

# The Effects of Incorporation in Pakistan: A Study of Corporate Veil Piercing

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## Abstract

This study of piercing the corporate veil aims to measure the effects of incorporation in Pakistan in a variety of situations. The main goal is to identify scenarios in which the courts disregarded the separate legal identity of a firm in favour of its constituents. The distribution of veil piercing cases among the three categories set out by the courts is pivotal in reaching this goal. The decisions of the courts vary depending on which party asked for the corporate veil to be pierced. The paper classifies the decisions into three categories: i) classic veil piercing scenarios, ii) voluntary piercing cases, and iii) shareholder disputes, with each category having its own jurisprudence. In the first and the third category, the paper finds that the courts rarely follow a single formula, and that the judgments have mostly been based upon vague principles of equity and good conscience. However, courts have essentially been consistent in attempting to follow the universally-recognised rule which endorses piercing of the corporate veil in cases where fraud or wrongdoing has been perpetuated. Nevertheless, the application of this doctrine is highly restricted, except in cases where a public office is involved. With regards to voluntary piercing, the variety of sub-categories make it difficult to devise a specific formula that can be applied to all the cases in which the constituents of a firm are requesting for the corporate veil to be pierced. We have however found that the number of voluntary piercing cases in Pakistan is substantially higher than that of other categories. This is largely due to the emergence of tax disputes concerning the corporations that are owned by the federal government. There has been limited success in this regard as the courts have generally been reluctant to overlook the effects of incorporation in such cases.

## I. Introduction

Since law is essentially a discipline comprising dispute resolution, the apportionment of liability – in any given situation – is one of its key functions. Factors such as ‘asset partitioning’<sup>1</sup> and ‘creditor protection’<sup>2</sup> represent key components of a discourse on corporate governance. Limited liability represents a primary function of a theory of corporate law that is based on property rights.<sup>3</sup> Bankruptcy proceedings reflect important policy considerations and have significant impacts on the pattern of entrepreneurship.<sup>4</sup> Therefore, the debate over piercing the corporate veil is of utmost importance in organizational law. While it deals mostly with the limitation of liability, its core function is that of an all-encompassing doctrine that has its own legal personality. This personification of the incorporated company has taken a novel turn in many

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<sup>1</sup> Henry Hansmann and Reiner Kraakman, ‘The Essential Role of Organizational Law’ (2000) 110 (3) *Yale Law Journal* 387, 393.

<sup>2</sup> Barry E. Adler & Marcel Kahan, ‘The Technology of Creditor Protection’ (2013) 161 (7) *University of Pennsylvania Law Review* 1773.

<sup>3</sup> J. Armour and M.J. Whincop, ‘The Proprietary Foundations of Corporate Law’ (2007) 27 (3) *Oxford Journal of Legal Studies* 429.

<sup>4</sup> John Armour and Douglas Cumming, ‘Bankruptcy Law and Entrepreneurship’ (2008) 10 (2) *American Law and Economics Review* 303.

jurisdictions.<sup>5</sup> Pakistan has had its own unique experience in defining the limits of the firm. This article aims to empirically study of piercing the corporate veil in Pakistan, and seeks to highlight major trends regarding limited liability over the last few decades. In Part II, we provide an introduction to the present concept of limited liability with contextual information regarding its history. Since limited liability was a concept inherited from the British colonial administration as part of the corporate framework of the Companies Act of 1913, a large part of the context consists of British cases that trace the evolution of the corporate form in that jurisdiction. This inherited form has also been the subject of scrutiny by Pakistani jurists. A 2009 judgment of the Federal Shariat Court examined fifty-one sections of the Companies Ordinance 1984 to test whether or not the concept of limited liability was repugnant to the injunctions of Islam.<sup>6</sup>

One of the greatest limitations of this study – and perhaps of any study on the subject of veil piercing – is that, given the costs associated with the pendency of litigation, a majority of disputes are settled outside the court. A common example of this in Pakistan is when a creditor obtains a guarantee from a certain shareholder for the latter to be personally liable in the case of certain debts. Similar practices are common in other jurisdictions, making limited liability more of a (rebuttable) presumption rather than a blanket rule.<sup>7</sup> While personal guarantees safeguard the creditors against liability, this perhaps does not adequately accommodate tort victims whose claims exceed the value of the company that they are suing. While there is a wealth of scholarship from other jurisdictions on this matter, Pakistan has developed minimal jurisprudence, if any, with regards to tort litigation and its application to corporate obligations.

In Part III, we introduce our primary data and the methodology used to obtain and analyze the same. In this regard, we set out to deliberate the effects of incorporation in Pakistan across a variety of scenarios. Our main goal was to identify scenarios in which the courts disregarded the separate legal identity of the firm in favour of its constituents. Our distribution of veil piercing cases among three categories was pivotal in reaching this goal, as the courts have applied very distinct reasoning based on which party is asking the corporate veil to be pierced. This distribution divides classic veil piercing scenarios, voluntary piercing cases, and shareholder disputes into separate categories, as each category primarily has its own jurisprudence.

These jurisprudential differences have been explored in detail in Part IV, with each of the three types of cases comprehensively evaluated, which forms the main body of the essay. Following this, Part V contains the conclusion and the table of cases that form the entirety of our primary data in this study.

Across the three categories, we have learned that the courts more often uphold the effects of incorporation, rather than disregarding them, and are highly reluctant to pierce the corporate veil. The respective outcomes are largely based on contextual factors that were not necessarily given equal weightage across cases. We have further deduced that certain courts have been more

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<sup>5</sup> *Burwell v Hobby Lobby* 573 US (2014) allowed firms to adopt a religious character in pursuance of avoiding certain charges.

<sup>6</sup> *Federal Government v Provincial Governments* PLD 2009 FSC 1.

<sup>7</sup> Robert B. Thompson, 'Piercing the Corporate Veil: An Empirical Study' (1991) (76) (5) *Cornell Law Review* 1036, 1070.

willing to pass veil piercing judgments, and in certain time periods, veil piercing has occurred more frequently. It seems that courts are generally reluctant to enforce financial liability upon a given shareholder; however, they have shown little hesitance in declaring members of parliament unfit for public office based on a certain pattern of shareholding.

## **II. The History of Limited Liability**

The corporation, as it is known today, comprises several distinguishing features, which include unlimited life, limited liability, separate legal personality, transferable ownership and delegated management. However, the concept of limited liability on its own has been around for centuries,<sup>8</sup> perhaps even millennia,<sup>9</sup> figuring one way or the other into how people have organized commercial activity. This concept has been integral to the development of the corporate form as it exists today. It provides enterprising individuals the security they need to carry out business activities without the risks generally associated with other models, such as sole proprietorship and partnership.<sup>10</sup> Hence, limitation of liability allows the firm to maintain a separate legal personality.

In the UK, the principle of limited liability can be traced as far back as 1671, when in *Salmon v Hamborough Co.*, it was established that, “the liability of members of even a chartered corporation was unlimited unless their charter specified that it was limited.”<sup>11</sup> Up until the 19<sup>th</sup> century, unlimited liability was more or less the norm, considering “the costs, delays and uncertainty as to the result involved in petitioning for a charter or private act of Parliament.”<sup>12</sup> The repeal of the Bubble Act in 1825 was one of the first attempts to specifically address the issue of limited liability and subsequently, in the period leading up to 1862, there were rapid developments, which included free incorporation by simple registration coupled with limited liability. This culminated into the Companies Act 1862<sup>13</sup> which “served as a model for public limited liability company legislation in other countries”<sup>14</sup> including the Company Act 1913, which was promulgated for colonial India, and was later adopted by Pakistan.

Pakistan, being an Islamic Republic, has a filter for all legislation which is not in accordance with the injunctions of Islam. In 1987, the Federal Shariat Court, under the powers

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<sup>8</sup> Frank H Easterbrook and Daniel R Fischel, 'Limited Liability and the Corporation' (1985) 52 (1) *University of Chicago Law Review* 89, 97.

<sup>9</sup> PLD 2009 FSC 1. The 2009 Federal Shariat Court judgement provides an Islamic basis for the concept of limited liability. William W Buckland, *A Text-Book of Roman Law: From Augustus To Justinian* (3rd edition, Cambridge University Press 1963). This study of Roman Law demonstrates provides a similar understanding of limited liability as that of early Islamic civilization.

<sup>10</sup> (n 8).

<sup>11</sup> *Salmon v Hamborough Co.* (1671) 1 Ch, Cas 204.

<sup>12</sup> Tony Orhrial, *Limited Liability and the Corporation* (Croom Helm 1982) 91.

<sup>13</sup> The Companies Act 1862 (25 & 26 Vict. c89). The British public's opinion on limited liability changed quite frequently between the Bubble Act Repeal Act 1825 and the Companies Act 1862. At the time of passing of the Repeal Act, the opinion was actually not favorable for limited liability. From then right up till promulgation of the Companies Act 1862, public opinion went back and forth between acceptance and rejection of the concept of limited liability. During this period, the Crown experimented with its new powers under the Repeal Act; a process which involved promulgation of the Trading Companies Act 1834, the Chartered Companies Act 1837, the Joint Stock Companies Act 1844, the Limited Liability Act 1855 and the Joint Stock Companies Act 1855, before the eventual Companies Act 1862 came into force.

<sup>14</sup> (n 12) 101.

vested in it by Article 203-D of the Constitution of Pakistan, took *suo motu* notice to examine many of the key provisions of the Companies Ordinance 1984, and to determine whether they were in congruence with the tenets of Islam. By and large, most of the sections of the 1984 Ordinance were affirmed to be in line with the Islamic principles, but in particular, the argument put forth for justifying the place of limited liability in Islamic jurisprudence was that in the days of Prophet Muhammad (PBUH), slaves were used as agents (of their respective masters) with liability limited to the value of the slave.<sup>15</sup> The slave was not able to own any property, and the agency would allow the slave to enter into commercial transactions on behalf of the master but without the latter's active involvement. If, for any reason, the claims against a certain slave were above and beyond the net realizable value of the slave, liability would not extend to the personal assets of the master.<sup>16</sup>

Such a mechanism for circumventing unlimited liability – which involved vesting a share of one's property rights only to the extent of allowing commercial activity and not the actual ownership upon a slave – was not a novel innovation during the Prophet's (PBUH) lifetime. In the Roman Republic, several centuries before the birth of the Prophet, essentially the same device was employed by free men for limiting their liability. During that era, the concept of a *peculium* existed, which was, in essence, “a particular portion of the property technically belonging to a master, or to a *pater familias*, which he allowed to his slave, or son in his *potestas*, respectively, to use as his own. A slave or child in *potestas* could not own property themselves. However, where the slave, or son, traded with his *peculium*, as commercially minded slaves were encouraged to do by their masters, debts and liabilities incurred in such trading could only be enforced by third parties against the master or *pater familias* to the extent of the *peculium*, and not against all the latter's property.”<sup>17</sup>

A separate legal personality entails that a company has rights and obligations similar to those of a natural person. These include, but are not limited to, the ability to enter into contracts, to incur liabilities, and to be sued in their own name. The veil of incorporation, which separates the corporation from its incorporating members, is a highly contentious construct of company law, and therefore is subject to a great amount of litigation.

The courts may choose to 'pierce the veil of incorporation' for a variety of reasons, the most common being that the corporation is engaged in misrepresentation or fraud.<sup>18</sup> In the US, the courts use the alter ego or the 'instrumentality doctrine'<sup>19</sup> as a test to determine whether the case warrants piercing. The alter ego doctrine has been defined by the courts as “ignoring the corporate status of a group of stockholders, officers, and directors of a corporation in reference to their limited liability so that they may be held personally liable for their actions when they have acted fraudulently or unjustly or when to refuse to do so would deprive an innocent victim of

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<sup>15</sup> (n 6).

<sup>16</sup> Ibid.

<sup>17</sup> William W Buckland, *A Text-Book of Roman Law: From Augustus To Justinian* (3rd edn, Cambridge University Press 1963) 65.

<sup>18</sup> *Salomon v A Salomon & Co. Ltd.* [1896] UKHL 1, [1897] AC 22.

<sup>19</sup> (n 8) 109.

redress for an injury caused by them.”<sup>20</sup> This doctrine is also referred to as the instrumentality rule because “the corporation becomes an instrument for the personal advantage of its parent corporation, stockholders, directors or officers.”<sup>21</sup> This approach to veil piercing has had its due share of criticism; primarily, that the rule was too vague and was likely to create uncertainty. Judge Easterbrook in *Secon Serv. Sys., Inc. v St Joseph Bank & Trust Co.*, noted that “such an approach, requiring courts to balance many imponderables, all important, but none dispositive and frequently lacking in a common metric to boot, is quite difficult to apply because it avoids formulating a real rule of decision.”<sup>22</sup>

### **Tort-Based Veil Piercing**

An emerging trend in veil piercing cases involves the question of whether the courts can and should pierce the veil in order to impose tortious liabilities on directors.<sup>23</sup> The courts in the UK, in cases such as *Standard Chartered Bank v Pakistan National Shipping Corp.*<sup>24</sup> and *MCA Records Inc. v Charly Records Ltd.*,<sup>25</sup> have taken the view that “the general rules of liability that apply to agents or others in tort are also generally applicable to directors.” Therefore, the court may have chosen to pierce the veil in order to impose an obligation under tort on certain members of a company acting in their official capacities. In other jurisdictions such as Australia, there persists what has been termed a ‘dis-attribution fallacy’.<sup>26</sup>

Professor Stefan H.C. Lo takes the view that the attribution of a director or manager's actions to the company does not free the individual of liability. Lo’s approach is very much in line with that of UK courts, and he insists that “where a director acts as an agent of the company, with the director's conduct or mental state attributed to the company pursuant to agency law, the usual agency law principles can well be applied so that the director remains liable for his or her own torts even though company might also be liable as principal.”<sup>27</sup>

Calls for the veil to be pierced more often in tort cases are not uncommon.<sup>28</sup> The scholarship on this sub-category has persisted<sup>29</sup> with the intent of allowing the corporate form to accommodate the indemnification of tort-victims from bearing the costs of risky corporate behaviour that they are not a direct party to.<sup>30</sup>

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<sup>20</sup> ‘Piercing the Corporate Law Veil: The Alter Ego Doctrine under Federal Common Law’ *Harvard Law Review* (95) (4) (1982) 853-71.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Secon Serv Sys, Inc. v St Joseph Bank & Trust Co.* 855 F2d 406, 414 (7<sup>th</sup> Cir. 1988).

<sup>23</sup> Arden Doss Jr., ‘Should Shareholders Be Personally Liable for the Torts of Their Corporations?’ (1967) 76 *Yale Law Journal* 1190.

<sup>24</sup> [2003] 1 AC 959.

<sup>25</sup> [2003] 1 BCLC 93.

<sup>26</sup> Stefan H. C. Lo, ‘Dis-Attribution Fallacy and Directors’ Tort Liabilities’ (2016) 30 *Australian Journal of Corporate Law* 1.

<sup>27</sup> *Ibid.*

<sup>28</sup> David W Leebron, ‘Limited Liability, Tort Victims, and Creditors’ (1991) 91 (7) *Columbia Law Review* 1565, 1601.

<sup>29</sup> Phillip Lipton, ‘The Mythology of Salomon's Case and the Law Dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective’ (2014) 40 *Monash University Law Review* 452.

<sup>30</sup> Christopher W Peterson, ‘Piercing the Corporate Veil by Tort Creditors’ (2017) (13) (1) *Journal of Business & Technology Law* 63.

## **Primary Data**

The primary data for this research consists of fifty-one cases, decided by the courts of Pakistan from 1947 till 2017.<sup>31</sup> These cases have been divided into three categories, to be referred to as Type 1, Type 2 and Type 3 cases, for which the sample space contains twenty-five, eighteen, and eight cases respectively.

A majority of the cases have been obtained via Pakistan Law Site by searching for the terms ‘piercing the corporate veil’ and ‘lifting the veil of incorporation’. However, this method was not sufficiently exhaustive, in terms of obtaining the relevant material on the topic. Hence, further cases were found through the perusal of various law digests from 1947 onwards. This process has revealed that a significant number of cases on the topic do not actually mention the phrases ‘corporate veil’ or ‘veil of incorporation’, despite fitting the description of veil piercing cases.<sup>32</sup> Many of these cases have been included for their mention of the company as a ‘separate juristic personality’. A further qualifier has been the courts’ reliance on important veil piercing precedents.<sup>33</sup>

Type 1 cases present classic veil piercing scenarios, where an entity outside the subject corporation is asking for liability to be enforced upon its constituents, on the basis of a certain pattern of ownership. A template for such cases can be found in *Salomon v A Salomon & Co. Ltd.*,<sup>34</sup> which involved a creditor claiming recovery from the shareholding of a single member company. With regards to Type 1 cases, it is important to note that all of the claims that form the basis of these cases were brought forth by unsecured creditors. As is mentioned before, a large portion of such disputes are settled without the involvement of the courts, as it is common practice for creditors to secure themselves by taking a personal guarantee from a director.

Type 2 cases are instances of voluntary piercing, where members of the firm are requesting the veil to be pierced. These cases mostly revolve around corporations owned by the (federal) government, who claim exemptions from provincial taxation based on their ownership. Other cases that fall under this category include a successor firm, claiming a certain right, based on its predecessor’s entitlement. A part of law that is peculiar to Type 2 cases is Article 165 and 165A of the Constitution,<sup>35</sup> which provides for the federal government to have exclusive jurisdiction over the taxation of corporations owned by it.

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<sup>31</sup> It should be noted that till 1971, the only ‘veil piercing’ case can be found in the form of the case of *Ladli Prasad Jaiswal v The Karnal Distillery Co. Ltd.* PLD 1965 SC 221 (a Type 3 shareholder dispute) in which the 1956 decision of the Lahore High Court was affirmed by the Supreme Court in 1965.

<sup>32</sup> Out of the twenty-five Type 1 cases, twelve do not explicitly mention the ‘veil of incorporation’ or ‘corporate veil’.

<sup>33</sup> This includes *Salomon v A Salomon & Co. Ltd.* [1896] UKHL 1, [1897] AC 22; *Daimler Co. Ltd. v Continental Tyre and Rubber Co. Ltd.* [1916] 2 AC 307; *Trebanog Working Men's Club and Institute Ltd. v MacDonald* [1940] 1 KB 576; *Re Yenidje Tobacco Co. Ltd.* [1916] 2 Ch 426; *Loch and another v John Blackwood Limited* [1924] AC 783 and other veil piercing cases from within the sample space in which the ‘veil of incorporation’ or ‘corporate veil’ was explicitly mentioned.

<sup>34</sup> *Salomon v A Salomon & Co. Ltd.* [1896] UKHL 1, [1897] AC 22.

<sup>35</sup> The Constitution of the Islamic Republic of Pakistan 1973, art. 165 and 165A.

Type 3 cases are essentially shareholder disputes that deliberate on the ‘true nature’ of the firm, and often pit minority shareholders against the majority shareholders with the latter accused of misappropriating company funds. While such scenarios may not necessarily follow the pattern of a classic veil piercing case, it seems appropriate to include such cases in the definition, given the increasingly blurred line between creditors and minority shareholders.<sup>36</sup> Type 3 cases are mostly winding up petitions claiming that the incorporated entity is in fact a partnership given its concentrated ownership (often among members of one’s extended family).<sup>37</sup>

Each case has been separately analysed according to the cause of action alleged, the year in which the case was reported, the year in which proceedings were initiated, the court or tribunal which dealt with the matter, the party asking for the veil to be pierced, corporate nature of the subject firm, and the conduct of the parties prior to and during proceedings.

Limitation of liability is referred to a number of times in the Companies Ordinance 1984; section 2(8) of the Ordinance defines the term explicitly and section 32 provides the effect of incorporation to be that of limiting liability.<sup>38</sup> The latter seems to be one that affirms the position of the famous case of *Salomon v A Salomon & Co. Ltd.*,<sup>39</sup> and has often been interpreted with the help of its guiding principles.<sup>40</sup> Additionally, section 111 of the Companies Ordinance 1984<sup>41</sup> provides for certain directors of a limited company to have unlimited liability, and section 194<sup>42</sup> provides for making directors liable in cases of “negligence, default, breach of duty or breach of trust”. Both these sections deal largely with fiduciary duties of directors and feature sparingly in our sample space but, most importantly, these sections reflect a control-centric approach to corporate veil piercing that focuses on assigning liability to directors rather than shareholders.

Quite often in practice, however, these sections of law are largely made redundant by the collective will of the parties to avoid the courts. If, however, the parties choose to pursue litigation, the conclusion of a particular dispute may take from five to fifty years.<sup>43</sup> By the time a

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<sup>36</sup> Many of the tools to secure the investment of creditors are those that can be applicable in the securing the investment of minority shareholders. This is due to the fact that both have very little say in the structure of the company, barring such security. See Barry E. Adler & Marcel Kahan, 'The Technology of Creditor Protection' (2013) 161 *University of Pennsylvania Law Review* 1773.

<sup>37</sup> Most of such cases involve disputes between real brothers.

<sup>38</sup> The Companies Ordinance 1984, s. 2(8) and 32 of which are succeeded by the newly enacted Companies Act of 2017, s. 2(8) and s.18 respectively.

<sup>39</sup> *Salomon v A Salomon & Co. Ltd.* [1896] UKHL 1, [1897] AC 22; The rule of *Salomon v Salomon* was one that preserved the personal assets of the owner of a single-member company in the context of a creditors claim against his company. However, it is important to note that Salomon did not establish limited liability as a doctrine, as the judgment itself outlines exceptions in which it would be prudent to pierce the corporate veil. Moreover, Salomon has not been the final word in discussions of limited liability. See Phillip Lipton, ‘The Mythology of Salomon's Case and the Law Dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective’ (2014) 40 *Monash University Law Review* 452.

<sup>40</sup> *Ibid.*

<sup>41</sup> The Companies Ordinance 1984, s. 111, which was succeeded by Companies Act 2017, s. 98.

<sup>42</sup> The Companies Ordinance 1984, s. 194, which was succeeded Companies Act of 2017, s. 180.

<sup>43</sup> A few notable examples from the sample space include *Mian Khurshid Alam v Shah Zaig-ur-Rehman* 2002 CLD 602, which took eight years for the Lahore High Court to decide, and *State Life Corporation Pakistan v Fazal and Sons (Pvt.) Ltd.* 2010 CLC 1895, which took the courts 16 years only for the suit to be dismissed at the stage of

final decision is issued, both parties would have paid a multitude of legal fees and the importance of the outcome may have diminished significantly. Hence, these disputes often culminate in some form of compromise outside the court, and while the possibility of litigation subtly affects the matter as if it were a sword hanging from above, the gravity of the matter is clearly not sufficiently significant.

### **Timeline of Cases**

The era from 1960 to 1990 was a formative one for corporate governance in Pakistan. The only 'veil piercing' case decided prior to this period was a Lahore High Court decision in (Type 3) *Karnal Distillery*,<sup>44</sup> subsequently taken up by the Supreme Court, with the final decision reported in 1965. The veil piercing jurisprudence during this time was dominated by shareholder disputes, such as *Karnal Distillery*<sup>45</sup> and *Lilawati*,<sup>46</sup> with as many as five such cases reported by the courts between 1960 and 1990. There was an influx of Type 2 cases from 1985 onwards, with a host of Federal Corporations claiming tax exemptions.

The passing of accountability legislation between 1996 and 2001 has not directly affected veil piercing proceedings; however, it represents a trend of establishing accountability at the turn of the millennium.<sup>47</sup> Courts have generally been more open to (involuntary) veil piercing arguments, as evidenced by the holdings in *Muhammad Yaqoob Sheikh v Election Tribunal*<sup>48</sup> and *Mian Khurshid Alam v Shah Zaig-ur-Rehman*.<sup>49</sup>

### **Forums**

In terms of the courts that have issued veil piercing judgments, perhaps the most frequented forums have been the High Courts of Karachi and Lahore. From twenty-five Type 1 cases, eleven have been filed in the Sindh High Court, ten in the Lahore High Court, two in the Peshawar High Court, one in the Income Tax Appellate Tribunal, and one in the Supreme Judicial Council.

A trend particular to Type 1 cases has been that the Lahore High Court appears more willing to pierce the corporate veil than its counterpart in Sindh. Judgments of the former court include the veil piercing precedents of *Mian Khurshid Alam*<sup>50</sup> and *Muhammad Yaqoob Sheikh*,<sup>51</sup>

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execution. Moreover, it took the Sindh High Court nearly half a century to decide *Shahamatullah Qureshi v Hi-Tech Construction (Pvt.) Ltd.* 2004 CLD 640, only to decide against interfering in the matter.

<sup>44</sup> *Ladli Prasad Jaiswal v The Karnal Distillery Co. Ltd.* PLD 1965 SC 221.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Lilawati v Anwarul Islam* PLD 1971 Kar 25.

<sup>47</sup> See the Financial Institutions (Recovery of Finances) Ordinance 2001, which provides for a number of procedural tools for expediting claims in cases involving financial institutions. Apart from summary procedure, this law provides the banking courts with the discretion to institute suits for financial obligations that have been written off, as well as empowering banking courts with the jurisdiction of a (criminal) sessions court. This, coupled with the establishment of the National Accountability Bureau in 1999, provided a robust accountability mechanism at the turn of the millennium.

<sup>48</sup> *Muhammad Yaqoob Sheikh v Election Tribunal* 2013 CLC 1512 Lah.

<sup>49</sup> *Mian Khurshid Alam v Shah Zaig-ur-Rehman* 2002 CLD 602 Lah.

<sup>50</sup> *Ibid.*



whereas the restrained approach of the Sindh High Court is reflected in *Messrs Sakhi Dattar*<sup>52</sup> and *Haji Khuda Bux Nizamani*.<sup>53</sup> In Type 2 cases, ten have been heard by the Supreme Court, three by the Lahore High Court, three by the Sindh High Court and two by the Income Tax Appellate Tribunal.<sup>54</sup> Type 3 cases have been mostly decided in Karachi, with the Sindh High Court delivering six of the eight judgments and the Lahore High Court and Supreme Court contributing with one judgment each.

### **III. Type 1 Cases: Classic Veil Piercing Cases**

The first (Type 1) veil piercing case in Pakistan was that of *President of Pakistan v Mr. Justice Shaukat Ali*,<sup>55</sup> argued before the Supreme Judicial Council. Shaukat Ali was disqualified in this case by the Council, on the basis of holding an office of profit via his shareholding of a company. Several years later, a rather interesting case was reported, in which the court was asked to establish criminal liability upon the managing director of a company which had manufactured sub-standard drugs. This case, i.e., *Superintendent of Police, F.I.A., Lahore v Akhtar Hussain Bhutta*,<sup>56</sup> was reported in 1978, and is perhaps the closest that Pakistan's veil piercing jurisprudence will come to in terms of establishing tortious liability upon the executives of a given company. Until 1995, only seven Type 1 cases had been reported, while the next twenty-two years yielded eighteen more cases in which the courts were asked to pierce the corporate veil.

Surprisingly, very few Type 1 cases actually contemplate winding up of the company. Winding up or bankruptcy proceedings are seemingly implied when we discuss the piercing of the corporate veil since it stands to reason that only after the assets of the firm have been distributed amongst creditors can the assets of the relevant shareholders be subject to liability. In fact, a large number of cases seek to assign liability which is valued at significantly less the amount than the net worth of the firm in question. In certain cases, it seems to be the result of clerical errors that have assigned liability to the managing director in his personal capacity, rather than to the firm. The courts have not reacted well to such litigation, and in a number of cases, the courts have shut down veil piercing arguments in matters of default of electricity and/or land revenue dues.<sup>57</sup>

However, litigation in itself has a significant impact upon both sides in a particular case. A suit for recovery or even a warrant for arrest issued in the name of an executive can be damaging for the executive or his firm. Perhaps more troubling is that, in the many years that

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<sup>51</sup> *Muhammad Yaqoob Sheikh v Election Tribunal* 2013 CLC 1512 Lah.

<sup>52</sup> *Messrs Sakhi Dattar Cotton Industries and Oil Mills v Messrs Mahmood Pvt. Ltd.* 2006 CLD 191 Kar.

<sup>53</sup> *Haji Khuda Bux Nizamani v Election Tribunal* 2003 MLD 607 Kar.

<sup>54</sup> This includes the case of *Associated Cement v Government of Sindh* 1992 MLD 1730 Kar. which the Supreme Court overturned in *Union Council Ali Wahan, Sukkur v Associated Cement (Pvt.) Ltd.* 1993 SCMR 468 SC. These judgments have been included in our sample space independently.

<sup>55</sup> *President of Pakistan v Mr. Justice Shaukat Ali* PLD 1971 SC 585.

<sup>56</sup> *Superintendent of Police, FIA, Lahore v Akhtar Hussain Bhutta* PLD 1978 SC 193.

<sup>57</sup> *Ayaz Durrani & others v Chairman, WAPDA & others* PLD 2000 Lah 414; *Shamim-ud-Din v Federal Government of Pakistan through Chairman WAPDA, Lahore & 4 others* 1995 CLC 299; *A Rehman v Tehsildar Lahore and another* 1993 CLC 1222; *Tariq Saeed Saigol v District Excise & Taxation Officer, RWP* 1982 CLC 2387.

pass between the institution and conclusion of a certain suit, an executive may securely remove himself and the assets (in question) from the jurisdiction of the courts of Pakistan. It is perhaps for this reason that in most cases, large creditors (often banks) arrange for personal guarantees to be given by the director(s) of a given firm. These guarantees effectively reflect the spirit of section 98 of the Companies Act 2017,<sup>58</sup> which allows for certain directors of limited companies to have a liability that is unlimited.<sup>59</sup> These creditors, armed with effective laws on bank defaulting, can then proceed to hold a director personally liable. It may be important here to note that the directors are not necessarily synonymous with the shareholders, but in Pakistan the executive tends to own a large (if not the majority) portion of the company's shares.

From the twenty-five Type 1 cases, the corporate veil has only been pierced in four instances.<sup>60</sup> Only one of these cases represents a classic veil piercing scenario, in which a firm's creditor was demanding contribution from the firm's shareholders upon winding up of the firm. This case, *Mian Khurshid Alam v Shah Zaig-ur Rehman*,<sup>61</sup> provides a high threshold for veil piercing, as the Lahore High Court only allowed the veil to be pierced in the context of several dubious transactions with a Hong Kong-based sister concern. The firm in Pakistan, Khurshid Brother (Pvt.) Ltd., then failed to honor its large debt, leading to a suit of recovery being filed by the creditor banks. Heard in November 2001, the result of *Mian Khurshid*<sup>62</sup> should be viewed within the context of a wave of accountability legislation being passed.<sup>63</sup> A contrasting decision can be found in 2006 in *Messrs Sakhi Dattar v Messrs Mahmood Pvt. Ltd.*,<sup>64</sup> where the Sindh High Court refused to pierce the corporate veil in the context of a default. While the case of *Sakhi Dattar*<sup>65</sup> was not *prima facie* as that of *Mian Khurshid*,<sup>66</sup> the facts of the former suggest that this default was willful.<sup>67</sup>

Out of the four Type 1 cases in which the veil has been pierced, two have been with the effect of establishing liability in terms of disqualification from office.<sup>68</sup> First, in 1971, Justice Shaukat Ali was disqualified for holding an office of profit (through ownership in an incorporated company) and then in 2013, a member of the National Assembly from Jhang, Muhammad Yaqoob Sheikh, was disqualified from contesting elections on the basis of his ownership of a company that had recently defaulted. There is a significant difference between

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<sup>58</sup> The Companies Act 2017, s. 98, successor of The Companies Ordinance 1984, s. 111.

<sup>59</sup> Examples of cases that have been filed under this section of law: *Sultan Ul-Arfeen v District Officer (Revenue), City District Government, Karachi* 2013 CLD 1280; *Arshad Saleem v Civil Aviation Authority* 2011 CLD 1171; *Ehtesham Ghazi v Izharruddin* 2001 YLR 526.

<sup>60</sup> *Muhammad Yaqoob Sheikh v Election Tribunal* 2013 CLC 1512; *Mian Khurshid Alam v Shah Zaig-ur Rehman* 2002 CLD 602; *Asgharali v PK Shahani* 1992 CLC 2282; *President of Pakistan v Mr. Justice Shaukat Ali* PLD 1971 SC 585.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Mian Khurshid Alam v Shah Zaig-ur-Rehman* 2002 CLD 602.

<sup>63</sup> The Financial Institutions Ordinance 2001; the National Accountability Ordinance 1999 (n 26).

<sup>64</sup> *Messrs Sakhi Dattar Cotton Industries and Oil Mills v Messrs Mahmood Pvt. Ltd.* 2006 CLD 191 Kar.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Mian Khurshid Alam v Shah Zaig-ur Rehman* 2002 CLD 602.

<sup>67</sup> This is due to the fact that the defendant in this case had absconded from the country following default and the plaintiff was forced to obtain an ex-parte decree that was eventually overturned by a judgment of the Sindh High Court.

<sup>68</sup> *President of Pakistan v Mr. Justice Shaukat Ali* PLD 1971 SC 585; *Muhammad Yaqoob Sheikh v Election Tribunal* 2013 CLC 1512.

the contexts of these decisions, as the former represents a (short-lived) purging of corrupt judges from the judiciary, whereas the latter is a part of a growing movement to establish stricter moral standards on lawmakers. This does, however, represent a willingness of the courts to pierce the veil in cases involving public office, and many would argue that even the disqualification of former Prime Minister Nawaz Sharif was a case of piercing the corporate veil.<sup>69</sup> A case that is an exception to this trend is that of *Haji Khuda Bux Nizamani v Election Tribunal*,<sup>70</sup> in which the Sindh High Court overturned the decision of the Election Tribunal to disqualify the Member of National Assembly (MNA) from Sanghar. In this case, the Sindh High Court opined that the “allegations (of bank default) could have been scrutinized more appropriately”,<sup>71</sup> but refused to do so itself. The ‘strictly construed’ law regarding disqualification of the candidate in *Nizamani*<sup>72</sup> is in contrast to the judgment in the *Muhammad Yaqoob Sheikh* case,<sup>73</sup> in which the Lahore High Court had no qualms in examining the candidate’s shareholding in the relevant companies and the various loans that these companies had obtained. The decade between the two cases should be noted as an important factor, as the latter case marked the start of a series of disqualifications from political offices that were based upon financial irregularities.<sup>74</sup>

The latest Type 1 veil piercing case in our sample space is that of *Abasyn University v Federation of Islamic Republic of Pakistan*.<sup>75</sup> *Abasyn University* somewhat tests the demarcation of cases in the sample space, as it is a case in which the court was asked to pierce the veil of a company established by a specific (provincial) statute. The university was asked by the federal government to pay contribution as per the federally mandated Employees Old-Age Benefits Act,<sup>76</sup> to which the university’s management responded by asserting that the (statutory) status of the university enabled it to be exempt from such contribution. This case is unique as most veil piercing cases revolve around the legal status of a company being either a partnership or limited company, although we have plenty of Type 2 cases in which a company asserts its status as a statutory corporation.<sup>77</sup>

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<sup>69</sup> This may well be true, considering the fact that in the ‘Panamagate’ case, the court set out to establish a certain pattern of corporate ownership that was allegedly hidden behind the veil of foreign incorporated entities. However, the fact that the verdict was based on an undisclosed work permit makes it more a case of undisclosed assets, and it would perhaps be veil piercing if it would be established that Nawaz Sharif had an undisclosed shareholding in an incorporated entity. *Imran Ahmed Khan Niazi v Mian Muhammad Nawaz Sharif* PLD 2017 SC 265; PLD 2017 SC 692.

<sup>70</sup> *Haji Khuda Bux Nizamani v Election Tribunal* 2003 MLD 607.

<sup>71</sup> And that the Election Tribunal erred in not issuing a show-cause notice to Nizamani; hence violating principles of natural justice which include the right to be heard.

<sup>72</sup> *Ibid.* The High Court in this case refused to “assume the jurisdiction of the Tribunal” and examine evidence with the object of disqualifying Nizamani.

<sup>73</sup> *Muhammad Yaqoob Sheikh v Election Tribunal* 2013 CLC 1512.

<sup>74</sup> This includes *Muhammad Hanif Abbasi v Jahangir Khan Tareen* PLD 2018 SC 114, *Imran Ahmed Khan Niazi v Mian Muhammad Nawaz Sharif* PLD 2017 SC 265, *Rai Hassan Nawaz v Haji Muhammad Ayub* PLD 2017 SC 70, and a presently unreported judgment of the Islamabad High Court, *Usman Dar v Khawaja Mohammad Asif* WP 2907 of 2017.

<sup>75</sup> *Abasyn University v Federation of Islamic Republic of Pakistan* 2017 PLC 34 Pesh.

<sup>76</sup> Employees Old-Age Benefits Act, 1976, s. 9 provides for contribution from private sector employers.

<sup>77</sup> It is for this reason that there was some confusion with regards to whether *Abasyn University* can be considered a Type 1 or Type 2 case. It is perhaps prudent to group it with the former considering the fact that the (potential) creditor is asking the court to take the pattern of shareholding into account. It cannot be considered as voluntary veil piercing since the shareholders are asking the court to ignore the ownership structure of the firm in favour of its statutory status.

## **Type 2 Cases: Voluntary Piercing**

Voluntary piercing refers to corporate veil piercing that is actually endorsed by the party controlling the firm. While this initiative is sometimes taken by the shareholders, in most cases it is the management of the firm that invites the courts to ascertain the ‘true’ owners in a given scenario. There is limited scholarship on this category of veil piercing; however, it has been discussed with reference to several jurisdictions.<sup>78</sup> Voluntary piercing should not be confused with the phenomenon of ‘reverse piercing’, which refers to the act of liability of the individual being enforced upon a company that he is a shareholder of.<sup>79</sup>

A large part of veil piercing jurisprudence in Pakistan is based upon voluntary piercing and hence, such cases have been referred to as Type 2 in our study. Cases involving voluntary piercing constitute eighteen out of the fifty-one in our sample space, in which the courts contemplate the question of whether or not the true pattern of ownership should be ascertained. Type 2 cases in Pakistan almost entirely centre on government ownership of a firm and the privileges accrued by the management and employees as a result of this government ownership.

We have further subdivided Type 2 cases into four categories, including those filed under Article 165 of the Constitution, those that are alleging some sort of tax-based link with the federal government (independent of Article 165), labour cases in which the employees of statutory corporations are asking to be treated as if they were working for the government, and lastly, cases of corporate succession.

## **Tax Avoidance for Federal Corporations under Article 165**

Article 165 was included in the 1973 Constitution from the beginning and was also a part of the 1962 and the 1956 Constitutions. This article provides for the ‘Exemption of Certain Public Property from Taxation’.<sup>80</sup> While the framers of the constitution most likely envisioned the demarcation of separate spheres for provincial and federal taxation, Article 165A was enacted (by the dictator, Zia-ul Haq) to ‘clarify’ the position of Article 165. The language of Article 165A is retrospective and only elucidates the fact that federal corporations shall be taxed per the directions of the federal legislature. This clarification can be seen as a part of Zia’s move to consolidate power at the centre.<sup>81</sup> This amendment had the effect of pitting federally owned

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<sup>78</sup> See Karen Vandekerckhove, ‘Piercing the Corporate Veil: A Transnational Approach’ *Kluwer Law International* 2007. Vandekerckhove explores voluntary veil piercing in Europe as initiated by parent companies with the object of avoiding the liabilities of certain creditors.

<sup>79</sup> This is especially confusing considering certain studies actually refer to the phenomenon of reverse piercing as voluntary piercing. See Thomas K. Cheng, ‘The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines’ (2011) 34 *SSRN Electronic Journal* 372. What Cheng refers to as ‘voluntary piercing’ is when the liability of an individual is extended to the company that he forms a part of.

<sup>80</sup> Article 165 of the Constitution of the Islamic Republic of Pakistan 1973, which was preceded by Article 137 of the Constitution of 1962 and Article 112 of the Constitution of 1956.

<sup>81</sup> This is due to the fact that the language of Art. 165A not only empowers the parliament to prescribe taxation on the income of “certain corporation”, but clarifies that it “shall be deemed always to have had” this power. Moreover, it provides for supremacy of the federal legislature of the parliament in the matter, whereas prior to this amendment, tax exemption was also extended liberally to those exercising functions of the provincial government as in *Central Board of Revenue v Sindh Industrial Trading Estate* PLD 1985 SC 97.

corporations such as the Rice Export Corporation, Pakistan Telecommunication Company Limited (P.T.C.L.) and Associated Cement against various provincial governments, in disputes regarding the payment of Provincial Octroi duty.<sup>82</sup>

Even though the cases in which the courts exempted federal corporations from provincial taxation are very few, the same reflect a culture of federal autonomy with regards to financial dealings on the part of such organizations.<sup>83</sup> The case in which a veil piercing argument did succeed was *Rice Export Corporation of Pakistan Ltd. v Karachi Metropolitan Corporation*,<sup>84</sup> where the Sindh High Court relied upon the 1985 judgment of the Supreme Court in *Central Board of Revenue v S.I.T.E.*<sup>85</sup> The courts have consistently held that the test for the application of Article 165 is whether the property and income in question is being operated on behalf of the government regardless of whether or not the government is a shareholder of the company.

### **Income Tax Appellate Tribunal Cases**

This sub-category only consists of two cases filed before the Income Tax Appellate Tribunal. These cases are very similar to those filed under Article 165 of the Constitution, as those also involved corporations requesting tax exemption on the basis of some link to the government. The 2009 judgment declared that the Chamber of Commerce is a charitable body, performing semi-governmental functions, while the 2006 judgment established National Transmission & Dispatch Company (NTDC) as an extension of Water and Power Development Authority (WAPDA) rather than a private corporation.<sup>86</sup>

### **Labour Cases**

There are certain cases from within the Type 2 category that differ slightly from those alleging Article 165. These are similar due to the looming possibility of government ownership, and different due to their premise that employees of certain corporations should be treated as employees of the Federal Government. However, such legislation has not proved particularly fruitful, as the Supreme Court in *Raziuddin v Chairman P.I.A.*<sup>87</sup> and *Lt. Col. Shujauddin Ahmad v O.G.D.C.*<sup>88</sup> refused to entertain pleas of the respective petitioners that they should be entitled to the same privileges (with regards to termination from employment) that are afforded to government employees.

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<sup>82</sup> Many of these disputes took place in (and against the governments) of Sindh and Khyber Pakhtunkhwa (formerly North West Frontier Province).

<sup>83</sup> See Khaleeq Kiani, '16 govt. entities resisting audit, AGP tells Senate committee' (*DAWN*, 8 November 2012) <<https://www.dawn.com/news/762408>> accessed 9 January 2018.

<sup>84</sup> *Rice Export Corporation of Pakistan Ltd v Karachi Metropolitan Corporation* PLD 1990 Kar 186.

<sup>85</sup> *Central Board of Revenue v SITE* PLD 1985 SC 97.

<sup>86</sup> 2009 PTD 820 (Trib.); 2006 PTD 2639 (Trib.).

<sup>87</sup> *Raziuddin v Chairman PIA* PLD 1992 SC 531.

<sup>88</sup> *Lt Col Shujauddin Ahmad v OGDC* 1971 SCMR 566.

### **Corporate Succession Cases**

The last sub-category within Type 2 cases concerns cases where neither party is alleging governmental control. However, a request for piercing of the corporate veil is being made from the members controlling the firm. One such case is that of *Messrs Premier Mercantile Service v S.M. Younus*,<sup>89</sup> in which a partnership had been changed to a limited company, without giving notice to a party which it had previously contracted with. In this case, the contract in question was of the renting of office space with the landlord suing for unlawful sub-letting, despite the fact that the constituents of the relevant concern had essentially remained the same. The courts have generally frowned upon such cases, although their decisions are often based on the conduct of the parties rather than the pursuit of a specific policy goal. For example, in *Manek Mobed v Shah Behram*,<sup>90</sup> the decision of the court was not based on any principle of piercing the corporate veil, but on the fact that the landlord had accepted payment on previous occasions. A slight variant of this scenario is the manner in which the court dealt with the matter in *Messrs Franksons and Co. v Muhammad Hussain*,<sup>91</sup> in which a landlord had filed a petition for eviction so that the premises could be used for a company that he was a shareholder of. The Lahore High Court ruled against eviction on the grounds that the company using such property did not constitute a 'personal' use of the owner.

### **Type 3 Cases: Shareholder Disputes**

As we have mentioned above, Type 3 cases are essentially shareholder disputes. The sample space amply indicates that the jurisprudence is centred on challenging the status of incorporation in firms, where the shareholding is concentrated, and in the hands of a particular family. A typical Type 3 case pits a minority shareholder against a majority shareholder. It is often the minority shareholder that has become disenfranchised from the direction that the firm is going in, and the majority shareholder has used his power to amend the articles of association to his own advantage. Type 3 veil piercing in effect renders a private limited company a partnership for the purposes of ownership and control. Hence, in cases where there is a *prima facie* case of wrongdoing, it disregards the action of incorporation in favour of a more inclusive type of firm.

Courts in Pakistan have been willing to consider petitions of such minority shareholders in cases where the constituents belong to a particular family and the structure of the firm resembles that of a family business. Such litigation has been surprisingly successful and the courts have treated private limited companies as partnerships, especially from 1960 till 1990. *Karnal Distillery, Lilawati* and *Nagina Films* reflect a policy of liberally enforcing the effects of incorporation.<sup>92</sup> The courts have limited this by only piercing the veil where the incorporated entity was previously a partnership.

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<sup>89</sup> *Messrs Premier Mercantile Service v SM Younus* PLD 1982 SC 79.

<sup>90</sup> *Manek Mobed v Shah Behram* PLD 1974 SC 351.

<sup>91</sup> *Messrs Franksons and Co. v Muhammad Hussain* 1983 CLC 1042.

<sup>92</sup> *Ladli Prasad Jaiswal v The Karnal Distillery Co. Ltd.* 1965 PLD 221 SC, *Lilawati v Anwarul Islam* PLD 1971 Kar 25, and *Messrs Nagina Films Ltd v Usman Hussain* 1987 CLC 2263 are among the cases in which Type 3 'veil piercing' took place.

While the justification of a ‘joint family business’<sup>93</sup> is not common in jurisprudence regarding the modern corporate form,<sup>94</sup> it is important to note that most of such veil piercing judgments were delivered between 1956 and 1990. The one Type 3 case in which the veil was pierced recently was that of *Messrs U.I.G. Ltd. v Muhammad Imran Qureshi*, which related to a shareholder dispute between siblings.<sup>95</sup> This judgment, reported in 2011, illustrates that the courts have not completely abandoned such jurisprudence, utilizing such discretion where they deemed it necessary.

#### **IV. Conclusion**

Limited liability is yet to be established as a rule in Pakistan as there are several instances in which the courts deemed it fit to pierce the corporate veil. These instances, especially the Type 3 piercing ones, have decreased with the passage of time and a continued trend towards the limitation of liability can be seen in the form of the recent Limited Liability Partnership Act.<sup>96</sup> While it is not clear how this legislation will affect the corporate form in Pakistan, it is a clear message from the legislature to the courts to strictly enforce the effects of incorporation. However, it must be noted that the imposition of limited liability is not a mandatory rule, but a presumption that may be overruled in favour of a personal guarantee taken by a director.<sup>97</sup> The trend of out-of-court settlements remains a major shortcoming of this study, as we were unable to adequately quantify the instances in which a shareholder is held personally liable for the obligations of the firm.

Public limited firms have generally been immune to veil piercing in Pakistan, with only one case requesting (unsuccessfully) for liabilities to be imposed upon a parent company of a (public) shipping company.<sup>98</sup> The rest of the cases have been filed with reference to private limited companies and the success has been limited to four instances of veil piercing from twenty-five cases.

While the debate on legal personality is certainly unique in Pakistan, the formula with regards to (Type 1) classic veil piercing scenarios is largely consolidated in a manner that is consistent with that of other common law countries.<sup>99</sup> However, these standards can be more strictly enforced in a country that has significant issues in establishing accountability. The rationale of not freely piercing the veil in common law jurisdictions has primarily been to avoid

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<sup>93</sup> Ibid.

<sup>94</sup> Perhaps with the exception of China. See Teemu Ruskola, ‘Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective’ (2000) 52 *Stanford Law Review* 1599. Ruskola talks extensively about the role of family and kinship in the Chinese firm.

<sup>95</sup> *Messrs UIG Ltd. v Muhammad Imran Qureshi* 2011 CLC 758.

<sup>96</sup> The Limited Liability Partnership Act 2017.

<sup>97</sup> This practice is actually endorsed by company law in Pakistan as there has long been a provision for limited companies to have ‘directors with unlimited liability’ which is represented in The Companies Act of 2017, s. 98.

<sup>98</sup> *Central Insurance Company Ltd v MT Tasman Spirit* 2004 CLD 695.

<sup>99</sup> With the formula being to have generally abstained from veil piercing except in situations where fraud is being perpetrated with the use of the corporate form. See: *Trustor AB v Smallbone (No. 2)* [2001] EWHC 703 (Ch) 1 WLR 1177, and *Gramsci Shipping Corporation and Others v Stephanovs* [2011] EWHC 333.

enforcing liability upon small shareholders that have no control over the actions of the firm.<sup>100</sup> Given the fact that even today, most corporations in Pakistan have a concentrated shareholding, it may be prudent for the courts to pierce the corporate veil more often in order to hold chief executives and large shareholders responsible for the actions of their company. However, this can also be achieved by the enforcement of provisions that now form part of Pakistan's company law.<sup>101</sup>

The true revelation of this study, however, has been the Type 2 cases. Firstly, the concept of the representatives of a firm asking for its true owners to be identified is certainly a novel scenario for anyone acquainted with the principle of veil piercing. Moreover, the legal personality jurisprudence incorporating such constitutional elements is also quite rare, although not entirely unheard of.<sup>102</sup> A majority<sup>103</sup> of the Type 2 cases present questions of public functionaries being treated in a special manner. The evidence reflects a worrying trend of entitlement on behalf of elected officials that can be witnessed all over Pakistan.<sup>104</sup> However, it is not the object of this essay to deliberate the morality of government entitlement. Therefore, we have largely focused on the corporate status that is afforded to the respective corporations. The rule with regards to success in the Type 2 cases has been of proving that the relevant firm is directly performing a function of the federal government.<sup>105</sup> Moreover, whether or not an entity is making profit is relevant, as this was one of the key factors in the Income Tax Appellate Tribunal exempting the Lahore Chamber of Commerce from income tax.<sup>106</sup>

The reluctance of Pakistani courts to strictly enforce the effect of incorporation in Type 3 cases reveals that the concept of separate legal personality has not yet been fully established in this jurisdiction. It also suggests that a minority shareholder in a family business is more secure than an unsecured creditor of a private limited concern. The jurisprudence of Type 3 cases has served to safeguard (minority) owners that are not actively involved in the running of the business. This safeguard seems reasonable considering its application only in scenarios where there is a *prima facie* case of wrongdoing and where the firms' shareholding is concentrated amongst the members of a particular family. However, an academic such as Timur Kuran would label such a phenomenon as a fatal barrier to a successful economic system.<sup>107</sup> The existence of Type 3 cases may seem to endorse Kuran's view that the "Islamic inheritance system would also have fragmented the estates of successful merchants, hindering the preservation of their

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<sup>100</sup> Henry G Manne, 'Our Two Corporation Systems: Law and Economics' (1967) 53 (2) *Virginia Law Review* 259, 262.

<sup>101</sup> See The Companies Act 2017, s.199-219.

<sup>102</sup> *Burwell v Hobby Lobby* 573 US (2014) allows firms to adopt a religious character in pursuance of avoiding certain charges as a part of the Supreme Court of the United States' interpretation of 1<sup>st</sup> Amendment rights.

<sup>103</sup> The exception being cases involving corporate succession.

<sup>104</sup> Particularly with regards to government owned vehicles paying toll and parking tax.

<sup>105</sup> *Rice Export Corporation of Pakistan Ltd. v Karachi Metropolitan Corporation* PLD 1990 Kar 186.

<sup>106</sup> 2009 PTD 820 (Trib).

<sup>107</sup> Kuran believes that the Islamic inheritance system (and its tendency to divide among many members of the same family) was key to ensuring the economic stagnation of Islamic civilization, which is problematic given his inability to demonstrate how a loosely held (ephemeral) corporate form necessarily causes economic stagnation. See Timur Kuran, 'The Absence of the Corporation in Islamic Law: Origins and Persistence' (2005) 53 (4) *The American Journal of Comparative Law*.



businesses across generations”,<sup>108</sup> considering that the Type 3 cases essentially endeavour for the ‘winding up of the firm’ and, therefore, spell the end of a particular business. However, this does not necessarily mean that the resources constituting the firm will be wasted; rather, it is likely that they will be used to constitute a different firm. While this remains true, it can be argued that the time spent locked in litigation can be considered a waste. Nevertheless, even if we were to assume that a large amount of time and resources were spent in resolving such disputes, evidence of such cases is anecdotal at best and largely confined to the 20<sup>th</sup> century.<sup>109</sup> The fact that in the last two decades, only one instance of the Type 3 veil piercing has occurred, makes it apparent that the phenomenon is less of a rule and now serves as a discretionary tool for the judiciary to step in where a minority shareholder is being unfairly treated by the majority.

To conclude succinctly, Pakistan’s veil piercing jurisprudence is generally moving towards safeguarding the rights of the majority shareholders, albeit keeping the door open to ruling in favour of the minority shareholders and creditors in certain cases. The reluctance has been profound with regards to imposing financial liability, with the courts keener on piercing the veil to disqualify holders of public office. Apart from this, it is apparent that veil piercing in Pakistan is unique, with cases such as *Abasyn University*,<sup>110</sup> *Justice Shaukat Ali*<sup>111</sup> and *Karnal Distillery*<sup>112</sup> truly testing the definition of this concept. In terms of instances of veil piercing, courts have been highly reluctant to disregard the effects of incorporation and have largely followed English and Indian precedent<sup>113</sup> to reflect a policy of a legal personality that is not different from that of major common law jurisdictions.

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<sup>108</sup> Ibid.

<sup>109</sup> This includes cases in which the veil was not pierced.

<sup>110</sup> *Abasyn University v Federation of Islamic Republic of Pakistan* 2017 PLC 34 Pesh.

<sup>111</sup> *President of Pakistan v Mr. Justice Shaukat Ali* PLD 1971 SC 585.

<sup>112</sup> *Ladli Prasad Jaiswal v The Karnal Distillery Co. Ltd.* PLD 1965 SC 221.

<sup>113</sup> *Salomon v A Salomon & Co. Ltd.* [1896] UKHL 1, [1897] AC 22; *Daimler Co. Ltd. v Continental Tyre and Rubber Co Ltd* [1916] 2 AC 307; *Trebanog Working Men's Club and Institute Ltd. v MacDonald* (1940) 1 KB 576; *Yenidje Tobacco. Co. Ltd. Re Yenidje Tobacco Co. Ltd.* [1916] 2 Ch 426; *Loch and another v John Blackwood Limited* (1924) AC 783; (5) *Re Jermyn Street Turkish Baths Ltd.* (1971) 3 All FR 84; (6) *Scottish Cooperative v Meyer* (1958) 3 All ER 66; *Mohan Singh Oberoi v Rai Bahadur Jodha Omal Kuthalla* PLD 1961 SC 6; *EBM Company Ltd. v Dominion Bank* AIR 1937 PC 279.

**Table of Cases**

Type 1

	<b>Short Title</b>	<b>Citation</b>	<b>Pierced</b>
1	Abasyn University v Federation of Islamic Republic of Pakistan	2017 PLC 34 Pesh.	No
2	Sultan-ul-Arfeen v District Officer (Revenue), City District Government Karachi	2013 CLD 1280 Kar.	No
3	Muhammad Yaqoob Sheikh v Election Tribunal	2013 CLC 1512 Lah.	Yes
4	Arshad Saleem v Civil Aviation Authority	2011 CLD 1171 Kar.	No
5	State Life Corporation Pakistan v Fazal and Sons (Pvt.) Ltd.	2010 CLC 1895 Kar.	No
6	Messr Saleem Cigarette Industries Pvt. Ltd. v Assistant Collector	2007 CLD 1520 Pesh.	No
7	Nazir Ahmad v Ittefaq Textile Mills Ltd. Lahore	2007 MLD 1311 Lah.	No
8	Anjum Rashid v Shehzad	2007 CLD 1210 Kar.	No
9	Messr Sakhi Dattar Cotton Industries and Oil Mills v Messrs Mahmood Pvt. Ltd.	2006 CLD 191 Kar.	No
10	Central Insurance Company Ltd. v M.T. Tasman Spirit	2004 CLD 695 Kar.	No
11	Haji Khuda Bux Nizami v Election Tribunal	2003 MLD 607 Kar.	No
12	Mian Khurshid Alam v Shah Zaig-ur-Rehman	2002 CLD 602 Lah.	Yes
13	Tanvir Rasool Roller Flour Mills (Pvt.) Ltd. v M.A.P.C.O.	2002 CLD 157 Lah.	No
14	I.T.As. Nos. 3498/LB to 3501/LB of 2001	2002 PTD 2185 (Trib.)	No
15	Ehtesham Ghazi v Izharuddin	2001 YLR 526 Kar.	No
16	Ayaz Durrani and others v Chairman, Wapda	2000 PLD 414 Lah.	No
17	Habib Bank Ltd. v Messrs Rudolf Donhill	1999 PTD 2940 Kar.	No
18	Shamim Ud din v Federal Government of Pakistan	1995 CLC 299 Lah.	No
19	A. Rehman v Tehsildar, Lahore	1993 CLC 1222 Lah.	No
20	Asgharali v P.K. Shahani	1992 CLC 2282 Kar.	Yes
21	Muhammad Anwar Khan Tiwana v Sadeeqa Begum	1984 PLD 411 Lah.	No
22	Tariq Saeed Saigol v District Excise and Taxation Officer, Rawalpindi	1982 CLC 2387 Lah.	No
23	Superintendent of Police, Federal Investigation Agency, Lahore v Akhtar Hussain Bhutta	1978 PLD 193 SC	No
24	Hamdard Dawakhana (Wakf) Karachi v Messr K.B. Joseph and Co. Ltd. Lahore	1971 PLD 279 Kar.	No
25	President of Pakistan v Mr. Justice Shaukat Ali	1971 PLD 585 SC	Yes

Type 2

	<b>Short Title</b>	<b>Citation</b>	<b>Sub-category<sup>114</sup></b>	<b>Pierced</b>
1	I.T.As. Nos.623/LB of 2000, 4874/LB to 4880/LB, 5697/LB to 5703/LB of 2005	2009 PTD 820 (Trib.)	I.T.A.	Yes
2	Xen Shahpur Division v Collector Sales Tax (appeals) Collectorate	2008 PTD 1973 Lah.	165	No
3	I.T.A. No. 2840/LB of 2004	2006 PTD 2639 (Trib.)	I.T.A.	Yes
4	Karachi Development Authority v Central Board of Revenue	2005 PTD 2131 SC	165	No
5	W.A.P.D.A. v Administrator, District Council Swabi	2005 SCMR 487; PTD 627 SC	165	No
6	Province of N.W.F.P. v Pakistan Telecommunication Corporation.	2005 PLD 670 SC	165	No
7	Union Council Ali Wahan, Sukkur v Associated Cement (Pvt.) Ltd.	1993 SCMR 468 SC	165	No
8	Associated Cement v Government of Sindh	1992 MLD 1730 Kar.	165	Yes
9	Raziuddin v Chairman, P.I.A.	1992 PLD 531 SC	Labour	No
10	F. Rahimtoola Ltd. v Government of Sindh	1990 MLD 2226 Kar.	Corporate Succession	Yes
11	Printing Corporation of Pakistan v Province of Sind	1990 PLC 176 SC	165	No
12	Rice Export Corporation of Pakistan v Karachi Metropolitan Corporation	1990 PLD 186 Kar.	165	Yes
13	Chairman, District Council, Rahim Yar Khan v United Bank Limited, Rahim Yar Khan	1989 CLC 1397 Lah.	165	Yes
14	C.B.R. v S.I.T.E.	1985 PLD 97 SC	165	Yes
15	Franksons and Co. v Muhammad Hussain	1983 CLC 1042 Lah.	Corporate Succession	No
16	Premier Mercantile Service v S.M. Younas.	1982 PLD 79 SC	Corporate Succession	No
17	Manek Mobed v Shah Behram	1974 PLD 351 SC	Corporate Succession	N/A
18	Lt. Col. Shujauddin Ahmad v O.G.D.C.	1971 SCMR 566 SC	Labour	No

<sup>114</sup> '165' denotes that a case has been filed based on Article 165 of the Constitution while I.T.A. denotes the other cases asking for tax exemption based on their link with the government.

Type 3

	<b>Short Title</b>	<b>Citation</b>	<b>Pierced<sup>115</sup></b>
1	Messrs U.I.G. Ltd. v Muhammad Imran Qureshi	2011 CLC 758 Kar.	Yes
2	Shahamatullah Qureshi v Hi-Tech Construction (Pvt.) Ltd.	2004 CLD 640 Kar.	No
3	Miss Mahenau Agha v United Liner Agencies of Pakistan Ltd.	1990 PLD 198 Kar.	No
4	Messrs Nagina Films Ltd. v Usman Hussain	1987 CLC 2263 Kar.	Yes
5	Eastern Company (Pvt.) Ltd. v Mst. Gul Begum	1980 PLD 69 Lah.	Yes
6	Lilawati v Anwarul Islam	1971 PLD 25 Kar.	Yes
7	Muhammad Irfan Azad v Mst. Sultana Begum	1971 PLD 91 Kar.	Yes
8	Ladli Prasad Jaiswal v The Karnal Distillery Co., Ltd.	1965 PLD 221 SC	Yes

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<sup>115</sup> In this category, piercing means treating a limited company as if it were a partnership.