

IMPLEMENTATION OF DOCTRINE OF LIMITED LIABILITY AND ITS EFFECT ON JURISPRUDENCE OF WESTERN AND ISLAMIC LAW

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ABSTRACT

A status accepted on the basis of the concept of legal entity of a company or a company since the decision *saloman v salomon and co. Ltd* reports by reference 1997 AC 22, and the same concept has become an integral part of corporate law worldwide. The company law of Pakistan also allows the formation of legal entities with the concept of limited liability, namely companies limited by shares or limited by guarantee. There is also a misconception that the liability of the company or the society is limited, one must first understand that the liability of the company is always unlimited as it is a separate legal entity from the founder, or member, the term company for limited liability does not limit a company's liability in any case. The topic of this research paper deals with the most important issue faced by a group of corporate stakeholders and has not yet been satisfactorily addressed by Western jurists. The company's creditors, if not secured by other collateral, feel stressed and extremely fearful of insolvency until their credits are met; so this is one of the big unresolved problems in the Pakistani economy, most of the investment takes place in limited liability companies which gives real benefits and big savings compared to other forms of investment. other commercial vehicles. However, the doctrine of limited liability still poses many problems, as this protection is only granted to shareholders in the event of the company's disappearance or insolvency. The doctrine of limited liability as applied by Western jurisprudence offers no solution to this problem. creditors of the same company and no consideration is given in lieu of limited liability to creditors or other claimants of the company, nor do the common laws provide for complete solution or any other way to solve this social problem among the stakeholders in the society. Corporations are still governed by traditional corporate law all over the business world with the same subject matter and especially in Pakistan which is a developing country and under the auspices of limited liability, these names Big white criminals are engaging in fraudulent activities without fear of any civil consequences. or criminal liability.

KEY WORDS: corporate veil, corporation, company, incorporation, limited by shares, limited by guarantee, shareholder, fiduciary duties, liquidation, insolvency, limited Liability, corporate, corporate world, corporate sector,

1. INTRODUCTION:

LIMITED LIABILITY, AND IT EFFECT

Limited liability is a legal shield for shareholders and owners, prohibiting them from being personally liable for their company's debts or financial losses.

Organizations are registered as independent legal entities in certain economic structures, such as joint stock companies and joint stock companies. Due to their legal status as "person", these companies may be subject to:

1. Separate business accounts from owner's accounts.

2. Keep any profits after taxes and own property.

When the owner's assets are divested from the businesses, the business takes on the responsibility for its liabilities, debts and financial losses.

This difference gives owners and shareholders legal protection since they don't have to do anything under the law. You can't confiscate any of your assets as an owner or stockholder to pay off the debt. The only thing you can lose is the money you put into the business in the first place.

Sole traders and unlimited liability

Unlimited Liability Unlimited Liability is the opposite of restricted Liability. All lone traders and certain types of business partnerships have unlimited Liability. In a sole trader business structure, there is no separation of business and owner. Sole traders can retain all profits after taxes. However, they are also liable for losses incurred by their business and can be required to repay loans on their own.

Although unlimited Liability is a disadvantage of a sole trader structure, it is worth it if you are in the business for the long term.

The Limited Liability (LL) doctrine has evolved throughout the corporate world. This doctrine has emerged in corporate law like back bone and has attracted huge investments in the modern corporate world without any fear of loss, except in a few countries such as Pakistan. Investors in Pakistan are not familiar with limited liability, and corporate laws are not equipped with proper control over misuse of the doctrine. Therefore, it is essential for investors in the corporate sector as well as other involvers in the corporate entities to understand limited liability. This is because without a basic understanding of the concept and its characteristics, one cannot make a profit by investing in the corporate sector.

The term 'limited liability' refers to the fact that the liability of the shareholders or the members of a company will be limited to the value of their investment in that company. In other words, they will not be held liable for their investment if the company goes into liquidation or bankruptcy. This means that they will only suffer the loss of their investment. As a member or shareholder, they are not held liable for the company's other liabilities if any. The company might have huge liabilities to its creditors or any other claimants. The shareholders or members of the company are not held liable under the cover. This concept ensures that the shareholders of a company who attract more investment do not have to worry about further liability from the company.

2. ISLAMIC CONCEPT OF ARTIFICIAL PERSONALITY AND LIMITED LIABILITY:

Because of the global reach of modern companies, they have a significant impact on our knowledge of Islamic law. These principles were not known in our traditional literature of Fiqh, and no research was done on them.

But today's legal requirements demand that such novel concepts be examined in the light of Sharia. Let's see if the notion of limited liability in sharia is compatible with the fundamental principles of sharia law.

There are two schools of thought on the topic of limited liability. One school of thought claims that limited liability exists within sharia law. For example, in sharia law, the following are examples of limited liability: Waqf Bait ul Mall Bequest Abd al Mazoon

The second group does not accept this concept. The title of the book is "An Introduction to Islamic Finance", which was written in 2007 by Mufti taqi Usmani. Currently, he works as a Sharia adviser in various banks. In his book, he discusses various topics such as Musharaka and Mudarba, as well as Ijarah. He also spends a whole chapter on the concept of Limited Liability in Islamic law.

In the book, he relies on the examples of waqf bait ul maal and others to argue that such an idea has already been accepted in sharia law; however, there is no empirical proof; all he has are examples, and after citing them, he argues that sharia jurists accept limited liability in sharia law.

The term 'person' is generally used and considered to be a natural person. In corporate law, a 'fictional person' also exists as a company having certain rights and obligations under the law under which it was



incorporated. Such a person can function by his or her own name, his or her own identity, and he or she can sue. He or she can sue in the event of a violation of his or her rights or obligations. Similarly, Islamic law recognizes such personalities such as Waqaf and Masjid as well as Bait ul Mal which are treated as separate entities like companies under western laws.

The term ‘liabilities’ in Islamic law is broader than in western law, Islamic law recognises the law of guarantees and guarantor. Liabilities can be changed in various situations in the Islamic corporate sector. However, it does not leave any party unsecured like in western law where creditors are unsecured under cover of limited liability.

That the rule may grant legal personality to non-living entities, such as funds or companies It is important to note that a juridical artificial person may have a legal entity, it may own property, it may run its business, it may be a party to any legal proceedings apart from its members as a natural person but it may have unlimited liabilities. These three examples are examples of legal entities in Islam which do not have the concept of a limited liability like bait ul mal, masjis and waqaf in uma. It is also claimed by western jurists that they developed these two concepts, i.e., a legal person and a limited liability, in the nineteenth century, but these examples of baitul mal, waqf and masjid of the Islamic legal system prove that the legal states have long accepted the principle of a legal person or a limited liability.

The term “corporation” does not seem to be prohibited by Islamic laws. The legal status of a company created and incorporated according to any state legislative process is that of a “creative person” with a “legal entity” rather than a “natural person” with “certain rights” and “obligations”. For instance, a company can acquire any property in whatever capacity (owner/ lessee/ pawnee/ etc. and Mortgagee, etc.). They can also alienate their property, sue or be sued in their own name and manage their property or affairs according to their instructions. Setting up a legal entity Financial obligations Acquiring financial rights Examples of incorporation In the Islamic system, there are legal entities with all of the following characteristics: Bait ul-Mal Waqf Masjid.

Since the institution is not a legal person according to the sharia (Islamic law), the concept of a limited liability company, which is widely used in the corporate world today, is not against Islamic injunctions. A group of natural persons or artificial persons form a limited liability company. The group of natural persons forms a limited liability company by purchasing different numbers of shares of the same value. Therefore, their liability is limited only to the amount of the shares they purchased. A legal personality is a fixed, unlimited liability to its creditors. It is not prohibited according to sharia or sharia injunctions as set out in the Holy Quranic and sharia jurisprudence of the Prophet Muhammad’s Sunnah. Contract and partnership rules under sharia provide full coverage.

3. RECOMMENDATIONS FOR PREVENTIONS AGAINST MIS-USE THE COVER OF LIMITED LIABILITY IN PAKISTAN

In order to detect the abuse of Legal Persons more effectively, supervisory authorities, financial authorities, law enforcement agencies, and other stakeholders should consider the following suggestions or best practices:

1. Conduct due diligence to determine whether the assumed nature of the activity is appropriate to the customer's needs.
2. Understanding business structure and ownership, as well as identifying red flags, are all important aspects of business.
3. Collect customer insights during deployment and ongoing operations using a risk-based strategy.
4. Monitor consumers while taking into account publicly available information from the appropriate authorities.
5. Collect corroborative evidence for underlying transactions if they do not comply with the rules.
6. Transactions are regularly observed as well as industry practices to verify the validity of customer complaints.

7. Implement systems that enable financial institutions to assess the fairness of transactions by comprehensively examining the transaction behavior of connected entities (including individuals and organizations)

8. Get a rationale for using deposits instead of the formal banking system.

9. Recognize the logic of appointing an authorized signatory when necessary. 10. not related to the company's business or assets.

10. Consider using data analytics to uncover hidden connections.

4. CONCLUSION:

The concept of limited liability is a part of company law in Pakistan which was also declared by Pakistan Federal Shariat Court in consonance with Islamic law which is in Quran and Sunnah and recently Limited Liability Partnership law was introduced for the firm of professionals. However, this concept has been made part of the panel provisions in levels only for violation of company law provisions relating to reporting and compliance. However, there is no provision for invoking the exceptional provision that is always required with the statutes of law. This is especially true in corporate sectors that attract investment based on trust in the management of a corporation. Therefore, without taking the theory of exception into consideration and giving it effect through the court of law, it is concluded that, the doctrine of limited liability does not always work well for the foreign small investors who are not familiar with the nuances of corporate law of corporate law in Pakistan. Let's accept that in both the Islamic and the western corporate system there is acceptance of the concept of legal personality and limited liability with an exception and in both the jurisprudence western and Islamic, these concepts are feasible in the same way and without further thinking that these concepts are permissible in Islam or otherwise work to correct mistakes considering both business concepts.

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