
LIFTING THE CORPORATE VEIL IN CONTEXT WITH HUMAN RIGHTS VIOLATION IN THE CORPORATE SECTOR WITH EMPHASIS ON BHOPAL GAS TRAGEDY

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ABSTARCT

The world as we know it has been evolving and developing since the age of industrialization, it has been since countries opened up their markets to other countries, the age of globalisation started, since then companies all over the world are trying to set up in places, they feel could benefit their interests as per the market standards and the culture being followed in that country. Along with the companies that set up in various countries, there are certain aspects such as that of Human rights which are one of the most important aspects that can't be overlooked for these rights are the basic principles guaranteeing the safety and protection of individuals from any and all acts that are done by the Companies, the Employees or Board of Directors. One of the biggest corporate human right disasters that took place was the Bhopal Gas Tragedy. This article along with the aspect of Human Rights violation will also aim to focus on the India's judicial and jurisprudential stance on such cases where the corporate veil of such corporates is finally lifted.

LITERATURE REVIEW

1. Mrs. Swatee Yogeshh, *Corporate Human rights Violation in India, Dialectics and Dynamics of Human Rights*, Balaji Law College, SSRN

The article discusses about efforts to create laws and policies aiming to curb Corporate Human Rights violations by Local as well as Multi-National Corporations.

2. George S. Dallas, *Human Rights Through A Corporate Governance Lens*, Harvard Law School Forum on Corporate Governance

The article examines the importance of human rights in corporate governance and how it affects shareholders and staff. Beyond the conventional legal liability perspective, it advances the discussion of corporate human rights obligations.

3. *Bhopal Campaign Digest*, Amnesty International

The Bhopal campaign Digest dated 2013 discusses the various HR violations of Union Carbide India Ltd. along with the legal battle and the side effects of the harmful gas.

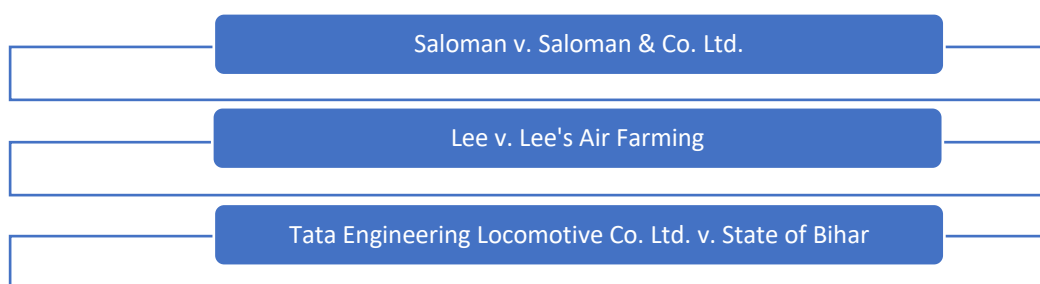
4. Alura Ceresna, *A Manual on Corporate Accountability in India*, Cividep India

The organization: Cividep, works on worker's rights and corporate accountability. It provides insight on existing laws in India with reference of Human rights responsibilities of Corporations.

INTRODUCTION

The Companies Act, 2013 has given us the distinction between the two different personalities that are present in the Companies all over the world. As compared to human beings a company is considered as a separate entity which is an artificial person altogether. This also indicates that a corporation has its own set of rules and rights that it can enjoy, such rights that do not apply to those who are working in the company.

There are certain prominent cases that prove and strengthen the statement provided, about the legal nature and the corporations being separate entities themselves-



Wherein in the case of *Salomon v. Salomon & Co. Ltd.*¹, the company is considered to be separate and different as compared to the employees that the company has. In *Lee v. Lee's Air Farming*², Lee who was a major shareholder could be in different capacities the promoter, pilot and employee and not considered at par and as equal with the companies. In the case of *Tata Engineering Locomotive Co. Ltd. v. State of Bihar*³, it was declared by the court that the corporation in law is equal to a natural person and has a legal entity of its own.

This principle of a Legal entity which is different and separate as per *Companies Act of India, 2013 U/s 96*⁴ which grants a different and separate legal entity to the company.

CORPORATE VEIL

The corporate veil is an instrument available with all firms that protects the owners of the business from the liabilities of their business. Because of this instrument certain companies and the promoters and BODs of the company use this as a means to escape any criminal liabilities or violations that the company may have caused under their guidance. Under such instances the separate legal entity of the company is disregarded which renders the actions of the company as the action of the ones making the decisions.

The Companies Act along with SEBI Act, 1992 have provisions which pinpoints and picks the individual persons in a company who are liable for the actions caused by them under the name of the company. In the case of *New horizons Ltd. V. UOI*⁵, the Supreme Court declared that if the principle of corporate personality is violated by certain means such as revenue generation, acts endangering life etc. then the corporate veil would be lifted. Similarly in the case of *Delhi*

¹ [1897] AC 22

² 3 All ER 420

³ AIR 1965 SC 40

⁴ S. 96, Companies Act, 2013, India

⁵ (1995) 1 SCC 478

*Development Authority v. Skipper Construction*⁶ wherein if a company commits frauds, it shall be one of the major grounds for lifting of the corporate veil.

Instances where the corporate veil may be lifted-

- **Fraud/Improper Conduct**: In these instances, the members of the companies have indulged in activity that are against certain principles that are not acceptable as per the rules laid down. *Formosa Plastic Corporation Ltd. V. Ashok Chauhan*⁷
- **Tax Evasion**: The courts decided that the corporate veil may be lifted in case the company has practiced in tax evasion activities. *Re Sir Dinshaw Manekji Petition*⁸
- **Determination of enemy character**: A company can never be an enemy or a friend but in certain instances these companies may be used as a medium to carry out certain activities that would not be in the right interest of the safety of the country (During times of war).
- **Illegal purposes**: When a company is involved in activities that harbour illegal activities, the veil is lifted so as to hold the individuals liable for the illegal nature of actions undertaken. *PNB Finance Ltd. V. Shital Prasad Jain*⁹
- **Public Interest**: The veil might also be lifted if the actions of the company are against public interest and do not fall within the specific and said brackets of the functionality of the companies. *Jyoti Ltd. V. Kanwaljit Kumar*¹⁰

HUMAN RIGHTS VIOLATIONS BY COMPANIES

Human Rights, a term which is very simple yet has applicability in all spheres of life, right from areas of conflicts in war torn areas to human rights violations in corporates. These Human rights include right to life and liberty, education, opinion, expression, work etc.¹¹ With the market being competitive at each and every sphere, certain times there are certain organizations

⁶ 1996 (4) SCC 622

⁷ 2011 SCC OnLine Del 3176

⁸ Re Sir Dinshaw Manekji Petition, AIR 1927 Bom 371

⁹ [1983] 54 Comp. Cas. 66 (Delhi)

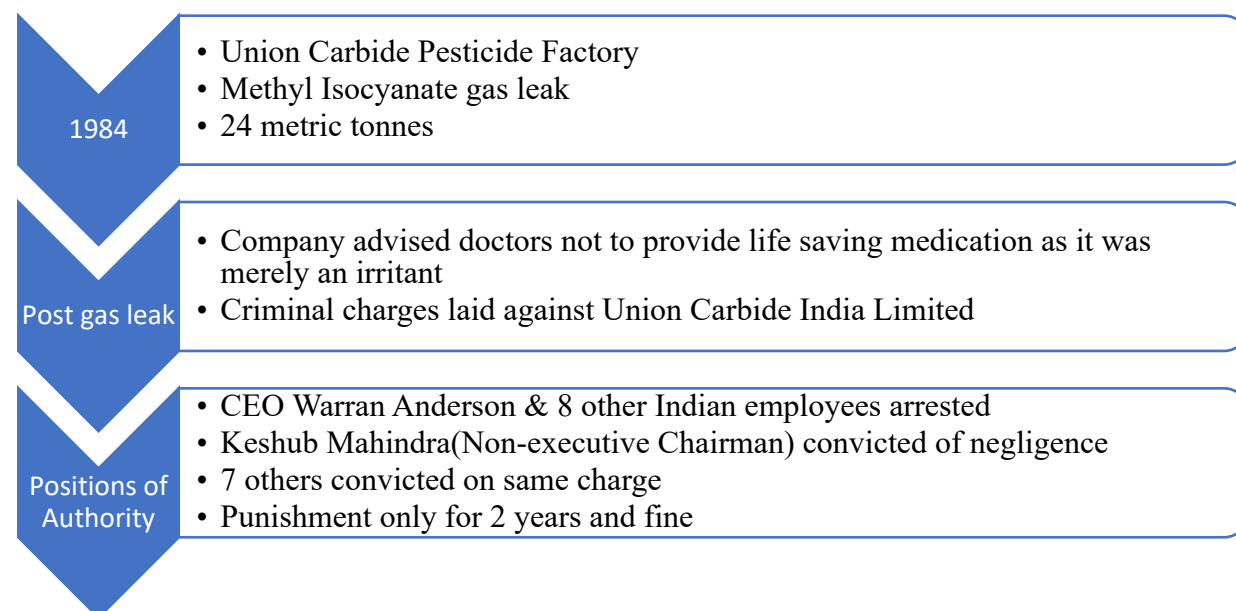
¹⁰ [1987] 62 Comp. Cas. 626 (Delhi).

¹¹ *Human Rights*, United Nations (15 September, 2020), <https://www.un.org/en/sections/issues-depth/human-rights/>.

who would want to gain an edge over their competitors by either producing more in a shorter span of time or would prefer to use cheap form of labour, this leads to certain Human Rights violation. The company, Nestle, a multinational food and drink manufacturing company has faced various claims of child labour and slavery, principles that hamper with the basic rights granted to all Human beings. Even companies such as Nike, Addidas, H&M and other fashion industries are also suspected to be involved in these Human rights Violations. In Kerala¹², Coca Cola was held liable for adverse environmental impact, and certain IT companies were also held for over working their employees.¹³

It is not only in the MNCs that such instances take place, in the local Tobacco manufacturing industry in India, households that manufacture 'Bidi' often involve the children below 12-15 years of age in the process of making 'Bidi' to earn money. Moreover, another aspect of HR violations is also prevalent in the parts of Odisha wherein in the name of development and future, several companies are uprooting forests and the tribal people, cutting them off from their land and their source of livelihood.

BHOPAL GAS TRAGEDY FLOW OF EVENTS



¹² *Coca Cola statement Re-compensation*, Business and Human Rights (16 September, 2020), <https://www.business-humanrights.org/en/latest-news/coca-cola-statement-re-compensation/>.

¹³ Perna Sindhwani, *Cognizant, Accenture and Caspex sued for overworking employees*, (3 October, 2020), <https://www.businessinsider.in/case-against-accenture-cognizant-caspex-for-bad-leave-policy-and-long-working-hours/articleshow/71074536.cms>.

This case of the gas leak was one of the deadliest acts of negligence that India ever faced, and something that the Judiciary and along with them, the public opinion was also in favour of, but the Punishment that was awarded to the accused was termed as 'Too little, too late'¹⁴. The long legal battle ended disappointingly, thereby exposing the weakness of law in handling corporate human rights violations. This incident laid down a major precedent, of lifting the veil of all corporates if they are found guilty of HR violations that endanger not only the current generations in the area but generations to come.

Under *Section 166 of the Companies Act, 2013*¹⁵, the responsibilities of the directors are also listed, which is something that should have been implemented in a stricter sense in the case of the Bhopal Gas tragedy-

- Acting in good faith for the benefit of the company, BODs, employees, community and the environment
- Exercising duties with due & reasonable care, skill and diligence and shall exercise independent judgement.
- Shall not act against the interest of the company

Under *Section 166(2)*¹⁶ the Director is supposed to act in good faith not only for the best interests of the company but the community and the environment. Failure to do so would result in fine between INR 1-5 lakhs.

CONCLUSION

The discussion makes clear how Indian law has numerous gaps in its application to corporate human rights responsibility. The Companies Act of 2013 largely disregards the directors' personal liability for various human rights violations under the corporate veil. Another criticism of the 2013 Companies Act is that it downplays the substantial social and cultural impact that businesses have in addition to their financial contribution. Companies need to be held accountable for more than just making a profit; they also need to be seen as having a strong

¹⁴ Central Bureau of Investigation and Ors. v. Keshub Mahindra and Ors., 2011 6 SCC 216.

¹⁵ S. 166, Companies Act, 2013, India

¹⁶ S. 166 S.2, Companies Act, 2013, India

obligation to the society in which they operate.

The Companies Act, 2013, may need to be changed to include specific provisions that punish directors for human rights violations. In addition, Section 166 (2) allows for the lifting of the corporate veil in cases of violations of human rights.

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