Journal of International Commercial Law and Technology
Print ISSN: 1901-8401

Website: https://www.jiclt.com/

Article

Corporate Personality and Liability in Multinational Enterprises: An Indian Perspective under International Commercial Law

Article History:

Name of Author:
Dr. Pranita Choudhury[1], Dr Vinayak Pandey[2], Mr. Sourabh Batar[3], Dr. Indra Daman Tiwari[4], Prachi Srivastava[5]

Affiliation:
[1]*Associate Professor, Royal Global University, Guwahati*
[2]*Associate Professor, School of Law, Galgotia's University.*
[3]*Assistant Professor, TMCLLS, Teerthanker Mahaveer University, Moradabad*
[4]*Assistant Professor, School of Law, T.S. Mishra University, Lucknow*
[5]*Research Scholar, Institute of Legal Studies, Shri Ram Swaroop Memorial University.*

Corresponding Author:
Dr. Pranita Choudhury

How to cite this article:
Choudhury P, *et, al,* Corporate Personality and Liability in Multinational Enterprises: An Indian Perspective under International Commercial Law. *J Int Commer Law Technol*. 2026;7(1):434–438.

Received: *18-12-2025*
Revised: *02-01-2025*
Accepted: *16-01-2026*
Published: *04-02-2026*

Abstract: The intricate doctrines of corporate personality and limited liability discussed in this review paper critically in the context of Multinational Enterprises in India and in particular under the international commercial law. It explores the historical development of such concepts, especially in the sense of using them to parent and subsidiary entities, in attempting to explain how traditional legal systems readily fail to handle the intricacies of contemporary multinational corporate arrangements. The paper also addresses the issue of the corporate shield that in most cases shield parent corporations against the liability of its subsidiaries, in particular with regard to environmental externalities and tortious misconducts. This discussion examines the mounting amount of criticism on these foundational pillars of corporate law, especially in situations where the victims of tort cannot recover damages because subsidiaries are undercapitalized. It also looks at new legal principles including the direct imposition of a duty of care on parent companies that undermine traditional principles of separate legal personality and limited liability in these circumstances.

Keywords: Corporate personality, limited liability, multinational enterprises, parent company liability, corporate veil, India, international commercial law.

INTRODUCTION

The objective of this paper is to critically evaluate theys of corporate personality and attribution of liability in multinational enterprises that do their operations in India using the international commercial law. This old concept of a corporate legal person, where each entity in a multinational group is separate, can frequently be of great difficulty in cases where subsidiaries of a parent company are to be held responsible of the actions of their foreign subsidiaries. It is exceptionally relevant in instances

around externalities to the environment or human rights violations when the doctrine of separate legal personality and the limited liability may act as an obstacle to the attainment of redress on the aggrieved. The concept of strict liability on multinational corporations, at least in the sectors that involve hazardous activities, has been adopted gradually in India by the judiciary, which is inspired by the English legal jurisdiction. This principle, however, collides with the practical application of the age-old principles of corporate law which is characterized by separate legal personality and limited liability which in practice protects the parent companies against the liability of their subsidiaries. Such tension means that the ways in which international commercial law frameworks can be successfully applicable in the Indian context and serve to establish a balance between corporate autonomy and accountability is more and more needed to be looked at, considering the intricate web of financial and operational control that multinational groups can often be seen to have.[1] This scenery is also complicated by the development of the concept of law on corporate liability in the field of international law that has been shaped to date by landmark cases in various jurisdictions, including the United Kingdom, to provide precedents to the overarching direct parental duty of care, where no specific contract is in place. The paper will also reflect upon the ramifications of enterprise liability where the whole group is one economic unit and how this doctrine can be more effectively utilized in the Indian legal system to further consider the question of corporate responsibility. Moreover, the analysis will also examine the effectiveness of the existing regulatory frameworks and suggest possible changes which will improve the corporate governance and make parent companies more accountable of their subsidiaries activities in India.

Conceptual Framework of Corporate Personality

The principle underlying the history of the entire corporate law is that a corporation is a separate legal entity, not only of its shareholders, employees, and directors, and thus limited liability is enjoyed. The doctrine that is common to all 39 surveyed jurisdictions, including India, hardly allows anyone to lift the veil of incorporation, so that the parent company became liable to the liabilities of its subsidiaries. Nonetheless, separate legal personality and limited liability are conceptually distinct, but often coincide, and it is difficult to circumvent limited liability in corporate groups. However, the growing sophistication of the formations of multinational enterprises and the expansion of global interrelatedness of supply chains have prompted a re-examination of this obdurate lead to segregated legal personality especially where the parent companies having good deal of operational control over their subsidiaries. This re-consideration has resulted in a gradual de-facto dislocation of liability amongst corporate groups that troubles the old perception that parent and subsidiary distinct entities exist in complete legal autonomy.[2] This rethinking recognises the economic fact of transnational business groups, which tend to be integrated wholes, and as a consequence of this redistribution, liability risks are shifted onto the wider enterprise in both cases, forcing it to either prevent unbeneficial conduct, or making sure that the directly liable entity is fit to indemnify the injured party. This re-conceptualisation of liability is consistent with the theory of a single economic entity that briefly had some momentum in the UK, but has had few adherents as a general rule of veil piercing. It is indeed true that the legislation of India, as with most other jurisdictions, in general honors the separate legal personhood of corporations, but judicial precedents have shown many cases where the corporate veil has been pierced to combat malpractices, as legal persons are irretrievably intertwined to indicate a shift in favor of recognizing substantive control over physical division.[3] This flexibility nonetheless is usually inadequate in dealing with more complex multinational corporate frameworks where more complex ownership and operational web patterns can blur responsibility. Therefore, it is crucial to consider the subtleties about corporate personality in a multinational enterprise, by examining the formal legalistic frameworks and substantive operation realities that constitute these compound-like organizational entities, especially in the Indian context.

Corporate Liability in International Commercial Law

The development of the history of corporate liability in international commercial law has had an upward trend in regards to interest in cross-entity liability which forces parent companies to take responsibility to the actions of their subsidiaries. The trend is especially relevant to the situations within which human rights abuse, and environmental harm are at issue, and the historic shelters of separate legal personality were gradually questioned. This questioning has seen development of new legal

[1] Nancy E. Reichman and Jamie Cassels, "The Uncertain Promise of Law: Lessons from Bhopal.," 23 Contemporary Sociology A Journal of Reviews 520 (1994).

[2] Claire Bright et al., "Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?" SSRN Electronic Journal (2020).

[3] Jamie Cassels, "The Uncertain Promise of Law: Lessons from Bhopal," 29 Deleted Journal 1 (1991).

theories and judicial practice which seek to broaden the parent company liability beyond the narrow limits of veil piercing. Particularly, it has long been contended by scholars such as Phillip Blumberg, that a transition process should be undertaken to entity into enterprise conception of corporate law, whereby the bases of liability should be the enterprise in full and not the legal entities within it. This theory of enterprise argues that a set of legally separate corporations acting in a common economic behavior must be structured as one economic entity as far as liability is concerned, especially in complicated multinationally situations in which a parent organization has decisive power over its subsidiaries. This is attuned to the economic truth of multinational firms, where centralized decision making frequently determines the activities of dispersed geographically located affiliates, and disproves the legal fiction of separate corporate personhood. The fact that nation and state are seen in the international statutes as key players, only leads to difficulties when trying to directly apply liability to multinational groups, and it reflects a conflict between the old legal framework and the new realities of globalized corporations. The judicial resistance to extraterritorial application of corporate liability is frequently based on considerations of jurisdictional difficulty and inability to draw direct causal connection between parent company conduct and subsidiary misconduct. The movement in the direction of finding parent companies liable in the acts of their subsidiaries does, however, manifest itself in different jurisdictions, such as the adoption in EU competition law of a concept of a single undertaking where a parent has decisive influence over its subsidiary and the parent and the subsidiary have joint and separate liability.[4] This is based on the assumption of dominant power over wholly-owned subsidiaries, except where the subsidiary can prove autonomy in market operation and therefore does not allow the parent companies to have the corporate veil shielding them against liability in cases of breach of competition law. This philosophy was conceived on the basis of the so-called single economic entity doctrine where a parent company can be said to be liable to any act of a subsidiary, especially where the shareholding is of 100 percent, which creates rebuttable presumption of decisive influence.

Multinational Enterprises and Their Legal Structure

Although the doctrine of a single economic entity was mainly put in place in the European competition law, its application is becoming an increasingly applicable model in the context of corporate liability in India and, more specifically, in regard to multinational corporations that do business within its territory. It is essential especially because the multinational corporate groups have underlying complexity and opaque structures that often leave them in a position where it becomes nearly impossible to demonstrate direct connections to liability. These multinational set ups are meant to take advantage of the concept of limited liability where they establish a multi-layered level of protecting parent companies which are able to dissociate themselves effectively of the risky activities that their subsidiaries engage in, unless these subsidiaries happen to be functioning as essentially the same entity. This growing body of jurisprudence, exemplified by rulings such as those of the UK Supreme Court, is increasingly permitting parents companies to have their foreign subsidiaries alleged to have breached the duty of care to face jurisdiction over their parent company, despite a lack of more traditional veil-piercing factors. Such a changing legal environment thus requires a fresh assessment of old doctrines of liability in order to sufficiently deal with the socio-economic effects of multinational business, especially in those jurisdictions where subsidiary activities may cause major local effects (such as India). This revision demands a subtle appreciation of the interpretation and application of Bollywood laws like the single economic entity in application to the competition law and overall corporate liability, especially in situations where there is complexity in the webs of control among multinational companies.[5] Analysis of these aspects would require looking into how Indian legal precedents and legal regimes such as Competition Act, 2002 are in harmony or divergent to global standards on corporate group liability bearing in mind the economic and organisational implication of multinational companies. This involves an in depth examination of how the principle of single economic undertaking as utilized in other forms of international jurisdiction to determine liability may be incorporated and utilized in the Indian legal system in cases involving corporate malfeasance by MNEs. This unity of judicial practice represents a move to the concept of enterprise liability, which is akin to similar developments in other countries such as the United Kingdom where landmark decisions have allowed claims to be brought against parent companies due to the acts of their subsidiaries abroad.

[4] Andrew Sanger, "Transnational Corporate Responsibility in Domestic Courts: Still Out of Reach?" SSRN Electronic Journal (2018).

[5] Vibe Ulfbeck, "Vicarious Liability In Groups Of Companies And In Supply Chains – Is Competition Law Leading The Way?" SSRN Electronic Journal (2019); Chirayu Jain, "Single Economic Entity Doctrine in India" SSRN Electronic Journal (2017).

Corporate Personality and Liability in the Indian Legal System

This changing attitude in the Indian legal system to consider the treatment used on corporate groups is a big shift in respect to a tight adherence to the principle of separate legal entity, with respect to the overall consideration of corporate personality and corporate liability, in the multinational business. Such a change reflects a wider global trend towards reconciling formalism in law with economic reality, which forces a deeper look into the perception and policy of corporate groups, in particular those under Indian law MNEs. A trend towards seeing the functional unity of MNEs, not their rigid legal separations, is suggested by the rising readiness of Indian courts to lift the veil of incorporation and merge entities in a corporate group, as recent insolvency proceedings have shown. Even though it remains in its infancy, this pragmatic scheme says that there will be a stronger scheme by which liability can be deemed in the case of complex corporate setups such as when the activities of a particular entity of a multi-national organization can result in far reaching consequences in the whole organization. These trends are in line with the emerging global understanding of cross-border insolvency, and on group company liability, which requires a re-consideration of legal doctrines to the extent that it is imperative to hold accountable and provide effective remedies to multinational corporate groups. This practice is consistent with the national local developmental trend of courts taking an increasingly liberal stance in enlarging the direct liability of corporate parents towards third parties suffering tortious losses as a result of subsidiary acts, another way of getting at the doctrine through application of the corporate veil without expressly relying on the doctrine.[6] This shifting legal environment in India, thus, is on a par with the situation in other jurisdictions, including those of the United Kingdom, where the judiciary has been able to appreciate the possibility of the parent company liability in the context of corporate groups and, as such, leave the strict message of separate legal personality. This pattern is a wider global trend of liability to enterprises, in which the economic realities of corporate groups prevail over the legal fiction of corporate personas, specifically in trans-national insolvency and tort claims. This change is specifically relevant in the light of cross-border insolvency, whereby the growing complexity of international business affairs demands a common way of addressing financial distress in the multinational business frameworks.[7] Although the international community agreed on the unitary and universal character of bankruptcy, national jurisdictions tend to be reluctant to be entirely guided by this principle in the insolvency of MNEs, considering this as a trade-off with their sovereignty.[8]

Challenges in Attributing Liability to MNEs in India

This natural tension between the quest to make insolvencies processes more efficient internationally and the need to maintain national legal eminences poses very serious challenges in successfully dealing with MNE debts in the Indian legal landscape. In addition, even though India has made advancements towards its insolvency regime, the fact that the country has not adopted the UNCITRAL Model Law on Cross-border Insolvency is an indication of an inherent territorialist tendency, which may pose a challenge in enforcing claims against MNEs across borders. This territorialist approach based on history and institutional frameworks of judiciary practices can restrict the level of cooperation in international insolvency processes, thus affecting the capacity to properly solve complex MNE insolvencies.[9] This poses a major threat to creditors who have been trying to redeem dues of MNEs whose assets are located in various jurisdictions and this highlights the importance of a more harmonized and cooperative strategy to deal with cross border insolvency. The current legislative attempts to bring a cross-border insolvency regime in India, however, suggest a possible change of approach towards even more consistency with global standards, designed to both alleviate these burdens and encourage an increasingly integrated approach to corporate group insolvencies. This entails tackling the thick jurisdictional problems of a business with an international business operating internationally especially in the digital economy where assets and operations are usually located geographically apart hence there is a likelihood of conflict in laws and enforcement. Such issues are further aggravated by the lack of standardized choice of law regulation that affects the promulgation and enforcement of international insolvency regulations within local jurisdiction. To be more precise, where a court of a

[6] Martin Petrin and Barnali Choudhury, "Group Company Liability," 19 European Business Organization Law Review 771 (2018).

[7] Ishita Das, "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016," 45 Vikalpa The Journal for Decision Makers 104 (2020).

[8] Priya Misra, "Cross-border Corporate Insolvency Law in India: Dealing with Insolvency in Multinational Group Companies—Determining Jurisdiction for Group Insolvencies," 45 Vikalpa The Journal for Decision Makers 93 (2020).

[9] Debaranjan Goswami and Andrew Godwin, "India's Journey towards Cross-Border Insolvency Law Reform" Asian Journal of Comparative Law 1 (2024).

certain country may be expected to apply a foreign judgment or an order, it may have to give deference to foreign law impliedly, thus indicating the enormous importance of the nexus between choice-of-law and the efficacy of cross-border enforcement systems. The fact that, as seen with well-known recent draft chapter to the Insolvency and Bankruptcy Code 2016, the Indian government continues to consider the UNCITRAL Model Law on Cross-Border Insolvency, is a sign of a possible shift towards resolving these issues and adopting international standards.[10]

Conclusion

The intent of this development in legislation is to make inter-country insolvency matters more clear, consistent and predictable, a task that is naturally complicated by the issue of jurisdiction and the integration of various actors. This suggested framework would offer a long overdue mechanism of recognising and enforcing foreign insolvency activities and judgments in a manner that would simplify the process of the creditors and the debtors. This would be a major stride to aligning the insolvency regime in India on the global standards thus possibly bring in more foreign investment since it will provide more legal certainty to business operating in India. This would not just help to simplify the complex multinational corporate insolvencies, but would also make India more responsible in the sense of providing even stronger and predictable legal frameworks to ensure that it can become a more business friendly environment. Experts are doing the right thing by continuing to establish such a framework as internationalization of trade is increasingly becoming global and this stretches international business into a sophisticated network of bilateral and multilateral relationships that in most cases result in cross-border insolvencies. This is especially applicable when global community still struggles to find different interpretations of the prevailing frameworks and enforcement of insolvency judgment where it is clear that there is a consistent need of globalized rules on choice of law to systematize cross-border proceedings. The unification of globally consistent choice of law rules is necessary in the successful realization of cross-border insolvency systems so that the legal ambiguities relating to multinational businesses can be properly taken care of. Such initiatives are also complemented by the fact that India is taking into consideration the UNCITRAL Model Law on Cross-border Insolvency and this is seen as a strategic step to a more coordinated approach to cross-border insolvency proceedings.

[10] Gerard McCormack and Wai Yee Wan, "The UNCITRAL Model Law on Cross-Border Insolvency Comes of Age: New Times or New Paradigms?," 54 Texas international law journal 273 (2019).