreneurship and corporatization of business.
- However, it is to be noted that an OPC is different from a sole proprietership, as an OPC is a separate legal entity and the member of the OPC has limited liability, whereas in the case of a sole proprietership the liability of the owner is not limited. There is no minimum paid-up capital required for constituting OPC.
- However, only a natural person who is an Indian citizen resident or otherwise stayed in India for not less than 120 days during the immediately preceding financial year shall be eligible to incorporate an OPC or to be a nominee for the sole member of an OPC. No minor can become a member or a nominee in OPC. Also, OPC cannot be converted into a company registered under section 8 of the Act.

2. Private Limited Company

- A Private Company as mentioned under Section 2(68) of the Companies Act 2013, has a minimum of 2 members and a maximum of 200 members, however, this figure shall exclude employees and ex-employees who are also the shareholders in the company.
- A Private Company cannot invite the general public to subscribe to their shares/debentures. Shares of private companies are not freely transferable and these shares can’t be transferred. A private company should have Private Limited as a suffix in its name.

3. Public Limited

- A Public Company is defined in Section 2(71) of the Companies Act, 2013. To establish a Public company, a minimum of seven members is required and there

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is no ceiling limit on the number of maximum members. In the case of a Public company, there are no restrictions on the buying and selling of shares.

- Any subsidiary of a public company shall be deemed to be a Public company. The shares of a Public company can be freely transferred. A Public company that has limited liability is required to add the word 'limited' at the end of the name. A Public company should have limited; as a suffix in its name.
- In case a company does not comply with the specified provisions of the Companies Act, it will renounce the status of a Private company. To transform a Public company into a Private company, the company is required to adopt a special resolution at the general meeting; i.e., 75% majority.

4. Section 8 Company

- Section 8 Companies, also known as companies formed with charitable objects. According to section 8 of the Companies Act, 2013, these companies are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, environment conservation etc.
- Such companies are required to apply their profits back to promote their objectives. Section 8 companies can't pay dividends to their members. Central Government has strict control over Section 8 companies and in case such a company fails to fulfill the statutory requirements of the act, the central government may revoke the license or may issue an order as may seem fit.

7. MODES AND CONSEQUENCES OF INCORPORATION OF A COMPANY

Incorporation of a company

The registration of the company is a legal recognition given to the body corporate under the Company law. The procedure for registration has been clearly stated in Section 7 of the Companies Act, 2013. This provision clearly lays down the requirements for the incorporation of the company. The details of the documents, namely:

- Memorandum of Association, which is the constitution of the company, wherein the signatories, in case of a public company, has been fixed to a minimum number of 7 and for a private company, a minimum number of 2. This document

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is duly stamped;

- Articles of Association, this is the document filed along with the MOA;
- List of directors, wherein the details regarding their names, occupation, and address is mentioned;
- Written consent of the directors is to be submitted to the registrar of the companies;
- Verification document, wherein such document is to be digitally signed by any recognised chartered accountant, company secretary, advocate.

Consequences of Incorporation -

1. Legal Existence: The Certificate of Incorporation confirms the legal existence of the company as a separate entity distinct from its shareholders, directors, and promoters. This legal personality allows the company to conduct business, own assets, enter into contracts, and engage in various activities in its own name.
2. Limited Liability: The Certificate of Incorporation provides limited liability protection to the shareholders. This means that the personal assets of shareholders are generally shielded from the company's debts and liabilities. Shareholders' liability is limited to the amount they have invested in the company.
3. Perpetual Succession: The issuance of the Certificate of Incorporation ensures the company's perpetual succession. This means that the company continues to exist even if there are changes in ownership, management, or the death of shareholders. The company's operations are not affected by such changes.
4. Separate Legal Identity: With the Certificate of Incorporation, the company gains its own legal identity. It can own property, sue or be sued, and undertake legal actions in its own name. This separation prevents the company's actions from being attributed directly to its shareholders or directors.
5. Access to Contracts and Transactions: The Certificate of Incorporation enables the company to enter into contracts, agreements, and transactions. It can engage in business activities, sign leases, make investments, and negotiate with other parties as a distinct legal entity.
6. Ability to Raise Capital: The issuance of the Certificate of Incorporation allows the company to raise capital through various means, such as issuing shares, debentures, or loans. Investors and lenders are more likely to engage with a legally recognized entity.
7. Share Trading and Ownership: For companies with shareholders, the Certificate of Incorporation enables the issuance and trading of shares. Shareholders can

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buy, sell, and transfer shares, allowing for ownership changes and investments.

8. Taxation and Reporting: The Certificate of Incorporation has implications for taxation. The company becomes subject to taxation as a separate entity, and it must fulfill tax reporting requirements based on the jurisdiction's laws.
9. Corporate Governance: With the Certificate of Incorporation, the company is expected to follow corporate governance standards, maintain proper records, and fulfill regulatory obligations. This includes holding annual general meetings, maintaining financial records, and submitting annual financial statements.
10. Legal Rights and Obligations: The company gains legal rights and obligations, similar to those of an individual. It can enforce contracts, protect intellectual property, and engage in legal proceedings.
11. Investor Confidence: The issuance of the Certificate of Incorporation enhances investor confidence. It provides assurance that the company is a legally recognized entity adhering to legal and regulatory standards.

The Certificate of Incorporation marks the official recognition of a company as a separate legal entity with its own rights, responsibilities, and liabilities. It opens doors for the company to engage in business activities, raise capital, and interact with stakeholders as a distinct entity under the law.

8. POSITION, DUTIES AND LIABILITIES OF PROMOTERS

Promoters play a crucial role in establishing a company right from its inception stage. **An individual or a group of people who come up with the concept of starting a business are the promoters of a company.** They carry out the required processes to establish the firm.

The company's promoters shape the company and thus are moulding blocks of the company. However, a promoter is not the owner of a company. The promoter helps to establish and run the company, but the company shareholders are the actual owners of the company.

As per Section 2(69) of the Companies Act, 2013, promoter means any of the following persons:

- A person named as a promoter in the prospectus or identified by the company in its annual return in Section 92.
- A person who controls the company affairs, indirectly or directly, whether as a director, shareholder or otherwise.
- A person in accordance with whose directions, advice or instructions the Board

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of Directors of a company are accustomed to act.

In simple words, promoters perform the preliminary steps, like floating the securities in the market, making the prospectus of the company, etc., for establishing the company's business. However, if a person is doing these things professionally, they will not be considered a promoter.

Types of Promoters of a Company

A promoter is a person/entity who conceives the idea of company formation. **An individual, firm, association of person or company can be a promoter. A promoter of a company can be any of the following types:**

- **Professional promoter:** A professional promoter is an expert in promoting the business during its formation or inception. They transfer the ownership of the business to shareholders when it is established in the market.
- **Financial promoter:** A financial promoter is a promoter who invests capital or money and has a sizable company share. They promote banks or financial institutions. They aim to assess the market's financial situation and start a company at the right moment.
- **Managing promoter:** A managing promoter helps in company formation. They also get the managing rights in the company after it is formed.
- **Occasional promoter:** An occasional promoter is a promoter whose main job is to float the company. They do not promote the business routinely since they are in charge of two to three enterprises, and they get involved only in the crucial matters of the business.

Functions of a Promoter

A promoter plays many functions in the formation of a company, from conceiving the business idea to taking all the required steps to make the idea a reality. Below are some of the functions of a promoter:

- A promoter needs to comprehend/conceive the idea of company formation.
- A promoter looks into the feasibility and viability of the business idea. He/she assesses whether the company formation will be practicable or profitable.
- Once the idea is conceived, the promoter organises and collects the available resources to convert the business idea into a reality.
- The promoter decides the company name and settles the contents of the company's Memorandum of Association and Articles of Association.
- The promoter decides the location of the company's head office.

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- The promoter nominates associations or people for vital company posts, such as appointing the auditors, bankers and the company's first directors.
- The promoter prepares all the necessary documents required to incorporate a company.
- The promoter decides the company's funding sources and capital requirements.

A promoter cannot be considered a trustee, employee or agent of a company. The role of the promoter ceases when the company is established and is handled by the board of directors and the company management.

Duties of a Promoter

The promoters have certain duties towards the company, which are as follows:

Disclose hidden profits

The first duty of the promoters is to be loyal to the business and not involve in malpractice. They should not earn secret or hidden profits while carrying out promoting activities such as buying a property and selling it for a profit without disclosing it. They are not barred from making such profits, but the only condition is that they must disclose it. They must share all the information regarding their profitability and earnings with all the relevant company stakeholders.

Disclose all material facts

A promoter has a relationship of trust and confidence with the company, i.e., a fiduciary relationship. Under this fiduciary relationship, the promoter has the duty to disclose all material facts relating to the company's business and formation with the relevant stakeholders.

Act in the best interest of company

In all situations, promoters should prioritise the company's interest over their personal interests. They must give utmost consideration to the company's best interest in its formation and all business dealings.

Disclose all private arrangements

While forming and establishing a company, many private transactions take place. However, such transactions must be disclosed by the promoters to the stakeholders. It is the duty of the promoters to disclose all private transactions and the profit earned from them to the stakeholders.

Rights of a Promoter

The rights of promoters include the following:

Right of indemnity

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Promoters are jointly and severally accountable for any hidden profits made by any of them and false statements made in the prospectus. All the promoters are individually and equally responsible for the company's affairs. Thus, one promoter can claim the compensation or damages paid by him/her from the other promoters.

Right of preliminary expenses

A promoter is entitled to reimbursement for preliminary expenditures incurred for the company's establishment, such as solicitors' fees, advertising costs and surveyors' fees.

Right of remuneration

A promoter has the right to receive remuneration from the company unless a contract to the contrary. The company's Articles of Association can also provide that the directors can pay an amount to the promoters for their services. However, the promoters cannot sue the company for remuneration unless there is a contract.

Liability of a Promoter

The liabilities of a promoter include the following:

- They cannot make secret profits out of company profits or deals for personal promotion. The promoters are liable to pay such profits to the company when they make such profits.
- They can be held liable for damages or losses suffered by a person who subscribes for debentures or shares due to the false statements made in the company prospectus.
- They are criminally liable for mentioning untrue statements in the prospectus.
- They can be held liable for a public examination of private company documents when there are reports alleging fraud in the company formation or promotion activities.
- They are also liable to the company where there is a breach of duty on their part, misappropriated company property or guilty of breach of trust.

Legal position of a promoter

It is tough to define the legal status of a promoter. Promoters are not the trustees or agents of the company. They behave in a fiduciary capacity for the company. They take actions and activities to create the company and pay the preliminary costs related to its

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incorporation, such as stamp duty, registration and professional fees. They have a fiduciary duty towards the company and are liable for any profits made by them personally in company deals.

9. USES AND ABUSES OF CORPORATE FORM; LIFTING THE CORPORATE VEIL

Salomon v. A. Salomon laid down the legal principle that a company is a separate legal entity *i.e.,* it is independent from its members and enjoys its own set of rights and obligations. Section 9 of the Companies Act, 2013 has the effect of making a company registered under the Companies Act, 2013, a separate legal entity, by conferring upon it the characteristics of a separate legal entity such as having-

i. Perpetual succession

ii. A common seal with power to acquire, hold and dispose of property, to contract and to sue or be sued, by the name of the company.

The honourable Supreme Court of India recognised the juristic personality of a company as distinct from its shareholders in **Bacha F. Guzdar v. CIT, Bombay**. This position has since been used to separate a company's existence from its owners (individuals or entity), by way of a 'Corporate Veil.'

This veil is used to protect the interests of the owners and officers of the company and can be lifted or pierced only under exceptional circumstances. It is reasonable to construe that as a separate legal entity, a company can also be used to facilitate the evasion of legal obligations or as a front for carrying on illegal activities. In such a scenario the corporate veil can be pierced to-

- reveal the true nature of the company; and
- identify the individuals exercising real control over the company; and
- such persons can be directly held liable.

The doctrine of piercing of corporate veil or the lifting of corporate veil, is invoked by Indian Courts on the basis of two theories-

i. The theory of alter ego- When the line of distinction between the company and its owners becomes blurred and the company merely functions as an alter ego of the owners for carrying on illegal activities.

• There is unity of interest between the company and the owner and the separate legal existence of the company has ceased.

• Separation of the company from its owners reveals the illegal activities of the owner.

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ii. The instrumentality theory- When the company's owners/directors use its corporate personality for their own benefit instead of using it for the benefit of the company.

• The company is merely an instrument of the owners/directors.

• Such owners/directors have complete control over the company and use the company for their own benefit.

In **Life Insurance Corporation of India v. Escorts Ltd.**, the Hon'ble Supreme Court recognised the doctrine of piercing of corporate veil and observed as follows that the veil of a corporate entity can be pierced when a legislation expressly permits it, or when improper conduct or fraud is sought to be avoided, or when a tax statute is tried to be circumvented, or when related entities are intimately associated and, in actuality, part of one concern. It is neither required nor preferable to list the types of cases in which piercing the veil is acceptable, because this would inevitably depend on the legislation, its object, the alleged conduct, impact on parties who may be affected, the public interest element, etc.

The Companies Act, 2013 has also incorporated certain provisions that provide for lifting of the corporate veil. **Section 339** empowers the National Company Law Tribunal to hold any person liable for fraud if such person carries on the company's business with the intent to defraud creditors or for any other fraudulent purpose during the course of winding up of such company.

Section 216 empowers the Central Government to appoint inspectors to investigate and report on the company's affairs, for determining the true persons-

- Who are financially interested in the success or failure of the company; or
- Who control or materially influence the policy of the company; or
- Who have beneficial interest in the company.

Section 212 empowers the Central Government to appoint Serious Fraud Investigation Office for investigating into the affairs of the company. Under **Section 210** and **Section 212,** the Central Government can appoint inspectors to investigate into the affairs of the company.

<u>Grounds for Piercing the Corporate Veil</u>

Although Indian courts have laid down certain grounds for invoking the doctrine of lifting of corporate veil, these grounds are not binding and the applicability of the doctrine depends upon the facts of the case.

1. **Prevention of tax evasion-**

The corporate character of a company is often used as a mechanism for evading taxes and revenue duties that the company would otherwise be legally bound to pay. Indian

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courts in such cases have often lifted the corporate veil of the company to identify if the separate legal existence of the company was being used a mechanism for evading taxes and revenue duties.

In **Commissioner of Income Tax v. Sri Meenakshi Mills Ltd., Madurai,**[4] the Apex court held that Courts are entitled to lift the corporate veil and disregard the corporate character of the entity if it is used for the purposes of tax evasion.

In **Vodafone International Holdings BV v. Union of India**, the Supreme Court observed that the corporate veil could be lifted by the Income Tax department if it could establish that the alleged transaction was a method adopted to evade tax. It was held that the Income Tax department had the power to pierce the corporate veil of the company to see if it was a resident of Mauritius and if it was paying income tax in Mauritius.

2. **Associated Companies inextricably connected so as to form one entity in reality -**

Sometimes, a company has a controlling stake over another company and they are so inextricably connected that in reality, they are one entity. In such cases, the Courts can apply the doctrine of lifting of the corporate veil to find out the true nature of the entities and determine if such a structure is being used as a front for improper purposes.

In **State of UP v. Renusagar Power Co,** Renusagar was supplying energy to Hindalco, which held 100% shares in Renusagar. The Supreme Court applied the doctrine of lifting of the corporate veil and held that Hindalco and Renusagar were to be treated as one concern. Hence, the Court came to the conclusion that Hindalco was consuming energy from its own source of generation and rates of duty applicable to own source of generation were to be applied over such consumption of energy.

3. **To identify true nature of the transaction**

The corporate character of a company can be used as a cloak to hide behind while carrying out improper transactions in the name of the company. In such cases, courts can apply the doctrine of piercing of the corporate veil to identify the true nature of such transactions and hold the persons exercising real control over the company's affairs, liable for such transactions.

In **Subhra Mukherjee v. Bharat Coking Coal Ltd**, the Supreme Court applied the doctrine of lifting of the corporate veil to identify the true nature of the transaction and determine the real parties to the sale. The Court held that the transaction by the directors of the company was a sham as they had illegally sold the properties of the company to their wives.

In **Vodafone International Holdings BV v. Union of India,** the Supreme Court also observed that the corporate veil can be lifted when a company engages in an indirect transfer by abusing the legal form of the company "*without reasonable business purpose*" and where "*the transaction is used principally as a colorable device for the*

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distribution of earnings, profits and gains" so as to evade tax obligations.

4. **Public Interest**

The doctrine of corporate veil can also be invoked on the ground of public interest. This can be done to give effect to law that was sought to be circumvented by using the corporate character of the company as a vehicle for such circumvention.

In **State of Rajasthan and Ors. v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and Ors,** the Supreme Court invoked lifting of corporate veil on the ground of public interest and observed that corporate veil can be pierced if the public interest warrants it. In this case, the corporate entity was used to disguise the real transaction of transferring a mining lease to a third party for consideration without obtaining statutory consent by separating it into two transactions: the first was the transformation of a partnership into a company, and the second was the sale of the entire shareholding to another company. The true transaction is the selling of a mining lease, which is illegal.

5. **Fraud**

The most common ground for invoking the doctrine of piercing of corporate veil is fraud. When persons in control of the company indulge in fraudulent activities by hiding behind the corporate identity of the company, the corporate veil can be lifted by Courts to hold such persons directly liable for frauds committed in the name of the company.

In **Delhi Development Authority v. Skipper Construction Company (P) Ltd. and Ors.,** the accused had created several companies and was using their corporate character as cloaks for defrauding people. The Honourable Supreme Court invoked the doctrine of lifting of the corporate veil and held that all such companies were essentially just one entity that was being controlled by the accused and held him directly liable for fraud.

In **OIS Advanced Technology Pvt. Ltd. v. State of NCT of Delhi,** the Delhi High Court applied the doctrine of lifting of the corporate veil to impose liability upon persons exercising real control over the company. The Court disregarded the separate legal existence of the shell company and held that the accused were using the corporate identity of the company as a mechanism for protecting themselves from liability while carrying out dubious transactions.

6. **Violation of human rights and rights of employees by Government Company**

In **Kapila Hingorani v. State of Bihar**, a government company was acting in a manner opposed to the interests of the workmen of the company. The Supreme Court held that the corporate veil can be pierced where a corporate entity is acting against justice and public interest. On piercing the veil, court found out that the Government of Bihar was the sole shareholder of the company and was exercising deep and pervasive control over the affairs of the impugned company. The court further held that when the State has such a deep and pervasive control over a government company, a constitutional obligation to protect the life and liberty of all the employees of the company is also

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imposed on the State. Accordingly, the government of Bihar was held liable to protect the life and liberty of the employees of the company.

7. **Contempt of Court**

In **Jyoti Limited vs. Kanwaljit Kaur Bhasin and Ors,** the Delhi High Court observed that the separate identity of a company was misused as a cloak by the accused for the improper purpose of wilfully disobeying the orders of the court. The court applied the doctrine of lifting of the corporate veil and directly punished the accused for contempt of court.

<u>Peculiar Approach of Indian Courts</u>

Indian courts have not applied the doctrine of lifting of corporate veil for just punishing wrongdoers who use the separate legal existence of a company as a device for indulging in improper activities. In a few cases, courts have adopted a peculiar approach for invoking the doctrine, such as-

i. In **Prem Lata Bhatia v. Union of India**, the Union of India had allotted a property to the owner of a sole proprietorship at a fixed monthly rent. The owner of the sole proprietorship later converted it to a private company and transferred the rented premises of the sole proprietorship to the private company. The owner was asked to evict the property on the ground that he had handed over the possession of the property to someone else without prior consent of the Government. The honourable Delhi High Court invoked the doctrine of lifting of the corporate veil to hold that even after converting the sole proprietorship into a private company, the owner could not be evicted as the possession over the property was still, in substance, in the hands of same person.

ii. In **Prasad - Sushee Jnt. Venture vs. Singareni Collieries Co. Ltd, M.D., Khammam and Ors**, an Indian subsidiary company had relied on the experience of its foreign-based parent company for meeting the requirement of experience under the tender and the court held it to be valid. By placing reliance upon **New Horizons Limited v.UOI**, the honourable Hyderabad High Court lifted the corporate veil of the subsidiary company to determine if its parent company had requisite experience to fulfil the experience criteria under the tender.

iii. In **J.B. Exports Ltd. v. BSES Rajdhani Power Ltd**, JB Exports Ltd had acquired 100% stake in BVM Engineering Limited. The Electricity Board passed an order demanding sub-letting charges from BVM Engineering on finding that JB Exports was using electricity at BVM's factory. The Delhi High Court observed that the doctrine of corporate veil should be invoked not just in cases involving fraud or evasion of legal obligations *"but also in a large number of cases where it would promote the growth of the industry."* The court applied the doctrine and held that JB Exports and BVM were one and the same entity and BVM was not required to pay sub-letting charges.

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Power of Arbitral Tribunal to Lift the Corporate Veil in India

The position of law on the power of arbitral tribunals to lift the corporate veil in India is not well-settled as a result of conflicting judgments by different High Courts. In fact, the Delhi High Court itself has conflicting decisions on this subject- matter. The Delhi High Court in Sudhir Gopi[17] held that an arbitral tribunal doesn't have the power to pierce the corporate veil and subsequently in GMR Energy, it held otherwise. Both these decisions were delivered by single judge benches and GMR Energy hasn't overruled Sudhir Gopi.

The Gujarat High Court by relying on similar authorities as were relied upon in GMR Energy, has held that an arbitral tribunal can lift the corporate veil. However, the Bombay High Court by relying on Sudhir Gopi, has held that arbitral tribunals cannot pierce the corporate veil. Hence, clarity in this regard is required from the Apex Court.

i. **Delhi High Court**

Upon application of the doctrine of corporate veil, owners/directors of the company who were not a signatory to the arbitration agreement can be held liable for the company's acts. In **Balmer Lawrie and Company Ltd. v. Saraswathi Chemicals Proprietors Saraswathi Leather Chemicals (P) Ltd.,** the Delhi High Court observed that an arbitral tribunal cannot pierce the corporate veil of a company as it does not have the power to proceed against non-signatories to the arbitration agreement. It further observed that delivering an arbitral award against non-signatories would be without jurisdiction and render the award unenforceable.

In **Sudhir Gopi v. IGNOU**, the Delhi High Court categorically held that although Courts have the power to lift the corporate veil, arbitral tribunals cannot not do the same as they are a mere creation of an arbitration agreement and cannot *"bind other parties who have not agreed to arbitrate."*

In **GMR Energy Ltd. v. Doosan Power Systems India Pvt. Ltd.**, the Delhi High Court referred to Sudhir Gopi and distinguished it from the facts of the case on the ground that Sudhir Gopi dealt with piercing of corporate veil in cases of fraud. Thereafter, the court held that the arbitral tribunal had the power to pierce the corporate veil in cases that do not deal with fraud.

ii. **Bombay High Court**

By relying on Sudhir Gopi, the Bombay High Court in **NOD Bearings Pvt. Ltd. v. Bhairav Bearing Corporation**, reiterated the view of the Delhi High Court and held that arbitral tribunals cannot pierce the corporate veil of a company.

iii. **Gujarat High Court**

In **IMC Ltd v. Board of trustees of Deendayal**, the Gujarat High Court held that arbitral tribunals have the power to lift the corporate veil on the basis of the doctrine of alter

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ego. The Court also observed as follows: *"Whether a case is made out for impleading a third party by applying the doctrine of lifting of corporate veil, is a matter which is to be examined having regard to facts of each case."*

10. CORPORATE LIABILITY

10.1. CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially accountable to itself, its stakeholders, and the public.

By practicing corporate social responsibility, also called corporate citizenship, companies are aware of how they impact aspects of society, including economic, social, and environmental. Engaging in CSR means a company operates in ways that enhance society and the environment instead of contributing negatively to them.

Through corporate social responsibility programs, philanthropy, and volunteer efforts, businesses can benefit society while boosting their brands. A socially responsible company is accountable to itself and its shareholders. CSR is commonly a strategy employed by large corporations. The more visible and successful a corporation is, the more responsibility it has to set standards of ethical behavior for its peers, competition, and industry.

Types of CSR

- **Environmental responsibility:** Corporate social responsibility is rooted in preserving the environment. A company can pursue environmental stewardship by reducing pollution and emissions in manufacturing, recycling materials, replenishing natural resources like trees, or creating product lines consistent with CSR.
- **Ethical responsibility:** Corporate social responsibility includes acting fairly and ethically. Instances of ethical responsibility include fair treatment of all customers regardless of age, race, culture, or sexual orientation, favorable pay and benefits for employees, vendor use across demographics, full disclosures, and transparency for investors.
- **Philanthropic responsibility:** CSR requires a company to contribute to society, whether a company donates profit to charities, enters into transactions only with suppliers or vendors that align with the company philanthropically, supports employee philanthropic endeavors, or sponsors fundraising events.
- **Financial responsibility:** A company might make plans to be more environmentally, ethically, and philanthropically focused, however, it must back these plans through financial investments in programs, donations, or product

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research including research and development for products that encourage sustainability, creating a diverse workforce, or implementing DEI, social awareness, or environmental initiatives.

Benefits of CSR

According to a study published in the Journal of Consumer Psychology, consumers are more likely to act favorably toward a company that has acted to benefit its customers.1 As a company engages in CSR, it is more likely to receive favorable brand recognition. Additionally, workers are more likely to stay with a company they believe in. This reduces employee turnover, disgruntled workers, and the total cost of a new employee.

For companies looking to outperform the market, enacting CSR strategies may improve how investors view the company's value. The Boston Consulting Group found that companies considered leaders in environmental, social, or governance matters had an 11% valuation premium over their competitors.2

CSR practices help companies mitigate risk by avoiding troubling situations. This includes preventing adverse activities such as discrimination against employee groups, disregard for natural resources, unethical use of company funds, and activity that leads to lawsuits, and litigation.

Why Should a Company Implement CSR Strategies?

Many companies view CSR as an integral part of their brand image, believing customers will be more likely to do business with brands they perceive to be more ethical. In this sense, CSR activities can be an important component of corporate public relations. At the same time, some company founders are also motivated to engage in CSR due to their convictions.

What Is ISO 26000?

In 2010, the International Organization for Standardization (ISO) released ISO 26000, a set of voluntary standards to help companies implement corporate social responsibility. Unlike other ISO standards, ISO 26000 provides guidance rather than requirements because the nature of CSR is more qualitative than quantitative, and its standards cannot be certified. ISO 26000 clarifies social responsibility and helps organizations translate CSR principles into practical actions.

10.2. CORPORATE CIVIL LIABILITY

A corporation can only do those things that are incidental to the fulfillment of the purposes for which it was established by law. All its actions must be directed toward its ultimate purpose of creating a corporation. A company incorporated by special statute

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is therefore limited to the powers conferred by the statute and to those reasonably incidental to it. The purpose and object of a company registered under the Companies Act 2013 is contained in its memorandum of association and the company cannot exceed the limits so set for its activities. Anything a company does beyond its subject matter clause is ultra vires. It may be reiterated that a company is not a natural person. It has no mind, body, soul or brain of its own. It has to act through its agents, employees and other functionaries like directors etc. Hence, it follows that a corporation has no will of its own and no interest of its own. The interest of the company is actually the interest of its shareholders, which is represented by the board of directors. Despite this fact, the law confers on corporations a fictitious legal personality that vests them with rights, obligations and property. As a result, a company can sue or be sued and owe both civil and criminal liability for actions it has taken.

Civil liability

It also imposed civil liability on companies. Although a company is an artificial person without a brain and body of its own, it would be liable for wrongful acts committed by its agents or employees in the course of their employment.

Indirect liability

A company is an artificial person that has no brain and body of its own, but would nevertheless be liable for wrongful acts committed by its agents or employees in the course of their employment. This liability is based on the principle of vicarious liability. This is further reinforced by the Latin maxim "Qui facet alium facet per se", which means that an authorized act which is done through another is deemed to have been done by him.

A company is therefore liable for the torts of its employees and agents, just as a master is liable for the wrongful and negligent acts of his employees. Thus, based on the principle of agency, the master, i.e. the corporation, would be liable for the acts of the servants done in the course of employment.

The decisive word here is the course of employment. The company is not responsible for any action that was done by the agent, but is not within the scope of his work and was not authorized by the principal. Only the one who did the act would be responsible.

Over the years, the concept of vicarious liability has also included various other aspects within its framework. The question of whether acts with malice as an ingredient has been the subject of much debate in court and whether there has been a shift in trend in recent years. Previously, in ***Stevens v. Midland County Rly. Company, Baron J.*** held that a corporation has no mind of its own and therefore cannot be liable in a civil action involving malice.

This view was again reiterated in **Abrath v. Nor Eastern Railway Company** [ii]. In this case, a railway company prosecuted Dr Abrath, a surgeon, for issuing a fabricated certificate to a passenger who claimed to have been injured in a railway accident.

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However, the surgeon was acquitted, after which the surgeon sued the railway company for malicious prosecution. The plaintiff had to prove that there was an ulterior motive and motive behind his prosecution.

However, Lord Bram ruled that the corporation was a mere fiction, unable to attribute any mind to it, and therefore incapable of inventing any malice. Lord Lindley overruled the decision in the earlier case of **Citizen's Life Assurance Company v. Brown** [iii] and noted that a company could be liable for torts involving malice, such as defamation. In this case, the company's superintendent sent a letter to its policyholders containing certain allegations against a former employee of the company.

An ex-employee sued the company for defamation. Lord Lindley held that a corporation is liable and responsible for defamation because of the agency principle, and because the alleged tort is committed in the course of the corporation's employment, it cannot claim immunity.

This settled the matter and firmly established that a corporation could be sued for malicious prosecution or fraud or defamation involving malice as an essential ingredient.

However, the company shall not be liable if the conduct of its employee or employee or officer is not authorized by its company articles. The case of **Poulton v London & S.W.Rly**. The company [iv] is the main decider in this matter. In this case, a station master in the employ of the defendant railroad company arrested the plaintiff for refusing to pay freight for a horse transported by the railroad.

The railway company had power under an Act of Parliament to arrest a person who failed to pay a fare, but not to arrest a person for non-payment of freight for the carriage of goods. The court held that the company was not liable because it itself had no power to arrest for such non-payment and therefore could not delegate such power to the station master (his employee) to do so.

The plaintiff's remedy for illegal arrest in such a case could be directed against the station master personally and not against the railroad company as the master of its employee. The reason for the decision appears to be that the superintendent had no implied authority to arrest the plaintiff on behalf of the railway company, so that he could not be held liable for an act to which the agent was not authorized and he held that the railway company could not be vicariously liable.

Companies Act, 2013

In addition to the above liability, the company also has civil liability under the Companies Act 2013. Misstatements in the prospectus have been subject to civil liability under Section 35. If any person has subscribed for the company's securities during the issuance of the prospectus, which contains the misstatements, and as a result has

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received any damage or loss, the director of the company at the time of issue of the prospectus, the founder of the company and any person named in the prospectus would be liable to indemnify the persons who suffer any loss as a result.

10.3. CORPORATE CRIMINAL LIABILITY

A company can only act through human beings and a human being who commits an offence on account of or for the benefit of a company will be responsible for that offence himself. The importance of incorporation is that it makes the company itself liable in certain circumstances, as well as the human beings- Glanville Williams

Section 11 of Indian Penal Code, 1860 (the Code) define person. It reads *"the word person includes any Company or Association or a body of persons, whether incorporated or not."* Further section 2 of the Code provides that *"Every person shall be liable to punishment under this Code."* Thus, section 2 of the Code without any exception to body corporate, provides for punishment of every person which obviously includes a Company. Therefore, by reading of these two provision concept of corporate criminal liability can be derived, though it is not the sole legislation which provides for the punishment of corporate body, Companies Act, 2013, Income Tax Act, etc.

Corporations have now became an integral part of our society, and with development of corporations they have become significant actor in our economy, our society runs in the risk of getting victimized by these corporation, and therefore they should be deterred too. Imposition of punishment, upon offenders of any kind, can be understood by various rationale of criminal law jurisprudence, but deterrence is the rationale that is applicable to such economic entities as corporations. Corporations have their own identity, they have separate legal personality and they are different from their members, and this is sufficient to makes it possible to held them liable and censure them.

Criminal Liability is the quality or state of being legally obligated or accountable; legally responsible to another or to society which is enforceable by criminal punishment. And therefore, Corporate Criminal Liability means the extent to which a Corporation as a legal person can be held criminally liable for its acts and omissions and for those of the natural persons employed by it. This paper is intended to examine various nuances related to corporate criminal liability, and at the end to provide various recommendation which should be incorporated in in legislations.

Twin Model of Corporate Criminal Liability

A. Derivative Model

This model is individual centred model. It derives to attach the liability to the

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corporation only because an individual connected to the corporation incurred some liability for which the individual is to be punished, but since it is connected to the corporation the liability is put on the corporation to having that individual with it and letting it incurred some liability. Derivative model can be understood in two sub-categorises: a) Vicarious Liability; b) Identification Doctrine.

a. Vicarious Liability

The concept of vicarious liability is based on two latin maxims- *first, qui facit per alium facit per se*, it means that he who acts through another shall deemed to have acted on his own, and *second, respondeat superior* which means let the master answer. In *Bartonshill Coal Co. v. McGuire*, Lord Chelmsford LC said: *'every act which is done by an employee in the course of his duty is regarded as done by his employer's orders, and consequently is the same as if it were his employer's own act.'*

Vicarious liability generally applies to civil liability but Massachusetts court in *Commonwealth v. Beneficial Finance CO.*, held three corporations criminally liable for a conspiracy to bribe, the first company, for the acts of its employee, the second, for the act of its Director, and the third, for the acts of the Vice-President of a wholly owned subsidiary. The Court seemed to believe that corporate criminal liability was necessary since, a corporation is a legal fiction comprising only of individuals. US courts are not the only courts which have incorporated the concept of vicarious liability in the cases of criminal liability, but now this model has been rejected considering it to be unjust to condemn one person for the wrongful conduct of another.

b. Identification Doctrine

This doctrine is an English law doctrine which tries to identify certain key persons of a corporation who acts in its behalf, and whose conduct and state of mind can be attributed to that of the corporation. In case of *Salomon v. Salomon & Co.* House of Lords held that *corporate entity is separate from the persons who acts on its behalf.* The Courts in England had in various judgments like *DPP v. Kent & Sussex Contractors Ltd.*, *R v. ICR Haulage Ltd.,* ruled that the corporate entities could be subjected to criminal liability and the companies were held liable for crimes requiring intent. Judgment like these led to the promulgation of 'identification doctrine'.

As to the liability of these key persons who act on behalf of company, it was held in *Moore v. Brisler* that *the persons who are identified with the corporations must be acting within the scope of their employment or authority. The conduct must occur within an assigned area of operation even though particulars may be unauthorised.* It will be wise to infer that identification doctrine is narrower in scope than the vicarious liability doctrine, instead of holding corporation liable for act of any employee, identification doctrine narrows it down to certain persons.

B. Organizational Model

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Unlike derivative model which focuses on individual, organizational model takes corporation into consideration. Offences require mental state (*mens rea*) to commit a crime along with physical act (*actus reus*), but the problem that arises while holding corporations criminally liable is how a corporation which is juristic person could possess requisite mental state to commit a crime.

Derivative model was one way to attribute mental state to corporation. Other way could be by proving that there existed an environment in the corporation which directed, tolerated, led-on, and even encouraged the non-compliance of specific law which made it offence. Moreover, physical act that too is required to complete the requirement of commission of an offence can be derived rather be proved from the act of its employees, officers, directors, etc. Thus, culture of a corporation is to be seen while determining its criminal liability.

Corporate culture may help for commission of an offence requiring mental state by- *firstly,* providing the environment or necessary encouragement that it was believed by the offender working in the corporation that it was perfectly alright to commit that offence, or corporation has psychologically supported the commission of offence; *secondly,* it is quite possible that the corporation created an environment which led to commission of crime. Both ways it was the corporation and its working culture that let the offence committed.

III. Deadlocks of Corporate Criminal Liability

A. Imprisonment

As has been discussed above that a company is recognized as a juristic person, and being a person it has to face the punishment that has been provided by the various acts. There are various provisions in Companies Act, 2013 itself which hold a company liable for its wrongdoing. However, there are provisions which provides mandatory imprisonment for a person including company, such as Section 447 of Companies Act, 2013 Act, Section 420 of The IPC, 276B of The Income Tax Act etc.

The Courts found themselves in dead end in these kind of situations where a company is charged under sections which provides for necessary imprisonment, as the company being a legal person cannot be imprisoned for its criminal acts, it can only be punished with fine and not otherwise. The Supreme Court has to face similar difficulty in case of *M.V. Javali vs. Mahajan Borewell & Co. and Others,* The Company was found guilty under Section 276B read with 278B of The Income Tax Act, which gives mandatory punishment of at least 3 months, but the Court found itself in a fix about how to imprison a company. J. Mukhrjee said that, *"Even though in view of the above provisions of Section 278B, a company can be prosecuted and punished for an offence committed under Section 276B the sentence of imprisonment which has got to be imposed there under cannot be imposed, it being a juristic person and we are of the*

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opinion that the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only punishment."

Therefore, the solution as of now is that a person is juristic person then punishment relating to imprisonment would not apply to it instead he will be liable for fine. The court can do one thing though, if it cannot imprison a corporate body but it can charge greater amount of fine in such cases in comparison to what it charges to the person who are capable of being imprisoned for the same offence.

B. Mens rea

Another problem faced by the Judges was how to try a company for the offences where mens rea was an essential. How can a juristic person have a mental element to commit a crime? The trend was such that the company was only tried for cases where mens rea was not an essential and it was accepted that it cannot be tried for offences where mens rea is required.

In the case of *Motorola Inc. vs. Union of India* the Bombay High Court quashed a proceeding against a corporation for alleged cheating, as it came to the conclusion that it was impossible for a corporation to form the requisite mens rea, which was the essential ingredient of the offense. Thus, the corporation could not be prosecuted under section 420 of the IPC, but this idea of company not possessing mens rea came to an end Lord Denning's view in the case of *H.R. Bolton (engg.) Co. Ltd. vs. T.J. Graham* was accepted that *"A company may in many ways be likened to a human body. They have a brain and a nerve centre, which controls what they do. They also have hands, which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what they do. The state of mind of these managers is state of mind of company and it treated by law as such. So you will find that in case where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of company."*

The concept of alter ego was evolved subsequently in India to tackle with the problem. The alter ego doctrine revolves around the concept of personification of the legal body. The Corporation is considered to be the alter ego of the individual. Therefore, the corporation can be rendered liable for the criminal act of the individual done in his scope of work. *Mens rea* of the individual is considered to be the mens rea of the corporation itself. In the case of *The Assistant Commissioner, Assessment-II, Bangalore & Ors. vs. M/s. Velliappa Textiles Ltd. & Anr*, the Supreme Court has held that, *"Though, initially, it was supposed that Corporation could not be held liable criminally for offences where mens rea was requisite, the current judicial thinking appears to be that the mens*

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rea of the person in-charge of the affairs of the Corporation, the alter ego, is liable to be extrapolated to the Corporation, enabling even an artificial person to be prosecuted for such an offence."

Thus, this doctrine of alter ego allowed the courts to frame corporate houses for the offences which had mens rea as an essential ingredient, and it is now less tiresome for the court to hold a corporation criminally liable.

10.4. CORPORATE TORTUOUS LIABILITY

Corporate tort liability is a complex legal issue that arises when a corporation is held responsible for harm caused by its actions or inactions. Corporations can be held liable for torts committed by their employees, agents, and even independent contractors.

Vicarious Liability

One of the most important concepts in corporate tort liability is vicarious liability, which is the legal doctrine that holds employers liable for the torts committed by their employees during the course of their employment. This means that if an employee commits a tort while performing their job duties, the employer can be held responsible for the harm caused by the tort.

Vicarious liability is based on the principle of agency, which is the legal relationship between a principal (the employer) and an agent (the employee). Under agency law, the actions of the agent are attributed to the principal, and the principal is responsible for the consequences of those actions.

However, there are limitations to vicarious liability. Employers can only be held liable for torts that are committed within the scope of the employee's employment. If an employee commits a tort outside the scope of their employment, the employer cannot be held responsible.

Joint and Several Liability

Another important concept in corporate tort liability is joint and several liability. This is the legal doctrine that holds multiple defendants jointly and severally liable for the same harm. This means that each defendant is responsible for the full amount of the damages, regardless of their individual degree of fault.

In the context of corporate tort liability, joint and several liability can be particularly important because it means that multiple defendants (such as the corporation and the individual employee) can be held responsible for the same harm. This can make it easier for the plaintiff to recover damages since they can pursue all responsible parties.

However, joint and several liability can also be problematic for defendants, particularly when one defendant (such as the corporation) has significantly greater financial resources than the other defendants. In these cases, the corporation may end up paying

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a disproportionate share of the damages, even if it was only partially responsible for the harm.

The Corporate Veil

Finally, one of the most controversial issues in corporate tort liability is the concept of the corporate veil. The corporate veil is the legal principle that separates the liabilities of the corporation from those of its shareholders or owners. This means that in most cases, the shareholders or owners of a corporation cannot be held personally responsible for the corporation's torts.

However, there are exceptions to the corporate veil. For example, if the corporation was formed for an illegal or fraudulent purpose, or if the shareholders or owners engaged in wrongdoing themselves, the court may pierce the corporate veil and hold them personally liable.

Piercing the corporate veil can be difficult since courts are generally reluctant to disregard the legal separateness of the corporation and its owners. However, in cases where the corporation has engaged in egregious conduct or the shareholders or owners have abused the corporate form, it may be necessary to pierce the veil in order to hold all responsible parties accountable for the harm caused.

10.5. CORPORATE ENVIRONMENTAL LIABILITY

The statutory responsibility imposed on corporations of preventing the environment is based on the idea that one who has the capability of causing the harm must invoke necessary precautions, remedies, and actions to minimize the same. The doctrine of environment liability is a twofold mechanism- On one end it aims at a cost- recovery based on the 'polluter pays principle 'where the onus of monetary compensation is on the one who causes damage to the environment and on the other end provides incentives to potential polluters for prevention of environmental harm.

ENVIRONMENTAL PREVENTION- A LIABILITY

'The growth of corporate entities should not be at expense of environment'

Environmental liability is the term that defines the process through which liability for degrading the quality of the environment is transferred back to those who cause the damage. The protection of the environment is a necessity as well as a luxury depending upon the economical and social development of the state. However, the notion of environmental protection as a 'luxury' is irrelevant in the context of developing countries with the constant battle to cater to the needs of the poor while addressing the degradation of the environment at an alarming rate. The inter-relationship between the notion of economic growth and environmental protection is evident in almost all the

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countries whether developing or developed.

The responsibility of the corporate entities and the business sector is multifarious in nature as the responsibility is not limited to the production of goods and services but also ensuring environmental prevention and protection in every stage of the production process. It reflects not only a responsibility towards the consumer to produce goods with quality catering to the demand of the market but also a duty to converse the environment.

Harm to the environment can be carried out in numerous ways depending upon the nature of the work of the corporation such as environmental pollution which can be exemplified and recognized; noise pollution, degradation of the air quality, water pollution, and marine pollution. Environmental degradation can be classified into several categories but it is the consequential effect of industrialization. Industrialization is the most evident cause of pollution; however, its harmful nature can be minimized when guided by strict environmental protection regulations and its righteous enforcement and serious implementation. Loss of wetlands, degradation of land and water resources, river pollution and atmospheric pollution and its adverse impacts in form of Global warming, melting of glaciers, rising sea levels are illustrations of environmental harm.

Environmental liabilities imposed on the corporations are from various sources like statutes, regulations, ordinances, declarations, treaties passed at the domestic to the international level. The civil and criminal law also incorporates and addresses the issue of environmental liabilities. There are various reasons or causes behind perpetrating environmental crimes by corporate entities. The crime may be committed due to the ignorance, carelessness of the concerned business entity. They may also be committed as a result of negligence i.e. where the management of the business is highly poorly, human resources are insufficiently trained and infrastructure has not been maintained to the adequate standard, permitting a pollution incident to take place.

Environmental crimes are instances of spoiling public space with advertising posters, illegal dumping of waste notwithstanding that is the result of general sewage waste or chemicals, being discharged into the watercourse. Narrowing down the damages done to the environment it can fall under any of the forms like animal, field, forest, emission, soil, storm, and water.

LEGAL MECHANISM

The status of ‘Fundamental Right’

The expansion of the right to life under Article 21 of the Indian Constitution in the revoluntarily judgment of ***Maneka Gandhi v U.O.I*** inspired the judicial body to widen the ambit of the expression ‘right to life’ to include ‘right to a healthy environment’. The imposition of monetary damages on the defaulting industry for causing disturbance to the water is justified on the touchstone of right to life, and duty to protect and improve

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the environment.

The status of 'obligation'

The 42nd amendment to the constitution of India imposed a statutory duty on the state and the citizens to protect and improve the environment, by adding article 51 A(g) as a fundamental right and article 48 A to Part IV of the Indian constitution as Directive Principles of State policy. These amendments have acted as a path for building up the regime of environmental jurisprudence in India. Corporate sustainability is defined as the part that companies should play in reaching the goal of sustainable development and requires a balanced approach to economic progression, social advancement, and environmental supervision.

The status of 'Responsibility'

The Companies Act, 2013 has introduced the idea of CSR- an area of Corporate Environment Liability to the forefront and through its disclose-or-explain mandate is promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the CSR activities, suggests communities be the focal point. On the other hand, by discussing a company's relationship with its stakeholders and integrating CSR into its core operations, the draft rules suggest that CSR needs to go beyond communities and the concept of philanthropy.

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