

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CORPORATE'S LEGAL PERSONALITY: A COMPARATIVE ANALYSIS

AUTHORED BY - TANISHA GARG

BBA LLB

SECTION-E

21011315

The concept of “separate legal personality” as a fundamental tenet of the Indian Company Law is conceived and developed in UK. The doctrine ensures that a company exists as separate legal entity from its shareholders and owners, giving the corporations some legal protection and shielding the owners from personal liability for the company's debts and responsibilities. Companies benefit from it by opening up to new markets, lower taxes, and benefit from advantageous business conditions.¹ It also gives the companies an advantage of perpetual succession i.e "members may come and go, but the company stays on until it's wound up by due process of law". Section 34 of the Indian Companies Act, 1956 reflects the company's distinct legal existence after incorporation. It is capable of exercising its functions without the assistance of its members². There are four popular theories surrounding the “separate legal personality”. Firstly, the fiction theory holds that there are ideal persons existing in the legal domain that have legal implications attached to them, thus, judicial personality is a result of state legislation that bestows this ability. It is the most accepted and commonly practiced theory. The second theory believes that the state is the ultimate authority and that there are certain sets of rights and obligation, not to any particular individual but are linked to goals for which corporations, temples, churches, hospitals, etc . are created. The third recognises that the corporations have the ability to be treated as individuals, since they are the benefactors of the vesting rights. Fourthly, the organism theory claims that states and corporations are being just as alive and as capable of having a will as the human beings with subject of rights.³

1 Budustour Y and Budustour L, 'The Doctrine of Separate Legal Personality and It's Significance in International Business' [2023] SSRN Electronic Journal

2 Indian Companies Act 1956 s.34.

3 Bahadur Krishna, 'Personality of Public Corporation and Lifting the Corporate Veil' [1972] Journal of the Indian Law Institute 207

Another concept that is recognised by the courts is limited liability company structure that shields its members from being personally held liable for repayment of the company's debts or liabilities⁴. It brings out the theory of corporate veil that is a privilege that shields an individual handling the company legitimately and fulfilling all the formalities, from his assets being held liable for the debts of the company or any other legal obligations. However, the shareholders can be held personally liable and their personal assets be seized if it is found that the firm has been involved in fraudulent activity or that its operations were not carried out in accordance with the rules.⁵ Therefore, by "piercing the corporate veil," the courts may ignore limited liability and hold directors or investors personally liable for the acts or debts of a company. The principle of "**lifting the corporate veil**" is regarded by the courts, as an '**exception**' to the corporate personality rule of corporate law.

Before the mid-nineteenth century, Corporation such as the unregistered Joint stock companies were governed by partnership law, and was created either by a royal charter, common law, or parliament's approval to be bestowed upon rights such as limited liability and the right to sue. The Joint Stock Companies Registration and Regulation Act 1844⁶ in the UK, identified a specific type of joint stock company that was distinct from the partnership, both legally and organizationally separate, promoting the concept of a corporate personality. Even with legislation's lenient provisions, the proportion of public firms incorporation grew slowly. By 1914, only five percent of newly registered firms were "public," compared to two to four thirds of "public" corporations in 1890. Of the 62,762 companies on the register, 48,492 were private by that time. The provided data demonstrates how the number of private company incorporations increased as a result of avoiding a public flotation and the Companies Act 1856⁷ (UK)'s removal of the majority of the 1844 disclosure requirements, which allowed private companies to maintain the advantages of privacy and secure control over their operations.⁸

The idea of a corporation's separate legal personality is referred to as a fundamental principle of company law. The law pertaining to "piercing the corporate veil" intervenes to preserve

4 Fernando J, 'What Is an LLC? Limited Liability Company Structure and Benefits Defined' (Investopedia) <<https://www.investopedia.com/terms/l/lc.asp>> accessed 31 October 2023

5 Singh Aparajita, 'An analysis on the Doctrine of lifting of corporate veil', Indian Journal of Integrated Research in law

6 Joint Stock Companies Registration and Regulation Act ,1844

7 The Companies Act ,1856

8 Singh Aparajita, 'An analysis on the Doctrine of lifting of corporate veil', Indian Journal of Integrated Research in law

equilibrium and prevent the limited liability concept from being misused to adversely affect the interests of third parties, particularly creditors. The case of *Salomon v. Salomon & Co. Ltd.*⁹ in 1897 led to the development of the “separate legal personality”, which dealt with the validity of limited liability for a single beneficially owned business.¹⁰ After a year of incorporation, Solomon's business failed and he retained 20,000 of the shares, while the other seven stockholders were all members of his own family with only one nominal share each. As a result, he was in control of the company's corporate governance and had a priority claim on its assets through his debentures. The case involved claims of certain unsecured creditors in the process of liquidation of *Salomon Ltd.*, for which he was made personally liable for the company's debt.¹¹

The House of Lords in 1897, took note to establish that *Salomon's* business was solvent at the time of incorporation, and held that the objective of a corporation is to limit liability legitimately through the procedure of incorporation, and *Salomon* merely followed the precedent set by numerous other businesses, including "industrial and banking concerns of the highest credit," and *Salomon's* actions were not in violation of the UK's Companies Act of 1862. It rejected the contentions of the unsecured creditors that the company was a mere “alias” or agent for Mr *Salomon*. “The *company is at law a different person altogether from the subscribers to the memorandum*”¹², the judgment reinforced shareholders' limited responsibility and upheld the sole proprietor's right to assert independent legal personality for their business. It demonstrated an understanding of the risk of fraud¹³, and even after the mismatch between economic entity and legal personality that may be found in many organizations due to networked and inter-firm linkages, it did not lead to the lifting of the corporate veil.

The position of law relating to the separate legal personality of a company has been deeply entrenched in the very roots of the common law tradition.¹⁴ Some other cases to determine the

⁹ *Salomon v Salomon & Co Ltd* [1897] AC 22

¹⁰ ‘The Concept of Separate Legal Entity in Light of Corporations’ (*Academike*, 30 January 2015) <<https://www.lawctopus.com/academike/concept-separate-legal-entity-light-corporations/>> accessed 31 October 2023 /

¹¹ *Ltd AA*, ‘*Salomon v Salomon - Case Summary*’ (Law Teacher, 31 October 2023) <<https://www.lawteacher.net/cases/salomon-v-salomon.php>> accessed 31 October 2023

¹² *Salomon v Salomon & Co Ltd* [1897] AC 22

¹³ *Ville SP*, ‘Judging *Salomon*: Corporate Personality and the Growth of British Capitalism in a Comparative Perspective’ (1999) 27 *Federal Law Review* 203

¹⁴ *Mohanty S and Bhandari V*, ‘The Evolution of the Separate Legal Personality Doctrine and Its Exceptions: A Comparative Analysis’ (SSRN, 26 May 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371379> accessed 31 October 2023

scope of the corporate veil is *VTB Capital PLC v. Nutritek International Corporation*¹⁵, wherein the common position was established that if corporate structure was being used as a “sham” or a “façade” to conceal wrongdoing,¹⁶ then, court can invoke the lifting of veil. The House of Lords pierced the corporate veil of *Daimler Co. Ltd. v. Continental Tyre and Rubber Co. Ltd.* to examine its character and found out that it is a foe organization, and if allowed to continue doing business, it will be utilized to generate cash for the enemies, and that will be against the public interest of the country¹⁷.

The doctrine of corporate veil was narrowed down by accommodating changes to the Salomon principle. It was determined that under certain conditions, the corporate veil may be lifted, making the directors or shareholders of the business subject to liability and requests to share in the company's debts¹⁸. The limited principle of English law, which states that an individual is subject to an existing legal duty, liability, or limitation that he purposefully avoids or whose enforcement is purposefully thwarted by interposing an organization under his control, was upheld in the case of *Prest v. Petrodel Resources Ltd*¹⁹. A court may breach the corporate veil to prevent the company or its controller from benefiting from the legal personality of the firm. However, this may only be done in limited circumstances involving the beforementioned principles. The concealment principle is applied when a business engages in a transaction in order to disguise its true character. The Evasion principle is invoked when an individual has a legal right against the company's controlling party, the company will intervene in a way that will override the individual's legal right because it is a distinct legal entity.²⁰ The concerns raised in *Trustor AB v Smallbone*²¹ validates the position that the corporate veil cannot be lifted merely if remedy for a plaintiff is to go under the narrow exception of fraud or avoiding an existing, fully crystallized contractual or legal obligation as in *Jones v Lipman*²² or *Gilford Motors* but the justice should require it to be done. Then, in order to stop deception, the courts must use equitable discretion.²³

¹⁵ *VTB Capital plc v. Nutritek International Corp.*, [2012] EWCA Civ 808

¹⁶ Dahal R, ‘Salomon v Salomon: Its Impact on Modern Laws on Corporations’ [2018] SSRN Electronic Journal

¹⁷ *Daimler Co. Ltd v. Continental Tyre & Rubber Co. Ltd.* (1916) 2 AC 307

¹⁸ Singh Aparajita, ‘An analysis on the Doctrine of lifting of corporate veil’, *Indian Journal of Integrated Research in law*

¹⁹ *Prest v. Petrodel Resources Ltd.*, [2013] UKSC 34

²⁰ Hannigan & Brenda, wedded to Salomon: Evasion, Concealment and confusion on piercing the veil of the one - man company, 50 *IRISH JURIST*, 11–39 (2013).

²¹ *Trustor AB V Smallbone*, [2001] 1 WLR 1177

²² *Jones v. Lipman* [1962] 1 WLR 832

²³ Mohanty S and Bhandari V, ‘The Evolution of the Separate Legal Personality Doctrine and Its Exceptions: A Comparative Analysis’ (*SSRN*, 26 May 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371379> accessed 31 October 2023

The issue that equity courts must address is how to apply the law in a fair and reasonable manner so as to preserve the harmony between the legal principle and the principle intended to prevent potential abuse.

Indian company law was first established by the U.K. Companies Act, 1956, and numerous changes have been incorporated since then to codify the Companies Act, 2013. A corporation is granted the attributes of an independent legal body, including perpetual succession and a common seal, under Section 9 of the Companies Act, 2013²⁴. This includes the ability to purchase, hold, and dispose of property, enter into contracts, and bring legal action under the company's name. Additionally, a number of provisions that allows for the lifting of the corporate veil have been introduced into the Companies Act, 2013. In *Bacha F. Guzdar v. CIT, Bombay*, the honourable Supreme Court of India acknowledged that a company's legal identity was separate from that of its stockholders. Since then, this position has been utilized to establish the "Corporate Veil," which separates a company's existence from its owners (individuals or entities)²⁵. "The doctrine of 'piercing the corporate veil' stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations," the court noted in *Balwant Rai Saluja v. Air India Ltd. (2006)*.²⁶

Indian courts use the theory of "piercing the corporate veil" or "lifting the corporate veil" based on two theories: The theory of alter ego states that when there exists no clear line of distinction between the company and its owners and the company simply acts as their alter ego in order to engage in illicit activity. The instrumentality theory describes the situation in which a company's directors or owners exploit the company's corporate identity for personal gain rather than the company's gain.²⁷

Although the Solomon principle continues to be upheld, India has seen a substantial developments in their legal frameworks over time. In ***Life Insurance Corporation of India v. Escorts Ltd.***, the Hon'ble Supreme Court observed that, "*it is neither necessary or desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessary depend on the relevant statutory or other provisions, the object sought to be achieved, the*

²⁴ The Companies Act, 2013

²⁵ *Bacha F. Guzdar v. CIT*, (1955) 1 SCR 876

²⁶ *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407

²⁷ Manupatra, 'Manupatra' (Articles) <<https://articles.manupatra.com/article-details/Pardey-ke-Peechey-kya-hai-A-Comprehensive-Analysis-of-the-Evolution-of-the-Corporate-Veil-Doctrine-in-India>> accessed 31 October 2023

*impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc.*²⁸ In such circumstances, the court is to lift the corporate veil, in-order to recognize the accused at fault.

Some cases in India have laid down the grounds for lifting the corporate veil such as Fraud or Improper Conduct which are also mentioned under section 339 and 35 of the Companies act, 2013. When a person conducts business on behalf of a company with the intention of defrauding creditors or for any other fraudulent purpose while the company is being wound up, Section 339 gives the National Company Law Tribunal the authority to hold that person accountable for fraud²⁹.

In Delhi Development Authority v Skipper Construction Co. Ltd, the Supreme Court held that *“the concept of corporate entity was evolved to encourage and promote trade and commerce : but not to commit illegalities or to defraud people”*³⁰, hence the court can look beyond the corporate nature of the company in cases where it is being utilized to conduct fraud. The case of **State of Rajasthan & Ors v Gotan Limestone Khanji Udyog Pvt. Ltd. & Anr** and Kapila Hingorani v. the State of Bihar, held similarly that the doctrine of lifting the veil can be invoked in situations there is a claim of a legal violation or when the public interest so demands, by using the device of a corporate entity.³¹

The case of Vodafone International Holdings B.V. v Union of India, has recognised the principle to “invoke the ‘substance over form’ principle or ‘piercing the corporate veil”, if it is able to establish that the transaction is a “sham or tax avoidant”. The facts were such that the revenue authorities declared that a capital gain tax of ₹12000 crores would be imposed on the transfer of 67% of an Indian entity's shares that resulted from the acquisition of shares of another offshore company. The company contends that since it was incorporated overseas, the revenue authorities lack the authority to seek payment of taxes. The Supreme Court ruled that foreign investors are permitted to enter India through special purpose vehicles (SPVs) and foreign holding companies that have been approved by Indian corporate and tax regulations. It emphasized the rules for tax authorities to pierce the veil in future , must focus on the purpose of the transaction by taking into

²⁸ LIC of India v. Escorts Ltd., (1986) 1 SCC 264

²⁹ The Companies Act, 2013

³⁰ Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622

³¹ State of Rajasthan & Ors v Gotan Limestone Khanji Udyog Pvt. Ltd. & Anr.

account a number of indicators such as participation in investment, generation of taxable revenues in India etc.³²

In the case of State Trading Corporation v C.T.O , being a government owned company and the Tata Engineering and Locomotive company ltd³³., a privately owned one. In both the cases ,the court refused to pierce the corporate veil and acknowledge that the share-holders were moving the court under article 32, because "it would really mean that what the corporations or the companies cannot achieve directly, can be achieved by them indirectly by relying upon the doctrine of lifting the veil." The Supreme Court declined to pierce the veil in the above cases not because doing so would have violated judicial norms, but rather because doing so would have prevented corporations from gaining fundamental rights.³⁴ In JB Exports, the Delhi High Court also observed that the doctrine should be should be applied to encourage the expansion of the industry as well as instances of fraud or avoidance of legal responsibilities³⁵. **Thus** ,the court ought to strike a balance between respecting the independent identity of the company and permitting the flexible use of piercing the corporate veil . As it was held **In the case of State of U.P. v. Renusagar Power Co**³⁶. **that** although it is not a generally accepted rule, courts should only lift the corporate veil under extraordinary circumstances in order to benefit corporations.³⁷

It can be said beyond doubt that it is not just about disregarding the corporate personality but about placing reasonable limitations on the usage of the right of independent capacity. Policies supporting the piercing of the veil must be weighed against those supporting the piercing of the corporate veil. An understanding of the English case laws reveals that the legislation is cautious when it comes to lifting of the corporate veil, treating the principles of limited liability and separate legal identity as unalterable. Indian courts on the other hand have created a more liberal interpretation for piercing the corporate veil that also takes into account the interests of all the shareholders whose interest get affected by the company's actions. ³⁸ Although the cases that

³² Vodafone International Holdings vs. Union Of India & Anr (2011)

³³ Tata Engineering Locomotive Co v. State of Bihar AIR 1965 SC 40

³⁴ Bahadur Krishna, 'Personality of Public Corporation and Lifting the Corporate Veil' [1972] Journal of the Indian Law Institute 207

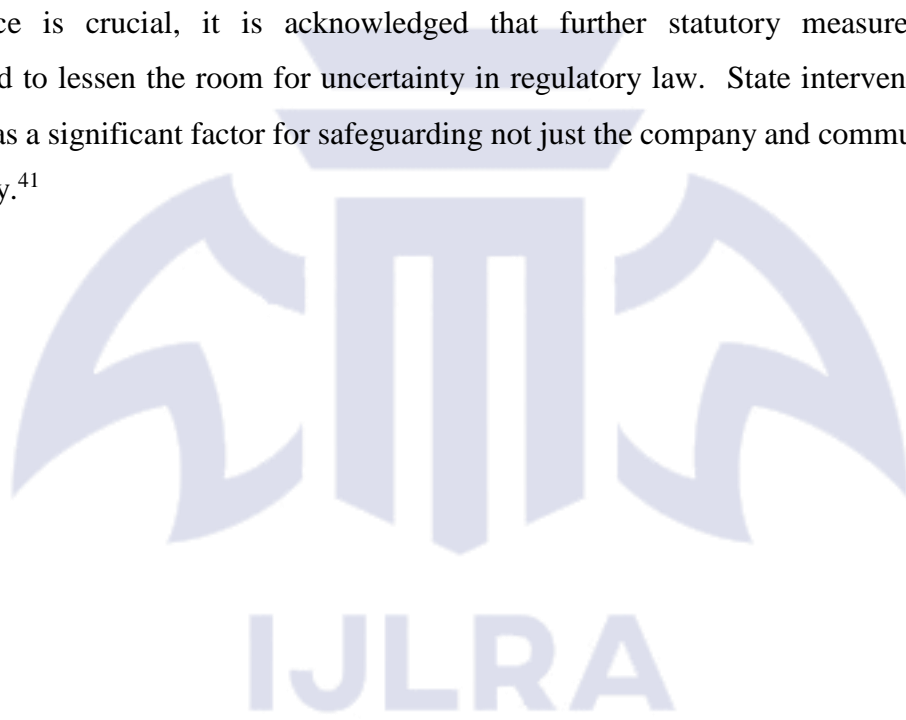
³⁵ Manupatra, 'Manupatra' (Articles) <<https://articles.manupatra.com/article-details/Pardey-ke-Peechey-kya-hai-A-Comprehensive-Analysis-of-the-Evolution-of-the-Corporate-Veil-Doctrine-in-India>> accessed 31 October 2023

³⁶ State of UP v. Renusagar Power Co., (1991) 70 Comp Cas 127 (SC)

³⁷ P.M Bakshi, *Lifting the Corporate Veil* , Journal of the Indian Law Institute, (July-September 1994), Vol. 36, No. 3, pp. 383-384

³⁸ Varottil U, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' [2015] SSRN Electronic Journal

have been referred demonstrate a great deal of variation in the nuanced features of when a corporation's separate personality might be avoided, the prevention of injustice is a valid argument in all of the cases. The court tends to rule in favour of justice whenever it is convinced that it would lead to prejudice or would particularly impair the functioning of a corporation..³⁹ For implementation of such an aspect, the Companies Act, 2013 grants the Central Government the authority to designate inspectors for the purpose of conducting investigations. Additionally, Section 212⁴⁰ empowers the Central Government to designate a Serious Fraud Investigation Office for the purpose of reporting on the company's affairs and identifying the true individuals who have a financial stake in the company's success or failure, control or significantly influence the company's policies, or have a beneficial interest in the company. Although judicial independence is crucial, it is acknowledged that further statutory measures should be implemented to lessen the room for uncertainty in regulatory law. State intervention has been recognised as a significant factor for safeguarding not just the company and community, but also the economy.⁴¹



39 Mohanty S and Bhandari V, 'The Evolution of the Separate Legal Personality Doctrine and Its Exceptions: A Comparative Analysis' (SSRN, 26 May 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371379> accessed 31 October 2023

⁴⁰ The companies Act, 2013

41 Mohanty S and Bhandari V, 'The Evolution of the Separate Legal Personality Doctrine and Its Exceptions: A Comparative Analysis' (SSRN, 26 May 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371379> accessed 31 October 2023