
CORPORATE PERSONALITY VS. CORPORATE ABUSE: A STUDY OF CORPORATE VEIL IN INDIAN COMPANY LAW

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ABSTRACT

The doctrine of corporate personality is a fundamental principle of company law which recognizes a company as a legal entity separate from its shareholders and directors. This principle was firmly established in the landmark case of *Salomon v. A Salomon & Co Ltd* and forms the basis of modern corporate law. By recognizing companies as independent legal persons, the doctrine provides several advantages such as limited liability, perpetual succession, and transferability of shares, thereby encouraging investment and economic development. However, the separate legal identity of a company may sometimes be misused by individuals to commit fraud, evade legal obligations, or conduct unlawful activities. To prevent such misuse, courts have developed the doctrine of lifting or piercing the corporate veil, which allows them to disregard the company's separate legal personality in exceptional circumstances. This research paper examines the concept of corporate personality and analyses the circumstances under which the corporate veil may be lifted under Indian company law. The study focuses on judicial interpretations and examines important cases such as *Life Insurance Corporation of India v Escorts Ltd* and *Balwant Rai Saluja v Air India Ltd* to understand how courts balance the protection of corporate autonomy with the need to prevent abuse. The paper also highlights the challenges and inconsistencies in the judicial application of the doctrine due to the absence of a uniform legal test and the growing complexity of corporate structures. The study concludes by emphasizing the need for clearer legal guidelines and stronger regulatory mechanisms to ensure that the corporate form is not misused while preserving its economic benefits.

Keywords: Corporate personality, corporate veil, lifting the corporate veil, company law, corporate fraud, judicial interpretation, corporate governance, Indian company law.

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INTRODUCTION

A corporation is a legal entity that is separate and distinct from its members, shareholders and directors. Built primarily upon the doctrine of separate legal personality. Since a corporation has a legal entity of its own it is entirely different from its shareholders: it bears its own name and has a seal of its own: its assets are separate and distinct from those of its members: it can sue and be sued exclusively for its own purpose and it can own and dispose of property. All statutes creating public corporations have specific mention of these features.² This nature of a corporation is firmly established in the English case of *Salomon v. Salomon & Co. Ltd.*³ The facts of this case were that Salomon converted his business into a company. There were 7 subscribers in the company- Salomon, his wife, one daughter, and four sons. Salomon issued \$40,000 shares to the public, and he himself purchased \$20,000 shares and holds \$10,000 debentures. The corporation went into liquidation, with \$6000 assets and \$10,000 debentures. The unsecured creditors claimed a priority over the debenture holder on the ground that company and Saloman were one and the same person. But the House of Lords held that the existence of a company is quite independent and distinct from its members and that the assets of the company must be utilized in payment of the debentures first in priority to unsecured creditors. The doctrine known as lifting up of corporate veil is also held in this case. The corporate veil is a legal concept treating a corporation separate from its shareholders.

The advantages of separate legal entity doctrine- limited liability, perpetual succession, transferability of shares, common seal of company, and stability of company- which collectively encourage economic development. Under Indian company law, the separate legal entity is recognized by Section 9 of the Companies Act, 2013. The Landmark case *State Trading Corporation of India Ltd. V. Commercial Tax Officer*⁴ has reinforced that a company is a distinct legal person even though it is not a citizen. However, these attractive features of corporation also lead to misuse. When directors, or whomsoever in the charge of the company, commits fraud, or illegal activities, or does any activities outside the scope of the objects, memorandum, article of association of the company, the principle of corporate veil is initiated. Members can not take shield behind the company. Situations under which lifting up of corporate veil can be used are- fraud/improper conduct, cloak or sham, tax evasion, and war

² *Tata E. & L. Co. v. State of Bihar*, A.I.R. 1965 S.C. 40, 46. See also *Tamlin v. Hannaford*, (1950) 1K.B. 18 where Denning, L.J., has, at pp. 23-24 vividly explained these characteristics.

³ *Salomon v. A. Salomon & Co. Ltd* [1897] AC 22

⁴ *State Trading Corporation of India Ltd v. Commercial Tax Officer* (1963) SCR 103

like situation.⁵ Consequently, lifting the corporate veil serves as a corrective measure to prevent the corporation from becoming an instrument of unfair advantage. Indian have shaped the corporate veil principles. In *Life Insurance Corporation of India v. Escorts Ltd.*⁶, the Supreme Court affirmed the separate corporate personality while allowing veil-piercing in exceptional cases to prevent abuse (Bhattacharya, 2019). A significant shift occurred in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*,⁷ where the doctrine was formally adopted, and non-signatories were allowed to be bound by arbitration agreements (Gupta, 2014). The doctrine was reaffirmed in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*,⁸ which clarified its application (Kumar, 2022). Similarly, in *ONGC Ltd. v. Discovery Enterprises Pvt. Ltd.*,⁹ the Delhi High Court extended arbitration obligations to closely related entities involved in transactions (Ramanathan, 2023). These rulings reflect a progressive and globally aligned judicial approach. Indian courts apply the doctrine based on: a direct link between the non-signatory and the contract; participation in negotiations or performance; clear intent to bind the entity; and the existence of a single economic unit (Tripathi, 2021). This approach balances contractual consent with commercial reality, ensuring fairness while respecting corporate separateness (Bansal, 2023).

LITERATURE REVIEW

Several scholars and judicial decisions have examined the doctrine of corporate personality and the circumstances in which the corporate veil may be lifted. Early legal scholarship primarily focused on the principle established in *Salomon v. A Salomon & Co Ltd*, which firmly established the concept that a company is a separate legal entity independent of its members. Scholars such as Bhattacharya (2019) highlight that this principle forms the foundation of modern company law by promoting investment and economic development through limited liability.

However, later academic discussions emphasize that strict adherence to corporate personality may lead to misuse of the corporate form. Gupta (2014) argues that the doctrine of lifting the corporate veil evolved to address such misuse, enabling courts to look beyond corporate structures when companies are used as instruments of fraud or illegality. Similarly, Tripathi

⁵ *LIC of India v. Escort Ltd.*, 1986 AIR 1370

⁶ *Life Insurance Corporation of India v. Escorts Ltd.* (1986 AIR 1370).

⁷ *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.* (2013) 1 SCC 641.

⁸ *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (2021 SCC OnLine SC 329).

⁹ *ONGC Ltd. v. Discovery Enterprises Pvt. Ltd.* (2022 SCC OnLine Del 4502).

(2021) observes that courts often examine factors such as control, intention, and economic reality when deciding whether to pierce the corporate veil.

Judicial interpretations in India have also significantly contributed to the development of this doctrine. In *Life Insurance Corporation of India v Escorts Ltd*, the Supreme Court recognized the importance of corporate personality while allowing veil lifting in exceptional situations. Later decisions such as *Balwant Rai Saluja v Air India Ltd* clarified that veil piercing should be applied cautiously and only when the corporate structure is used for fraud, façade, or evasion of legal obligations.

Recent scholarship also points out challenges arising from complex corporate structures, shell companies, and multinational corporate groups. Researchers such as Bansal (2023) and Chakraborty (2022) emphasize the need for clearer legal standards and stronger regulatory mechanisms to ensure consistent judicial application of the doctrine.

RESEARCH METHODOLOGY

This research paper adopts a doctrinal research methodology, which primarily focuses on the analysis of legal principles, statutes, and judicial decisions relating to the doctrine of corporate personality and the lifting of the corporate veil.

The study relies on secondary sources of data, including statutory provisions such as the Companies Act, 2013, judicial precedents, books, journal articles, and scholarly commentaries on company law. Landmark judgments of the Supreme Court and High Courts have been examined to understand how Indian courts interpret and apply the doctrine of lifting the corporate veil in different circumstances.

A case law analysis method has been used to evaluate important judicial decisions that illustrate the circumstances in which courts disregard the separate legal personality of a company. Cases involving fraud, sham companies, tax evasion, and evasion of legal obligations have been analysed to identify common judicial reasoning and principles.

The research also adopts a descriptive and analytical approach to examine the challenges and inconsistencies in the judicial application of the doctrine. By analysing existing legal literature and case law, the study identifies gaps in the current legal framework and proposes suggestions for improving the consistency and effectiveness of veil-lifting principles in Indian company

law.

LIFTING THE CORPORATE VEIL

The situations under which corporate veil can be lifted are-

1. Fraud or improper conduct

When company is created only for the purpose of fraud. In the case of *Jones v. Lipman*,¹⁰ Under a contract, Lipman promised to sell property 'A' to Jones but after some change of mind, Lipman sell his property to a company to avoid specific performance under the contract. When Jones demanded to fulfil the contract, Lipman said that there is no meaning of contract now I have sold the property to a company. Jones files a suit against the Lipman. The court lifted the corporate veil and finds that the company has only 2 members- Lipman and clerk. The court held that the company is only the mask that Lipman holds to avoid specific performance of the contract. Therefore, the court lifted the veil to avoid fraud and awarded specific performance against the Lipman.

2. Cloak or sham

When there are multiple companies but they are owned by one person or group of people. The main purpose for the incorporation of the company is to commit illegal activity, these companies or corporate bodies are mere cloak or sham (look alike). In the case of *Gilford Motor Co. Ltd. v. Horne*,¹¹ Gilford Motor Company Ltd. entered into a contract with Horne (an employee) stating that Horne could not engage in any separate transactions with the company's customers which is different from the business. In order to avoid specific performance of the contract, Horne established his own company, which was a look-alike of Gilford and started approaching Gilford's customer. The Court lifted the corporate veil and held that the company was created solely for a mala fide intention. Therefore, the court invalidated the act.

3. Tax evasion

The company has the same liabilities as any other legal person. One such liability is to pay tax to the government. Members, themselves, however, are not allowed to claim that they should

¹⁰ *Jones v. Lipman*, 1962. 1 WLR 832.

¹¹ *Gilford Motor Co. Ltd. v. Horne*, 1933. Ch 935.

be regarded as economically identical with the company, particularly when this is not in the interest of revenue. In *Bacha F. Guzdar v. CIT. Bombay*,¹² under the Income Tax Act, then in force, agricultural income was exempt from tax. The income of a tea company was exempt up to 60% as agricultural income and 40% was taxed as income from manufacture and sale of tea. The plaintiff was a member of a tea company. She received a certain amount as dividend in respect of shares held by her in the company and claimed that this dividend income should be regarded as agricultural income up to 60%. But it was held that although the income in the hands of the company was partly agricultural, yet the same income when received by the shareholders as dividends could not be regarded as agricultural income.

Indian courts have long acknowledged that corporate personality cannot be used as a shield for fraud or evasion. In *Delhi Development Authority v. Skipper Construction Co.(P) Ltd.*,¹³ the Supreme Court pierced the corporate veil where a group of companies was used to defraud property buyers and evade regulatory sanctions (Joshi, 2018). Similarly, in *Juggilal Kamalapat v. Commissioner of Income Tax*,¹⁴ the Court lifted the veil to reveal the economic reality of a tax-avoidance scheme, ensuring that taxation aligned with substance over form (Mehrotra, 2020). More recently, in *Balwant Rai Saluja v. Air India Ltd.*,¹⁵ the Supreme Court emphasized that veil piercing is justified only in exceptional circumstances, such as fraud, façade, or evasion of obligations (Naik, 2021). These cases collectively affirm that the corporate veil is not impenetrable; it may be lifted when the entity's separate existence is exploited for illegitimate purposes, but must otherwise be respected to uphold economic stability and legal certainty (Chakraborty, 2022).

A turning point came with the Supreme Court's judgment in *Life Insurance Corporation of India v. Escorts Ltd. (1986)*,¹⁶ where the Court acknowledged that although the corporate veil is a fundamental legal concept, it may be lifted in the interest of justice, national security, and statutory enforcement. While the Court maintained a cautious approach, it confirmed that the veil could not be used to conceal the identity of real actors when the corporate personality was manipulated for improper objectives.

In recent years, businesses have become more complicated, with things like shell companies

¹² *Bacha F. Guzdar v. CIT. Bombay* AIR 1955 SC 74: (1955) 1 SCR 876.

¹³ *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.* (1996 AIR 2005 SC 2005).

¹⁴ *Juggilal Kamalapat v. Commissioner of Income Tax* (1969 AIR 932 SC).

¹⁵ *Balwant Rai Saluja v. Air India Ltd.* (2014) 9 SCC 407.

¹⁶ *LIC of India v. Escort Ltd.*, 1986 AIR 1370.

and large groups of connected companies. Because of this, Indian courts have started taking a more practical approach to companies.

Normally, a company is treated as a separate legal person from its owners. But courts may “lift the corporate veil” (ignore this separation) in certain situations. They do this to:

- Find out who actually owns or controls the company
- Track illegal activities like money laundering
- Identify who is really responsible during insolvency (bankruptcy) cases
- Make sure laws like the Companies Act, SEBI rules, and tax laws are properly followed

With the introduction of the Insolvency and Bankruptcy Code (IBC), courts and tribunals have even more power to ignore company structures if they are being used to hide money, cheat creditors, or avoid paying debts.

Indian courts have not made a strict rule for when to lift the veil. But their decisions show one clear idea: If keeping the company separate would lead to unfairness or misuse of the law, the court will ignore that separation. In short, Indian law tries to maintain a balance. It respects that a company is a separate legal entity, but it will not allow people to misuse this concept to do wrong things or harm the public interest.

CHALLENGES AND INCONSISTENCIES IN JUDICIAL APPLICATION

The idea of “lifting the corporate veil” is important because it helps courts stop people from misusing companies for wrong purposes. However, it has a big problem: courts do not apply it in a consistent or predictable way. The main issue is that there is no clear rule about when the veil should be lifted. Courts agree that sometimes a company’s separate identity should be ignored (for example, in cases of fraud), but they decide this on a case-by-case basis. Because of this, different judges may give different decisions even in similar situations. There is also a conflict between two goals: Protecting the company as a separate legal entity, preventing fraud or misuse of that company. Courts try to balance these goals, but they use different reasons like fairness, public policy, fraud prevention, or interpretation of laws. This leads to inconsistent judgments.

Another problem is that courts rely on many different legal theories (like fraud, sham companies, tax evasion, or group company liability). Since each theory has different requirements, the outcome depends on which one the judge chooses. This makes it hard to predict decisions.

Modern business structures also make things more complicated. Today, companies often have: Multiple layers (subsidiaries, holding companies), Complex ownership structures, Shell companies. Because of this, it becomes difficult for courts to find out who is actually controlling the company. Judges often have to rely on indirect evidence, which can lead to different conclusions.

There is also confusion between statutory rules and judicial decisions. Some laws already allow courts to hold directors personally liable, but it is not always clear whether this counts as “lifting the veil” or just applying the law. This overlap adds to the confusion.

Another inconsistency is seen in group companies: Sometimes courts treat related companies as one-unit, other times they treat them as completely separate. This depends on the type of case (for example, tax vs. contract cases), which creates uncertainty for businesses. Courts also sometimes let moral feelings influence their decisions. If a judge strongly feels that something is unfair, they may lift the veil even without clear legal reasoning. In other cases, they may refuse to do so. This makes the doctrine unpredictable.

Because of all these issues: Businesses and investors face uncertainty, victims may not always get justice, legal advisors find it hard to predict outcomes.

In conclusion, the doctrine is useful but not applied consistently. The main problems are: No clear test, too much judicial discretion, complex business structures, different legal approaches. To improve this, there is a need for clearer rules or guidelines so that courts can apply the doctrine more consistently while still preventing misuse of companies. Codify rules in legislation. Laws like: Companies Act, Insolvency laws, Securities regulations should include clear guidelines on veil lifting. These laws should ensure Proportionality, necessity, transparency. Improve beneficial ownership transparency. Corporate registries should clearly record: Real owners, Parent companies, Control structures. This helps courts easily identify who really controls the company. Use technology and data analysis. Regulators can use data analytics to detect suspicious patterns like: Frequent creation of shell companies, rapid

dissolution of companies, repeated directors in fraudulent companies, unusual related-party transactions.

The doctrine of lifting the corporate veil is important to prevent misuse of companies, but currently it is unclear and inconsistent. To improve it, the law needs: Clear judicial guidelines, better transparency of company ownership, stronger regulation, better evidence procedures, coordination between authorities, proportional remedies. This will protect honest businesses while preventing fraud and abuse of the corporate form.

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