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**“PUBLIC INTEREST LITIGATION: A STUDY IN REFERENCE TO  
SOME CORPORATE CASE LAWS”**

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**ABSTRACT**

*The concept of public interest is therefore to a large measure general and undefined into any parameters of fixed meaning. The concept is fluid and elastic and therefore normally the question is not of looking at, in case of a company or a corporation, only to the corporate personality in isolation and testing its working vis-à-vis the touchstone of public interest but to see in each case, depending on the facts and circumstances whether the considerations of private interest, i.e. of the members, or promoters in operating through the corporate entity are more weighty or the interest of public at large.*

**Keywords:** Public interest, corporate, lawsuit, judiciary

## **INTRODUCTION**

Public interest means those interests which concern the public at large. A matter of public interest does not mean that which is interesting or gratifying curiosity or love or amusement, but that in which a class or community have a pecuniary interest or some interest by which their legal rights or liabilities are affected<sup>1</sup>. Mahajan C.J says<sup>2</sup> “the expression is not capable of precise definition and has no rigid meaning, and is elastic and takes its color from the statute in which it occurs, the concept varies with time and state of society and its needs. Thus what is public interest today may not be so considered a decade later. In any case, the expression cannot be considered *in-vacuo* but must be decided on the facts and circumstances”

R.N. Misra J of the Orissa High Court observed that in case of a company, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasizes the idea of the company functioning for the public good or general welfare of the community, at any rate, not in a manner prejudicial or detrimental to the public good.

The concept of public interest is therefore to a large measure general and undefined into any parameters of fixed meaning. The concept is fluid and elastic and therefore normally the question is not of looking at, in case of a company or a corporation, only to the corporate personality in isolation and testing its working vis-à-vis the touchstone of public interest but to see in each case, depending on the facts and circumstances whether the considerations of private interest, i.e. of the members, or promoters in operating through the corporate entity are more weighty or the interest of public at large. It is in cases, where the practices or acts of companies or corporations as separate entities are likely to be prejudicial and detrimental to public interest and likely to outweigh the considerations of private interest that the legislation or/and the courts disregard the corporate personality .

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<sup>1</sup> A.K. Majumdar & Dr G.K. Kapoor, Company Law and Practice, Taxman, edn 12, 2007, p.22

<sup>2</sup> *State of Bihar Vs Kameshwar Singh* AIR 1952 SC 252

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## ISSUES OF PUBLIC INTERESTS

Looking at considerations of public interest from this point of view, one can find ‘public interest’ as the all pervasive underlying theme in most of the cases where the corporate personality is disregarded, the corporate veil is lifted and the corporate shell is cracked open. In cases of benefit of revenue, agency, determination of character of corporations, public policy and almost all broad category of cases where the corporate personality has been disregarded by the courts, under currents of judicial thinking having been guided by public interest can be clearly seen. There are at times clear cases where the corporate personality is used directly to public detriment for instance where all members belong to an enemy nation and use the corporate form; or cases where considerations of private interests have to be balanced against those of public interest, for example where revenue is sought to be avoided by organization of affairs in a corporate structure<sup>3</sup>. In a way therefore a study of situations of corporate form has been or has not been disregarded is a study of public interest factors affecting the corporate entity existence of enterprises yet some specific situations need a little more probe to appreciate the psyche of the judiciary and, to an extent the legislature, in disregarding corporate personality, and the achievements of judicial system as well as areas where it has yet to step in of become more effective.

## ROLE OF JUDICIARY IN PUBLIC INTEERESTS

The courts have intervened frequently and quite freely wherever it has been observed that the corporate form is being used as a device to perpetuate, what may be called generically, a public wrong or to inflict directly or indirectly an injury to public interest. Courts have stepped into prevent fraud and improper conduct at the bipartite traders level in the general interest of the business as well as in cases where much larger public policy aspects are involved like in *Escorts*<sup>4</sup> case where the policy of NRI investments in India came to light.

The contours of public interest are however limitless and so are the ways and means in which the corporate form of organization can be used as a tool to achieve ends contrary to public interest. The segments of the society getting affected by the ever expanding arena of corporate activity are increasing every day. The companies wield much greater powers than they ever possessed

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<sup>3</sup> *Re Dinshaw Maneckji Petit* AIR 1927 Bom. 317

<sup>4</sup> *Life Insurance Corporation of India Vs Escorts Ltd. & Ors* (1986) 1. Comp. L.J. 91 (SC)

and have an influence over the social, economic and political milieu of countries that is unprecedented and calls for a much closer scrutiny and regulations of companies and corporations to balance out the needs of complex business environment on the one hand and public interest at large.

## **JUDICIAL ACTIVISM AND PUBLIC INTEREST**

Judicial activism has to gear up to meet the challenges and enter the many and varied and unexplored areas, where the corporate form has to be X-rayed for preventing violation of public norms. Law-breakers have to be out pierced and the law makers and the judiciary has to be more alive to the needs of the modern legal management. Pragmatism has to be reached and any tendencies to over-zealously pursue the public interest claims has also to be guarded against. A most difficult balance has to be struck in the conflicting private and public interest demands. New areas of company jurisprudence have to be examined as to whether a company can be held liable for crimes, whether *mens-rea* can be attributed to a legal entity, to what extent can group enterprises be liable for torts by one such enterprise, to what extent the directors can be held responsible for controlling the business activities of a corporate entity, how the inter-corporate trade wars can be controlled, and how are the shareholders, investors, consumers interests being by-passed by the corporate form and how can the misuse be stopped? New vistas of judicial thinking have to be opened and the finer technical preconditions for looking through the corporate veil have to be abandoned in the interests of growing public interests concerns.

## **SOME CASE LAWS**

### **Bhopal Gas Tragedy – A case of Multinational Corporation’s liability**

Shortly after midnight of December 2, that is early morning of December 3, 1984, the most tragic industrial disaster in history occurred in the city of Bhopal, State of Madhya Pradesh, India. Located there was a chemical plant owned and operated by Union carbide India Limited (UCIL). The plant situated in northern sector of the city, had numerous hutments adjacent to it on its southern side which were occupied by impoverished squatters. UCIL manufactured the pesticides Sevin and Temik at the Bhopal plant at the request of and approval of Government of

India. UCIL was incorporated under Indian law in 1934. 50.99% of its stock is owned by Union Carbide Corporation (UCC) a New York Corporation.<sup>5</sup>

Methyl-isocyanides (MIC), a highly toxic gas, is an ingredient in production of both the pesticides. On the night of tragedy MIC leaked from the plant in substantial quantities. The prevailing winds in the early morning were from northwest to southwest. Due to which the gas got spread in the populated hutments adjacent to the plants and into most densely populated parts of the city affecting more than 500,000 people.<sup>6</sup>

On December 7 1984 the first lawsuit was filed in USA by an American lawyer on behalf of thousands of Indians<sup>7</sup>. Within months after the disaster, the Government of India issued an ordinance appointing itself as the sole representative of the victims for any legal dealings with UCC as regards compensation. The ordinance was later replaced by the Bhopal Gas Leak (Processing of Claims) Act, 1985. Armed with this power, the Government of India filed its suit for compensation and damages against UCC in the United States District Court for the Southern District of New York. Besides filing the suit, one of its prime responsibilities was to register the claims of each and every gas victim in Bhopal. Analysts felt that this job was never done, or rather, not with any seriousness for the next ten years.

After various litigations, the matter was reverted to the District Judge, Bhopal, Madhya Pradesh, and several interim applications and interim orders were passed by the court and when the matter moved to the High court of Madhya Pradesh it ordered that \$ 5 million to be given as interim relief, but UCC didn't agree to it and an appeal was filed in the Supreme court of India, the matter till then was not looking to get resolved that easily but the Supreme Court of India<sup>8</sup> in November 1990 passing a summary order, in public interest, without going into the details of procedure applied the absolute liability rule and held that UCC is liable for the act of UCIL as it is a subsidiary company and a principal company being responsible for its plants in subsidiary company and ordered UCC to pay a compensation of \$450 million to be paid to the victims along with various other directions but UCC was relieved of all its criminal liabilities and the matter was disposed off in a barely 4 page judgment.

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<sup>5</sup> <http://www.bhopalbuzz.com/gastragedy.htm> last visited on 09/02/2012

<sup>6</sup> [http://www.hu.mtu.edu/hu\\_dept/tc@mtu/papers/bhopal.htm](http://www.hu.mtu.edu/hu_dept/tc@mtu/papers/bhopal.htm) last visited on 09/02/2012

<sup>7</sup> Dawni et al. Vs Union Carbide Corporation S.D.A. Va (84-2479)

<sup>8</sup> Union Of India Vs Union Carbide Corporation (1991) 4 SCC 584

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Though this decision passed by the Supreme Court is often criticized and the compensation awarded is not enough and till date the victims of one of the greatest industrial disaster are suffering, but this decision brought out a change in case of liability of a company.<sup>9</sup>

### **The Shriram Foods and Fertilizer Case**

While the horror of the Bhopal disaster was still fresh in the minds of the Indian populace, on December 4 1985, about exactly one year after the Bhopal gas leak, a major leakage of oleum gas took place from one of the units of Shriram Foods and fertilizer Industries (SFFI)<sup>10</sup> and this leakage affected a large number of persons both amongst the workmen and the public and it was also alleged that even an advocate practicing in Tis Hazari courts died on account of inhalation of oleum gas. This leakage resulted from bursting of a tank containing oleum gas as a result of the collapse of the structure on which it was mounted and it created a scare amongst the people residing in that area. Within two days another leakage occurred, though minor, from the joints of the pipe

Public interest litigation which was initiated in this regard brought to focus issues like principles and norms for determining the liability of the large enterprises engaged in manufacture and sale of hazardous products, the basis on which the damages should be quantified, what is the extent of liability of such companies etc.

The court inter alia held

- 1) An enterprise which is engaged in hazardous or inherently dangerous industry which poses potential threat to health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity it has undertaken.
- 2) The measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise the greater must be the amount of compensation payable by it for

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<sup>9</sup> <http://www.thehindubusinessline.com/2004/12/08/stories/2004120800040800.htm> last visited on 09/02/2012

<sup>10</sup> Shriram Foods and fertilizer Industries is an undertaking of an Indian company, the Delhi Cloth Mills Ltd.(now DCM Ltd)

the harm caused on account of an accident in the carrying of the hazardous or inherently dangerous activity by the enterprise.

### **The Renusagar Case**

It was observed by the Supreme Court<sup>11</sup> “In the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible, its frontiers are unlimited. It must however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of doctrine of lifting of the corporate veil is expanding”

In this case, the question re: lifting of corporate veil was whether Renusagar was ‘own’ source of generation of electricity for Hindalco, because if it were to be so held that consumption of electricity from Hindalco was from its own source of generation, Hindalco would have to be paying at reduced rate and not at the higher rate at which the impugned for electricity duty was raised by the state government against it.

A conflict was involved so far as public interest was concerned. The Hindustan Aluminium Corporation Ltd (HINDALCO) had established the aluminum in UP in 1959 and it was claimed that this was under an inducement of the government’s assurance that cheap electricity would be made available. Aluminum being an essential raw material in a large number of industries of strategic national importance, its production was noted to be of vital public interest. It is a commodity mentioned in Schedule I of The Industries (Development and Regulation) Act, 1951 which contains only such industries which have been declared by the parliament to be of public interest. Hindalco also set up its wholly owned subsidiary, The Renusagar Power Company Ltd. and in 1967 its first generating unit commenced. On the other hand, was UP Electricity (duty) Act, 1952 which sought to levy a duty on consumption of electrical energy in UP. One of the public interest objects of this act was that as the programme of development of the state involved enormous expenditure additional resources had to be raised and a bulk of these could only be raised by means of fresh taxation.

So far as the conflict in the broader question of public interest was concerned the Supreme Court noted “Whether in such a particular situation, rural electrification and development of agriculture should be given priority of electricity or development of aluminum industry should be given

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<sup>11</sup> *State Of UP Vs Renusagar Power Co and Others* (1988) 3 Comp L.J. 1 (SC)

priority or which is in public interest- are value judgments and the legislature is the best judge. Thus what is paramount before introduction of the development programme and how the funds should be allocated, and how far the government considers a negligible increase, and rise in cost of aluminum for the purpose of raising money for other development activities are matters of policy to be decided by the government”.

The court therefore left the public interest concerns to the government and in its examination of the issue whether Renuagar should be considered as ‘own’ source of generation of Hindalco and the veil of corporate personality be disregarded, the court examined several judicial decisions and trend in lifting the corporate veil.

## CONCLUSION

From the study of above case laws, it seems that the court has always observed that the veil on corporate personality even though not lifted, is becoming more and more transparent in modern company jurisprudence. The corporate form as of late acquired so much importance from the public’s point of view which includes workers, investors, consumers and the society generally, that most large companies have ceased to be private affairs. Fortunes and fate of not only the public at large but even societies and nations are now linked to the vast corporations of today. The courts have so far remained in the background in such circumstances as family feuds etc. leaving it to the financial institutions and the executives to directly deal with, but time has come for judicial activism in this area as well. Indifference to such affairs cannot be accepted anymore and the corporate status cannot be allowed to decline with impunity to the detriment of public at large.<sup>12</sup>

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<sup>12</sup> *Kapila Hingorani Vs State of Bihar*, (2003) 44 SCL 429 (SC)



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