



LIFTING OF THE CORPORATE VEIL AND LIMITED LIABILITY IN PAKISTAN: CORPORATE VEIL AND LIMITED LIABILITY

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ABSTRACT:

If there are no exceptions in the enactments, then their enforcement and interpretation in specific circumstances cannot be carried out, which can lead to challenging situations. It is always necessary to keep laws in a way that can achieve their purpose of enactment and must explain their exceptions in the same statute. The Company Act of 1913 provided for limited liability and its exceptions through express clauses, and that act served as the basis for Pakistani company law. However, Pakistani company law does not offer a method for relying on the corporate veil in the event that the company's management defrauds the company. The aim of this cover can be misused in the lack of specific provision for utilizing the idea of lifting or breaching the corporate veil by ignoring the doctrine of limited liability established in company law. This paper may help to fill in that vacuum.

Key Words: company, corporation, corporate world, corporate veil, limited liability, exception to general rule.

INTRODUCTION:



The Doctrine of Limited Liability now has developed in all over the corporate world , in western jurisprudence this doctrine emerged in corporate laws like back bones and successful attracting huge investments in modern corporate world without fear of loss except few countries which includes Pakistan , the knowledge of limited liability is not common in the investors in Pakistan nor corporate laws are equipped with proper check on mis-using the doctrine of limited liability, you must comprehend the idea of limited liability has now become necessary for the investors of corporate sector and other involvers of the corporate entities. This is true that without basic knowledge of limited liability and its features one cannot make money by investing in corporate sector.

The Limited liability indicates that, in the event of a company's collapse or insolvency, a shareholder's or member's obligation is only up to the amount of his investment in the firm. As a result, he will only suffer a loss on his investment; however, as a shareholder or member of the company, he is not liable for any additional obligations the company may have that are related to his investment. The shareholder or member of the corporation is not liable under the protection of limited liability even though the company may have enormous liabilities to its creditors or other claims. With this idea, the company's stockholders are protected, attracting new investment without concern about potential responsibility.

Theories Of Lifting Of Corporate Veil:

Theories of Corporate Veil Lifting: In Western Law, There Are Two Theories for Enforcing The Corporate Veil Lifting Doctrine

Alternative theories of self:

The alter-ego theory takes into account and implies that if the boundaries between the corporation/company and shareholders are not distinct, then there is either a defect in the company's separate personality from its shareholders or it is impossible to assess the degree of separation between two personalities. It means that piercing the corporate veil is required if a court determines that there is insufficient separation between the company and its members. Courts of law are required to see through the limited liability's covering and examine the causes of default by judicial minds. If there is no distinction, then lifting the corporate veil is required. If personalities clash, a liability is stated as personal liability of the members or directors. It describes a scenario in which Courts disregard limited liability and hold the members accountable for the corporation's deeds or obligations, including other responsibilities on a civil and criminal level. If the court finds that there is no separation, everything is being managed as if it were their own, and there are sufficient grounds supported by sufficient evidence and the shareholder will bear the costs of lifting the corporate veil. These types of companies include private companies and families companies made up of just one or two family members and used solely for show or facade purposes. The court has an obligation to examine behind the corporate veil in order to repay the company's unsettled creditors for their



damages. This alternative approach gives the court the choice to take action against white collar offenders as well and attach their personal assets for paying off the company's debts if they are discovered to have contributed directly or indirectly to the losses of the corporation. The idea of lifting the corporate veil has been used by courts of law in numerous situations when businesses have been formed only for fraudulent, fictitious, or façade reasons.

Theory of "Instrumentality"

On the other hand, the instrumentality theory is a source of fraud since it looks at and may be applied by members and directors who use the company in ways that benefit the owners rather than the company. With this perspective, the Court disregards limited responsibility and uses the typical corporate protection for personal gain. Courts are required to take action against people engaging in such activities by invoking the corporate veil if the court of law determines that the company is being used as a tool to offer the benefits to its owners rather than the company.

The purpose of invoking the doctrine of lifting the corporate veil is always to reveal the real realities underlying drove the organization which led the corporation towards insolvency condition, who is behind the curtain and what they have done against the company or in its assets under the cover of limited liability. The Court will decide which theory to apply or make a combination of the both theories and disregard the doctrine of limited liability.

In order to protect the corporation's innocent claims and creditors, the court must consider the facts and reach a decision by invoking the doctrine of lifting the corporate veil and applying these theories as appropriate.

Islamic Idea of Corporate Veil Lifting

Islamic law's basic concept of accountability is the belief that there is only one, all-powerful God. Humans were created solely to obey the teachings of Allah and his prophet Muhammad (PBUH), and they will receive rewards for doing so in the Hereafter. Humans are only Allah's vicegerents (Khalifas), acting only on His instructions. They have no independent powers.

Every Muslim believes that he is responsible to Allah for everything he does because of the commands of Allah. In the Islamic corporate system, shareholders, members, directors, creditors, and investors are all human and acting in the capacity of Allah's vicegerent. They will appear before Allah in the afterlife, who will have all of his records, and they will answer for all of their deeds in this life and be held accountable in all ways.

The main corporate and underlying concept to preserve the business sector as progressive, transparent, and fair in the business to each other like members in the firm is the accountability is before vicegerent who is exercising powers on behalf of Allah and Before Allah hereinafter.



Allah stated in the HOLY Qur'an that those who handle things gently would experience His mercy. (Qur'án 3:159)

Islam's major characteristic is fairness, and it offers the notion of all civil and political liability as well as tolerance to resolve intergroup conflicts.

Each of you has a responsibility to look after what is beneath you, much like a guardian, and everyone who is a guardian is responsible, according to our Prophet (PBUH). The directors of the company are guardians and hold all managerial powers as vicegerents of Allah so they are under Islamic corporate governance principles and will act accordingly for the benefits of members save for natural disasters all liabilities are upon them until final penny a (Bukhari) All employees are required to adhere to the teachings of Islamic concepts, and all activities should be in accordance with injunctions of Islam without any compromise.

Invoking the "Lifting Of Corporate Veil" Doctrine In Order To Get Attention:

While examining the western corporate culture, it appears to be an accepted fact that there was no concept of corporations in the west prior to the 15th century, and the idea of limited liability is a more recent development that resulted from legal interpretation in the western civilization.

It's also important to note that this idea was adopted in response to investors' reluctance to put their money into corporations. The doctrine of limited liability's primary goal is to draw in investment from the general public, with the ultimate goal of creating large corporations with diverse business interests.

While examining Islamic jurisprudence or business conceptions, it appears that divine law provides fundamental business principles. These values are older than western civilization and are firmly rooted in social fairness and equity.

If we look at the western doctrine of limited liability once more, it protects investors who are shareholders or members of the corporation from the liability of the corporation in the event of its insolvency. The shareholders, who may be directors of the corporation in private or public limited companies, may be sleeping members or active members in the corporation or company, and they are not liable to any creditors or claimants against whom compliant judgments may be made.

When examining the Islamic business principles, it is important to keep in mind the concept of liability that was previously discussed. Each and every person involved, whether they are partners, passive members, or actively involved, has a responsibility to deter wrongdoing through the strict application of fundamental principles like "no wrong, no wrongdoing," "bearing of less injury to avoid greater injury," "bear private injury to avoid public injury," and "illegal things are not accepted."



The Islamic idea of accountability for wrongdoing also includes removing or piercing the corporate veil. Contractual or fiduciary obligations imposed by Islamic business principles set forth in divine law must be respected during commercial transactions.

In the western system, the doctrine is being applied broadly under the umbrella of limited liability, which has since become the law. The shareholders take advantage of this protection as a matter of course and have also construed the doctrine so as to continue conducting business primarily through corporations with limited liability. Although fraud has been perpetrated in western corporate sectors under the guise of this doctrine, despite the misapplication reports in the west, this doctrine was supported by courts, and from time to time, its guiding principles were interpreted and implemented through new laws to limit the fraudulent activities of a corporation's management. British lawmakers passed a statute disqualifying directors, and the doctrine of limited liability's exclusions were widely used.

The terms "juridical personality" and "legal entity" are used in Islamic law. As was previously mentioned, Mufti Taqi Usmani, a contemporary Islamic jurist, provided examples such as "waqf," "Baitulmal," "property in the inheritance pool," "mosque," "madrasa," and "Islamic trusts with certain names" as examples of juridical personalities. Despite the fact that these are not business vehicles, these entities serve human welfare and charity. Although some scholars disagree with Mufti Taqi Usmani's use of a slave as an example, there are numerous instances, such as those mentioned above when discussing liability in Islam and limits on liability, that demonstrate the existence of the concept of limited liability in Islamic law ever since its revelation.

The Muzarbat, an Islamic business vehicle, offers comprehensive Idea of limited liability and its limitations, wherein commercial losses can be offset against profits and, if they exceed profits, can be offset against *Rsa Ul Mal* (Assets of Muzarbat).

CONCLUSION:

The law governing limited liability is a part of Pakistani company law, and a limited liability partnership law was recently passed for professional firms. This concept of limited liability has been made part of a panel of provisions in the form of varying degrees of punishments just for violating company law provisions relating to reporting and compliances, but there is not a single provision relating to invoking the exceptional provision, which is always required.



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