RETHINKING CORPORATE STRUCTURES: THE 'GROUP OF COMPANIES' DOCTRINE AND ITS TRANSFORMATIVE IMPACT ON INDIAN COMPANY LAW

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ABSTRACT

The judgement of the Supreme Court of India in Cox & Kings Ltd. v. SAP India Pvt. Ltd is a revolutionary one which set very important precedents with respect to arbitration and company law. The decision provided in the above-mentioned case established a key doctrine known as the 'Group of Companies' doctrine. The main focus of this research paper is to understand how the judgement and the doctrine it established influences the concept of separate legal personality and piercing of the corporate veil in companies.

The 'Group of Companies' doctrine in essence allows non-signatory companies within a corporate group to be bound or benefit from an arbitration agreement signed by another group company on the grounds of there being a mutual intention present between the parties to bind both signatories and non-signatories of the agreement. This doctrine stands in direct opposition to the traditional concept of separate legal personality introduced by the decision in Salomon v Salomon & Co Ltd (1897). When a group company defaults, the doctrine allows creditors to look beyond the corporate veil. They can seek recovery from other affiliated entities, the paper will thus analyse how the courts therefore must strike a delicate balance preventing double recovery, and respect each company's autonomy, while also keeping in mind concerns about the erosion of the separate legal personality principle. The doctrine also implies about how the corporate veil can be lifted more readily in arbitration scenarios to provide recognition to the economic situation of companies under one roof.

Analysing the doctrine with respect to company law, while understanding its criticisms and future implications, the paper helps one understand in depth about how Indian company law must adapt, balancing collective interests of corporate groups and non-signatory parties with legal certainty. It also helps reshape ones understanding of corporate identity and corporate governance along with when exactly individuality and interconnectedness respectively must apply with respect to the "group of companies" doctrine.

Introduction

The legal landscape of arbitration and company law in India experienced a very significant transformation with the Supreme Court's landmark judgement in Cox & Kings Ltd. v. SAP India Pvt. Ltd.[1] This 2023 decision introduced and solidified the 'Group of Companies' doctrine within Indian jurisprudence, marking a pivotal shift in how corporate groups are to be treated under law. This doctrine has significant ramifications for the conventional understanding the concepts of separate legal personality and piercing of the corporate veil. It basically permits non-signatory entities in an arbitration agreement, within a corporate group to be bound by or benefit from an arbitration agreement signed by another group company.[2]

The long-standing rule established in Salomon v. Salomon & Co Ltd (1897)[3], which set the overall foundation for the idea of distinct legal identity, is called into question by the "Group of Companies" doctrine. The principle of separate legal personality states that a company is a completely different entity from its owners or directors in terms of its individual legal rights and obligations. But the Cox & Kings ruling held that, depending on the situation, the economic realities of corporate groups require some flexibility from this rigid demarcation. The doctrine established that non-signatory corporations might be included within the scope of an arbitration agreement provided there is a common desire to bind both signatories and non-signatories. Indian courts have previously hinted at the prospect of enforcing arbitration agreements against non-signatories, but there was no established, unified theory at the time.[4] The Cox & Kings ruling along with a few subsequent rulings established a precedent for cases to come and offered much-needed clarity regarding the doctrine and helped expand its comprehensive scope and applicability.[5] In the case of Oil and Natural Gas Corporation Ltd v. Discovery Enterprises Pvt. Ltd.[6], the Courts established precise standards for figuring out whether a non-signatory could be bound by an arbitration agreement. These standards included the parties' shared intention, the non-signatory's connection to the arbitration agreement or contract performance, the shared nature of

[1] Cox and Kings Ltd. v. SAP India Pvt. Ltd., 2022 SCC OnLine SC 570.
[2] IBC Laws Editor, *Read more: IBC Laws - The validity of the "Group of Companies" doctrine in the jurisprudence of Indian Arbitration – Landmark Judgment of Five-Judge Bench of Supreme Court - Cox and Kings Ltd. v. SAP India Pvt. Ltd. & Anr. - Supreme Court*, IBC Laws (2023), https://ibclaw.in/cox-and-kings-ltd-v-sap-india-pvt-ltd-anr-supreme-court/.
[3] Salomon v. Salomon & Co. Ltd., [1897] AC 22.
[4] Aditya Singh, Group of Companies Doctrine: Evasive Piercing and a Conglomerate's Lament, IRCCL (2024), https://www.irccl.in/post/group-of-companies-doctrine-evasive-piercing-and-a-conglomerate-s-lament.
[5] You, Me and Dupree: Indian Supreme Court Rethinks the Tenability of Using the Group of Companies Doctrine to Bind Non-Signatories to an Arbitration Agreement - Kluwer Arbitration Blog, Kluwer Arbitration Blog (2022), https://arbitrationblog.kluwerarbitration.com/2022/07/13/you-me-and-dupree-indian-supreme-court-rethinks-the-tenability-of-using-the-group-of-companies-doctrine-to-bind-non-signatories-to-an-arbitration-agreement/.
[6] Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd. (2003) 5 SCC 705.

the subject matter, and the overall economic reality of the corporate group. Subsequent decisions have followed and expanded upon this ruling, therefore further improving the doctrine's scope.

The overall impact of the "Group of companies" doctrine is not solely limited to the realm of arbitration. The doctrine also makes one significantly consider the in-depth implications in the notion of corporate identity and governance as the challenges the existing ideals of individuality and interconnectedness between corporate groups. The theory in essence promotes a more integrated approach to corporate governance, where the interests of the individual firms are taken into consideration alongside those of the group as a whole, by acknowledging the economic reality of corporate groups.[7] This research paper aims to help one understand thoroughly the 'Group of Companies' Doctrine, examining its establishment and its evolution.[8] The main focus of the paper is to explore the challenges the doctrine poses to the principle of separate legal personality and corporate veil.[9] Through this analysis, the paper seeks to provide one with a greater understanding of how Indian company law has been affected, and how it must now adapt to balance the collective interest of corporate groups and non-signatory parties for legal certainty and respect for corporate autonomy.

Impact on Separate Legal Personality

The doctrine of 'Group of Companies' in India, stems from the realisation and understanding that modern corporate structures often involve very complex webs of thoroughly interconnected entities. Here, the conventional view of each company as a distinct legal person may not always reflect economic realities. The 'group of companies' doctrine in Indian law challenges the traditional understanding of the principle of separate legal personality in company law and presents a significant challenge to it. Despite the principle, the 'group of companies' doctrine suggests a more flexible approach in corporate groups. It acknowledges that in modern corporate groups, the lines between separate entities can blur, with companies within a group functioning as part of a single economic unit.[10] The doctrine does not completely erase the validity or significance of the principle of separate legal personality but rather provides a framework for when exactly it might be necessary and appropriate to look beyond the formal corporate structure.[11]

[7] Rachit Garg, *Group of companies doctrine - iPleaders*, iPleaders (2024), https://blog.ipleaders.in/group-of-companies-doctrine/.
[8] William W Park, Non-Signatories and International Contracts: An Arbitrator's Dilemma, Ssrn.com (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3018722.
[9] Pietro Ferrario, "The Group of Companies Doctrine in International Commercial Arbitration: Is there any Reason for this Doctrine to Exist?", Journal of International Arbitration [Kluwer Law International (2009), Vol. 26(5), pp. 647-673].
[10] Separate legal personality – an explanation and a defence, Journal of Corporate Law Studies (2024), https://www.tandfonline.com/doi/full/10.1080/14735970.2024.2365170#abstract.
[11] Shaheen Banoo, *Lifting of the Corporate Veil: Decoding the Doctrine of Separate Legal Personality*, SSRN Electronic Journal (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609245.

This evolving doctrine has a multifaceted impact on separate legal personality in corporate groups. First of all, it casts a doubt on the corporate separateness assumption. Companies that are part of a group may no longer count on their separate legal status to be unchanged in any and all circumstances. While deciding whether to classify a group as an independent entity, courts may now consider the economic reality of the group's interactions and transactions. Secondly, the doctrine has the potential to broaden the extent of responsibility across corporate entities. The theory enables one company to be held accountable for the deeds or obligations of another under specific conditions, even if each company continues to be a distinct legal entity. The limitations of traditional corporate responsibility are being challenged by the expanding scope of liability, which may force businesses to reevaluate their risk management plans within group structures. In corporate governance, separate legal identity is greatly impacted by the "group of companies" theory.[12] It enables courts to see beyond official corporate structures, which may incite businesses to uphold more distinct borders or combine their activities when integration of that kind already occurs. This might alter the connections, financial structures, and decision-making procedures that business groupings use.

The idea that a company being a completely legal fiction is called into doubt by the doctrine, which also calls into question the nature of corporate personality. Rather, it proposes a more complex understanding of corporate personality that considers the pragmatics of how businesses function inside hierarchical corporations. The 'group of companies' theory does not, however, have an absolute effect on separate legal personality.[13] The courts stress that while the doctrine offers a framework for figuring out when it could be acceptable to look beyond it, each case must be carefully examined since the application of the doctrine is strictly fact specific.

Impact on Corporate Veil

The corporate veil is a foundational idea in company law that distinguishes a corporation's legal identity from that of its shareholders. By granting limited liability, this principle protects shareholders from being held personally liable for the corporation's obligations and debts. Nonetheless, there are some specific instances in which courts feel compelled to breach the corporate veil and hold stockholders accountable for the deeds or debts of the business. Corporate evil is one intricate and nuanced

[12] Umakanth Varottil, SC Ruling on “Group of Companies” Doctrine: Viewed Through a Corporate Law Lens - IndiaCorpLaw, IndiaCorpLaw (2023), https://indiacorplaw.in/2023/12/sc-ruling-on-group-of-companies-doctrine-viewed-through-a-corporate-law-lens.html#:~:text=Sanctity%20of%20the%20Separate%20Legal%20Personality&text=In%20other%20words%2C%20the%20group,corporate%20personality%20very%20much%20intact.

[13] A DETAILED ANALYSIS OF THE ‘DOCTRINE OF GROUP OF COMPANIES’ IN THE INDIAN ARBITRATION CONTEXT By - Aryaman Sharma & Dr. Harshita Thalwal White Black Legal, Whiteblacklegal.co.in (2015), https://www.whiteblacklegal.co.in/details/a-detailed-analysis-of-the-%E2%80%98doctrine-of-group-of-companies%E2%80%99-in-the-indian-arbitration-context-by---aryaman-sharma-dr-harshita-thalwal-.

component of company law that has attracted a lot of interest from legal experts. Lifting the corporate veil entails court involvement to see past the corporate structure to the persons hiding behind it, which is a deviation from the basic norm of limited liability. [14] The 'group of companies' doctrine has significant implications for the corporate veil in Indian company law.

Historically speaking, Indian courts have been very hesitant to pierce the corporate veil and do so only in particularly exceptional circumstances as in line with the case of Prest v. Petrodel[15]. The 'Group of Companies' doctrine on the other hand introduces a very nuanced approach, specifically for corporate groups. It suggests that the courts may, in certain circumstances look beyond the separate legal personalities of companies within a group to consider the economic reality of their relationships and transactions. This particular approach is substantially evident in the Cox and Kings judgment where the supreme court outlined the framework for application of the 'Group of Companies' doctrine in India. The ruling indicates an overall willingness to look beyond formal corporate structures to understand the true nature of relationships and transactions within a corporate group by emphasising elements like the direct relationship between parties, commonality of subject matter, the composite nature of transactions, and the overall group structure and business reality.[16]

The corporate veil is being significantly impacted by this evolving doctrine. First of all, it broadens the overall range of situations in which the corporate veil can be removed or ignored. The 'group of companies' doctrine adds additional considerations based on the economic realities of corporate groups, which may make it easier for courts to look past the corporate veil, especially in cases where strict adherence to corporate separateness might result in unfair or unrealistically high costs. Traditional grounds for piercing the veil still remain valid.[17]

Secondly, the doctrine adds a sense of subtlety and flexibility to the corporate veil's application. The 'group of companies' theory facilitates a more gradual approach as opposed to an all-or-nothing one in which the veil is either fully acknowledged or entirely discarded. In situations involving complex corporate structures, courts can modify their handling of the corporate veil based on the level of integration and control within a business group. This allows for a more individualized and tailored approach to justice. The impact that the doctrine has extends beyond the focused scope of litigation and even influences corporate structuring and governance. The companies within corporate

[14] Kumar Arvind & Singh, Exploring The Corporate Veil in reference to Telford Test House Author 1-Vishakha Singh, BBA.LLB(Sem-6), 71 Journal of Engineering and Technology Management (2024).
[15] Prest v. Petrodel Resources Limited (2013) UKSC 34.
[16] Indian Supreme Court Endorses the Application of the "Group of Companies" Doctrine to Join Non-Signatories - Kluwer Arbitration Blog, Kluwer Arbitration Blog (2024), https://arbitrationblog.kluwerarbitration.com/2024/03/15/indian-supreme-court-endorses-the-application-of-the-group-of-companies-doctrine-to-join-non-signatories/.
[17] M.S. Sahoo & Rajiv Shakdher, "Piercing the Corporate Veil," in A. Ramaiya, Guide to the Companies Act (19th ed., 2020).

groups may need to be extra careful and conscious with respect to the inter-company relationships and transactions they might have along with how they might be perceived by the courts.[18] This could thus lead to many changes occurring in how a company structures it operations, allocates resources and manages the gross internal relationships so as to either reinforce or purposely blur the lines present between separate entities, aligning with their strategic objectives all-in-all.

Even then, the doctrine does not simply imply that the corporate veil is now to be completely abandoned. Courts have strictly upheld the idea that the doctrine ought to be used sparingly and only in situations that seem to be suitable for its application.[19] Disregarding the concept of corporate veil as a whole is still seen as an extraordinary step in company law as corporate veil in itself is a fundamental concept of company law.[20] In the context of business organizations, the doctrine only offers a framework for a more in depth and thoughtful analysis of when and how the corporate veil is to be lifted or preserved.

Intersection of 'Group of Companies' doctrine and Companies Act, 2013

The Companies Act, 2013 provides for a very comprehensive framework with respect to corporate governance in India. Several provisions of the act are particularly relevant to the doctrine and its implications for separate legal personality and the corporate veil. The sections of the act help one understand in detail how exactly the legislature has attempted to balance the principles of corporate separateness with the realities of the operations of group companies, complementing the developments in judicial jurisprudence.

One of the most important provisions here would be Section 2(87) of the Companies Act,2013[21], which defines what exactly a "subsidiary company" is. This particular definition helps in identifying the relationships present between corporate groups that may be subject to scrutiny under the 'group of companies' doctrine. Furthermore, Section 2(46)[22] defines a "holding company", thus establishing the other side of the parent-subsidiary relationship. This then provides for a strong foundation for understanding the group dynamics that the doctrine seeks to address.

The act also recognizes the economic reality of group operations through Section 129(3).[23] This

[18] Mathew, P. D. The Doctrine of Lifting the Corporate Veil: Its Evolution and Application in India. NALSAR Student Law Review, 12, 131-150 (2018).
[19] Umakanth Varottil, *SC Ruling on "Group of Companies" Doctrine: Viewed Through a Corporate Law Lens - IndiaCorpLaw*, IndiaCorpLaw (2023), https://indiacorplaw.in/2023/12/sc-ruling-on-group-of-companies-doctrine-viewed-through-a-corporate-law-lens.html.
[20] Kumar Shubham and Kshitij Ujala, Manupatra, Articles-Manupatra, Manupatra.com (2024), https://articles.manupatra.com/article-details/Lifting-the-Corporate-Veil-in-India.
[21] Companies Act, 2013 S. 2(87).
[22] Companies Act, 2013 S. 2(46).
[23] Companies Act, 2013 S.129(3).

particular section mandates consolidated financial statements for companies with subsidiaries to be there including associates and joint ventures. The provision has the need for the presence of a very holistic view of the financial position of the group, aligning with the emphasis that the doctrine has on economic substance over legal form. Similarly, Section 134(1)[24] requires for the report of the board to explicitly highlight the performance and exact financial position of each subsidiary, associate, and joint venture as it further focusing on the presence of group-wide transparency.

Section 185[25] and 186[26] of the act respectively are also relevant in the context of the 'group of companies' doctrine. Section 185 restricts the loans specifically to directors of the company and entities that the director may be interested in, including holding companies. This provision indirectly recognizes the potential present for abuse in intra-group transactions, a concern that the doctrine directly seeks to address. Section 186 which regulates the inter-corporation loans and investments sets boundaries to be followed for financial interactions within corporate groups, complementing the overall approach of the doctrine.

The concept itself of "lifting the corporate evil" finds implicit recognition in Section 7(7)[27] of the act allows for the personal liabilities of the promoters, directors and other individuals in cases of fraudulent incorporation of the company.[28] This aligns with the doctrine approach of looking beyond the formal corporate structures in appropriate circumstances. Sections 241[29] and 242[30] of the act deals with oppression and mismanagement. These basically provide a mechanism for minority shareholders to seek relief, forming a remedy for the second agency problem, including in scenarios involving group companies. These sections can thus be invoked to address specifically unfair practices within corporate groups, resonating with the aim of the doctrine of achieving equitable and just outcomes. Additionally, Section 35[31] and 36,[32] which deal with civil and criminal liability for misstatements in prospectuses, extends the responsibility to the various parties involved in the issue. This very broad approach to liability could be seen to be aligned with the doctrine and its willingness to look beyond what are considered to be the immediate corporate boundaries.

The Companies Act, 2013 is one that also contains provisions that may conflict with the 'group of companies' doctrine, thereby highlighting the complex relationship between statutory frameworks and

[24] Companies Act, 2013 S.134(1).
[25] Companies Act, 2013 S.185.
[26] Companies Act, 2013 S.186.
[27] Companies Act, 2013 S.7(7).
[28] Vikash Kumar, *SC rules on applicability of doctrine of "group of companies" in arbitration jurisprudence*, Dispute Resolution Blog (2023), https://disputeresolution.cyrilamarchandblogs.com/2023/12/sc-rules-on-applicability-of-doctrine-of-group-of-companies-in-arbitration-jurisprudence/.
[29] Companies Act, 2013 S.241.
[30] Companies Act, 2013 S.242.
[31] Companies Act, 2013 S.35.
[32] Companies Act, 2013 S.36.

the judicial interpretations of corporate structures. Section 105[33], which deals with contracts that are formed by companies, assumes distinct legal entities, while the 'group of companies' doctrine suggests a more integrated economic approach to corporate relationships eventually making conflict appear to be present between the section and the doctrine especially in cases that involve inter-company conflicts. Similarly, Section 128[34], which basically mandates maintaining separate financial records for each company, challenges the doctrine's economic unity perspective by it requiring the individual companies to maintain distinct financial documentation. Section 447[35] too, which is addressing fraud, primarily focuses on individual corporate entities, while the 'group of companies' doctrine seeks to understand broader patterns of behaviour within corporate groups. Although Section 447 of the act broadly defines and prescribes severe penalties for fraud. This can be very relevant in scenarios where the corporate form in itself is being misused within group structures. The section provides for a statutory basis for addressing bad conduct which the ‘group of companies’ doctrine also might target.

To address these conflicts, courts could adopt a purposive interpretation of these sections, introduce more nuanced provisions that recognize the complexities of corporate groups, develop more comprehensive guidelines for applying the 'group of companies' doctrine, and issue regulatory guidance. This conflict reflects a deeper tension between traditional notions of corporate separateness and the economic realities of modern corporate structures. Section 2(45)[36], which defines what a “government company” is and subsequent provisions related to such companies highlight how the act recognizes and regulates thoroughly different types of corporate control and ownership structures, a concept that yet again resonates with the doctrine’s nuances approach to corporate groups. While these sections of the Companies Act, 2013 do not explicitly codify the doctrine of ‘group of companies’, they do indeed demonstrate a strong and evident legislative recognition of the complex realities of the corporate groups present and provide for tools that courts can then use in conjunction with the doctrine itself. The ongoing interplay between these statutory provisions and the judicially developed doctrine puts into light the ongoing evolution of Indian company law in addressing the challenges that were posed by the modern corporate structures.

The Companies Act of 2013, in essence has a notable influence on the legal framework that the 'group of companies' doctrine functions in. The Act recognizes the need to strike a balance between the economic realities of group company operations and the present ideals of corporate separateness. This is reflected in its provisions, which cover everything from responsibility and shareholder protection to definitions and financial reporting as well. The way that the judicially established doctrine and the

[33] Companies Act, 2013 S.105.
[34] Companies Act, 2013 S.128.
[35] Companies Act, 2013 S.447.
[36] Companies Act, 2013 S.2(45).

legislative framework meet highlights exactly how dynamic the Indian company law is in addressing the intricacies of contemporary corporate governance.

Role of Corporate law

When there is a group of companies and the circumstances surrounding the negotiation, execution, and termination of the agreement show that the mutual intention of all parties was to bind the non-signatories, Indian jurisprudence functions very similarly to the tests established in the Dow Chemical's case[37]. When there is active influence from the non-impleaded firm in many aspects of the transaction, this doctrine is then applied to assign responsibility from a subsidiary to a parent or any other subsidiary of the same group. Using the wording "claiming through or under," which is given under Sections 8 and 45[38] of the Arbitration and Conciliation Act 1996[39], struck down the invocation of the doctrine. The strategy used in Chloro Controls[40] was that a group company is "claiming through or under" the contract since it receives interest from it. The same was declared invalid due to its violation of corporate law and contract standards. This was mostly due to the fact that the presence of a "group of companies" was almost the only thing that allowed one company to improperly pierce the veil through the implosion of another. According to their influence and participation in the transaction, a parent or subsidiary may be held to be liable as under the doctrine as it currently exists. Both the prevailing and the one struck down have the same entrance point, but the prevailing must meet an extra requirement. Both strategies eliminate the separate legal identities, but only very few, well-founded situations with strong legal basis allow for the breach of the independent identity and limited liability protection.

The cross-jurisdictional comment that the Singapore High Court made regarding the doctrine is also very important to be taken into consideration. Although like the United States and the United Kingdom who have rejected the doctrine explicitly, the Singapore High Court's stated that "*anathema to the logic of consensual basis of an agreement to arbitrate; and second, ordering of companies within a broader group did not mean one could dispense with separate legal entity"*[41]. The presence of a single economic reality is where the court ends its analysis. It notes that a company's rights may only be exercised by that firm, and as a result, its distinct legal personality cannot be disregarded, regardless of the structure and final flow of benefits through its economic reality.[42] The high standards of protection for a company's distinct legal personality are comparable in the other mentioned jurisdictions. The

[37] Dow Chemical v. Isover Saint Gobain, [ICC Case Number 4131, Interim Award dated 23 September 1982].
[38] Arbitration and Conciliation Act, 1996 S.45.
[39] Arbitration and Conciliation Act, 1996 S.8.
[40] Chloro Controls (India) Pvt. Ltd. v. Union of India (2004) 5 SCC 618.
[41] *Manuchar Steel Hong Kong Limited v. Star Pacific Line Pte Ltd.* [2014] SGHC 181.
[42] Doctrine Of Group Of Companies: An Analysis Across Jurisdictions - Arbitration & Dispute Resolution - Litigation, Mediation & Arbitration - Worldwide, Mondaq.com (2024), https://www.mondaq.com/india/arbitration-dispute-resolution/1412622/doctrine-of-group-of-companies-an-analysis-across-jurisdictions#:~:text=The%20Singapore%20High%20Court%20has,not%20mean%20one%20could%20dispense.

fundamental case in the United Kingdom, Peterson Farms v. C&M Farming[43], categorically denies the existence itself of the English common law theory. Both this and the landmark American decision of Thomson-CSF v. Am. Arbitration Association[44] explicitly dismissed the doctrine's autonomous existence and held that the implementation could only take place through the application of already-existing corporate and contract law mechanisms. These include of agency, the classic piercing, the application of the doctrine of estoppel, etc. This further demonstrates that the 'group of companies' theory could not have been created effectively without violating some of the core principles of corporate law.

Criticisms and Challenges

Despite its now growing acceptance, the 'Group of Companies' doctrine faces many challenges and criticisms within the framework of Indian company law. The above-mentioned concerns primarily revolve around the legal certainty, potential erosion of limited liability, conflicts being present with the statutory provisions and practical challenges that one might face regarding the overall application of the doctrine. One primary criticism of the doctrine is that it inserts an element of uncertainty into company law. As stated in decisions such as Cox and Kings, the fact-specific investigation that it requires makes it immensely challenging for companies to anticipate when and how the doctrine is required to be applied.[45] Risk management plans and long-term company planning may become more difficult as a result of this uncertainty. Businesses that are part of groups could find it difficult to judge how much they can rely on their unique legal position in different situations, which could result in undue caution (overly cautious behaviour) or unforeseen liabilities. Furthermore, there are also concerns present about the possible inconsistent application of the doctrine across different courts and jurisdictions across India. The nuanced and fact specific nature of the inquiry may in different scenarios lead to many varying interpretations and applications by different judges. This may then end up resulting in inconsistent outcomes resulting from similar cases. This severe lack of uniformity could therefore undermine the predictability and overall stability which is crucial for effective corporate governance and planning.

Another significant criticism to be considered pertains to the potential erosion and removal of limited liability which is a cornerstone of company law. Limited liability may be undermined by the doctrine by the extension of liability across the group. By potentially extending the net liability across group companies, the doctrine might increase the exposure that the parent company has to the liabilities of its

[43] Peterson Farms v. C&M Farming [2002] EWHC 121.
[44] Thomson-CSF, S.A. v. Am. Arbitration Ass'n, 64 F.3d 773.
[45] IBC Laws Blog Group Arbitrations vis-à-vis the "Group of Companies" Doctrine in India – By Tazeen Ahmed & SK Raqueeb, Ibclaw.blog (2016), https://ibclaw.blog/group-arbitrations-vis-a-vis-the-group-of-companies-doctrine-in-india-by-tazeen-ahmed-sk-raqueeb/.

subsidiaries. This increased risk could undermine one of the key advantages of incorporating that a company possesses.[46] This might then lead to lesser and discouragement from investment in particularly high-risk sectors or newly developing markets, which may have potentially broader economic implications. Due to this, entrepreneurship endeavours along with economic growth would be suppressed.

The relationship between the doctrine in itself and certain legislative provisions in Indian company law presents additional challenges. For example, holding firms liable for their subsidiaries is covered by the Companies Act, 2013 through sections like 105, 128 and 447[47]. The 'group of companies' doctrine may occasionally run counter to these clauses, raising the possibility of conflicts between legislative purpose and judge-made law. This calls into question how the theory relates to statutory corporation law and fits within the larger context of Indian company law. Furthermore, there are real difficulties in applying the idea in practice. It can be quite burdensome to prove the necessary criteria for its implementation, including the total level of control or economic integration inside a company. This might result in drawn-out, intricate legal disputes, raising the legal expenses and uncertainties for the firms. In situations that involved multinational corporate groups, especially in circumstances where foreign entities are involved, the doctrine will raise complex jurisdictional issues.

Yet another difficulty in the field of company law is striking a balance between conflicting interests. The doctrine must be such that it strikes a balance between retaining corporate freedom to support entrepreneurship and safeguarding creditors and other interests. It must also somehow strike a compromise between acknowledging the economic realities of contemporary business activities and upholding the legal formality of corporate formations. For courts using the concept, striking the correct balance between these conflicting interests is an extremely difficult and delicate task to complete. Critics also contend that the approach may have some unforeseen effects for corporate governance methods. The fact-specific nature of the doctrine has led to the inconsistent interpretations across courts, and this has undermined predictability. Even if we establish a criteria to apply the doctrine, it may prove to be complex and will lead to increase in legal costs and prolonged litigation Companies are encouraged to either overly formalize their inter-company interactions in order to preserve separation or purposefully blur the distinctions between businesses due to the possibility that courts may go beyond formal corporate structures. This might result in fictitious or ineffective business

[46] Tejas Chhura, THE NEED TO RE-THINK THE GROUP OF COMPANIES DOCTRINE IN INTERNATIONAL COMMERCIAL ARBITRATION, (2022), https://nujslawreview.org/wp-content/uploads/2022/07/15.1-Chhura.pdf.
[47] Companies Act, 2013, No. 18, Acts of Parliament, 2013, Section 447.

structures that prioritize legal protection over practicality.[48]

The doctrine has also raised concerns about its impact on international business and investment. As Indian companies become more global slowly and steadily, foreign investors may need to reassess their investment structures and risk profiles when dealing with Indian corporate groups, potentially affecting foreign direct investment in the country. Group of companies doctrine does not promote legal certainty in all cases because it has a case by case application and therefore it becomes difficult for the companies to predict its application. However, people supporting the doctrine still argue that the doctrine provides a necessary tool that helps address all of the complexities that one might face regarding modern corporate structures and preventing any kind of potential abuses of the corporate form. The challenge thus at its core, lies in the developing of a consistent framework that balances flexibility with legal certainty.

Future Directions and Implications

With its emergence within Indian company law, the 'group of companies' doctrine now makes tremendous strides within corporate law and applications thereafter. The developments in corporate governance practice - in judicial decisions that follow, legislative measures under consideration or in sight, and corporate governance practices that may change the course and implications it will hold for Indian company law. The 'group of companies' theory will without a doubt be greatly clarified by future decisions. Although very broad, the Cox and Kings judgment set out a framework that is capable of being applied to a wide variety of circumstances of fact. As more cases come before the courts, a clearer and more developed body of caselaw may develop, tending to effect greater uniformity in the application of the doctrine as a whole. As a unified field, it could take the form of the creation and continually evolving industry-specific applications that take an understanding of the distinct nature and unique issues that arise with particular industries. Legislation may be passed to increase clarity and certainty regarding the application of the doctrine. It may also create a system of regulation like that in most Europe to reinforce the "group of companies" doctrine.[49] Such a framework may give further direction to the extent to which, when, and in what circumstances the doctrine applies, thus reducing uncertainty for both the court and the companies involved. The harmonization of the Companies Act with the stated principles of the recent cases may also include amendments, particularly on some of the

[48] Bhumika Indulia, The Group of Companies Doctrine in India – Antithetical to Free Consent? | SCC Times, SCC Times (2023), https://www.scconline.com/blog/post/2023/03/23/the-group-of-companies-doctrine-in-india-antithetical-to-free-consent/.

[49] INDIAN SUPREME COURT CLARIFIES APPLICABILITY OF THE “GROUP OF COMPANIES” DOCTRINE IN COX AND KINGS LTD. V. SAP INDIA PRIVATE LTD., Herbert Smith Freehills | Global law firm (2024), https://www.herbertsmithfreehills.com/notes/arbitration/2023-12/indian-supreme-court-clarifies-applicability-of-the-group-of-companies-doctrine-in-cox-and-kings-ltd-v-sap-india-private-ltd.

issues related to group liability and the corporate veil.

This evolution of this doctrine will likely tend to influence the corporate governance practice in India significantly. To avoid potential liabilities resulting from the enforcement of the doctrine, there is a likelihood that organizations will need to develop stronger monitoring mechanisms on the group structures. This would imply changes in internal relationship, decision-making processes, and financial configurations, especially for the corporate groups. As the corporate attempt to either strengthen or deliberately blur the lines that differentiate between various entities is made in pursuit of the strategic goals of business, demand for more openness in inter-organisational relationships within corporate networks will probably increase. This notion will have tremendous ramifications on structuring organisational systems. This might prompt the reconsideration of structural formations by organizations, even moving toward greater integration in areas where it is already strong or otherwise encouraging clearer divisions between entities when dislocation is helpful. It might nudge corporate structures from their mazes and multiple layers into group structures that are much better set off in limelight and within one line of light. This could make a 'group of companies' theory more visible in the context of dispute resolution, especially cases involving Indian corporations or foreign subsidiaries which carry on international arbitration. Its application could be used in such contexts and may expand the concept of arbitration agreements, thereby making arbitral jurisdiction extend to non-signatories in group corporate structures. The implications of this development may even extend into the future, affecting foreign investment in India.[50] When Indian business conglomerates are involved, the investment framework of global investors may have to be revised along with their risk assessments associated with them. This may alter the very pattern and strategy that foreign direct investment follows. In addition to this, the concept of "group of companies" shall influence several other dimensions of corporate law. It can also affect competition law, especially in the evaluation of the market leadership level of a business group.

It might also affect tax policies, potentially modifying the essence of a corporate group for tax purposes. As this concept develops further, future work on ethical issues of corporate group structure may also gain more attention. The corporate entities might be feeling more pressure to have their organizational structure and configurations of operations harmonize with tenets of ethical corporate conduct and business social responsibility, since judicial bodies and regulatory authorities are increasingly disposed towards substantive review of formal structures of corporate jurisdictions.

[50] Vijay Purohit, Pratik Jhaveri & Faizan M Mithaiwala, Group of companies doctrine: An analysis in view of Cox and Kings, Bar and Bench - Indian Legal news (2023), https://www.barandbench.com/columns/group-companies-doctrine-analysis-view-cox-and-kings.

Conclusion

The 'Group of Companies' doctrine is one that represents a significantly prominent development in Indian company law. Overall, it challenges the pre-existing traditional notions that were present regarding the concepts of separate legal personality and corporate veil. As it evolves, specifically in light of recent judgements, it has now started to reflect a growing recognition of the intricate and complex realities of modern corporate structures along with the total need for adequate legal frameworks to adapt accordingly.[51] The overall impact of the doctrine on separate legal personality and corporate veil is especially profound. It helps introduce a much more flexible and nuanced approach to these fundamental concepts of company law, which then allows the courts to be able to look beyond what were considered to be the formal corporate structures when necessary, so as to ultimately achieve just outcomes. This flexibility, however, does come at the cost of some legal certainty, as it presents challenges for corporate planning and risk management.

The immediate need for the careful consideration of the implications that the doctrine poses are evidently highlighted by the criticisms and challenges that are faced by the doctrine. Balancing the overall benefits of the doctrine in addressing what are considered to be complex corporate realities with the need for legal certainty along with the protection of limited liability of a firm remains to be a significant challenge. Whether it is through legislative interventions or judicial decisions, the future developments must address these concerns while preserving the required flexibility for dealing with the complexities of modern corporate structures.

As the doctrine now continues to improve and evolve with time, it will likely have far reaching implications in the fields of structuring, corporate governance as well as dispute resolution and arbitration in India. Companies will need to adapt their practices so as to accustom themselves to this newly evolving legal landscape, and policymakers will need to take into consideration how to best balance competing interests with respect to shaping the future of the 'Group of Companies' doctrine in Indian company law

[51] Two's Company, Three's A Crowd: Revisiting the Group of Companies Doctrine - Kluwer Arbitration Blog, Kluwer Arbitration Blog (2021), https://arbitrationblog.kluwerarbitration.com/2021/06/24/twos-company-threes-a-crowd-revisiting-the-group-of-companies-doctrine/.