
LIFTING OF CORPORATE VEIL: A TOOL TO CURB CORPORATE ABUSE

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ABSTRACT

From juristic point of view, a company is a legal person distinct from its members (*Salomon v Salomon*, 1897 A.C 22). The effect of this principle is that there is fictional veil between the company and its shareholders. This principle is often referred as “Veil of incorporation”. However in number of cases, the court will pierce the corporate veil or will ignore the veil in order to reach the real actors behind the shield or to reveal the true nature of the company. The paper discusses myriad of instances when lifting of the iron curtain becomes necessary to see the backstage of a company only to appreciate the purpose of its incarnation better in the first place. The doctrine of lifting of corporate veil is an exception to the doctrine of separate legal personality as enunciated in the *Salomon v. Salomon* case.

This paper attempts at explaining how this doctrine has evolved, challenged, and yet has helped in enriching the jurisprudence. It further provides an examination of the instances underlining the principles adopted by common law, case law and statutes to pierce the veil of incorporation where the company is a façade, a sham, an alter ego, or a puppet for crime. Further, this paper analyzes jurisprudential aspect regarding lifting of corporate veil in U.K, U.S.A and Singapore and concomitant issues followed by the conclusion.

Keywords: Corporate veil, separate legal personality, abuse, veil of incorporation.

INTRODUCTION:

“The company is at law a different person altogether from the subscribers to the Memorandum and, although it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or the trustee for them. Nor are subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”

Lord McNaughten

Solomon v. Solomon and Co. Ltd.¹

The Concept of Company as a separate legal entity distinct from its shareholders is a bedrock of Modern Company Law. Although the distinction of separate personality of company from its shareholders is the fiction created by law. The concept of lifting of the corporate veil traces its genesis back in the year 1844 with the inception of the concept of incorporation of a company by registration². It is a consequent jurisprudence developed in years with the advent of the principle of limited liability of the company in the year 1855.³ The concept of incorporation of a company and limited liability was further bolted down by the House of Lords in the infamous case of **Solomon v. Solomon & Co. Ltd.** paving path for the emergence of the doctrine.⁴

This paper will deal with following chapters as follows. The First chapter will deal with **Statement of problems, Research questions**. The Second chapter will deal with **Research methodology and Literature review**. The Third chapter will deal with meaning of **Doctrine of lifting of corporate veil, Elements of Lifting of veil, Doctrine of reverse piercing**. The Fourth chapter will deal with **Comparative analysis between the doctrine of lifting of corporate veil in several countries i.e. (United Kingdom, United States of America, Singapore and India)**. The Last chapter will deal will **suggestions and conclusion**.

¹ Solomon v. Solomon and Co. Ltd., (1897) A.C 22 (H.L).

² Thomas K. Cheng, The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines, BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW, Volume 34, Issue 2, Article 2.

³ R. Judith Priya, S. Susmitha, Subhicksha & B. Thenmozhi, A Descriptive Study of the Doctrine of Lifting of Corporate Veil, INTERNATIONAL JOURNAL OF ADVANCE RESEARCH AND DEVELOPMENT, Volume 3, Issue 3.

⁴ P.M. Bakshi, Lifting the Corporate Veil, JOURNAL OF THE INDIAN LAW INSTITUTE, Volume 36:3.

CHAPTER I

STATEMENT OF PROBLEM

The principle laid in Solomon's case is the foundation of principle of Separate legal personality. However this corporate structure was blatantly abused and hence the doctrine of lifting of corporate veil was emerged. The purpose of the study is to understand the concept of lifting of veil. The paper also identifies the elements which are pre requisite in lifting of corporate veil. Further, the paper analyzes the comparative aspect of lifting of veil in different countries. In this paper the researcher seeks to shed light on doctrine of reverse piercing which will held the corporation liable for the acts of individual shareholders or the subsidiary company on behalf of parent company. The paper suggests that the judicial grounds shall be enacted under the legislative provisions under the statute.

RESEARCH OBJECTIVES

- **To, understand the concept of lifting of corporate veil.**
- **To, identify the elements of lifting of corporate veil.**
- **To, analyze the comparative jurisprudence relating to lifting of corporate veil in United Kingdom, United States, Singapore and India.**

RESEARCH QUESTIONS

- **What are the elements of lifting of corporate veil?**
- **What is meant by Doctrine of reverse piercing?**
- **What is the Jurisprudence relating to lifting of corporate veil in U.K, U.S.A., and Singapore?**

CHAPTER II

LITERATURE REVIEW:

S. OTTOLENGHI (1990): The author in his paper has discussed that the court will lift the veil when corporate personality is blatantly used to cloak or fraud or for improper conduct. He has further analyzed that the doctrine of lifting of veil is more developed in United States rather than United Kingdom. The author has also enumerated that enemy character can also be a ground on which veil can be pierced. Further, it has been discussed about the four categories

of veil i.e. peeping behind the veil, penetrating the veil, extending the veil and ignoring the veil. However the author while categorizing the types of veil has not provided justifiable grounds.⁵

JENNIFER PAYNE (1997): The author has discussed about the separate legal entity of a company distinct from its shareholders and exception to the said doctrine. The author in his paper has discussed the limited circumstances in which the iron veil between the company and members can be lifted according to the fluctuating judicial precedent. He has further discussed about the principle of fraud exception to Solomon's case principles. For fraud exception to succeed the defendant must intend to deny a pre existing legal right to the plaintiff. The author aptly discussed that corporate vehicle cannot be used to perpetrate corporate frauds.⁶

BAKSHI (1994): The author in this article has shedded light upon the doctrine of lifting of veil in the Indian context. The doctrine has been applied several times in India many of which is surveyed in *L.I.C v. Escorts Ltd.*⁷ and *State of U.P v. Renusagar Power Co.*⁸ The author suggests that the doctrine shall not be used indiscriminately since the company is distinct entity separate from its shareholders. Further, the courts shall maintain a balance whilst lifting the veil. The author discussed that the doctrine that corporation is firmly rooted in our system and cannot be driven away. However author failed to provide coherent insights on how to strike a balance between lifting of veil and separate legal entity of the corporation.⁹

CHENGHAN, WANG AND HOFMANN (2019): The authors have discussed the fundamentals of corporate law and why courts hesitate to pierce the veil. The author stated that principle of separate personality is not absolute. Further, they have discussed the stand taken by courts in common law as well as civil law countries. The authors have analyzed the comparative study of doctrine of lifting of veil in several countries i.e. (U.K, U.S.A, China, Germany and Singapore).¹⁰

⁵ S. Ottolenghi, From Peeping behind the Corporate Veil, to Ignoring It Completely, Vol. 53, Issue 3, The Modern Law Review, 338, pp. 338-353 (1990).

⁶ Jennifer Payne, Lifting the Corporate Veil: A Reassessment of the Fraud Exception, Vol. 56, Cambridge Law Journal, 284, pp. 284-290 (1997).

⁷ *Life Insurance Corporation of India v. Escorts Ltd.*, [(1986)1 S.C.C. 264].

⁸ *State of U.P v. Renusagar Power Co.*, [A.I.R. 1988 S.C. 1737].

⁹ P.M. Bakshi, LIFTING THE CORPORATE VEIL, Vol.36, Issue 3 Journal of the Indian Law Institute, 383, pp.383-384 (1994).

¹⁰ Tan Cheng-Han, Jiangyu Wang & Christian Hofmann, Piercing the Corporate Veil: Historical, Theoretical and Comparative Perspectives, 16 BERKELEY Bus. L.J. 140 (2019).

ALLEN (2011): The author in his article has discussed the reverse doctrine of lifting of veil. It is a general notion that liability of corporation does not extend beyond its assets however in reverse doctrine the corporation is held liable for the acts of the stakeholders. However the courts have taken a conservative approach whilst utilizing this doctrine. The author failed to suggest instances in which such doctrine shall be operated. The issue of protection to the bonafide creditors and shareholder's has also not been provided. However with the growing menace of frauds this doctrine could pave a way to curb frauds if proper legislative measures are laid down.¹¹

CHAPTER III

▪ **LIFTING OF CORPORATE VEIL: DECODING THE MEANING**

As the name manifests, a corporate veil is an **iron curtain** that separates the company from its shareholders allowing the members to shield behind the iron curtain. This intangible iron curtain curtails the feasibility of anyone looking behind the company and thus, making the concept concrete that the members and the company are not one and the same.¹² Another definition of lifting the veil is that it is 'a tactic used by the judiciary in a flexible way to counter fraud, sharp practice, oppression and illegality'.¹³

Lifting the corporate veil refers to the possibility of looking behind the company's framework (or behind the company's separate personality) to make the members personally liable, as an exception to the rule of limited liability. The intention behind disregarding the doctrine of separate legal personality is to deliver justice to general public for the frauds committed by the persons under the guise of corporate structure. Doctrine of corporate veil here means neglecting the iron curtain and to bring company and its members on same pedestal for bearing the liability.

In the landmark case of **Life Insurance Corporation of India v. Escorts Ltd.**, "it was held by the Apex court that despite the fact that a company is considered to be a separate legal

¹¹ Nicholas B. Allen, Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice, 85 St. JOHN'S L. REV. 1147 (2011).

¹² James Wibberley, & Michelle Di Gioia, Lifting, Piercing and Sidestepping the Corporate Veil, GUILDHALL CHAMBERS & GARDNER LEADER SOLICITORS, UK.

¹³ S. Ottolenghi, From Peeping behind the Corporate Veil, to Ignoring It Completely, Vol. 53, Issue 3, The Modern Law Review, 338, pp. 338-353 (1990).

person in the eyes of law, this corporate personality has to be ignored for the recognition of the people behind the acts of the company in certain exceptional situations”.¹⁴

It is equitable to have exceptions to the principle of separate legal entity because firstly, the human ingenuity uses the veil of corporate personality as a cloak for fraud or improper conduct and hence court cannot treat the company as separate from its owner rather it will have to look at the intention of its shareholders. Secondly, if there are no exceptions to this principle, then the shareholders can easily shield themselves behind the curtain without being held liable for their acts.

The “corporate veil” is a metaphorical reference to the limited liability of a company, based on the prevailing rule that when corporate formalities are observed, initial financing is adequate, and the company is not formed to defraud creditors or other third parties, the corporate form will be respected and shareholders will be respected and shareholders will not be liable for corporate debts and liabilities.¹⁵ Hence, whenever this corporate veil is lifted, the distinction between the company and the stakeholders is set aside and the shareholders are held liable for the actions of their company. Lifting the corporate veil helps in discovering the economic reality behind the legal façade and prohibiting the indiscriminate malpractice of individual members vested with personal economic interests.¹⁶

“It should be noted that this doctrine of piercing the corporate veil is not only used to impose liability on the shareholders, it can also be used to relieve the shareholders from any such liability”, as laid down in **Premlata Bhatia v. Union of India**.¹⁷ This is known as reversing the piercing of corporate veil. Reverse piercing of the corporate veil refers to an attempt initiated by shareholders, or the corporation itself, to pierce the corporate veil existing between the corporation and its shareholders.¹⁸

▪ ELEMENTS OF PIERCING OF CORPORATE VEIL CLAIM

¹⁴ Life Insurance Corporation of India v. Escorts Ltd, [1984 SCR (3) 643].

¹⁵ Karin Schwindt, “Limited Liability Companies: Issues in Member Liability” 44 UCLA L. Rev. 1550 (1997) as cited in Jeffery K. Vandervoort, “Piercing the veil of Limited Liability Companies: The Need for a Better Standard” 3 DePaul Business and Commercial Law Journal 51, 57 (2004).

¹⁶ H.K. Saharay, Company Law 12 (Universal Law Publishing Co., 5th edition, 2008).

¹⁷ Premlata Bhatia v. Union of India, [2006] 71 SCL 142 (Delhi).

¹⁸ William. M. Fletcher, “Cyclopedia of The Law Of Private Corporations” (3rd edition, Thomson/West, 1988) 41.70 as cited in Michael J. Gaertner, “Reverse Piercing The Corporate Veil: Should Corporation Owners Have It Both Ways?” (1989) 30 William & Mary L. Rev. 667.

In general, there are three components that Plaintiff must prove in order to pierce the corporate veil. Those elements are commonly characterized as (1) control and domination, (2) improper purpose or Fraud, and (3) resulting damage or harm.¹⁹

1. CONTROL AND DOMINATION

Generally, mere majority stake holding or domination will be an insufficient ground for satisfying this element. Instead, Plaintiff must show not only complete dominance of finances but also policy making, business transaction, monetary gains in respect to transactions wherein the corporate entity has no separate mind or existence of its own.

In determining whether "complete domination" exists, courts usually require the plaintiff to produce evidence of one²⁰ or more²¹ factors evincing control. Here is the non exhaustive list of common grounds used to establish degree of control:

- Inadequate capitalization or undercapitalization;
- Failure to follow corporate formalities;
- Identity of directors and officers;
- Sole or majority stock control;
- Commingling of funds;
- Sharing of corporate employees;
- Parent finances subsidiary;
- Diversion of funds or assets for non-corporate purposes;
- The parent company pays the salaries and other expenses or losses of the subsidiary.²²

Most veil-piercing claims are focused on the control element. Even if one or more of the elements are present, the court may find insufficient proof that the parent corporation (or other insider) exercised the necessary degree of control such that "full dominance" exists.

2. FRAUD OR IMPROPER CONDUCT

¹⁹ Morris v. Department of Taxation & Fin., 623 N.E.2d 1157, 1160-61 (N.Y. Ct. App. 1993).

²⁰ Fazio v. Brotman, 371 N.W.2d 842, 846 (Iowa Ct. App. 1985) (holding jury instruction proper which stated veil can be pierced when "any one of the six items is established").

²¹ Miller Brewing Co. v. Best Beers of Bloomington, Inc., 579 N.E.2d 626, 641 (Ind. Ct. App. 1991).

²² Uchitel Co. v. Telephone Co., 646 P.2d 229, 235 (Alaska 1982); Mid-Century Ins. Co. v. Gardner, 11 Cal. Rptr. 2d 918, 922 n.3 (Cal. Ct. App. 1992); New Sheridan Hotel & Bar, Ltd. v. Commercial Leasing Corp., 645 P.2d 868, 869 (Colo. Ct. App. 1982).

The second rudiment of the piercing test requires the claimant to show that the control exercised by the parent company or dominant stockholder was "used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right."²³

The element of fraud or improper conduct has to be established by the plaintiff in order to suffice the rudiments of this test. The decision of **Creasey v. Breachwood Motors Ltd.**²⁴ "in which the opportunity for the court to utilize the fraud exception was raised. It was not accepted, and the veil was eventually lifted on the basis that to do so was necessary in order to achieve justice."

In **Jones v. Lipman**²⁵, "Mr. Lipman had agreed to sell a freehold property to the plaintiffs. However, he set up a limited company which was in his absolute control and sold the property to that company with the sole intention the plaintiffs the remedy of specific performance. Russell J. specifically referred to the judgments in *Gilford v. Horne* and held that the company here was "a mask which [Mr. Lipman] holds before his face in an attempt to avoid recognition by the eye of equity."

In case where fraud or improper conduct is sufficed the courts may pierce the veil. Statutory violations, torts, fraud, or, in some cases, a court's finding that the action was merely "unjust" or "inequitable" may be used to justify the inappropriate aim. The plaintiff must, however, prove causation.

3. RESULTING DAMAGE

The plaintiff, at last, manifest that the defendant's control, exerted in fraudulent or illegal means and has resulted in damage to him. To put it another way, the plaintiff must prove that irreparable loss shall be suffered to him unless the veil is not pierced and he has no other remedy to claim his damages if the iron curtain is not moved.

²³ *Pauley Petroleum, Inc. v. Continental Oil Co.*, 239 A.2d 629, 633 (Del. Super. Ct. 1968).

²⁴ *Creasey v. Breachwood Motors Ltd.*, [5 (1993) B.C.L.C. 480].

²⁵ *Jones v. Lipman* [1962] 1 W.L.R. 832.

"The fact that the corporate veil could be disregarded for some purposes does not mean that it must be disregarded for all purposes." Not every case justifies disregard of separate legal personality. Courts should exercise care to balance the competing goals of a company as separate legal entity and protecting creditors. Finally, the plaintiff must show that the control and acts complained of coalesced at the same time as the harm.²⁶

DOCTRINE OF REVERSING PIERCING

When a corporation is used as a shield for liability or for an illegitimate business purpose, courts will exercise their equitable power in applying the "equally fundamental principle" of piercing the corporate veil.²⁷ By piercing the veil one punctures the veil of limited liability in order to hold members liable for the corporation's conduct.²⁸

The Doctrine of reverse piercing undermines the traditional principle of piercing the veil, in reverse piercing liability is imposed on the corporation for obligations of an individual shareholder or on a subsidiary for the acts of its parent company. However the reverse piercing initially requires the two pronged analysis of domination and fraud or improper conduct.

The concept of reverse piercing" first arose in the landmark case of **Kingston Dry Dock Co. v. Lake Champlain Transportation Co.**²⁹, decided by Judge Learned Hand. "In Kingston, the plaintiff, Kingston, repaired a ship owned by the defendant Champlain's subsidiary." Champlain, not the subsidiary, requested the repairs, and Plaintiff entered into the agreement with Champlain. Champlain and its subsidiary shared nearly identical boards, but both companies kept separate identities, with decisions made independently." Following default by Champlain, Kingston attached the boats to satisfy the debt owed by Champlain. The trial court permitted Plaintiffs attachment, but Judge Hand reversed. In doing so, Judge Hand greatly limited the potential scope of the reverse piercing holding: while it may "be too much to say that a subsidiary can never be liable for a transaction done in the name of apparent...such instances, if possible at all, must be extremely rare."³⁰

²⁶ J. M. Thompson Co. v. Doral Mfg. Co., 324 S.E.2d 909, 915 (N.C. Ct. App. 1985).

²⁷ Bestfoods, 524 U.S. at 62.

²⁸ Anderson v. Abbott, 321 U.S. 349, 362 (1944).

²⁹ 31 F.2d 265 (2d Cir. 1929) While Judge Hand described the facts of a typical outside reverse pierce case; he did not use the term "reverse pierce." See *id.* The first mention of the term "reverse pierce" came forty-five years later in a Georgia case. See *Kingston Dev. Co. v. Kenerly*, 208 S.E.2d 118, 122 (Ga. Ct. App. 1974).

³⁰ *Id.*

The doctrine of reverse piercing finally reemerged and gained acceptance in a marital property case, **W.G. Platts, Inc. v. Platts**.³¹ “In Platts, the plaintiff sought to impose liability on her husband's corporation in order to satisfy her share of the assets per their divorce decree. The court held the corporation was an alter ego of the husband and permitted piercing in order to satisfy the divorce decree.”³² This opinion offered little precedential value for reverse piercing, however, as the court relied heavily on the fact that the ex-husband voluntarily proffered the corporation's assets for inclusion in the decree and a subsequent avoidance of that offering by his alter ego corporation “would be unconscionable and a denial of justice.”

There are two types of reverse piercing: inside and outside—depending on the relationship of the party attempting to pierce the corporate veil.³³ **Inside reverse piercing** claims involve a corporate insider seeking to pierce the corporate veil to take advantage of corporate claims that she would be unable to bring in her individual capacity.³⁴

In an **outside reverse piercing** claim, the plaintiff, an “outside” third party, seeks to pierce the corporate veil to impose liability on the corporation in order to satisfy the debt of an individual shareholder.³⁵

In India, the doctrine of reverse piercing is yet not applied. Courts and tribunals in India have divided opinion regarding the application of reverse piercing of the corporate veil. There is no specific case wherein the courts actively applied the doctrine of the reverse piercing.³⁶ Moreover, in the case of **NEPC (National Energy Processing Company) India Ltd. v Securities and Exchange Board of India (SEBI)**³⁷, “the Securities Appellate Tribunal observed that ‘doctrine of the reverse piercing of the corporate veil as argued by the respondent was not only outlandish but inconceivable.’”

However this doctrine cannot be kept aside as it is too radical. Although the courts in India face problems as there are no guidelines by the Supreme Court on this doctrine. Nevertheless with the advent of economic and commercial growth the company law shall be modified to meet the

³¹ *W.G. Platts, Inc. v. Platts* [298 P.2d 1107 (Wash. 1956)].

³² *Id.*

³³ *In re Phillips*, 139 P.3d at 644-45.

³⁴ Nicholas B. Allen, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice*, 85 *St. John's L. REV.* 1147 (2011).

³⁵ See *Acree v. McMahan*, 585 S.E.2d 873, 874 (Ga. 2003).

³⁶ Vijay P. Singh, *Trusts & Trustees*, Vol. 27, No. 1-2, February-March 2021, pp. 108–117.

³⁷ *NEPC (National Energy Processing Company) India Ltd. v Securities and Exchange Board of India (SEBI)* [2003] 3 *Comp L.J* 170 SAT].

ends of justice. This doctrine in a way will bolster the doctrine of lifting of veil as corporate structure is blatantly misused by the members who are separated by the iron veil between them and the company.

CHAPTER IV

▪ A COMPARATIVE ANALYSIS OF U.S.A, U.K, SINGAPORE AND INDIAN JURISPRUDENCE RELATING TO DOCTRINE OF LIFTING OF CORPORATE VEIL

1. U.K AND SINGAPORE

Both England and Singapore have broadly homogenous approaches. The courts in U.K and Singapore have acknowledged that the key point of contention in these corporate liability instances is whether company officers mistreated or abused the corporate form. Accordingly, England and Singapore have begun to move away from the use of metaphors such as sham and facade as the basis to disregard corporate personality.³⁸

While it is an exceptional doctrine, Lord Sumption would limit it only to a category of "evasion" cases³⁹, namely those where a company has been interposed to frustrate the enforcement of an independent legal right that exists against the controller of the company.⁴⁰ "However, Lord Sumption was only ready to accept the evasion cases, not the concealment cases as good law. He argued that it had been wrong to pierce the veil for mere concealment."⁴¹

"According to his view, only the evasion or frustration of existing obligations truly justified piercing the corporate veil (Gilford, Jones)". According to Lord Sumption n held that true piercing of the corporate veil was only to be applied where no other, more conventional legal instruments were at hand.

Although the **Singapore** courts have generally endorsed the approach in **Prest v. Petrodel**, "that abuse of corporate personality is what underlies veil piercing;⁴² the Singapore Court of Appeal had previously also accepted an "alter ego" ground as a distinct basis to lift the

³⁸ Tan Cheng-Han, Jiangyu Wang & Christian Hofmann, Piercing the Corporate Veil: Historical, Theoretical and Comparative Perspectives, 16 BERKELEY Bus. L.J. 140 (2019).

³⁹ *Prest* [2013] 3 WLR 1 [28], [33].

⁴⁰ *Gilford Motor Co Ltd v. Horne*, [1933] Ch 935.

⁴¹ ALEXANDER SCHALL, *The New Law of Piercing the Corporate Veil in the UK*, ECFR, 549–574, 2016.

⁴² *Manuchar Steel Hong Kong Ltd v. Star Pacific Line Pte Ltd* [2014] SGHC 181,

corporate veil.” The important dicta on doctrine of veil is set out by Court of Appeal’s Judgment in **Alwie Handoyo v. Tjong very Sumitom**⁴³ the Court of Appeal accepted that the appellant, Alwie, was the alter ego of a company known as OAFI.

“However in Singapore the courts have recognized two distinct grounds wherein the company is not a distinct entity and where the corporate form is abused for improper means. However the court on the basis of “**alter ego**” has pierced the veil in its landmark judgment.”

However statutory provision relating to conduct of business without a director resident in Singapore for period of 6 months the members shall be sued is provided under S.145 of Singapore Companies Act (Chapter 50).⁴⁴ Further, S.144 (2), S.339 (3), S.340, S.403 (2) (b) are some of the statutory provision wherein the veil can be pierced. It is to be noted that Singapore courts do not recognize the reverse doctrine of lifting of lifting of veil.

2. U.S.A

In the U.S., courts enunciate that they will pierce the corporate veil of a subsidiary where the parent exercises control over the subsidiary and the exercise of control is accompanied by fraudulent, illegal, or other improper conduct which leads to an injustice. Veil-piercing is frequently associated with intentional acts of fraud, but other conduct of a misleading nature that creates an injustice could trigger veil-piercing.⁴⁵ In U.S., Laws regarding the piercing of the corporate veil vary from state to state they are demonstrated as follows:

- **Florida** – In Florida, one must typically show two things in order to pierce the corporate veil:
 1. That the relevant corporation is only the alter ego or mere instrumentality of the parent corporation or its shareholder(s)
 2. That the alleged parent company or shareholder(s) also engaged in improper conduct.⁴⁶

⁴³ Handoyo v. Tjong very Sumitom, [2013] 4 SLR 308.

⁴⁴ <https://sso.agc.gov.sg/Act/CoA1967pr145> last accessed October 13, 2021.

⁴⁵ Anderson v. Kennebec River Pulp & Paper Co., 433 A.2d 752 (Me. 1981) (involving an attempt to hold a parent company liable for salary owed by its subsidiary when the corporate officers allegedly promised plaintiffs that the parent company would stand behind their salaries despite financial difficulties).

⁴⁶ https://www.law.cornell.edu/wex/piercing_the_corporate_veil., last accessed October 13, 2021.

- **Alaska** – In Alaska, courts use two tests to determine whether a court may pierce the veil:
 1. Disjunctive test –
Either excessive control or corporate misconduct must be shown for the court to pierce the veil.
 2. Conjunctive test – Both excessive control and corporate misconduct must be shown for the court to pierce the veil.⁴⁷

- **New York** –
In New York, **John Walkovszky v. Carlton**⁴⁸ “is a leading case on piercing the corporate veil. The court in this case held that a plaintiff needs to prove that a shareholder used the corporation as his agent to conduct business in an individual capacity. A court will pierce the corporate veil when it finds that the corporation is an agent of its shareholder, and will hold the principal vicariously liable, due to the respondent superior doctrine.”⁴⁹

- **Texas** –
In Texas, **In re JNS Aviation, LLC**⁵⁰ “is a leading case. The court found that the corporate veil could be pierced when any of the asserted veil-piercing strands are met. Further, courts will pierce the corporate veil when the member(s) intended to use the company to perpetrate an actual fraud, and the company did perpetrate an actual fraud “primarily for the direct personal benefit of the considered defendant.”

It is notable that doctrine of veil piercing in United States varies from state to state unlike United Kingdom, India and Singapore. Moreover the states adhere to two or three traditional instrumentalities in lifting the veil. The United States applies the doctrine in wider sense rather than most of the common law countries. United States are more liberal in their approach towards piercing of veil and disregarding the separate corporate personality.

3. INDIA

⁴⁷ Ibid.

⁴⁸ John Walkovszky v. Carlton, [24 A.D.2d 582 (1965)].

⁴⁹ Ibid.

⁵⁰ In re JNS Aviation, LLC, [376 B.R. 500 (2007)].

The Indian jurisprudence of Doctrine of veil is in congruence with the U.K doctrine. The Indian Courts from past few decades followed the principle laid down in **Solomon v. Solomon**.⁵¹ However the courts started to pierce the iron curtain between the company and its shareholders where the corporate personality was used as cloak for fraud or improper conduct.

In **Life Insurance Corporation of India v. Escorts Ltd.**⁵², “Justice O. Chinappa Reddy had emphasized that the corporate veil should be lifted where the associated companies are inextricably connected as to be in reality, part of one concern. However he observed that the veil may be lifted on in necessary instances wherein public interest is involved and parties are affected.”

A more direct instance relating to the nexus between the parent and subsidiary companies is to be found in **State of UP v. Renusagar Power Company**.⁵³ “In that case, the Supreme Court pierced the corporate veil to hold that Hindalco, the holding company and Renusagar Power Company, its subsidiary, should be treated as one and the Power Plant of Renusagar must be treated as the own source of generation of Hindalco and on that basis, Hindalco would be liable to pay electricity duty.” The Supreme Court in **L.I.C v. Escorts** also observed that the veil may be lifted under statutory provisions when the legislature fits deem for specific purpose and not to any other extent.

STATUTORY PROVISIONS

1.1 Misrepresentation in prospectus –

Section 34 and Section 35 of the Companies Act, 2013 provides that if there's any misrepresentation on the company's prospectus then the people who have prepared the prospectus will be held liable, and not the company.⁵⁴

1.2 Misdescription of name –

⁵¹ Solomon v. Solomon [(1897) AC 22].

⁵² Life Insurance Corporation of India v. Escorts Ltd., AIR 1986 SC 1370.

⁵³ State of UP v. Renusagar Power Company (AIR 1988 SC 1737).

⁵⁴ Dr. S. R. Myneni, Company law pg.70, 5th Ed.

According to section 12 if there's misdescription of the name of the company then the directors, officers or any other member of the company who is involved in such misdescription shall be personally made liable for the same.⁵⁵

1.3 Reduction in number of members –

If at any time the number of members of a company is reduced in case of public company below seven and in case of private company below two and company carries business for period more than six months then every member of the company who is cognizant of the fact that it is carrying the business below statutory limit shall be severally liable.⁵⁶

1.4 Fraudulent conduct –

Section 339 provides that if the company is incorporated with fraudulent intent then the directors and promoters shall be liable to the people.⁵⁷ In such cases the corporate veil is lifted and the directors are held personally liable for such acts.

These are some of the instances wherein veil can be pierced and members can be held liable. The statutory provisions between India, U.K., and Singapore are somewhat similar in nature. The United States approach varies from state to state. The courts in England mainly lift veil on basis of evasion principle or concealment principle however Lord Sumpton does not recognize the concealment principle. The Indian courts pierce the veil in case of Tax evasion, enemy character, prevention of fraud or improper conduct and public policy. However these grounds are not exhaustive in nature and vary from case to case.

After analyzing the jurisprudential aspects in various countries the judiciary is vested with wide discretionary powers leading to delay in justice as the principle applied are not concrete and varies from case to case. In order to, curb the menace of corporate abuse statutory provision shall be enacted so that courts are left with diminutive discretion.

CHAPTER V

⁵⁵ Dr. S. R. Myneni, Company law pg.70, 5th Ed.

⁵⁶ Ibid.

⁵⁷ Ibid.

RECOMMENDATIONS

1. The doctrine of reverse piercing shall be acknowledged by the Indian Judiciary or Statutory Provision shall be enacted in the Companies Act, 2013.
2. The Shell or Shadow companies are being used as cloak for fraud or improper conduct, tax evasion or reaping profits. The provisions regulating the misfeasance by such shell or a shadow company is a gray area under the Companies Act, 2013 which shall be addressed. Also, the definition of “**Shell companies**” shall be defined under the act.
3. The Judicial grounds of lifting of Corporate veil shall be brought under the purview of statutory provisions so that the discretion provided to the judiciary is limited and the persons abusing the corporate structure shall be held liable.

CONCLUSION

“Separate corporate personality is the **rule** and lifting the corporate veil is an **exception** as understood in simple notion.”

The author in this paper is of the opinion that the House of Lords has erroneously decided the **Solomon’s Case** which is still the bedrock of modern company law jurisprudence. However, the judgment was pronounced neglecting the grounds of fairness and equity. The courts in plethora of judgments diluted from the principle laid down in Solomon’s Case in order to deliver justice as the human ingenuity abused the corporate structure. As it is seen in the paper that wide discretionary powers are enshrined upon the judiciary, the courts have struggled to decide concrete principles over past few decades. However, due to varied facts and circumstances in each case it is difficult for experts to figure out the fix set of rules in lifting the veil. However the most underlying test formulated by the courts is gross abuse of corporate structure by shareholders. Thus, protecting the abuse of corporate structure is the need of the hour and keeping them without four corners of law. **To conclude**, Law and Judiciary have always acted as check and balance on the principle of separate legal personality and delivered justice whenever requisitioned.

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