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# LIFTING THE CORPORATE VEIL: ADDRESSING JUDICIAL INCONSISTENCY THROUGH STATUTORY REFORM

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## ABSTRACT

The principle of separate legal personality is a cornerstone of corporate law, recognising a company as a legal entity distinct from its shareholders and directors. As an exception to this principle, courts have developed the doctrine of lifting the corporate veil to prevent misuse of the corporate form. However, the Companies Act does not provide clear or comprehensive guidance on the circumstances under which the corporate veil may be lifted. Consequently, courts have applied the doctrine inconsistently, leading to uncertainty and unpredictability in corporate jurisprudence and weakening legal certainty. This paper examines the reasons behind the inconsistent judicial application of the doctrine of lifting the corporate veil and explores how such inconsistency can be addressed to ensure that the veil is lifted only in appropriate and justified cases. The study adopts a doctrinal and analytical research methodology, relying on a critical examination of statutory provisions, judicial precedents, and scholarly writings. Key Indian and comparative common law decisions are analysed to assess evolving judicial approaches toward veil lifting. The research finds that courts frequently rely on broad equitable considerations, such as the “interest of justice,” without applying uniform or objective criteria. The absence of codified standards allows excessive judicial discretion, resulting in divergent outcomes. . The paper concludes that statutory codification of specific grounds, adoption of uniform judicial tests, and authoritative guidelines from higher courts are necessary to ensure consistency while preserving the principle of separate legal personality.

**Keywords:** Corporate Veil, Separate Legal Personality, Companies Act, Judicial Discretion, Corporate Law.

## **CHAPTER I - Introduction**

### **Origin of the Concept**

One of the fundamental tenets of contemporary business law is the concept of corporate personality. It is the legal acknowledgement that a business exists independently of its directors, shareholders, and members. When a corporation is incorporated under statutory law, it becomes a separate legal entity with the ability to enter into contracts, own property, file lawsuits, and be sued in its own name.

In the past, the idea changed as trade and industrialization increased. Large sums of money were needed for early business endeavors, which were difficult to raise through individual partnerships. Investors were able to pool funds while reducing their personal liability thanks to the emergence of the corporate form. Large-scale economic activity was made easier by this legal innovation, which was essential to the development of contemporary trade.

The Companies Act, 2013, which controls company creation, regulation, and dissolution, is the primary means by which corporate personhood is acknowledged in India. A company gains a distinct legal identity and perpetual succession at incorporation, which means that it will continue to exist even if its membership changes.

### **Separate Legal Entity Doctrine**

The House of Lords' seminal ruling in *Salomon v. A. Salomon & Co. Ltd.* (1897) solidified the idea of a distinct legal organization. In this instance, Mr. Aaron Salomon established a business in which he owned the majority of the shares. Creditors tried to hold Salomon personally accountable for the company's debts when it ultimately went bankrupt<sup>1</sup>.

This argument was dismissed by the court, which decided that: A firm becomes a distinct legal entity after it is formally incorporated. Shareholders' personal responsibilities are not the company's liabilities. The liability of shareholders is limited to the amount they own.

By distinctly separating the company's legal identity from that of its members, this ruling established the groundwork for contemporary corporation law.

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

## **Research Problem: Judicial Inconsistency in Veil Lifting**

The principle of corporate personality regards a corporation as an independent legal entity, separate from its directors and shareholders. But this rule isn't always true. In cases of fraud, evasion of legal duties, or misuse of the corporate structure, courts may lift or pierce the corporate veil. This means that the people behind the company are personally responsible. This doctrine is important for stopping abuse, but it hasn't always been used the same way in court cases.

In India, courts have lifted the veil in cases of fraud, tax evasion, and breaking the law. Some examples are *Salomon v. A. Salomon & Co. Ltd.*, *Life Insurance Corporation of India v. Escorts Ltd.*, and *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.* But the Companies Act, 2013 doesn't clearly say when the veil should be lifted. This is why courts mostly rely on past cases, which leads to different interpretations. The main problem is that the courts aren't consistent and the rules aren't clear, which makes things unclear for investors, managers, and regulators. This study investigates the erratic implementation of veil lifting and the necessity for more explicit legal standards or legislative reform.

## **Research Questions**

The doctrine of lifting the corporate veil is crucial for safeguarding against the abuse of corporate identity; however, its implementation is often unclear and inconsistent. Different courts have used different methods to decide when the veil should be lifted, which has led to different interpretations in different cases and jurisdictions. This study investigates the limitations of the doctrine on the principle of separate corporate personality as established in *Salomon v. A. Salomon & Co. Ltd.*, the conditions and legal justifications for disregarding corporate personality, and the causes of inconsistent judicial reasoning. It also looks at whether the lack of clear guidance in the Companies Act, 2013 makes things less clear and whether a structured legislative framework is needed to make sure that things stay the same while also stopping corporate abuse and protecting legal business activity.

## **Objective of study**

The primary aim of this study is to rigorously analyze the doctrine of lifting the corporate veil and evaluate the impact of judicial inconsistency on its implementation in corporate jurisprudence. It aims to examine the theoretical underpinnings of corporate personality,

specifically the principle of separate legal identity as established in *Salomon v. A. Salomon & Co. Ltd.*, and to delineate the conditions under which courts may overlook this principle. The study also wants to look into important court decisions about veil lifting, see if there is a lack of clear legal guidance under the Companies Act of 2013, and find out if changes to the law are needed. It also looks at how inconsistent court decisions affect investor confidence, corporate governance, and business certainty, with the goal of suggesting a legal framework that is more clear and predictable.

### **Hypothesis**

The research is predicated on the hypothesis that judicial inconsistency in the application of the doctrine of lifting the corporate veil predominantly results from the lack of a definitive statutory framework. Because the Companies Act of 2013 doesn't have any written rules, courts mostly use their own judgment and reasoning based on the facts of each case. This leads to different and sometimes contradictory decisions. It is additionally posited that the implementation of explicit statutory provisions or organized legal directives would mitigate inconsistency, guarantee uniform application of the doctrine, and preserve equilibrium between deterring the abuse of the corporate structure and safeguarding the principle of distinct corporate personality established in *Salomon v. A. Salomon & Co. Ltd.*

### **Research Methodology**

This study employs a doctrinal and analytical research methodology to investigate the doctrine of lifting the corporate veil and the problem of judicial inconsistency in its application. The research predominantly depends on the examination of primary sources, such as statutes, judicial rulings, and pertinent sections of the Companies Act, 2013, with a specific focus on corporate liability and fraudulent behavior. Landmark cases like *Salomon v. A. Salomon & Co. Ltd.* are studied to learn how the idea of corporate personality has changed over time and what its limits are. The study employs secondary sources, including textbooks, journal articles, legal commentaries, and research papers, to present academic viewpoints. By carefully looking at how judges make decisions, the research finds inconsistencies in court decisions and looks into whether changes to the law are needed to make the rules about veil lifting clearer.

### **Scope and Limitations of the Study**

This study primarily examines the doctrine of lifting the corporate veil within the overarching

context of corporate personality in company law. It looks at how courts understand the idea of separate legal identity and when it is not followed, with a focus on the Indian legal system under the Companies Act of 2013. The analysis primarily depends on judicial rulings from the Supreme Court of India and other Indian courts, with brief references to significant common law cases like *Salomon v. A. Salomon & Co. Ltd.* for contextual clarity.

The study is confined to a doctrinal analysis grounded in statutes, judicial precedents, and academic literature, excluding empirical data, interviews, or quantitative research. Because of practical limits, it only looks at a few court cases that show how veil lifting is used inconsistently, rather than covering every possible situation, like fraud, taxes, or following the rules. The research is limited to the assessment of doctrinal issues and the necessity for statutory clarification or reform.

### **Significance of the Study**

The importance of this study is that it looks at the doctrine of lifting the corporate veil as an important way to fix problems in company law. The principle of separate corporate personality, established in *Salomon v. A. Salomon & Co. Ltd.*, underpins contemporary corporate law; however, inconsistent judicial application of veil lifting has engendered legal ambiguity. This study underscores the issue of judicial inconsistency and its effects on legal certainty, corporate governance, and investor confidence.

The research is also important for figuring out if the lack of a clear legal framework under the Companies Act, 2013 makes this situation even more unclear. The study identifies doctrinal deficiencies and the necessity for clearer legislative direction, thereby contributing to academic discourse and potentially aiding lawmakers, legal practitioners, and regulators in formulating a more coherent framework that reconciles corporate accountability with the safeguarding of legitimate business operations.

## **CHAPTER II – DOCTRINE OF SEPARATE LEGAL ENTITY**

### **Meaning and nature of corporate personality**

The doctrine of separate legal personality is one of the most important and game-changing ideas in corporate law. It means that when a company is incorporated, it gets its own legal identity that is separate from its shareholders, directors, promoters, and other stakeholders.

This independent personality lets the company act like a legal person, with rights and duties like those of a real person. For example, it can own property, enter into contracts, take on debts, and start or defend legal proceedings in its own name<sup>2</sup>. The importance of this doctrine is that it is different from older ways of organizing a business, like partnerships and sole proprietorships, where there is no clear line between the business and its members<sup>3</sup>. Corporate legal personality separates a corporation from its members, giving it separate rights, liabilities, assets, and obligations. This principle ensures legal certainty and business efficiency. Savigny's fiction theory, Gierke's realist theory, and the concession theory explain corporate personality, while modern law recognizes the corporation as a business mechanism. The doctrine guarantees perpetual succession, allowing the company to survive membership changes.

### **Doctrine's Historical Evolution and Development**

Early trading corporations and chartered companies helped establish separate legal personality in English law. As commerce expanded, general incorporation statutes were introduced in the nineteenth century to simplify company formation without a royal charter or special legislation. This spurred industrialization and business participation.

In *Salomon v A Salomon & Co Ltd*, the House of Lords established that a properly incorporated company is a legal entity separate from its members. Modern corporate law was founded on this landmark decision that a company has its own legal identity independent of shareholder motives or control. Company law is based on this principle, which has been strengthened by subsequent judicial decisions.

### **Limited Liability principle**

The idea of limited liability is a key part of having separate legal personalities and is a key part of modern business. The doctrine protects shareholders from having to pay for the company's debts and obligations beyond the amount they owe on their shares by limiting their financial liability to the amount they invested in the company<sup>4</sup>. The protection of personal assets through limited liability is crucial for encouraging investment, as it reduces the financial risk of business participation and enables investors to engage in economic activities

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<sup>2</sup> *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL)

<sup>3</sup> Gower and Davies, *Principles of Modern Company Law* (10th edn) 8.

<sup>4</sup> The Companies Act 2013, Sec 3

without facing unlimited personal liability. It facilitates capital formation, diversification of investments, and the growth of large-scale enterprises. However, the principle has also been criticized for encouraging moral hazard and misuse of the corporate form, particularly in closely held companies where ownership and control often overlap. Despite these concerns, limited liability remains a fundamental principle of corporate law due to its significant role in promoting economic growth and investment.

### **Judicial Elaboration of the Salomon Principle**

The ruling in *Salomon v A Salomon & Co Ltd* has been consistently upheld and further defined in later court cases. These cases have strengthened the idea of separate legal personality while also making its limits and scope clearer. The Privy Council in *Lee v. Lee's Air Farming Ltd.*<sup>5</sup> said that a shareholder who is also a director can be an employee of the company at the same time. This shows that the person and the company are separate legal entities. In *Macaura v Northern Assurance Co Ltd*, the House of Lords also ruled that a shareholder does not have an insurable interest in the company's property because the property belongs to the company and not to its members<sup>6</sup>. These decisions reflect the strict application of the doctrine of separate corporate personality, under which a company's assets and liabilities remain distinct from those of its shareholders. At the same time, courts have recognized that this principle should not be used to facilitate fraud or injustice, leading to the development of the doctrine of lifting or piercing the corporate veil. This judicial approach seeks to balance the protection of corporate personality with the prevention of its misuse.

### **Importance in modern corporate law**

The idea that companies are separate legal entities is very important to both modern corporate governance and the global economy. Recognizing the company as a separate legal entity makes it possible to separate ownership and control. This lets shareholders put money into the company while management and directors run the day-to-day business. This doctrine helps businesses run more efficiently, allows capital markets to grow by allowing shares to be freely traded, and lets multinational companies run subsidiaries and affiliates with their own legal identities. This kind of flexibility is necessary for managing risk, following the rules, and

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<sup>5</sup> *Lee v Lee Air Farming Ltd* [1961] AC 12 (PC)

<sup>6</sup> *Macura v Northern Assurance Co Ltd* [1925] AC 619 (HL)

running a successful global business.

### **Justification and Reasons for Protection of the Corporate Veil**

Corporate veil protection is supported by legal, economic, and policy factors. Separating the company's rights and liabilities from those of its members provides legal clarity. It boosts business growth by reducing shareholder financial risk and encouraging investment and entrepreneurship. It streamlines business operations by allowing the company to deal with third parties as a single legal entity. The doctrine of lifting or piercing the corporate veil was developed to prevent fraud and illegal conduct from being concealed. In cases like *Gilford Motor Co Ltd v. Horne* and *Jones v. Lipman*<sup>7</sup>, the courts have ignored the separate legal personality of companies that were only used to avoid legal obligations or commit fraud. This means that the people behind the companies are responsible. This method makes sure that the doctrine of separate legal personality does what it was meant to do: help legal business activity while stopping it from being abused.

### **III. LEGAL AND STATUTORY FRAMEWORK**

#### **Overview**

Corporate personality separates a company from its directors and shareholders in modern company law. It can own property, enter contracts, and sue or be sued in its own name, while shareholders have limited liability. This principle can be abused for fraud or legal evasion. In such cases, courts lift the corporate veil to prevent abuse. The Companies Act, 2013 does not codify this doctrine, but several Indian company law provisions impose personal liability. . Together, these clauses provide India's legal foundation for piercing the corporate veil. Section 7(7), which addresses the incorporation of a company by providing false or inaccurate information<sup>8</sup>, is one of the most important provisions in this regard. A company's incorporation process is crucial to its existence because it gives it legal personality. The company's very foundation is called into question if this process is tainted by fraud or misrepresentation. Section 7(7) gives the Tribunal the authority to take strict actions, such as controlling the company's management, ordering its winding up, or directing the removal of the company's

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<sup>7</sup> *Gulford Motor Co Ltd v Horne* [1933] Ch 935

<sup>8</sup>The Companies Act 2013 , sec 7(7)

name from the register. More significantly, it permits the directors, subscribers, and promoters who participated in the fraudulent incorporation to be held personally liable<sup>9</sup>.

Misstatements in a prospectus are covered by another significant set of rules, specifically Sections 26 and 34.<sup>10</sup> A prospectus is an essential document for drawing in investment, and it must give prospective investors accurate and comprehensive information. Any inaccurate or deceptive statement in a prospectus damages investor trust and could lead to large losses. Individuals who issue a deceptive prospectus may face both civil and criminal penalties under these provisions<sup>11</sup>.

### **The Legislative Purpose of Veil Lifting**

Legislation lifts the corporate veil to balance economic growth and accountability. Limited liability encourages investment and entrepreneurship, but the Companies Act, 2013 prevents corporate fraud and legal evasion. It protects creditors, investors, and employees while protecting the public interest in tax evasion and economic offenses. This approach improves transparency, corporate governance, and Indian company law to international standards.

### **Situations allowing Piercing of corporate veil**

In addition to statutory provisions, the judiciary has formulated specific principles to govern the application of the doctrine of piercing the corporate veil. These principles are not all-inclusive and vary based on the specifics of each case; however, courts typically tend to overlook the corporate entity in specific common situations. Fraud or improper behavior is one of the most common reasons for veil lifting<sup>12</sup>. Courts lift the corporate veil in cases of fraud, legal evasion, or company pretense. They may also do so if the company acts solely as a shareholder agent or trustee without independent control. Another important reason to pierce the corporate veil is tax evasion<sup>13</sup>. The corporate structure cannot be used to evade tax obligations, according to court rulings. Courts can determine the true beneficiaries of transactions and guarantee adherence to tax regulations by lifting the veil. Group company

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<sup>9</sup> The Companies Act 2013, sec7(7)(c)

<sup>10</sup>The Companies Act 2013,sec26,34

<sup>11</sup> The Companies Act 2013,sec 34

<sup>12</sup> Delhi Development Authority v Skipper construction Co (P) Ltd (1996) 4 SCC 622

<sup>13</sup> Juggilal Kamalpat v CIT AIR 1969 SC 932

cases are also covered by the doctrine. To avoid abuse of the corporate structure, courts may ignore the distinct identities of several businesses that function as a single economic entity<sup>14</sup>.

### **Lack of Guidance and Legislative Ambiguity**

Lifting the corporate veil in India is unclear and inconsistent due to the lack of a statutory framework under the Companies Act, 2013. Courts rely heavily on judicial discretion, resulting in varied fraud, fairness, and justice interpretations. The scattered statutory provisions further muddy the law, especially in group company cases. Legal certainty, regulatory compliance, and investor confidence are affected by this uncertainty, requiring a codified framework.

## **CHAPTER IV – JUDICIAL APPROACH TO VEIL LIFTING**

### **INDIAN JUDICIAL DECISIONS ON VEIL LIFTING**

Indian courts contributed to lifting the corporate veil. In the early stages, courts treated the company as a separate legal entity per *Salomon v Salomon*. Courts began to intervene as complex corporate structures and misuse of the corporate form increased. They agreed that separate legal personality should not shield fraud, illegality, or injustice. Landmark judicial decisions.

#### **(a) Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar**

In this case, the Supreme Court recognized the company's separate legal personality while also acknowledging that the corporate veil could be lifted under certain circumstances. The Court stated that the veil may be pierced if the company is used to avoid tax obligations or commit fraud. This case was a significant step toward recognizing the limitations of corporate personality.<sup>15</sup>

#### **(b) Life Insurance Corporation of India vs. Escorts Ltd**

This case is considered a leading authority on the doctrine of veil lifting in India. The Supreme Court emphasized that the corporate veil should not be lifted lightly and only when there are

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<sup>14</sup> State of UP v Renuagar Power Co (1988) 4 SCC 59

<sup>15</sup> Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar AIR 1965 SC 40

compelling reasons to do so. The Court ruled that veil lifting can be justified in cases of fraud, improper conduct, or public interest.<sup>16</sup>

Importantly, the Court stated that the doctrine should not be applied arbitrarily and must be based on sound legal principles.

(c) *Delhi Development Authority vs Skipper Construction Co. (P) Ltd*

This case is a strong example of judicial intervention to prevent the misuse of corporate personality. The Court lifted the corporate veil to reveal fraudulent activities carried out by multiple corporate entities. It ruled that individuals cannot hide behind a corporate structure to avoid liability for illegal acts.

The decision emphasized that the corporate veil can be lifted when necessary to prevent fraud or injustice.<sup>17</sup>

(d) *State of Uttar Pradesh v. Renusagar Power Company*

In this case, the Supreme Court lifted the corporate veil to determine whether two companies were effectively the same entity. The Court examined the economic reality of the companies' relationship and concluded that the separate legal personality could be waived in certain circumstances<sup>18</sup>.

## **GROUNDINGS USED BY COURTS FOR VEIL LIFTING**

There are a number of common reasons why courts have decided to lift the corporate veil, but these are not all of them. Fraud or bad behavior is the most important reason for this, where the corporate structure is used to trick or avoid legal obligations. Courts may also lift the veil under the agency or alter ego doctrine when the company is just a tool for its shareholders or directors. Other reasons include sham or façade companies, which only exist on paper; public interest, especially when it comes to regulatory or economic crimes; and tax evasion, where the company is used to avoid paying taxes. In these situations, courts ignore the separate legal personality to make sure that justice is served and people are held accountable. The underlying

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<sup>16</sup> *Life Insurance Corporation of India vs. Escorts Ltd* (1986) SC 40

<sup>17</sup> *Delhi Development Authority vs Skipper Construction Co. (P) Ltd* (1996) 4 SCC 62

<sup>18</sup> *State of Uttar Pradesh v. Renusagar Power Company* (1988) 3 SCC 230

idea is that economic reality, not fictitious corporate structures, should be the basis for taxation.<sup>19</sup>

## **COMPARATIVE JUDICIAL ANALYSIS**

The doctrine of veil lifting has evolved differently across jurisdictions, reflecting varying legal philosophies.

### **United Kingdom**

The United Kingdom takes a conservative approach to veil lifting. Courts are generally reluctant to pierce the corporate veil and will only do so in exceptional circumstances.

Key cases include:

- a) *Gilford Motor Company Ltd. v. Horne*
- b) *Jones vs. Lipman*
- c) *Prest v. Petrodel Resources Limited.*

The UK approach emphasizes legal certainty and corporate personality, with veil lifting reserved for cases involving evasion of legal obligations.

### **United States**

The United States takes a more flexible approach, emphasizing fairness and equity. Courts use the "alter ego" doctrine to consider a variety of factors, including undercapitalization, fund commingling, and failure to comply with corporate formalities.

The US approach is more pragmatic, allowing courts more leeway.

### **Indian Position**

India takes a middle path between the UK and US approaches. While respecting corporate

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<sup>19</sup> *Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613

personality, Indian courts are more likely than UK courts to lift the veil in appropriate cases. However, they proceed with greater caution than US courts.

### **Critical Analysis**

The doctrine of lifting the corporate veil embodies a conflict between two opposing principles: the necessity to uphold corporate identity and the imperative to avert injustice. The doctrine is necessary for holding people accountable, but putting it into practice can be hard.

Lack of veil lifting guidelines is a major issue. Case-by-case analysis can lead to inconsistent court decisions. Excessive intervention may undermine corporate law's predictability.

The doctrine is also very important for stopping people from abusing corporate structures and protecting the public interest. . It ensures that individuals cannot escape liability by hiding behind the corporate form. Scholars have emphasized the importance of balancing these considerations to achieve fairness and efficiency in corporate law<sup>20</sup>.

## **CHAPTER V –INCONSISTENCY IN JUDICIAL APPLICATION**

### **EXCESSIVE JUDICIAL DISCRETION**

Lifting the corporate veil balances corporate personality and injustice. While essential for accountability, its application is difficult due to the lack of clear guidelines, resulting in inconsistent case-by-case judicial decisions. Overuse of the doctrine may weaken corporate law predictability and certainty. While protecting public interest and preventing corporate abuse, it is crucial.

### **ABSENCE OF UNIFORM CRITERIA**

The doctrine's inconsistency stems from courts' broad discretion. Since veil lifting is mostly ruled by judicial interpretation rather than clear statutory guidelines, outcomes depend on the facts and the judge's assessment. The Supreme Court in *Balwant Rai Saluja v Air India Ltd* stressed the need for clear misuse evidence, but “misuse” is ambiguous. Due to legal uncertainty and

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<sup>20</sup> Easterbrook and Fischel , *The Economic Structure of Corporate Law* (Harvard University Press 199

unpredictability, excessive discretion makes it hard for businesses to plan operations and transactions.

## **DIVERGENT CASE OUTCOMES**

The lack of uniform criteria, combined with excessive judicial discretion, frequently results in divergent outcomes in similar cases. Even if the facts appear to be the same, courts can reach different conclusions.

In *Delhi Development Authority v Skipper Construction Co (P) Ltd*, the Supreme Court removed the corporate veil to prevent fraud. The Court emphasized the importance of looking beyond corporate structures and holding individuals accountable.

In *Vodafone International Holdings BV v Union of India*, the Supreme Court took a conservative approach and refused to lift the corporate veil. The Court emphasized the importance of corporate personality and determined that tax planning within the framework of the law is permissible.

These contrasting decisions highlight the inconsistency of judicial application. While one case focuses on preventing the misuse of corporate structures, the other emphasizes legal certainty and corporate personality. Such disparate outcomes cause confusion and uncertainty among businesses and legal practitioners. It is difficult to predict how courts will interpret similar facts, resulting in increased litigation and legal risks.

## **EQUITY vs LEGAL CERTAINTY DEBATE**

Equity and legal certainty debates are linked to judicial inconsistency. Equitable principles underpin veil lifting to ensure fairness and justice in individual cases. This flexibility allows courts to address complex corporate misuse, but excessive equity may undermine legal certainty, which is necessary for predictable and stable commercial transactions. For businesses, frequent deviation from legal principles in the interest of fairness can create uncertainty.

In *Prest v Petrodel Resources Ltd*, the UK Supreme Court limited veil piercing to cases of evasion of existing legal obligations, attempting to reconcile the tension. The decision

emphasized the importance of having a clear and predictable legal framework<sup>21</sup>

In contrast, the US approach focuses more on equity and fairness, allowing courts to pierce the corporate veil based on a variety of criteria. This approach provides flexibility, but may result in inconsistency.<sup>22</sup>

The Indian approach strikes a balance between these competing considerations. Courts seek justice while respecting corporate personality. However, the lack of clear guidelines frequently shifts the balance toward judicial discretion, resulting in inconsistency.

## **IMPACT ON CORPORATE JURISPRUDENCE**

The doctrine of lifting the corporate veil is inconsistently applied by courts, making it hard for companies to predict judicial outcomes and plan their affairs. It also raises business risk and encourages forum shopping, which lowers investor confidence and undermines the legal system. Despite these concerns, the doctrine is essential for accountability and public interest, highlighting the need for clearer statutory guidelines to balance flexibility and consistency. Such measures could reduce judicial inconsistency while maintaining the courts' ability to address exceptional cases<sup>23</sup>

## **CHAPTER VI – REFORMS AND RECOMMENDATIONS**

### **Need for Statutory Codification**

The lack of a clear and complete legal framework in the Companies Act, 2013, is one of the main reasons why the doctrine of lifting the corporate veil is not always applied consistently. The Act does not clearly say when courts can ignore a company's separate legal personality, even though some parts of it deal with fraud, misrepresentation, and misconduct in an indirect way<sup>24</sup>.

Because the law isn't clear, courts have a lot of leeway, which often leads to different decisions in similar cases. Because of this, there is a strong need for the doctrine to be written into law.

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<sup>21</sup> Prest v Petrodel Resources Ltd [2013] UKSC 34

<sup>22</sup> Robert B Thompson, "Piercing the Corporate Veil: An Empirical Study" (1991) 76 Cornell Law Review 1036

<sup>23</sup> Easterbrook and Fischel, The Economic Structure of Corporate Law (Harvard University Press 1991)

<sup>24</sup> Anubhav Pandey, Lifting the Corporate Veil – Provisions under the Companies Act, 2013

The law should make it clear what reasons there are for lifting the veil, such as fraud, fake incorporation, tax evasion, avoiding legal duties, and protecting the public interest.

This kind of codification would make sure that court decisions are certain, predictable, and consistent.

### **Fair Tests for Judges**

Courts should also adopt a standard test for when veil lifting is appropriate, in addition to changes to the law.

It is possible to follow a suggested two-stage test:

**Misuse Test:** This checks to see if the company structure has been used to commit fraud, break the law, or avoid legal obligations.

**Necessity Test:** Is it necessary to lift the veil to stop unfairness and protect the people who are affected?

Having a standard test would make things less subjective and help courts use the doctrine in a consistent way.

### **Rules from Higher Courts**

The Supreme Court and High Courts ought to promulgate definitive guidelines and judicial principles concerning the lifting of veils.

These rules may apply in situations like:

- i. Dishonest behavior
- ii. Avoiding taxes
- iii. Fake or sham businesses
- iv. Situations of agency or alter ego
- v. Protection of creditors

- vi. Issues of public policy and justice

### **Proposed Framework for Multi-Factor Balancing**

To decide if the corporate veil needs to be lifted, a multi-factor balancing framework should be used.

- I. Purpose behind incorporation
- II. Amount of control that shareholders or directors have
- III. Being dishonest or committing fraud
- IV. Abuse of limited liability
- V. Prejudice inflicted upon creditors or third parties
- VI. Fairness and the public good

This framework makes sure that veil lifting stays a carefully controlled exception and not something that happens all the time in court.

### **MCA Guidelines and Suggestions from Regulators**

The Companies Act, 2013 gives the Ministry of Corporate Affairs (MCA) some tools to help veil lifting by finding out who really runs the company. Section 90, which deals with Significant Beneficial Ownership (SBO), is an important part. This section says that everyone who has a lot of control over or benefits from the company must tell the company about their ownership, and the company must keep a list of these people.

The Companies (Significant Beneficial Owners) Rules, 2018 make this framework even stronger by requiring forms like BEN-1, BEN-2, and BEN-3 to be filled out. These rules help find out who really has control, even when ownership is hidden behind layers of entities. Also, Section 216 gives the Central Government the power to look into who really owns a company when control or a beneficial interest is hidden.

The MCA should put out specific interpretive circulars or guidelines that explain when courts and tribunals should use veil lifting principles. This would greatly cut down on inconsistencies

in the courts.<sup>25</sup>

## **CHAPTER VII – CONCLUSION**

### **SUMMARY OF FINDINGS**

According to the findings of this study, the doctrine of lifting the corporate veil is an important factor in preventing the misuse of the corporate form<sup>26</sup>. In exceptional circumstances, the courts are required to disregard the principle of separate legal personality, which is a fundamental principle in company law. This is done to prevent fraudulent activity, illegal activity, and improper use of limited liability structures. Furthermore, the research demonstrates that the lack of clear statutory guidelines has led to inconsistent judicial application, which has been a consequence of the situation.

#### **Solution to the Problem of the Research**

The lack of legislative guidance was the source of the research problem, which concerned the inconsistent application of the doctrine.

According to the findings of the study, this inconsistency can be resolved by the following means:

- I. Legal codification of statutes
- II. Identical judicial examinations
- III. Guidelines that are unambiguous from higher courts
- IV. A framework for managing the balance of power
- V. Guidelines established by the MCA for the regulation of beneficial ownership and control.

These reforms would make certain that the veil is only lifted in situations that are deemed

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<sup>25</sup> The Companies Act 2013, Sec 90 & 216

<sup>26</sup> Princess Preet Kaur Kalra, 'Lifting of the Corporate Veil under the Companies Act, 2013: A Critical Study' (2021) IJLLR.

appropriate.

### **Protecting the Separate Legal Personality of Each Individual**

In spite of the fact that reforms are required, the principle of separate legal personality must continue to be the general rule. The doctrine that was established in the case of *Salomon v. A. Salomon & Co. Ltd.* continues to be the foundation of company law. It is imperative that veil lifting be maintained solely as an exception in order to prevent its application. It is possible that an excessive expansion of the doctrine could undermine the confidence of businesses and defeat the purpose of incorporation.

### **Scope of Research in the Future**

More research could be done on the following topics:

- a) Comparative analysis with the legal systems of the United Kingdom and the United States
- b) The lifting of the veil in regards to multinational corporations
- c) Situations involving insolvency and bankruptcy
- d) Companies that are merely shells and digital corporate structures

Research of this nature would make a significant contribution to the ongoing development of corporate jurisprudence.