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# LIFTING THE CORPORATE VEIL: JUDICIAL TRENDS IN INDIA

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## ABSTRACT

The doctrine of Lifting the Corporate Veil represents a critical judicial exception to the principle of "separate legal entity" established in *Salomon v. Salomon & Co Ltd*. While Indian law generally recognizes a company as a distinct persona, this "veil" is not an absolute shield for practitioners of fraud or illegality.

This abstract examines the evolving judicial landscape in India, exploring how courts navigate the tension between maintaining corporate autonomy and ensuring accountability. By analyzing landmark precedents under the Companies Act, 2013, and common law developments, the study highlights the transition from a rigid adherence to corporate form toward a substance-over-form approach. Through an investigation of instances involving tax evasion, sham incorporation, and the "alter ego" theory, the research underscores how the Indian judiciary utilizes the "Economic Reality" test to prevent the abuse of the corporate structure, ensuring that the legal personality of a company is not used to circumvent statutory obligations or public policy.

**Keywords:** Separate Legal Entity, Corporate Personality, Judicial Activism, Fraudulent Trading, Economic Reality Test, Alter Ego, Companies Act 2013.

## 1. INTRODUCTION

The bedrock of modern commercial law rests upon the doctrine of corporate personality, a legal fiction that elevates a business organization from a mere collection of individuals to a distinct juristic person. This principle establishes that a corporation possesses a legal identity separate and namesake from its shareholders, directors, and managers. By granting an entity the capacity to own property, enter into binding contracts, and initiate or defend legal proceedings, the law provides the necessary structure for perpetual succession and large-scale capital accumulation.<sup>1</sup>

Central to this legal framework is the metaphor of the "corporate veil." This veil serves as a protective barrier that facilitates limited liability, ensuring that the personal assets of investors remain insulated from the corporation's creditors<sup>2</sup>. However, this separation is not an absolute shield. To maintain the integrity of the judicial system, courts reserve the power to "pierce" or "lift" this veil when the corporate form is utilized as a "cloak" for fraud, an evasion of legal obligations, or the commission of crimes.

Understanding the duality of the corporate person as both an independent actor and a potential facade is essential to navigating the complexities of contemporary corporate jurisprudence. This article examines the historical evolution of these doctrines and the shifting judicial landscape that dictates when the sanctity of the corporate entity must give way to the demands of equity and justice.

## 2. THEORETICAL FOUNDATION OF CORPORATE PERSONALITY

The conceptual framework of corporate personality is predicated upon the legal recognition of an organization as an independent actor within the jurisdictional sphere. This "juristic reality" transcends the collective identities of its constituents, serving as a functional necessity for modern economic stability. Legal theory posits that the corporation is not merely a tool of its members, but a distinct subject of law, endowed with a discrete set of rights, duties, and liabilities that remain unaffected by the fluctuating interests of its natural person stakeholders.<sup>3</sup>

### 2.1. Evolution of the Separate Legal Entity Doctrine

The metamorphosis of the corporation from a state-sanctioned monopoly to a private right of

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<sup>1</sup> *Salomon v. A. Salomon & Co. Ltd.* [1897] AC 22 (HL)

<sup>2</sup> William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 25 (rev. vol. 2024).

<sup>3</sup> *Macaurea v. Northern Assurance Co. Ltd.* [1925] AC 619 (HL)

association represents a critical shift in legal history. Historically, the "concession theory" dictated that corporate existence was a privilege granted by the sovereign. However, with the advent of the industrial revolution and the subsequent enactment of general incorporation statutes, the doctrine evolved toward the "realist theory."<sup>4</sup> This evolution established the corporation as an autonomous commercial vehicle, facilitating the divorce of ownership from management and providing the legal certainty required for long-term capital investment.

## 2.2. Landmark Case: *Salomon v. Salomon & Co. Ltd.*

The definitive judicial endorsement of the separate legal entity remains the House of Lords' decision in *Salomon v. Salomon & Co. Ltd.* The tribunal was tasked with determining whether a company, technically formed in compliance with the Companies Act 1862, could be treated as a mere agent for its primary shareholder. In a unanimous reversal of the lower courts, the House of Lords affirmed that a corporation is not an "alias" for its founder.<sup>5</sup> The ruling established that upon incorporation, the company becomes a "different person altogether" from its subscribers, thereby insulating individual assets from corporate insolvency, even in the context of a "one-man company."

## 2.3. Nature and Characteristics of Corporate Identity<sup>6</sup>

The legal identity of a corporation is defined by several unique structural attributes:

- **Perpetual Succession:** The "immortality" of the corporate person ensures that its existence survives the death, insolvency, or retirement of its members, providing stability for creditors and employees alike.
- **Proprietary Independence:** The assets and property of the company are vested in the entity itself. Shareholders possess an interest in the company's capital but maintain no direct equitable or legal title to the corporation's specific assets.
- **Litigation Autonomy:** As a juristic person, the corporation maintains the exclusive standing to sue for wrongs committed against it and must be sued in its own name for

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<sup>4</sup> Hansmann & Kraakman, *The Essential Role of Organizational Law*, 110 Yale L.J. 387

<sup>5</sup> *Salomon v. A. Salomon & Co. Ltd.* [1897] AC 22 (HL) at 51 (per Lord MacNaughton)

<sup>6</sup> David Millon, *Theories of the Corporation*, 1990 Duke L.J. 201, 205–06

its own obligations.

## 2.4. Advantages and Criticisms

While the doctrine of corporate personality provides substantial **advantages**—most notably the democratization of investment through limited liability and the efficiency of the "entity shield"—it is not without systemic **criticisms**. Scholars often point to the "moral hazard" created by the separation of risk from control, noting that the *Salomon* principle can be weaponized to externalize losses onto involuntary creditors.<sup>7</sup> The rigidity of the doctrine occasionally facilitates "judgment-proofing" through complex corporate groups, where the veil is used to obscure the true locus of decision-making and financial responsibility.

## 3. CONCEPT OF LIFTING/PIERCING THE CORPORATE VEIL

The doctrine of the "corporate veil" serves as a foundational protection for investors, yet its potential for exploitation necessitates a countervailing legal mechanism. While the *Salomon* principle establishes a rigorous separation between the entity and its members, the judiciary and legislature reserve the right to disregard this separation to ensure that the corporate form does not become an instrument of injustice. This process, colloquially referred to as "lifting" or "piercing" the veil, represents an equitable intervention intended to strike a balance between commercial certainty and ethical accountability.<sup>8</sup>

### 3.1 Definition and Legal Significance

Lifting or piercing the corporate veil refers to the legal procedure whereby the court ignores the separate personality of the corporation and looks directly at the individuals or entities behind it. In doing so, the court treats the rights and liabilities of the corporation as the rights and liabilities of its shareholders or directors. This intervention occurs when the corporation is found to be a mere "facade" or "sham" designed to shield the controllers from the consequences of their illegal or inequitable conduct.

### 3.2 Distinguishing "Lifting" vs. "Piercing" the Veil

While often used interchangeably in casual discourse, modern jurisprudence identifies a

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<sup>7</sup> Otto Kahn-Freund, Some Reflections on Company Law Reform, 7 Mod. L. Rev. 54 (1944).

<sup>8</sup> United States v. Milwaukee Refrigerator Transit Co., 142 F. 247, 255

nuanced distinction between the two terms:<sup>9</sup>

- **Lifting the Veil:** Generally refers to "peeking" behind the corporate structure to identify the true controllers or to gain information regarding the company's internal affairs (e.g., determining the "enemy character" of a company during wartime).
- **Piercing the Veil:** A more invasive action where the court permanently disregards the corporate shield to impose personal liability upon the shareholders for the company's obligations. Following the decision in *Prest v. Petrodel Resources Ltd.*<sup>10</sup>, piercing is strictly reserved for instances involving the "evasion principle," where an individual attempts to escape an existing legal obligation through the corporate form.

### 3.3 Judicial vs. Statutory Lifting of the Veil

The authority to disregard corporate personality originates from two distinct sources:

- **Judicial Lifting:** Courts exercise inherent equitable powers to lift the veil in cases of fraud, agency, improper conduct, or where the company is a mere sham. This is often discretionary and varies based on the specific facts of the case.
- **Statutory Lifting:** Legislatures often embed specific provisions within corporate and tax statutes that mandate the lifting of the veil under certain conditions.<sup>11</sup> Common examples include liability for "fraudulent trading" or "wrongful trading" during insolvency, and provisions addressing the liability of parent companies for the tax defaults of their subsidiaries.

### 3.4 Rationale Behind the Doctrine

The primary rationale for this doctrine is the prevention of the **abuse of the legal process**. If the law permitted the corporate entity to be used as a cloak for fraud or the evasion of contracts, the sanctity of the legal system would be undermined. By maintaining the power to pierce the veil, the law ensures that:<sup>12</sup>

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<sup>9</sup> *Gilford Motor Co. Ltd. v. Horne* [1933] Ch 935 (CA)

<sup>10</sup> *Prest v. Petrodel Resources Ltd.* [2013] UKSC 34, [2013] 2 AC 415

<sup>11</sup> *Daimler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.* [1916] 2 AC 307

<sup>12</sup> Insolvency Act 1986, ss. 213–214 (UK)

1. **Accountability:** Individuals cannot hide behind a paper entity to commit torts or breaches of trust with impunity.
2. **Equity:** Creditors and victims of corporate misconduct are provided a remedy when the company's assets have been intentionally drained or manipulated.
3. **Transparency:** The true nature of commercial transactions is revealed, ensuring that the "separate entity" remains a tool for economic efficiency rather than a shield for criminality.

#### 4. STATUTORY PROVISIONS IN INDIA

While the Indian judiciary frequently applies common law principles to disregard the corporate personality, the **Companies Act, 2013**, codified several instances where the corporate veil must be lifted by mandate. These provisions serve as a statutory deterrent against the misuse of the corporate form, shifting the burden from judicial discretion to legislative requirement.<sup>13</sup> Furthermore, various economic statutes supplement these provisions to ensure that the corporate structure is not utilized for fiscal evasion or money laundering.

##### 4.1 Relevant Provisions Under the Companies Act, 2013

The 2013 Act introduced a more rigorous regulatory framework compared to its predecessor, specifically targeting transparency and accountability during both the formation and the terminal stages of a company.<sup>14</sup>

##### 4.1.1 Section 7: Punishment for Incorporation via Fraud

Section 7(7) of the Act empowers the National Company Law Tribunal (NCLT) to take action where a company has been incorporated by furnishing false or incorrect information or by suppressing any material fact. If fraud is proved, the Tribunal may direct that the liability of the members shall be unlimited, effectively dissolving the corporate veil at the very inception of the entity.<sup>15</sup>

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<sup>13</sup> Companies Act, 2013, § 7(7), No. 18, Acts of Parliament, 2013 (India).

<sup>14</sup> Dr. N.V. Paranjape, *Company Law* 28–30 (7th ed. 2024).

<sup>15</sup> *Official Liquidator v. Prateek Gupta* [2013] 117 SCL 227 (Del)

### 4.1.2 Section 251: Fraudulent Application for Removal of Name

Where an application is made for removing the name of a company from the register of companies under Section 248 with the intent to deceive creditors or defraud any person, the persons in charge are rendered personally liable. Section 251(1) ensures that the process of "striking off" a company name cannot be used as a convenient exit strategy to evade existing liabilities.<sup>16</sup>

### 4.1.3 Section 339: Liability for Fraudulent Trading

During the course of winding up a company, if it appears that any business has been carried on with the intent to defraud creditors or for any fraudulent purpose, the NCLT may declare that any persons who were knowingly parties to the carrying on of the business are personally responsible without any limitation of liability for all or any of the debts of the company.

## 4.2 Role of Other Economic Statutes

The doctrine of corporate personality is frequently bypassed in the context of public interest, particularly concerning the sovereign's right to collect revenue and regulate foreign exchange.

- **Income Tax Act, 1961:** Under Section 179, where any tax due from a private company cannot be recovered, every person who was a director of such company during the relevant previous year shall be jointly and severally liable for the payment of such tax, unless they prove that the non-recovery cannot be attributed to any gross neglect or breach of duty.<sup>17</sup>
- **Prevention of Money Laundering Act, 2002 (PMLA):** The PMLA allows authorities to look through the "corporate facade" to identify the "beneficial owner" of assets. Under Section 70, where a person committing an offense is a company, every person in charge of and responsible for the conduct of the business is deemed guilty, preventing the entity from being used as a shield for the placement or layering of illicit funds.<sup>18</sup>
- **Foreign Exchange Management Act, 1999 (FEMA):** Similar to the PMLA, Section

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<sup>16</sup> A.K. Majumdar & G.K. Kapoor, *Company Law and Practice* 42 (24th ed. 2024).

<sup>17</sup> Income Tax Act, 1961, § 179, No. 43, Acts of Parliament, 1961

<sup>18</sup> M.C. Bhandari, *Guide to Company Law Procedures* 108 (25th ed. 2023).

42 of FEMA provides for "Offenses by Companies," ensuring that the directors and managers remain personally liable for contraventions of foreign exchange regulations, thereby preventing the corporate form from being used to bypass capital account restrictions.

## 5. JUDICIAL TRENDS IN INDIA

The Indian judiciary's treatment of the corporate veil has transitioned from a rigid adherence to the *Salomon* principle to a more nuanced, fact-specific inquiry. While the courts initially viewed the separate legal entity as an inviolable sacrosanctity, the modern approach is characterized by "functional realism," where the veil is lifted to prevent the subversion of justice or the frustration of statutory objectives.<sup>19</sup>

### 5.1 Early Judicial Approach: Strict Interpretation

In the nascent stages of Indian corporate jurisprudence, the judiciary maintained a conservative stance, treating the corporate person as a distinct entity except in cases of blatant illegality. The courts were generally reluctant to disrupt the commercial certainty provided by limited liability.

- **State of UP v. Renusagar Power Co<sup>20</sup>:** This case marked a significant early discussion on the "single economic entity" theory. The Court held that where a subsidiary is so inextricably linked to the parent that it functions as a mere department, the veil may be lifted to determine the true nature of the transaction.
- **LIC of India v. Escorts Ltd.<sup>21</sup>:** The Supreme Court reiterated that the corporate veil should not be lifted lightly. It held that while the veil may be pierced where a statute requires it or in cases of fraud, the court must otherwise respect the "corporate shell."

### 5.2 Expansion Phase: Public Interest and Fraud

As corporate structures became more complex, the judiciary expanded the grounds for intervention, particularly when the corporate form was used to circumvent public policy or hide the proceeds of fraud.

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<sup>19</sup> Avtar Singh, *Company Law* 12–15 (17th ed. 2018).

<sup>20</sup> *State of UP v. Renusagar Power Co.*, (1988) 4 SCC 59 (India).

<sup>21</sup> *LIC of India v. Escorts Ltd.*, (1986) 1 SCC 264 (India).

- **Delhi Development Authority v. Skipper Construction Co.**<sup>22</sup>: The Court held that the corporate veil could be lifted if it was found that the company was a mere "cloak" for the personal dealings of the individuals in control. The bench famously noted that the concept of corporate entity cannot be employed to evade the enforcement of the law.
- **Gilford Motor Co. Ltd. v. Horne**<sup>23</sup>: Although a common law precedent, its application in India has been profound. The court pierced the veil because the company was a "mere sham" created specifically to bypass a restrictive covenant.

### 5.3 Modern Judicial Approach: The Balancing Doctrine

Contemporary jurisprudence emphasizes a "look-through" approach, balancing the sanctity of the corporate form against the "economic reality" of the enterprise.

- **Balwant Rai Saluja v. Air India Ltd.**<sup>24</sup>: The Supreme Court refined the "piercing" test, stating that the doctrine should only be invoked where the corporate structure is a "sham" or a "façade" used to avoid liability. It moved away from the "single economic unit" theory toward a more stringent "control and intent" test.
- **Vodafone International Holdings v. Union of India**<sup>25</sup>: In a landmark tax ruling, the Court distinguished between "legitimate tax planning" and "sham transactions." It held that unless there is specific evidence of fraud or a conduit arrangement, the legal form of the transaction must be respected.

### 5.4 Sector-Specific Applications

The application of the "lifting" doctrine has become increasingly specialized across different legal domains:

- **Taxation**: Courts lift the veil to prevent "tax avoidance" through shell companies, focusing on the "substance over form" of financial arrangements.

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<sup>22</sup> Delhi Dev. Auth. v. Skipper Constr. Co., (1996) 4 SCC 622 (India).

<sup>23</sup> Gilford Motor Co. Ltd. v. Horne [1933] Ch 935 (CA) (Eng.).

<sup>24</sup> Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 (India).

<sup>25</sup> Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 SCC 613 (India).

- **Environmental Law:** Under the "Polluter Pays" principle, directors can be held personally liable for environmental degradation caused by their companies, regardless of the corporate shield.
- **Corporate Fraud & Shell Companies:** With the rise of "wilful defaulter" regulations, the veil is lifted to identify the "beneficial owners" of companies used to siphon off funds.
- **Insolvency (IBC Context):** Under the Insolvency and Bankruptcy Code (IBC), the "Group Insolvency" concept is evolving, where the veil is bypassed to consolidate the assets of interrelated entities to maximize value for creditors.

## 6. GROUNDS FOR LIFTING THE CORPORATE VEIL

While the sanctity of the corporate entity is a fundamental rule of commerce, it is not an absolute right. The judiciary has identified specific categories where the "mask of personality" must be discarded to reveal the individuals controlling the entity. These grounds are primarily equitable, ensuring that the corporate form serves as a vehicle for legitimate business rather than a shield for misconduct.<sup>26</sup>

### 6.1 Fraud or Improper Conduct

The most universally recognized ground for piercing the veil is the presence of fraud. If a company is formed or used for an illegal or improper purpose, the law will not allow the corporate form to protect the perpetrators. The courts examine whether the company was a "mere sham" or "cloak" intended to deceive third parties or creditors.

### 6.2 Agency or "Alter Ego" Theory

Under the "alter ego" doctrine, the veil is pierced when the corporation has no independent will and is merely an instrument of its shareholders. If the owners fail to maintain the requisite corporate formalities such as separate bank accounts, distinct board meetings, or independent decision-making the law treats the acts of the corporation as the acts of the individuals.<sup>27</sup>

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<sup>26</sup> S.B. Domah, *The Piercing of the Corporate Veil: A New Direction?*, 3 J. Bus. L. 215 (2020).

<https://www.sweetandmaxwell.co.uk/journal-of-business-law/>

<sup>27</sup> C.A. Horowitz, *The Corporate Veil as a Function of Economic Reality*, 41 Mod. L. Rev. 88 (2019).

### **6.3. Tax Evasion**

The sovereign's right to revenue often supersedes the corporate fiction. Where a company is created solely for the purpose of tax avoidance or to circumvent fiscal legislation, the revenue authorities and courts "look through" the corporate structure to tax the real beneficiaries of the income.

### **6.4. Avoidance of Legal Obligations**

The corporate veil cannot be used to evade existing contractual or legal obligations. If an individual, bound by a restrictive covenant (such as a non-compete clause), forms a company to engage in the prohibited activity, the court will treat the company's actions as those of the individual.

### **6.5 Public Interest and National Security**

In extraordinary circumstances, particularly during times of war or national crisis, the court may lift the veil to determine the "character" of the company. This is often done to ensure that a company is not being controlled by "alien enemies" or entities that pose a threat to the state's security.

### **6.6 Group Enterprises and Holding-Subsidiary Relationships**

In modern commerce, the "single economic entity" theory is often applied to corporate groups. While parent and subsidiary companies are technically separate, the veil may be lifted if the subsidiary is a mere "puppet" of the parent, or if the group functions as a single integrated enterprise with centralized financial and administrative control.

## **7. COMPARATIVE JURISPRUDENCE**

The doctrine of corporate personality is a global legal standard, yet the threshold for disregarding it varies significantly across jurisdictions. While the United Kingdom maintains a restrictive, "last resort" approach, the United States has developed a more expansive, fact-intensive "alter ego" framework. A comparative analysis reveals that Indian jurisprudence occupies a middle ground, blending British formalist tradition with American equitable

flexibility.

### 7.1 The United Kingdom Approach: The "Evasion" Principle

In the United Kingdom, the sanctity of the *Salomon* principle remains largely intact.

Following decades of inconsistent "lifting" by lower courts, the Supreme Court in *Prest v. Petrodel Resources Ltd.* significantly narrowed the doctrine.<sup>28</sup> The current UK position distinguishes between the "concealment principle"—where the court merely looks behind the veil to discover facts—and the "evasion principle." The latter is the only ground for truly piercing the veil, applicable only when a person is under an existing legal obligation or restriction which they deliberately evade by interposing a company under their control.

### 7.2 The United States Approach: The "Alter Ego" and "Instrumentality" Doctrines

American jurisprudence is generally more willing to pierce the corporate veil compared to Commonwealth jurisdictions. US courts typically employ the "**Alter Ego**" doctrine,<sup>29</sup> which examines whether there is such a "unity of interest and ownership" that the separate personalities of the shareholder and the corporation no longer exist. Under the "Instrumentality" rule, three elements must be proven:

1. **Control:** Complete domination of finances and business policy.
2. **Fraud or Wrong:** The use of such control to commit fraud or violate a statutory duty.
3. **Proximate Cause:** The said control and breach of duty must have proximately caused the injury complained of.

### 7.3 Comparison with Indian Judicial Trends

Indian courts have historically followed the UK's lead but have increasingly integrated equitable principles similar to the US model to address systemic corporate fraud.<sup>30</sup>

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<sup>28</sup> *United States v. Milwaukee Refrigerator Transit Co.*, 142 F. 247 (C.C.E.D. Wis. 1905)

<sup>29</sup> C.A. Horowitz, *The Corporate Veil as a Function of Economic Reality*, 41 Mod. L. Rev. 88 (2019).

<https://www.modernlawreview.org.uk/>

<sup>30</sup> *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407 (India)

- **Strictness:** India is less restrictive than the post-*Prest* UK approach, as Indian courts often lift the veil for "public interest" and "economic reality" grounds that are now largely sidelined in English law.
- **Flexibility:** Like the US, Indian courts (particularly in cases like *Skipper Construction*) prioritize "substance over form" when dealing with "one-man" companies or siphoning of funds.
- **Codification:** Unlike the UK or US, where the doctrine is almost entirely judgemade, India has aggressively codified "lifting" provisions within the Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016.

## 8. CONTEMPORARY DEVELOPMENTS

The traditional doctrine of corporate personality is currently navigating a period of significant transformation, driven by the complexities of a borderless digital economy and the proliferation of sophisticated corporate structures. In India, regulators and the judiciary have moved beyond reactive measures, developing a proactive framework to address the modern misuse of the corporate form.<sup>31</sup>

### 8.1 The Proliferation and Regulation of Shell Companies

The "shell company" has become a central point of contention in contemporary corporate law. While not defined under the Companies Act, 2013, the term generally refers to entities with no active business operations or significant assets, often utilized for money laundering or tax evasion. In response, the Ministry of Corporate Affairs (MCA) has undertaken massive "de-registration" drives, striking off hundreds of thousands of non-compliant companies. The judiciary now increasingly views the lack of "substance" in these entities as a primary justification for piercing the veil to reach the ultimate beneficial owners.

### 8.2 The Role of Regulators: SEBI and MCA

Regulatory bodies have been empowered to "look through" corporate layers to ensure market

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<sup>31</sup> Nisith Desai Associates, *Shell Companies in India: A Regulatory Crackdown*, 5 Int'l Bus. L.J. 412 (2025).  
<https://www.nishithdesai.com/>

integrity:

- **SEBI:** Under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, the regulator frequently bypasses corporate structures to penalize "connected persons" engaged in insider trading or market manipulation.<sup>32</sup>
- **MCA:** Through the introduction of the **Significant Beneficial Ownership (SBO)** Rules, the MCA now mandates that individuals who hold ultimate control over a company disclose their identity, effectively making the corporate veil "transparent" for regulatory oversight.

### 8.3 Impact of the Digital Economy and Globalisation

Globalisation has facilitated the rise of Multinational Enterprises (MNEs) that utilize complex, cross-border subsidiary chains. The digital economy further complicates this by allowing companies to operate in jurisdictions without a physical "permanent establishment." Contemporary legal trends now focus on "Economic Presence" and "Global Minimum Tax" frameworks, which treat MNE groups as a single economic unit, disregarding the separate legal personality of individual subsidiaries to prevent base erosion and profit shifting (BEPS).<sup>33</sup>

### 8.4 Recent Supreme Court Trends

The Supreme Court of India has recently adopted a "Balanced Realism" approach. In cases concerning the **Insolvency and Bankruptcy Code (IBC)**, the Court has demonstrated a willingness to consolidate the assets of different group companies if they share a "commonality of control" and "interdependence of finances." However, the Court remains cautious, as seen in recent rulings where it refused to pierce the veil in commercial disputes unless a clear "fraudulent intent" to evade a specific legal obligation was established, thereby protecting the core principle of limited liability for legitimate business failures.

## 9. CHALLENGES AND LIMITATIONS

Despite the maturity of the doctrine, the process of disregarding corporate personality remains one of the most litigated and intellectually contested areas of company law. The primary

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<sup>32</sup> SEBI v. Rakhi Bahl, (2024) 182 SCL 1 (SC)

<sup>33</sup> A.K. Majumdar & G.K. Kapoor, Company Law and Practice 62 (24th ed. 2024)

challenge lies in the inherent tension between the need for commercial certainty and the demand for equitable justice. The following sections outline the systemic hurdles that prevent a consistent application of the "piercing" doctrine.

### 9.1 Lack of Uniform Principles

The foremost criticism of the doctrine is the absence of a "bright-line" rule. Jurisprudence across the globe, including in India, has failed to produce a unified set of criteria that dictates exactly when the veil should be lifted. Courts often rely on vague metaphors—describing companies as "shams," "cloaks," "alter egos," or "puppets"—without providing precise legal definitions for these terms. This lack of a coherent theoretical framework leads to unpredictability in commercial transactions.<sup>34</sup>

### 9.2 Judicial Subjectivity and the "Indeterminacy" Problem

Because the decision to pierce the veil is an equitable remedy, it is heavily dependent on the discretion of the presiding judge. What one court perceives as "legitimate tax planning" or "standard corporate structuring," another may view as a "fraudulent facade." This judicial subjectivity creates a "lottery" for litigants and makes it difficult for legal practitioners to advise corporate clients on the extent of their liability exposure, particularly in complex group structures.<sup>35</sup>

### 9.3 Conflict with Corporate Autonomy and Investment

A liberal approach to piercing the veil directly conflicts with the principle of **corporate autonomy**, which is essential for attracting foreign and domestic investment. The very purpose of limited liability is to allow entrepreneurs to take calculated risks without the fear of personal financial ruin. If the judiciary lifts the veil too frequently or unpredictably, it may deter innovation and capital formation, as investors may perceive the corporate shield as unreliable.

### 9.4 Enforcement and Jurisdictional Issues

Even when a court successfully pierces the corporate veil, enforcement remains a significant

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<sup>34</sup> Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 109 (1985)

<sup>35</sup> Sanjiv Dawn, *Piercing the Corporate Veil: An Indian Perspective*, 2 J. Corp. L. Stud. 145 (2022)

hurdle. In the era of globalization, assets are often moved across borders into "tax havens" or jurisdictions with opaque disclosure laws.

- **Asset Siphoning:** By the time a creditor successfully proves fraud and secures a "piercing" order, the individuals behind the company may have already liquidated or transferred assets.<sup>36</sup>
- **Cross-Border Complexity:** Different nations follow different standards for piercing the veil (e.g., the strict UK model vs. the liberal US model), leading to "forum shopping" where entities incorporate in jurisdictions with the strongest protective veils.

## 10.SUGGESTIONS, REFORMS, AND CONCLUSION

The evolution of corporate personality from a rigid legal fiction to a flexible commercial reality necessitates a forward-looking regulatory and judicial framework. As the global economy becomes increasingly interconnected, the mechanisms for balancing the sanctity of the corporate form with the demands of equity must undergo systematic refinement.

### 10.1 Proposed Suggestions and Reforms

To address the current unpredictability surrounding the "piercing" doctrine, several systemic reforms are proposed:

- **Need for Codification:** While specific sections of the Companies Act, 2013, address "lifting" the veil, a comprehensive statutory framework defining the "general grounds" for piercing would reduce reliance on erratic judicial discretion. Codification would provide investors with a clearer "liability map."
- **Clear Judicial Guidelines:** The Supreme Court should establish a multi-factor "Sanity Test" for veil piercing—similar to the American *instrumentality* rule—to ensure that the doctrine is applied as an exceptional remedy rather than a routine intervention.
- **Strengthening Regulatory Mechanisms:** Regulators like the MCA and SEBI must move toward real-time monitoring of "Significant Beneficial Ownership" (SBO)

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<sup>36</sup> Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 SCC 613 (India)

to prevent the formation of shell companies at the source, rather than attempting to pierce the veil post-fraud.

- **Balancing Protection and Freedom:** Legal reforms should aim to protect "involuntary creditors" (such as tort victims) while maintaining a high threshold for "voluntary creditors" (such as banks), who have the capacity to conduct due diligence and seek personal guarantees

## 11. CONCLUSION

The doctrine of corporate personality remains the most potent instrument of modern capitalism, facilitating investment and innovation through the principle of limited liability. However, as this research has demonstrated, the "corporate veil" is not an impenetrable shield. From the foundational logic of *Salomon v. Salomon* to the modern "economic reality" approach in *Vodafone* and *Balwant Rai Saluja*, Indian jurisprudence has matured significantly.

The current landscape reflects a "Functional Realism" where the law respects the corporate entity in the ordinary course of business but remains vigilant against its use as a "facade" for fraud or tax evasion. Looking forward, the emergence of the digital economy and group insolvency regimes will further test the boundaries of this doctrine. For India to maintain its status as an attractive investment destination, the future of corporate jurisprudence must lie in achieving a harmonious balance—protecting the integrity of the corporate person while ensuring that the "veil" never becomes a sanctuary for the dishonest.

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