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# Piercing the Corporate Veil and Beyond: Analyzing the Human Right Violations of Multinational Corporations and Liability of Subsidiaries

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## ABSTRACT

*This paper looks at the complex legal relationships that exist between MNCs and their subsidiaries, primarily between the legal systems in the UK and India. The concept of subsidiaries, their legal independence, and the situations in which the parent company can be held accountable for the activities of its subsidiaries through the piercing of the corporate veil are all examined in this paper. It investigates the idea of agency in this setting and queries whether MNCs and their subsidiaries have completely separate legal identities. The study explores the intricate matter of multinational corporations' accountability for human rights breaches, mainly in the context of Indian law. It examines important Indian court rulings that have shaped the body of knowledge about parent company liability. The impact of Corporate Social Responsibility on the Indian Constitution and other relevant legal provisions on corporate responsibility for human rights abuses is also examined.*

*The paper examines the Duty of Care test in the context of UK law, as established by precedents such as Vedanta and Okpabi v. Royal Dutch Shell. This test holds parent firms responsible for abuses of human rights that their subsidiaries may have committed. The study emphasizes the changing legal frameworks intended to ensure corporate accountability and the unique strategies adopted by India and the UK to solve these intricate legal issues.*

*Additionally, the research paper assesses the shortcomings and disputes surrounding the Bhopal Gas Tragedy case—which included Union Carbide Corporation and its affiliate, Union Carbide India Ltd.—critically. It examines the amount of compensation given, the fact that business leaders are not held personally liable, the persistent complaints, and the lawsuits requesting more money.*

*The piece highlights the need for additional legislative measures to achieve full corporate responsibility and, in a larger perspective, shows that penetrating the corporate veil alone may not be adequate to handle the complex difficulties faced by multinational corporations.*

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*To promote ethical business conduct, it suggests non-legal means, international collaboration through treaties, and legislative measures. In this globalized society, the paper argues for a multifaceted strategy to secure justice and responsibility in cases of human rights violations by multinational corporations (MNCs), strengthen corporate accountability, and promote ethical corporate conduct.*

## **I. INTRODUCTION**

Within the complicated web of international trade, where multinational corporations (MNCs) hold enormous influence and their extensive subsidiaries frequently function as semi-autonomous entities, the concept of human rights is enmeshed in a complex and thought-provoking sandwich.

Imagine this sandwich, if you will, with the top layer standing in for the unstoppable power of multinational companies, whose sphere of influence reaches across nations and industries. These are the titans, the giants of the corporate world, whose main goal seems to be profit maximization all the time. Their organizational complexity and plenty of resources can occasionally make it difficult to discern their moral compass. In this paper, we shall dwell into the human rights violations undertaken by cooperation around the world. Scrutinize the cases in which the corporate veil was not lifted and examine the factors that lead to lifting of corporate veil. Thereafter, the legal relationship between a MNC and a subsidiary will be established from the perspective of Indian Jurisdiction and United Kingdom Jurisdiction. To conclude, the paper gives an insight into ways in which human rights can be protected, since lifting of corporate veil is has failed to prevent corporations from violating human rights.

## **II. CONDITIONS FOR LIFTING CORPORATE VEIL IN INDIA**

It has been said that the most essential idea in company law is corporate personality. It serves as the foundation for the company's perception as an independent entity apart from the shareholders who have signed its memorandum. A firm that has incorporated is seen as a different "legal entity distinct" from its members, workers, promoters, shareholders, and directors<sup>3</sup>. As a result, the idea of the corporate veil—which divides these parties from the corporate body—has emerged.

A key idea in limited liability as well as a fundamental tenet of corporate personality were established by the House of Lords' Salomon decision. There are two parts to Salomon's decision-making relevance. The first and most important is the well-founded concept of a

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<sup>3</sup> Salomon v Salomon & Co. Ltd., [1897] AC 22

"separate corporate personality," which is independent of its shareholders and is subject to the same laws and regulations as any other independent entity. Salomon concurrently establishes the second premise, which is the protection of the restricted responsibility of shareholders. These two ideas are acknowledged as the twin pillars, mostly inviolable, and have maintained their status for more than a century<sup>4</sup>.

It's also critical to remember that, prior to the Salomon ruling in 1897, the idea of a separate legal entity had not yet been completely defined or acknowledged<sup>5</sup>. As a result, it was unclear how much and under what conditions a corporation was believed to be independent legally from its stockholders.

This legal fiction serves as the foundation for incorporation and is essential to the operation of corporations. The boundary, or veil, that separates a company's stockholders from its corporate legal identity is so strong that it cannot be broken unless there are extreme conditions. In some circumstances, a court may peel the mask of this made-up persona and examine the inner workings of the business or the stockholders who founded it. A court lifts or penetrates the corporate veil in this way. The company's corporate identity may be violated in circumstances when its distinct identity is utilized to protect or hide individuals engaged in unlawful activity, or as a shield for unethical or unlawful purposes.

The Supreme Court used the LIC v. Escorts<sup>6</sup> case to outline the fundamental guidelines and rules that must be followed as well as the different situations in which a company's corporate veil may be lifted, thereby casting blame or liability for an action taken by the company. These include deception or unethical behaviour, dodging taxes or charitable laws, or situations in which related businesses are so closely linked that they truly constitute a single entity and need to be handled as such.

In India, the corporate veil can be lifted when it is thought necessary to expose the real nature of a transaction<sup>7</sup>, to "look at realities of a situation and to know the real state of affairs<sup>8</sup>" stop fraud or tax evasion<sup>9</sup>, public interest<sup>10</sup>, a subsidiary company which has been constituted with the sole intention of concealing the true facts, to act as a façade and thereby perpetrate a fraud<sup>11</sup>,

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<sup>4</sup> Dahal, Rajib, Salomon v Salomon: Its Impact on Modern Laws on Corporations (April 26, 2018). Available at SSRN: <https://ssrn.com/abstract=3169431> or <http://dx.doi.org/10.2139/ssrn.3169431>

<sup>5</sup> Phillip Lipton, The Mythology of Salomon's Case and the Law dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective, <http://classic.austlii.edu.au/au/journals/MonashULawRw/2014/20.pdf>

<sup>6</sup> Life Insurance Corporation Of ... vs Escorts Ltd. & Ors, 1986 AIR 1370

<sup>7</sup> In re Dishaw Maneckjee Petit, AIR 1927 Bom 371

<sup>8</sup> Subhra Mukherjee v. Bharat Coking Coal, (2000) 3 SCC 312

<sup>9</sup> Life Insurance Corporation of India v Escorts Limited [AIR 1986 SC 1370]

<sup>10</sup> State of Rajasthan and Ors. vs. Gotan Limestone Khanji Udyog Pvt. Ltd. and Ors, MANU/SC/0058/2016

<sup>11</sup> Delhi Development Authority v. Skipper Constructions Co. (P) Ltd., (1996 ) 4 SCC 622

violation of human rights and rights of employees by Government Company<sup>12</sup>, or in cases where the subsidiary and a parent company are “*guided by the same head and brain*”<sup>13</sup>. Nonetheless, courts will often recognize a company's distinct legal personality, and the curtain is only raised in extraordinary situations and for certain objectives<sup>14</sup>.

With the corporate veil, the liability of the shareholders of a company, remains limited. Once this veil is lifted the liability of the shareholders becomes unlimited and the company is no longer seen as a separate legal entity. Given the capacity of limited liability to reduce investment risk through separation of corporate assets and those of its owners and promoters, limited liability is said to encourage entrepreneurship, to reduce monitoring costs for investors and creditors and to ensure the promotion of the market for corporate control by reducing of shares.<sup>15</sup>

The concept of limited liability is a double edged sword. Limited liability is essential to investment and entrepreneurship, but corporate entities can also utilise it as a tactic to escape responsibility. Due to their complex network of subsidiaries, multinational firms are able to take advantage of the legal distinction between these organisations. When limited liability is strategically applied, it may not be enough to dissuade negative externalities like environmental damage or abuses of human rights<sup>16</sup>.

### III. THE RELATIONSHIP BETWEEN MNC AND SUBSIDIARIES: LEGAL PERSPECTIVE

A subsidiary usually operates in a host country but it is governed, to a great extent by the MNC. According to Section 2(87) of Companies Act, 2013<sup>17</sup>; a company is deemed to be a subsidiary of the holding company if, inter-alia,

- A. The Board of directors of the said company is controlled by the holding company,
- B. Controls more than one-half of the total voting power either independently or with another subsidiary of the parent company.

A similar understanding is that of United Kingdom's jurisdiction. As per Section 1159 of

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<sup>12</sup> Kapila Hingorani v. State of Bihar, MANU/SC/0403/2003, Paragraphs 25,26,27,30,31

<sup>13</sup> Hackbridge-Hewittic & Easun Ltd. v. G.E.C. Distribution Transformers Ltd. – [1992] 74 Comp Cas 543 (Mad)

<sup>14</sup> Macaura v. Northern Assurance Company (1925) AC 619, Vodafone International Holdings BV v. Union of India (2012) 6 SCC 613

<sup>15</sup> Easterbrook and Fischel, 1985; Cheffins, 19

<sup>16</sup> Paces, Alessio Maria, Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal: A Law & Economics Analysis (March 16, 2023). European Corporate Governance Institute - Law Working Paper No. 691/2023, Amsterdam Law School Research Paper No. 2023-14, Amsterdam Center for Law & Economics Working Paper No. 2023-02, Forthcoming in *Ondernemingsrecht* (2023), Available at SSRN: <https://ssrn.com/abstract=4391121> or <http://dx.doi.org/10.2139/ssrn.4391121>

<sup>17</sup> Indian Companies Act, 2013. S. 2(87)

Companies Act 2006<sup>18</sup>, a company is deemed to be a subsidiary of the holding company if, inter-alia,

- A. The parent company has voting rights,
- B. Has the authority to remove or appoint board of directors.

A subsidiary, although an identity of its own, is not independent. Moreover, If the existence of a subsidiary is dependent on the holding company, then this leads to a series of questions. Is the holding company liable for the actions of subsidiaries? If so, to what extent? Also, will the corporate veil of the parent company be lifted if the veil of subsidiaries has lifted? The answer to the aforementioned varies from jurisdictions.

### **Is The Legal Identity of MNC and Subsidiaries Exclusive?**

The aforementioned question has a multi-faceted answer. It is an undisputed fact that a subsidiary is bound to comply with the request of the parent company. But it cannot be construed as a “puppet”<sup>19</sup>. The subsidiary can, at times, carry on their trade, contrary to the desire and interest of the parent company<sup>20</sup>. If the subsidiary has an autonomous identity then by default—it has—to an extent a liability of its own. Hence, The MNC may not be held liable for all actions undertaken by subsidiaries. However, consider an instance in which, the MNC owns a substantial majority of the subsidiary equity. In that scenario, it would be not be deemed coherent to consider the identity of the MNC and subsidiaries<sup>21</sup> exclusive to each other. It is crucial to scrutinize, amongst other things, the nature of the wrong done by the company, and the degree of control of the MNC over subsidiaries. But a contrary view was taken in the case of *United States v. Bestfoods*.<sup>22</sup> The court established that control, ownership, and management of the MNC to the holding company is not alone sufficient to make the MNC liable but only when the parent company was actively participating in the wrong done. Several jurisdictions have established differing reasoning but subject to the certain exceptions, the legal identity of the subsidiary is exclusive from the parent company.

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<sup>18</sup><https://www.legislation.gov.uk/ukpga/2006/46/part/38/crossheading/meaning-of-subsiary-and-related-expressions>

<sup>19</sup>*M S Smart Chip Ltd and others V. The Secretary to Government Transport Department Secretariat and other*

<sup>20</sup>*Freewheel (India) Ltd. - Vs .. Dr. Veda Mitra (1969 (39) Com Cases 1 (Delhi)).*

<sup>21</sup>*Holdsworth & Co. (Wakefield) Ltd. - Vs .. Caddies (1955 (1) All ER 725)*

*House of Lords in DHN Food Distributors Ltd. - Vs .. London Borough of Tower Hamlets (1976 (3) All ER 462)*

<sup>22</sup>*United States v. Bestfoods [141 L Ed 2d 43 : 524 US 51 (1998)*

#### IV. NAVIGATING THE LIABILITY OF MNC IN HUMAN RIGHTS VIOLATIONS UNDER THE INDIAN JURISDICTION

India is no stranger to witnessing Human Right violations undertaken by cooperates<sup>23</sup>. The East India company routinely indulged in slave trade and opium trafficking<sup>24</sup>. However, the advent of an independent nation became a turning arc to ensure protection of human rights and deter any deviation from the same. The Constitution of India, under the ambit of Article 12<sup>25</sup>, guaranteed certain fundamental rights to citizens against—not just state actors but also private cooperations<sup>26</sup>. Not to mention, Section 305 of Code Of Crimnial procedure<sup>27</sup> lays down the procedure of a company being held criminally liable. Additionally, as per the Corporate Social Responsibility Voluntary Guidelines 2009<sup>28</sup>, a company “*should avoid complicity with human rights abuses by them or by third party.*”

It is safe to say that the jurispurence of human rights cease to be novel. However, the lines get realtively blurry when the courts have to establish the liability of the MNC when the wrong is done by a susbsidiary. Below are certain landmark Indian cases that recounts the jurisprudential development of Parent company liability.

State of Uttar Pradesh V. Renusagar Power Co<sup>29</sup> (1982): Renusagar was a child company of Hindalco. The company was instituted to provide electrical power to Hindalco. The shareholders of both company were the same. Moreover, the State of Uttar Pradesh levied electrical duty on Renusagar under section 3 of the UP Electrical (Duty) Act, 1952. One of the issue rose before the court of whether Renusagar generation of power can be considered as their own source of power? In other words, the court had to established the whether Renusagar and Hinalco can be clubbed as one single identity to perce the cooperate veil. The court scrunitized the fact that the shareholders in both the companies are same. Additionally, the court took cognizance of the fact that the parent company controlled Renusagar to a great extent. In pursuance of the above, the court established that the existence of Renusagar was soley to provide electricity to Hindalco so it law must not the former exclusively. In conclusion, The

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<sup>23</sup>Smith, Edmond J. "Reporting and Interpreting Legal Violence in Asia: The East India Company's Printed Accounts of Torture, 1603–24." *The Journal of Imperial and Commonwealth History* 46, no. 4 (2018): 603-626.

<sup>24</sup>Panda, Barcelona. "Multinational corporations and human rights violations: Call for rebuilding the laws of twenty-first century." *Journal of Financial Crime* 20, no. 4 (2013): 422-432.

<sup>25</sup>Constitution of India, 1950, Art. 12(1)

<sup>26</sup>Kaushal Kishore vs State of Uttar Pradesh | 2023 LiveLaw (SC) 4; *Fundamental Rights Under Article 19, 21 Enforceable Against Private Persons: SC.* (n.d.). The Wire. <https://thewire.in/law/article-19-21-fundamental-rights-supreme-court>

<sup>27</sup>Code of Criminal procedure, 1973, Section 305

<sup>28</sup>Corporate Social Responsibility Voluntary Guidelines, 2009

<sup>29</sup>State of Uttar Pradesh V. Renusagar Power Co, 1988 AIR 1737 1988 SCR Supl

court did not provide the a seperate identity of the subsidiary to the parent company and cooperate veil of both— *Renusagar and Hindalco*. It also emphazies on lifting of corporate veil in matters of public interest and safeguard the public good at large.

*Hackbridge-Hewittic & Easun v. G.E.C Distribution*<sup>30</sup> (1990): A different position was taken by the Apex Court than the aforementioned case. *Hackbridge-Hewittic & Easun* came into an agreement to G.E.C Distribution for technical assistance in consideration of royalties. However, before their agreement came to a halt, *Hackbridge* was bought by General electric company of the United Kingdom. Subsequently, *Hackbridge* became a susbsidiary of General Electric. Intringunly, G.E.C Distribution objected to this status as it alleged the confidentiality may be take stake given the relationship between General Electric and their competitor. The court was of the opinion that at the outset, a susbdinary and parent company are both exclusive entities but it made an advancement. It established that the legal identity of subsidiary and parent company is subject to nature of the subsidiary. As in, whether the subsidiary is acting as an agent of the parent company or has independent conscience. Moreover, it relied on the case of *Mc Dowell & Company Limited v. The Commercial Tax Officer*<sup>31</sup> and *The Commissioner Of Income-Tax v Sri Meenakshi Mills Ltd. & Ors*<sup>32</sup> to set a precedent for the courts to lift the coperate veil of subsidiary and the parent company to find any deviations from a legal obligation.

*Vodafone International Holdings BV v. UOI* (2012)<sup>33</sup>; The court in this realtively recent judgement took a contrary view of the *Reunsagar* judgement. In 2007, *Vodaphone* acquired majority stake in *Hutchison*. Moreover, the transaction involved the shares of another subsidiary company but had assets in India. *Vodafone* acted under the impression that the transaction is not taxable since neither of the countries at play were Indian companies. However, *Vodafone* received a show-casue notice from Indian Tax department and matter eventually resorted to litigation. While deciding the issue of taxation of the company, the court was to determine if the authority of the parent company over the assests of susbdinary. In the judgement, it established that the *Companies Act*<sup>34</sup> deems a parent company and subssidiary to be distinct. The corollary that follows is that a parent company can only hold the assets of the subsidiary as a collateral. More importantly, it set out that a parent company and its subsidiary are distinct entities. The only instance the two can clubbed together is when there is prima facie case of wrong done by the parent company or the subsidiary was conceived with mala fide intentions.

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<sup>30</sup>*Hackbridge-Hewittic & Easun v. G.E.C Distribution*, A.I.R. 1992 C.C. 543

<sup>31</sup>*Mc Dowell & Company Limited v The Commercial Tax Officer*, 1985 SCR (3) 791

<sup>32</sup>*Commissioner Of Income-Tax v Sri Meenakshi Mills Ltd. & Ors* ,1967 AIR 819

<sup>33</sup>*Vodafone International Holdings BV v. UOI*, [2012] 1 S.C.R. 573

<sup>34</sup>*The Companies Act*, 2013

In conclusion, the Indian Jurisdiction does acknowledge the separation of legal identity between MNC and subsidiary. However, the degree of control of the parent company over the subsidiary may be factor for the court to club them together. In addition, the identity can cease too exist in matters of human rights violation and public interest if the subsidiary was acting under the directions of the parent company or if the parent company was actively involved.

## **V. DUTY OF CARE TEST UNDER UNITED KINGDOM JURISDICTION**

The United Kindgom jurisprudence is more advanced in contrast to Indian Jurisdiction. But just like the Indian jurisdiction, The common law was novel to tackle the liability of parent companies a few decades ago. The court in *Lubbe v Cape Plc*<sup>35</sup> established that in common law no special doctrine exist to determine the liability. However, *Connelly v. R.T.Z Corporation Plc and Others*<sup>36</sup> established the concept of the Duty of Care test. Much like the doctrine enrishend in the *Donoghue v Stevenson*<sup>37</sup> landmark case, the duty of care test is for the parent company to consciously make sure that the subsidiaries are not causing any human rights violations. Deviation from the same, may to lead lifting of the corporate veil of the company. In case of *Vedanta*<sup>38</sup>, the company was based in the United Kingdom but had a subsidy in Zambian. A group of workers of the subsidy made certain allegations. The United Kingdom court, disregarding the fact that the susbdiy was not in the terirotly of the state, and the fact that the parent company was not directly involved, instituted the case. It set a precedent that the court can take cognizance and make the parent company liable irrespective of the fact that the subsidiary is in a different country. The recent case of *Okpabi and others v Royal Dutch Shell*<sup>39</sup> upheld this test which had a similar factual scenario. The MNC, Royal Dutch Shell had a subsidiary in Nigeria. Certain citizens of the state felt the MNC was causing enviromental damage. The case was once again instituted notwithstanding the fact that the cause of action took place in a host country. It is safe to say that the duty of care test with regards to parent company liability is stll developing. Similar to the Indian Jurisdiction, the identity of the subsidiary is exclusive and distinct. However, that does not exempt parent company of liability as it is still obligated to look after the operations of susbdary and prevent any human right violations.

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<sup>35</sup>*Lubbe v Cape Plc* [2000] UKHL 41

<sup>36</sup>*Connelly v. R.T.Z Corporation Plc and Others*, [1997] 3 WLR 534

<sup>37</sup>*Donoghue v Stevenson*, [1932] UKHL 100.

<sup>38</sup>*Vedanta Resources PLC and another v. Lungowe and others*, [2019] UKSC 20

<sup>39</sup>*Okpabi and others v Royal Dutch Shell plc and another* [2021] UKSC 3.

## **VI. HUMAN RIGHT LAWS AND CORPORATE RESPONSIBILITY**

In order to increase their worldwide reach and profit margins, multinational businesses (MNCs) take advantage of legal and tax benefits. MNCs are major players in the global economy. But this growth frequently has a price, as it is harder for people who have had their rights violated by corporate subsidiaries to sue the parent corporation for compensation. Multinational corporations (MNCs) design their corporate responsibility to insulate the parent business from the human rights abuses carried out by their subsidiaries<sup>40</sup>.

MNCs deliberately establish subsidiaries in developing countries in order to benefit from reduced labour expenses and regulatory requirements. Although this growth promotes economic progress, it frequently results in grave human rights abuses. Because of the way the corporate structure is set up, victims find it challenging to hold parent businesses responsible for the activities of their subsidiaries. By claiming that the parent firm and its subsidiaries are distinct entities, the corporate veil protects the former from liability. If a parent company's subsidiaries are regarded as its agents, the parent may be held accountable for the subsidiary' activities under classic agency law. Though it might be difficult to prove agency links, business groupings frequently arrange their relationships in a way that prevents them from being classified as under the legal definition of agency.<sup>41</sup>

### **Is a state centric approach enough to address human rights violations by MNC's?**

The entire range of violations of human rights, particularly those carried out by non-state actors, cannot be adequately addressed by the conventional state-centric approach to human rights enforcement. States may not always be the main offenders of human rights breaches, even if they are ultimately accountable for protecting them. A crucial vacuum in addressing violations of human rights more thoroughly is filled by acknowledging that non-state actors, including companies, should also be held directly accountable<sup>42</sup>.

An important factor contributing to the move away from a purely state-centric approach to accountability is the growth of transnational companies (TNCs). These multinational conglomerates usually operate beyond national borders and on a worldwide scale, including several nations. It is difficult for a single state to adequately control or hold transnational corporations responsible due to their immense size and complexity. They have the ability to

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<sup>40</sup> Ratner, Steven R. "Corporations and Human Rights: A Theory of Legal Responsibility." *The Yale Law Journal* 111, no. 3 (2001): 443–545. <https://doi.org/10.2307/797542>.

<sup>41</sup> Osunbor, Oserheimen A. "The Agent-Only Subsidiary Company and the Control of Multinational Groups." *The International and Comparative Law Quarterly* 38, no. 2 (1989): 377–87. <http://www.jstor.org/stable/760036>.

<sup>42</sup> Ratner, Steven R. "Corporations and Human Rights: A Theory of Legal Responsibility." *The Yale Law Journal* 111, no. 3 (2001): 443–545. <https://doi.org/10.2307/797542>.

take advantage of differences in regulations across nations, which might endanger human rights<sup>43</sup>. There is sometimes a large disconnect between the ability and necessity to keep an eye on and control the actions of large enterprises, especially in developing nations. These nations could put luring in foreign capital before upholding human rights norms, which might lead to a situation where corporations operate with impunity in their host countries. Resource and capacity constraints, coupled with a lack of political will, often render states ill-equipped to confront corporate abuses effectively<sup>44</sup>.

As firms have become more international, they have also become ever more independent of government control<sup>45</sup>. Many of the largest TNEs have headquarters in one state, shareholders in others, and operations worldwide. If the host state fails to regulate the acts of the company, other states, including the state of the corporation's nationality, may well choose to abstain from regulation based on the extraterritorial nature of the acts at issue.<sup>46</sup> Corporations can also shift activities to states with fewer regulatory burdens, including human rights regulations. Recognition of duties on corporations under international law could encourage home states to regulate this conduct or permit others to do so; at the very least, it would suggest a baseline standard of conduct for corporations themselves that could be monitored by interested constituencies.<sup>47</sup>

### **Case studies in India**

There have in recent times been many instances of human rights violations by MNC's in India. An interesting case study is the Vedanta Sterlite copper refinery<sup>48</sup> in Tamil Nadu. The facility kept running despite several health and environmental concerns expressed by the locals. Licences were granted by the Tamil Nadu Pollution Control Board (TNPCB) without the need for Environmental Impact Assessments. Allegations were made against the factory for allegedly polluting water, contaminating groundwater, and generating harmful gases. The factory was closed in 1998 due to these worries, but it was able to reopen after receiving approval from the National Environmental Engineering Research Institute (NEERI). More demonstrations and

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<sup>43</sup> AMNESTY INT'L & PAX CHRISTI INT'L, MULTINATIONAL ENTERPRISES AND HUMAN RIGHTS 17-18 (2000)

<sup>44</sup> Ratner, Steven R. "Corporations and Human Rights: A Theory of Legal Responsibility." *The Yale Law Journal* 111, no. 3 (2001): 443–545. <https://doi.org/10.2307/797542>.

<sup>45</sup> STRANGE, *supra* note 50, at 49-50; see also Nick Butler, Companies in International Relations, SURVIVAL, Spring 2000, at 149, 155 (describing the lack of national identity of TNEs); Jonathan I. Charney, Transnational Corporations and Developing Public International Law, 1983 DUKE L.J. 748, 770-72 (examining the role of corporations as global actors)

<sup>46</sup> Peter J. Spiro, New Players on the International Stage, 2 HOFSTRA L. & POL'Y SYMP. 19, 28-30 (1997)

<sup>47</sup> *Ibid* 17.

<sup>48</sup> STERLITE INDUSTRIES (INDIA) LTD. ETC. ETC. v. UNION OF INDIA & ORS. ETC. ETC., [2013] 6 S.C.R. 573

legal lawsuits followed accusations of environmental infractions, including sulphur dioxide emissions. 2018 saw fatalities as police opened fire on unarmed demonstrators. A National Green Tribunal verdict that authorized the reopening of the plant was overruled by the Supreme Court in this case, highlighting the need to pierce the corporate veil to hold the parent company, Vedanta, accountable. However, there was no mention of lifting the corporate veil in this case and nor was Vedanta the parent company held liable for the damage caused.

In the case of Plachimada<sup>49</sup>, the Coca-Cola Company signed a deal with the Kerala State Pollution Control Board (KSPCB) to collect enormous volumes of groundwater for their manufacturing requirements. As a result, the surrounding communities experienced serious health risks, the water table declined, and the quality of the groundwater deteriorated. Furthermore, the byproduct—colloid slurry—which contained harmful metals and carcinogens—was sold as fertiliser. Residents' health was at danger, and the region's agriculture industry sustained significant harm. The Kerala state legislature approved the Plachimada Coca-Cola Victims' Relief and Compensation Claims Special Tribunal Bill<sup>50</sup> in order to settle disputes on the amount of compensation that Hindustan Coca-Cola Beverages Limited is required to pay for the damages that it caused. But the central government returned it without the president's approval and even declared it unlawful based on the authority of the legislature. The speaker of the 14th Kerala legislature declared earlier this year that the Bill may be reintroduced with a few essential modifications<sup>51</sup>.

However, what is interesting to note in this case is that, even though Hindustan coca cola<sup>52</sup>, is a 100% subsidiary of Coca Cola, Coca cola was not held liable for the environmental damage or human rights violations, and piercing the corporate veil was not even spoken about in this case. The MNC which is coca cola is escaping its liabilities in this way, the jurisprudence and legislature has to evolve in India in such a way that these MNC's are too held liable for the damage caused and not just the subsidiaries.

Other cases include, Nike, H&M and Apple.

### **The case of Nike<sup>53</sup>-**

Nike claims to have made progress in its impact report, but there are still issues. Allegations have been made against the corporation for not doing more to address the possibility of forced

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<sup>49</sup> *HINDUSTAN COCA COLA BEVERAGES (P) LTD. Versus PERUMATTY GRAMA PANCHAYAT LNIND 2005 KER 252, PERUMATTY GRAMA PANCHAYAT Versus STATE OF KERALA LNIND 2003 KER 693*

<sup>50</sup> <http://www.niyamasabha.org/bills/12kla/plachimada%20victims.pdf>

<sup>51</sup> <https://thewire.in/law/coca-cola-plachimada-kerala-water>

<sup>52</sup> <https://www.sec.gov/Archives/edgar/data/21344/000002134418000008/a20171231ex-211.htm>

<sup>53</sup> <https://www.reuters.com/business/retail-consumer/nike-faces-shareholder-proposal-human-rights-2023-03-30/>

labour by Uyghurs in its supplier chain. Alleging that Nike had violated OECD principles, a coalition of international garment worker unions and labour rights groups filed a complaint against the company with the U.S. State Department. Regarding labour rights, the company's COVID-19 pandemic policies, which included salary reductions and layoffs, have sparked complaints.

#### **The case of Apple<sup>54</sup>-**

Foxconn's iPhone plant in India came under fire when rumours of unfavourable working conditions surfaced. Employees staged protests about filthy food, overcrowded dorms, and poor sanitation. In response, Apple placed the facility on "probation" and dispatched auditors to conduct an investigation. This example emphasises how important it is to improve worker conditions inside multinational corporations' supply chains.

#### **The case of H&M<sup>55</sup>-**

This well-known global fashion company came under fire for treating Bangladeshi garment suppliers unjustly. According to the report, some businesses made purchases at a lower cost than what it cost to produce them, which led to increased employee turnover, job losses, and reduced salaries for factory workers. Among the businesses involved in these unfair practises were Inditex, H&M, Next, and Primark.

In order to address human rights breaches by multinational companies (MNCs), a more comprehensive accountability system is urgently needed. This is demonstrated by the examples of Vedanta Sterlite, Plachimada, Nike, Apple, and H&M in India. Considering the global character of MNC activities and their capacity to take advantage of regulatory differences across host nations, relying exclusively on a state-centric approach is insufficient. These instances highlight how crucial it is to cut through the corporate veil and hold parent businesses fully liable for the deeds of their subsidiaries. To guarantee that MNCs are held accountable for the harm they create and to promote justice and accountability in the face of human rights breaches, it is imperative that laws and jurisprudence change both in India and throughout the world. Transparency, due diligence, and stakeholder involvement should all be included in this larger framework, empowering all parties to monitor and advocate for responsible corporate behavior. In an era of global business, consistency in standards and responsibility is fundamental for MNCs to operate sustainably and ethically, benefiting both their bottom line and the

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<sup>54</sup> <https://www.indiatoday.in/technology/news/story/apple-investigates-iphone-facility-in-india-after-workers-protest-against-poor-working-conditions-1894826-2022-01-01>

<sup>55</sup> <https://laborrights.org/releases/workers-reveal-poverty-wages-and-labor-law-violations-hm%E2%80%99s-supply-chain>

communities in which they function.

## VII. THE JUDICIAL SHORTCOMING: REVIEWING THE BHOPAL GAS TRAGEDY CASE

One of the biggest industrial accidents, if not the biggest, took place in Bhopal in the dawn of 3 December, 1984<sup>56</sup>. The Union Carbide India Ltd. was a subsidiary of a parent company named Union Carbide Corporation. The subsidiary had a chemical plant in the heart of the city. The primary ingredient of the plant was “methyl isocyanate.” Because of negligence and lack of safety measures, the disastrous toxic chemical was leaked<sup>57</sup>. Unfortunately, over 2,000 lost their lives and 200,000 were injured. The corporate veil was bound to be lifted but there were many players in this tragedy— The executives, the UCC, and UCIC itself. The tremours of this tragedy were even felt in the United States of America. A few days after the tragedy, several claims were filed against Union Carbide Corporation in the USA. However, UCC contended that the US courts do not have the jurisdiction to institute the matter as the incident took place in India. While, the petitioners contended that principle office of the parent company is in New York and hence, the court has the jurisdiction. Eventually, the court granted UCC contended on the condition that it will render the judgement granted by the Indian courts<sup>58</sup>. Moreover, this order benefited UCC as the compensation would have lower in Indian jurisdiction than United States<sup>59</sup>.

The Indian judiciary has been the centre of criticism for their failure to provide adequate compensation<sup>60</sup>. A certain school of thought consider that Union Carbide Corporation was not held accountable<sup>61</sup>. Intriguingly, before the matter was instituted in the Supreme Court, the state was of the opinion that the judicial courts are not competent to take cognizance of the matter given the significance of the case and the back-log<sup>62</sup>. Nevertheless, their endeavour to adjudicate this matter on foreign soil was not accomplished as the court themselves dismissed. Eventually, when the matter was instituted in the Apex court, the contentions made by the appellant and the

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<sup>56</sup>Mishra, Pradyumna K., Ravindra M. Samarth, Neelam Pathak, Subodh K. Jain, Smita Banerjee, and Kewal K. Maudar. "Bhopal gas tragedy: review of clinical and experimental findings after 25 years." *International journal of occupational medicine and environmental health* 22, no. 3 (2009): 193.

<sup>57</sup>Bhopal 1, 634 F. Supp. 842 (S.D.N.Y. 1986), *aff'd* and modified, 809 F.2d 195 (2d Cir. 1987).

<sup>58</sup>634 F. Supp. at 867.

<sup>59</sup>Ipe, Mary. "Bhopal Gas Tragedy: Lessons for corporate social responsibility." *Social Responsibility Journal* 1, no. 3/4 (2005): 122-141.

<sup>60</sup>Satinath Sarangi. "Bhopal Disaster: Judiciary's Failure." *Economic and Political Weekly* 30, no. 46 (1995): 2907–9. <http://www.jstor.org/stable/4403440>.

<sup>61</sup>Amnesty International, 'First convictions for 1984 Union Carbide disaster in Bhopal too little, too late' (Amnesty International, 7 June 2010) <https://www.amnesty.org/en/latest/news/2010/06/first-convictions-1984-union-carbide-disaster-bhopal-too-little-too-late/>

<sup>62</sup>L. (2020, October 2). *Union Carbide Corporation* | Lexpeeps. Lexpeeps. <https://lexpeeps.in/union-carbide-corporation-v-union-of-india/>

underdeveloped jurisprudence lingered the trial.

The judgement was passed in the year in 1988, almost 4 after years after the tragedy<sup>63</sup>. The Supreme Court felt that the Parent company must be held liable as it has more than 51% equity; becoming the majority share holder. The court calculated compensation grounds on the basis of, inter-alia, untreatable cases, cases of severe or grave injury, treatment that required medical attention, and loss of tangible property. After calculating the number of persons affected, the court reached to compensation of \$470 Million. Moreover, it is pertinent to note that this compensation was jointly shared by UCC and UCIC. The parent company was liable to a sum of \$420 Million and UCIC was liable to compensate over \$45 Million<sup>64</sup> and the this settlement-cum-compensation was decided to dispose of any claim of the past, present or future. However, no individual was held liable despite allegations of negligence because the court did not deem the executives of UCC to be liable of the action done by the subsidiary<sup>65</sup>. However, this compensation does not seem “fair and adequate” to many scholars around the world. The disdain has prolonged even decades after tragedy. Petitions continue to be filled in Supreme court to seek additional compensation<sup>66</sup>. One of the major dissatisfaction is the fact that the compensation was granted without acknowledgement of the fact that there was no accurate official count of victims<sup>67</sup>. According to an autonomous study done by Amnesty International in which it reported that the estimate death toll was two or even three times more than official sources.<sup>68</sup>This was also acknowledged by the Supreme court two years later<sup>69</sup>. In 1991, a constitutional bench was set-up after a review petition to evaluate the compensation. The court, while acknowledging the short-fall, held that the Union of India would liable to compensate further<sup>70</sup>.

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<sup>63</sup>Union Carbide India Limited v. Union of India AIR 1992 Supreme Court 248

<sup>64</sup>Fischer, Michael J. "Union carbide's Bhopal incident: a retrospective." *Journal of Risk and Uncertainty* 12 (1996): 257-269.

<sup>65</sup>Dahiya, Yash. "How the UCC Was Not Liable for the Bhopal Gas Tragedy: An Analysis of One of the Biggest Industrial Disaster." *Supremo Amicus* 9 (2019): 369.

<sup>66</sup>Chowdhury, S., & Law, L. (2023, March 14). *Bhopal Gas Tragedy : Supreme Court Dismisses Centre's Curative Petition Seeking Additional Compensation From UCC*. Live Law. <https://www.livelaw.in/top-stories/bhopal-gas-tragedy-supreme-court-dismisses-centres-curative-petition-seeking-additional-compensation-from-ucc-223669>

<sup>67</sup>Rajagopalan, Shruti. "Bhopal Gas Tragedy: Paternalism and Filicide." *J. Indian L. & Soc'y* 5 (2014): 201.

<sup>68</sup>See Clouds of Injustice Bhopal Disaster 20 Years On, Amnesty Int'l Publications1, 10 (2004).

<sup>69</sup>Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584, 612, para 29.

<sup>70</sup>Justice A.M. Ahmadi dissented questioning the principles on which Indian taxpayer should be liable for damages in a case where Union of India was not held liable and the BGLDA and the following settlement were held constitutionally valid. See Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584.

## VIII. BEYOND PIERCING THE CORPORATE VEIL: EXPLORING ADDITIONAL AVENUES FOR CORPORATE ACCOUNTABILITY

Piercing the corporate veil is a notion that has long been considered a way to hold parent corporations responsible for the acts of its subsidiaries in the context of multinational corporations (MNCs). To attain complete corporate responsibility, nevertheless, this conventional method might not be enough on its own. Piercing the corporate veil is a valuable legal tool, but in order to effectively enforce legal restrictions on corporate conduct overseas and overcome the inherent shortcomings of the Indian legal system, it needs to be complemented by additional legal measures.

Although the theory has proven useful in some situations, there are a number of obstacles when it comes to international organisations. First off, it might be difficult to determine the legal requirements for breaching the corporate veil since they necessitate proof of fraud, unlawful behaviour, or an abuse of the corporate form. This burden of proof can be difficult to meet, limiting the scope of accountability.

Secondly, even if the corporate veil is pierced, the practical enforceability of legal judgments against parent corporations can be challenging, especially when they are based in different jurisdictions. Jurisdictional barriers and the doctrine of forum non conveniens often hinder the ability to bring a case to an American court or obtain a favorable judgment. These procedural complexities can impede the pursuit of justice and perpetuate a culture of impunity for MNCs.

### **Exploring Additional Avenues for Corporate Accountability:**

To overcome the limitations of piercing the corporate veil, it is crucial to explore alternative avenues that can enhance corporate accountability for MNCs. Here are three key avenues that deserve consideration<sup>71</sup>:

#### 1. Legislative Reforms:

One approach is to advocate for legislative reforms that strengthen the legal framework governing MNCs. This can include enacting laws that establish clearer standards of corporate accountability and liability, imposing stricter regulations on MNCs' overseas activities, and enhancing cross-border cooperation in legal proceedings. Legislative reforms can provide a

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<sup>71</sup> Phillip I. Blumberg, *Accountability of Multinational Corporations: The Barriers Presented by Concepts of the Corporate Juridical Entity*, 24 *Hastings Int'l & Comp. L. Rev.* 297 (2001). Available at: [https://repository.uclawsf.edu/hastings\\_international\\_comparative\\_law\\_review/vol24/iss3/2](https://repository.uclawsf.edu/hastings_international_comparative_law_review/vol24/iss3/2)

more robust basis for holding parent corporations accountable and facilitate international collaboration in addressing corporate misconduct.

## 2. International Cooperation and Treaties:

International cooperation and treaty formation may play an important role in promoting corporate responsibility, particularly given the global character of multinational corporations. Cooperation between countries can result in the creation of global frameworks that control multinational corporations (MNCs), encourage openness, and make it easier to share data and proof. Treaties that address certain concerns like environmental harm, human rights breaches, and corruption by multinational corporations (MNCs) can establish a more standardised and efficient approach to responsibility.

## 3. Non-Legal Mechanisms:

Complementary to legal avenues, non-legal mechanisms can exert pressure on MNCs to act responsibly. These mechanisms include voluntary codes of conduct, corporate social responsibility initiatives, stakeholder engagement, and public awareness campaigns. By encouraging ethical practices and promoting transparency, these mechanisms can enhance accountability and exert reputational consequences on MNCs that engage in irresponsible behaviour.

Piercing the corporate veil alone may not be sufficient in situations involving multinational corporations (MNCs) to secure responsibility, justice, and restitution, as demonstrated by the Bhopal gas catastrophe. Following the incident, attempts to hold UCC responsible faced several legal and jurisdictional obstacles. In order to meet the particular obstacles given by MNCs in situations of this size, victims and their families had to endure a drawn-out legal struggle that finally resulted in an insufficient settlement. This underscores the need for additional legal remedies and an improved global legal framework. These difficulties highlight the necessity of developing international cooperation and legal frameworks to guarantee that MNCs are held responsible for their deeds, regardless of where they are located, and to stop other tragedies like the Bhopal disaster from happening.

While piercing the corporate veil remains an important legal tool, it is essential to recognize its limitations in achieving comprehensive corporate accountability for multinational corporations. By exploring additional avenues such as legislative reforms, international cooperation, and non-legal mechanisms, we can address the structural challenges posed by the corporate juridical entity concept and strengthen the enforcement of legal restraints on MNCs. Only through a multi-faceted approach can we strive for a more accountable and responsible corporate

landscape, both domestically and internationally.

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