

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.  
All rights reserved.**

## ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

## ***PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT***

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

# **REVISITING THE CORPORATE VEIL: COMPARATIVE JUDICIAL APPROACHES IN INDIA AND THE UNITED KINGDOM**

AUTHORED BY - MAYANK SATIJA

## **INTRODUCTION**

The doctrine of separate corporate personality, codified in *Salomon v A Salomon & Co Ltd*, is the foundation block of modern company law, which insulates the shareholders against personal liability and allows the company to raise capital on an unprecedented scale.<sup>1</sup> Concurrently, this legal fiction has always been accompanied by the threat of being abused because the controllers can use the corporate form to commit fraud, to avoid the obligations that they already have, or to cover wrongful acts with the veil of incorporation.<sup>2</sup> The judicial reaction to this strain has been the extraordinary doctrine of piercing or lifting the corporate veil, which provides that, in specified circumstances, the courts will disregard separate personality, and fix liability on those who stand behind the company in narrowly defined situations.

In this article, we shall compare and contrast veil-piercing in India and the United Kingdom, jurisdictions which share a common-law heritage, but have diverged in their articulation and application of the doctrine.<sup>3</sup> Having outlined the development of corporate personality it visits the normative justifications of judicial intervention, then it looks at the leading Indian and UK authorities and finally it draws out points of convergence and divergence in modern doctrine and policy.

## **EVOLUTION OF CORPORATE PERSONALITY**

Historically, the personality of corporations was granted either by royal charter or by some particular statute, usually aimed at municipal, ecclesiastical or trading purposes.<sup>4</sup>

The general incorporation and limited liability laws of the nineteenth century changed this landscape, however, without individual legislative action the business associations acquired separate legal personality upon registration. This change was effected by the House of Lords in *Salomon* in which it was held that a duly incorporated company is a legal person separate of its members, regardless of the extent of shareholding or control.<sup>5</sup>

The unsecured creditors in *Salomon* contended that the company was only an alias or agent of Mr Salomon who owned the majority (overwhelming) proportion of shares and controlled the affairs of the company. Dismissing this argument, the House of Lords pointed out that the motives of the promoters and the proximity of control have no relevance once the statutory requirements of incorporating are fulfilled and the closely held and the so-called “one-man” company is legitimised. This argument formed the basis of later cases like *Lee v Lee Air Farming Ltd*, which conceded that a single person could be sole shareholder, director and employee of a company, which reinforced the independence of the corporate person.<sup>6</sup>

The Salomon principle was adopted by Indian company law, which initially followed the Companies Act 1956 and currently follows the Companies Act 2013, virtually unqualified.<sup>7</sup> Section 34(2) of the 1956 Act and its successor provisions in the 2013 Act provide that on registration, the company is a “body corporate” with perpetual succession and a common seal (now optional), separate from its members.<sup>8</sup> Indian courts have consistently held that a company has an independent personality that is not erased by concentrated ownership or total control over management.

Simultaneously, Indian courts, relying on the English authorities, have also realised that separate personality is not absolute, and may be overlooked in carefully circumscribed cases, especially when the corporate structure is a tool of fraud, or law avoidance.<sup>9</sup> This two-fold dedication – to the facilitative role of separate personality and to its principled restriction – frames the further evolution of veil-piercing in each of these jurisdictions.

## **MISUSE OF CORPORATE PERSONALITY AND NEED FOR JUDICIAL INTERVENTION**

The focus of the normative issue of veil-piercing is the avoidance of abuse of the corporate form.<sup>10</sup> Controllers can also include entities to avoid prevailing legal obligations, defeat valid claims of creditors, conceal illegal activity, or fragment assets and operations in a way that destabilizes regulatory and remedial regimes. In the event that the separate personality should be treated by the courts as impregnable in such a circumstance, incorporation would have become a means of injustice instead of productive enterprise.

In reaction, courts have created exceptional situations where they will pierce the corporate veil to look at the real persons who actually wield real control, the natural or juridical persons. English jurisprudence, particularly since *Prest v Petrodel Resources Ltd*, (“Prest”) has distinguished between cases of “concealment” – where the courts simply look behind the

company to identify the real parties without lifting the veil – and the cases of “evasion”, where the corporate structure is interposed to defeat already existing rights or obligations and may be disregarded.<sup>11</sup> Indian judicial decisions, especially *Life Insurance Corporation of India v Escorts Ltd* and *Balwant Rai Saluja v Air India Ltd*, (“**Balwant Rai Saluja**”) speak in those terms of preventing fraud, tax evasion or improper conduct and of protecting public interest, and also increasingly say that veil-piercing must remain a measure of last resort.<sup>12</sup>

In both jurisdictions, statutes sometimes designate the lifting of the veil, and incur personal liability on officers in instances of fraudulent trading, environmental pollution, or breach of specific regulations. These legislative intrusions confirm that separate personality is a policy instrument rather than an absolute metaphysical fact that the legislature is prepared to re-realize the distribution of risk where it is required to safeguard third parties and the public interests.

## INDIAN APPROACH AND LANDMARK CASES

One of the first generalizations of the Indian veil-piercing doctrine was stated in *Balwant Rai Saluja*, by the Supreme Court.<sup>13</sup> The Court stated that, “generally and broadly speaking”, the corporate veil can be pierced where a statute of the kind so contemplates, as a measure of prevention of fraud or improper conduct, to prevent tax evasion, or where the companies in question are so inextricably linked as to be in reality one concern. This passage, which has since been quoted frequently in subsequent cases, acknowledges a non-exhaustive list of the situations in which judicial intervention is justified and the general principle of respect to separate personality affirmed.

The Supreme Court in (“**Skipper Construction**”) extended this further by ignoring a complex corporate structure, which was being used to commit real-estate fraud against so many flat buyers.<sup>14</sup> The Court also ruled that where the corporate form is utilized as a device or a sham to avoid or evade judicial orders or to perpetuate fraud, then courts would not look at the corporate aspect but will look at the reality behind the veil.<sup>15</sup> *Skipper Construction* is thus an example of aggressive application of veil-piercing to safeguard victims of fraud and enforce the authority of the courts at the expense of weakening the authority of multiple corporate entities in a group.<sup>16</sup>

In *State of Uttar Pradesh v Renusagar Power Co*, (“**Renusagar**”) the Supreme Court treated a wholly owned generating company as being virtually one with its parent in the eyes of the taxing statute.<sup>17</sup> The Court was willing to consider the contents of the relationship – economic unity and functional integration, rather than the separate legal shells of group entities when the corporate form was used to lessen or evade statutory burdens.<sup>18</sup>

In *Vodafone International Holdings BV v Union of India*, (“**Vodafone**”) however, the Court opposed a broad and amorphous anti-avoidance doctrine in the guise of veil-piercing.<sup>19</sup> Although it was admitted that sham or colourable devices would be disregarded and that a court would look at the transaction as a whole to determine the true legal nature of the transaction in question, it was nevertheless insisted by the Court that legitimate tax planning structured through corporate entities would be respected in the absence of a specific statutory general anti-avoidance rule. *Vodafone*, therefore, portends a more cautious stance within the tax environment, and highlights the aspect of certainty and the boundaries of judicially constructed anti-avoidance principles.

The most notable modern restatement of Indian veil-piercing is the case of *Balwant Rai Saluja v Air India Ltd*, where the Supreme Court was considering the question whether or not workers in a statutory canteen, run by a subsidiary of Air India, were in law employees of Air India itself. The employees claimed that the subsidiary was a sham or camouflage to deny them the benefits and protections that come with employment in the principal establishment, and asking the Court to lift the veil.

The Supreme Court, after considering the English and Indian authorities, including *Prest* and the English High Court decision in *Ben Hashem v Ali Shayif*, (“**Ben Hashem**”) held that the corporate personality can only be lifted under special conditions, such as where the corporate personality is being used to evade taxes, perpetrate fraud, avoid the law, or defeat public interest. Relied upon to a large extent by *Ben Hashem*, the Court affirmed six principles which when combined, stress the fact that veil-piercing is not available merely because a company is closely held, undercapitalised, or because it is under complete control of a parent.<sup>20</sup> The Court, on the facts, refused to lift the veil, and held that the subsidiary was a bona fide independent entity and that the employees could not be treated like employees of Air India.

*Balwant Rai Saluja* thus represents a major restriction of judicial discretion in India such that the doctrine more closely resembles the evasion-based conception of judicial discretion in the UK whilst still retaining some references to the broader grounds of judicial discretion such as the so-called “public interest”. It has led commentators to argue that the Supreme Court is abandoning earlier, more broadly conceived, notions of single economic unit and moving towards a principled, impropriety centred test.<sup>21</sup>

## STATUTORY VEIL-LIFTING IN INDIA

The Indian statutes also, have explicit veil-lifting provisions, especially in the area of fraudulent practice and regulation in the public welfare.<sup>22</sup> As an illustration, the personal

liability of directors and officers in a case of fraudulent trading during winding-up, and the environmental and labour laws that take individual responsibility of “persons in charge” of companies in certain offences.<sup>23</sup> Recent scholarship has underscored the role played by environmental legislation and disaster-management laws, in facilitating the courts and regulators to target parent companies and key officers in the harm done under the guise of the complex corporate structures. These statutory interventions go hand in hand with, and in some cases, eliminate the need of, common-law veil-piercing, particularly where regulatory purposes are clear.

### UK APPROACH AND LANDMARK CASES

After *Salomon*, the courts of England were initially not keen to lift the veil of incorporation, but a series of cases of “abuse” soon followed.<sup>24</sup> In *Gilford Motor Co Ltd v Horne*, a former employee bound by a non-solicitation covenant set up a company through which he solicited his former employer’s customers, prompting the Court of Appeal to treat the company as a mere cloak or sham.<sup>25</sup> The court also issued an injunction against the individual and the company, ignoring separate personality to avoid a deflection of the existing covenant.

In like manner, in *Jones v Lipman*, a vendor sought to avoid specific performance of a contract to sell land by transferring the property to a company which he controlled.<sup>26</sup> The court referred to the company as “a mask which the defendant holds before his face in an attempt to avoid recognition by the eye of equity” and ordered specific performance against the individual and the company. Such cases were the predecessors of an “evasion” based concept of veil-piercing long before it was formally theorised in *Prest*.

The issues of corporate groups were brought to the fore in cases like *DHN Food Distributors Ltd v London Borough of Tower Hamlets* where the Court of Appeal considered a group of companies as a single economic unit when it comes to compensation matters.<sup>27</sup> But this practice was afterwards criticised and circumscribed by the House of Lords in *Woolfson v Strathclyde Regional Council* and decisively rejected by the Court of Appeal in *Adams v Cape Industries plc*.<sup>28</sup> (“**Adams**”)

In *Adams*, the foreign plaintiffs attempted to enforce an American judgment against the English parent, Cape and argued that its subsidiary was a mere façade and that the group should not be treated separately as its subsidiaries. The Court of Appeal denied it, saying that separate corporate personality must be respected and that veil-piercing can only be applied where separate corporate personality is sought to avoid existing legal obligations, and not simply to limit future liabilities or to be able to structure international operations. In this way, *Adams*

predetermined a highly conservative attitude toward group liability, in favor of corporate autonomy rather than the protection of creditors unless there is evidence of impropriety.

The ruling in *Prest v Petrodel Resources Ltd* as provided by the UK Supreme Court has now become the standard in veil-piercing in English law.<sup>29</sup> The case involved a matrimonial property case in which the husband had his assets largely held by companies that he controlled, leading to the question whether the court could disregard corporate personality to treat such assets as his to the purpose of ancillary relief.

Lord Sumption, who gave the main judgment, created a clear-cut between the cases of “concealment” and “evasion”.<sup>30</sup> The company in concealment cases is interposed to conceal the acts or persons of real actors; courts may look behind the veil by the application of ordinary principles of equity and statutory interpretation without necessarily “piercing” the veil. In evasion cases, the company is interposed in order to defeat or frustrate a prior legal obligation; only in exceptional cases, may the veil be pierced and the company disregarded.<sup>31</sup>

Notably, the Supreme Court eventually ruled *Prest* on the basis of trust and property law and that the companies held the properties in resulting trust on behalf of the husband and that the veil of incorporation did not have to be lifted.<sup>32</sup> The conceptual framework followed by the Court, however, sharply reduced the veil-piercing doctrine, and narrowed it to a residual category of evasion cases and rejected more general theories of the “single economic unit”, “interests of justice” or group liability which had been proposed in some earlier authorities. It has been theorized that *Prest* has brought much-needed clarity but at the cost of leaving victims of corporate abuse dependent on other doctrines such as agency, unjust enrichment, and statutory liability instead of basing their arguments on veil-piercing.

### **COMPARISON ANALYSIS: INDIA AND THE UK**

The initial similarity between the UK and India lies in the fact that both countries start with the same underlying premise: the doctrine of separate legal personality of *Salomon*, is to be respected as a general rule, and veil-piercing is an extraordinary remedy that should only be used in a case of abuse. Both jurisdictions acknowledge common core reasons to intervene – fraud, sham or façade companies, evasion of the existing legal obligations and statutory mandates which attribute liability directly to controllers or “persons in charge”.

But the language of the doctrine and the posture of the institutions of the two systems are not only different in several significant aspects, but are also fundamentally different in their approaches to religion and theology. A highly constrained, conceptually narrow doctrine that views veil-piercing as a last resort and favors resolving disputes by alternative legal avenues

such as agency, tort, trust, or statutory interpretation, has been adopted by UK courts, particularly after the cases of *Adams* and *Prest*. *Prest* requires that the legal obligation to be defeated is already pre-existing, and the interposed company is used specifically in order to defeat this legal obligation, so as to exclude broader appeals to the concept of “justice” or to the concept of a “single economic unit”.

In Indian courts, the historical tendency has been to be more permissive in invoking broad considerations of the overall interest of the population, the economic reality and fairness, as was the case in *Renusagar* and *Skipper Construction* cases.<sup>33</sup> The formulation of the Supreme Court in *Escorts*, which includes open-texted references to the fact that fraud, tax evasion, and related companies were “inextricably connected”, and *Skipper Construction* and other cases illustrate relatively aggressive veil-piercing to combat fraud and abuse in real-estate and regulatory environments.<sup>34</sup> Concurrently, *Vodafone* and *Balwant Rai Saluja* exhibit a more recent trend of convergence with the UK, emphasizing that veil-piercing is rare and that simple group structure or tight control are insufficient without showing impropriety which is linked to the use of the corporate form.<sup>35</sup>

Another source of difference is the statutory environment. Although both jurisdiction have provided statutory provisions which apply in the areas of fraudulent trading, environmental harm and regulatory offences, the application of personal liability to the conduct of business is often explicit under the Indian legislation in the areas of environmental protection, labour welfare and financial regulation. When coupled with a more activist judicial tradition, this can have functionally similar effects to those of veil-piercing even in circumstances where the courts formally apply statutory attribution of personality instead of common-law disregard of corporate personality.

Comparative scholarship has indicated that Indian law is in a transitional phase that is moving towards a more structured, UK-influenced doctrine, especially in commercial and tax law. However, because of the socio-economic background of India, including the presence of weaker regulatory power and higher vulnerability of workers and consumers, judicial and scholarly support to maintain a relatively broader ability to peer through corporate structures in cases of egregious abuse and harms of the public interest is widespread.

## CONCLUSION

Piercing the corporate veil is a judicial measure of very fine-tuning: the requirement to stimulate investment and economic activity by the doctrine of separate corporate personality of limited liability; and the need to prevent the corporate form becoming a vehicle of fraud, evasion and

injustice. The United Kingdom, by cases like *Adams* and *Prest* has taken a decisive step towards a narrow, conceptually restricted doctrine in which veil-piercing is viewed as a true exception, largely limited to avoidance of pre-existing obligations and often replaced by other legal instruments.

India, which in its historical more indulgent and ready to invoke general notions of the common good and economic reality, is now increasingly converging in a more restrained approach as has been shown by *bala* and *Vodafone*. Meanwhile, Indian courts and legislatures are still relying on statutory attribution and targeted veil-lifting to target environmental, labour and regulatory harms in a locally sensitive manner. The comparative study indicates that the future of veil-piercing in both jurisdictions is not in broad, amorphous judicial discretion but in principled, narrowly focused interventions, backed by sound statutory regimes and other alternative doctrines capable of coping with the challenges of complex corporate structures.

<sup>1</sup> *Salomon v A Salomon & Co Ltd* AC 22 (HL).

<sup>2</sup> Gayathri Gireesh, Pradnesh Kamat and Viraj Thakur, 'Examining the Doctrine of Veil-Piercing vis-à-vis Environmental Parent Company Liability in India' (CEERA, NLSIU Bengaluru, 24 October 2024).

<sup>3</sup> Aishwarya S et al, 'The Concept of Corporate Veil: A Comparative Study of India, UK and USA' (2024) (Alliance University Working Paper).

<sup>4</sup> A Comprehensive Analysis of the Evolution of the Corporate Veil Doctrine in India (Manupatra Articles, 2022).

<sup>5</sup> *Salomon* (n 1).

<sup>6</sup> *Lee v Lee's Air Farming Ltd* AC 12 (PC).

<sup>7</sup> Hari Prakash V, Kalai Selvan P and Hiran Y, 'The Corporate Veil in India: Law and Practice' (2025) Indian Journal Of Law and Legal Research.

<sup>8</sup> Companies Act 1956, s 34(2); Companies Act 2013, s 9.

<sup>9</sup> Sharmishtha Barde, 'Lifting of the Corporate Veil for Environmental Degradation' (2018) Penacclaims Journal.

<sup>10</sup> A Comparative Look at Reverse Piercing of Corporate Veil Across Jurisdictions (IJIRL, 2023).

<sup>11</sup> *Prest v Petrodel Resources Ltd* UKSC 34, 2 AC 415.

<sup>12</sup> *Life Insurance Corporation of India v Escorts Ltd* (1986) 1 SCC 264; *Balwant Rai Saluja v Air India Ltd* (2014) 9 SCC 407.

<sup>13</sup> *ibid*

<sup>14</sup> *Delhi Development Authority v Skipper Construction Co (P) Ltd* (1996) 4 SCC 622.

<sup>15</sup> *Ibid* 643–644.

<sup>16</sup> Umakanth Varotttil, 'The Indian Supreme Court on Lifting the Corporate Veil' (IndiaCorpLaw Blog, 29 September 2014).

<sup>17</sup> *State of UP v Renuagar Power Co* AIR 1988 SC 1737.

<sup>18</sup> *ibid*.

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

<sup>20</sup> *Ben Hashem v Ali Shayif* EWHC 2380 (Fam), 1 FLR 115.

<sup>21</sup> JIER, 'Corporate Veil and Group Liability in India'.

<sup>22</sup> Companies Act 2013, s 339; see also Environment (Protection) Act 1986, s 16; various labour statutes.

<sup>23</sup> Companies Act 2013, s 339.

<sup>24</sup> Ferran E, 'Overcoming the Corporate Veil Challenge: Could Enterprise Liability Help?' (2018) 67 ICLQ 1.

<sup>25</sup> *Gilford Motor Co Ltd v Horne* Ch 935 (CA). <sup>26</sup> *Jones v Lipman* 1 WLR 832 (Ch).

<sup>27</sup> *DHN Food Distributors Ltd v London Borough of Tower Hamlets* 1 WLR 852 (CA).

<sup>28</sup> *Woolfson v Strathclyde Regional Council* 1978 SC (HL) 90; *Adams v Cape Industries plc* Ch 433 (CA).

<sup>29</sup> *Prest* (n 11) –.

<sup>30</sup> *Prest* (n 11) –.

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> Renusagar (n 17); Skipper Construction (n 14).

<sup>34</sup> LIC v Escorts (n 22).

<sup>35</sup> Vodafone (n 19); Balwant Rai Saluja (n 12)

