

**PIERCING THE CORPORATE VEIL: A COMPARATIVE DOCTRINAL ANALYSIS
OF THE UK AND US JURISPRUDENCE AND ITS IMPLICATIONS FOR THE
INDIAN CORPORATE GOVERNANCE REGIME**

Advait Vijay¹

ABSTRACT

This project compares the doctrine of corporate personality and the practice of piercing the corporate veil in the United Kingdom, the United States, and India. The doctrine, established by *Salomon v. Salomon & Co. Ltd.* (1897), treats a company as a separate legal entity apart from its owners, allowing for limited liability. However, this separate legal status can be abused to commit fraud, avoid legal duties, or obstruct justice. To counter this, courts have developed effective mechanisms to pierce the corporate veil. The research examines how the idea of separate corporate personality developed, beginning with early concepts of ownership and developing through Roman law, Canon law, and English common law. The objectives are to understand the basis of separate corporate personality, compare how veil-piercing operates in the three jurisdictions, and assess the clarity and predictability of India's approach. The study finds that the UK takes a narrow approach, focusing on the evasion principle, particularly where a company is used to avoid an existing obligation. US courts adopt a more flexible, fairness-based approach through the alter ego doctrine, considering factors such as control and the mixing of company and personal finances. India follows a mixed and situation-based approach, allowing intervention in cases involving fraud, evasion of legal duties, public interest, and social justice. Although this flexibility helps courts address corporate misconduct, unclear legal boundaries can create uncertainty. Therefore, the research suggests a balanced approach that provides greater legal predictability while allowing clear exceptions based on fairness, corporate integrity, accountability, and legal certainty.

Keywords: corporate veil, corporate governance, Indian companies act, UK and US jurisprudence

¹ National University of Advanced Legal Studies, Kochi

INTRODUCTION

The doctrine of corporate personality is one of the most significant concepts in company law, forming the basis for the modern corporate framework. By treating a company as a separate legal entity, distinct from its shareholders and managers, the law provides the assurance of limited liability, which in turn encourages investment and business growth. At the same time, this legal fiction has also created opportunities for misuse, as individuals may hide behind the corporate veil to evade responsibilities, commit fraud, or exploit the advantages of incorporation in unjust ways. This tension between the sanctity of the corporate veil and the need to prevent its abuse has shaped some of the most important debates in corporate jurisprudence.

The idea of piercing or lifting the corporate veil is the judicial response to this dilemma. Courts in different jurisdictions have developed their own approaches. The United Kingdom has emphasised a doctrine of restraint, the United States has adopted a more flexible, equity-driven approach through the alter ego test, and India has developed a context-dependent approach with varying judicial decisions. This diversity highlights both the importance and the difficulty of balancing certainty in business law with fairness and accountability in practice.

This project examines the genesis and evolution of corporate personality and undertakes a comparative study of veil-piercing approaches in the United Kingdom, the United States, and India. It traces the development of corporate personality through Roman law, Canon law, and English common law, while exploring how the three jurisdictions have responded to corporate misuse. The study also considers the strengths and limitations of these approaches and examines how India, in particular, can develop a balanced path that ensures both legal certainty and equitable outcomes.

THE GENESIS AND EVOLUTION OF CORPORATE PERSONALITY

The concept of corporate personality had got its prominence early-on from ancient societies where communities found it difficult to accord individual liability to a generally collective fiction. For example, a land owned by a religious community cannot be considered as owned by every single member of the religious community instead the entire religious community is often

law to adjust the ownership of the property as per the changing membership of the religious community, if not a singular unit. Such early recognitions were not considered a developed concept of corporate personality, instead these were some of the early foundations to the doctrine of corporate personality, but it established the crucial foundation where the law could attribute a form of identity and continuity to a group, even though it lacked a physical body of its own.

The more nuanced understanding of the concept of corporate personality developed during the era of Roman law, which categorised collective legal identity in a structured manner. The roman jurists used terms like *collegia*, *universitates*, and *corpora* to describe associations that were recognised as having a kind of legal existence. These included municipalities, trade guilds, and associations formed for religious or professional purposes. Such entities were treated as capable of owning property, entering into obligations, and appearing in court through representatives. These collective agencies were able to survive even when the membership changed of these guilds. If one member died or withdrew their membership the collective still stood. Romans never considered these collective associations as real persons but instead enduring subjects of law. Thus, Roman law was able to recognise rights and duties of an abstract entity irrespective of its constituent members.²

During the medieval period Canon law gave corporate personality a theological and philosophical foundation for the benefit of the institution of the church. They recognised the church as a legal subject. The church was one of the most influential institutions at that time having vast expansive property at their disposal including monasteries, universities etc. which needed a proper legal recognition for its continuous stable existence. it was in this context that Pope Innocent IV, in the thirteenth century, developed the doctrine of *persona ficta* (fictitious person). he argued that that church, monasteries were not real persons having souls but instead legal persons by a fiction of law. This fiction granted them the ability to act in law, though only through human representatives like abbots or bishops. The justification behind this was deeply practical: without the fiction of corporate personality, property of religious houses would have to pass repeatedly to individuals, leading to instability and fragmentation. Thus, Canon law helped

in cementing the idea that a corporation is a distinct legal subject, having perpetual existence, and not dependent on the mortality of its members.³

The fiction theory that emerged from Canon law was not just a theological innovation but also a critical legal tool. By treating corporations as “imaginary persons,” jurists provided a flexible device that could be extended beyond religious bodies to universities, municipalities, and eventually trading companies. The doctrine spread through Europe, influencing both civil and common law traditions. The recognition of corporate personality was now seen as a way of reconciling two competing needs: on the one hand, acknowledging that groups of people were the real actors, and on the other, ensuring that the law could treat these groups as unified, stable, and continuous entities. This laid the groundwork for the later development of corporate personality in England, where the doctrine would take on a more commercial and economic dimension during the rise of joint-stock companies.⁴

When the doctrine reached the English common law, it got its concrete form. From the Middle Ages onwards, the crown issued charter towards municipalities, towns, boroughs, and guilds which allowed these institutions to make laws to govern themselves without depending on an external authority. The charter allowed these corporations to own property, to be sued or to sue in their name. The jurist Sir Edward Coke famously described them as “invisible, immortal, and existing only in intendment and consideration of the law. “His description of the corporation considered it an artificial creature independent from its members, having a separate personality of its own. This separation of the corporate with its constituent members came to be known as the corporate veil. At this stage, the idea of corporate veil was not theorized as such, but established the practice of considering corporations as immortal legal beings.⁵

The sanctity of corporate veil became even more prominent during the emergence of joint stock companies such as the East India company and the Hudson’s Bay Company which later became powerful actors in governance and commerce. Their ability to own land independently, wage war and enter into treaties were only possible due its separate legal personality different from its

shareholders. The shareholders were able to buy and sell their share of the company, affecting the

³Id.

⁴Isuru Dissanayaka, *Evolution of corporate personality principle within the ambit of Commercial law*, in Unknown Journal (2024).

⁵Id.

perpetual character of the company thereby not dissolving it. The corporate veil here provided stability and encouraged investment by shielding shareholders from direct liability. Without such separation, large-scale trade and colonial expansion would have been impossible. Thus, the early development of corporate personality under English law was directly tied to the sanctity of the veil where the law's respect for the corporation as a separate legal person was the condition that enabled these enterprises to flourish.

The doctrine as we understand today came to its ultimate form after the landmark case of *Salomon v. Salomon & Co. Ltd.* (1897), which established that once a company gets incorporated, it's a separate legal entity notwithstanding any liability of its shareholders; the debts of the company were considered of its own and not of its shareholders. This established separation was the first time when the doctrine was not seen as a legal fiction or for some practical convenience, but a principle commanding judicial respect. It guaranteed that incorporation produced a legal personality distinct from natural persons, and that this separation had to be honored.⁶

Presently, even though such a veil is recognised by law its sanctity at times is lifted to make the individual shareholders liable for being liable for committing fraud, evading laws, or avoiding liabilities. The recognition of this doctrine has had a huge impact in company law, regardless. both as a shield that protects shareholders and as a boundary that courts can penetrate when fairness demands

THE UK APPROACH - A DOCTRINE OF RESTRAINT: AN ANALYSIS OF THE "EVASION PRINCIPLE" The United Kingdom for the most part have recognised the sanctity of the veil which could be understood from the case such as the *Salomon v. Salomon & Co. Ltd.*(1897), which recognizes company as a separate legal entity, and its debts and obligations are its own, not those of its shareholders .However, English courts have been open to piercing, even though such a concept is

inconsistent to the already established principles, when it seemed such a privilege has been used by the individual shareholder as a mask for their own benefit, thereby reassuring the public of the commitment of the justice system; this judicial principle is called the “evasion principle.” This

⁶ Prithvijoy Das, *Corporate Personality is the Laws Greatest Invention*, (Apr. 16, 2019), available at SSRN, <https://ssrn.com/abstract=3373137>.

principle allows courts, in limited circumstances, to pierce or lift the corporate veil in order to prevent individuals from escaping legal duties by hiding behind the corporate form.⁷

The evasion principle comes into play when an individual deliberately interposes a company between themselves and an existing legal obligation, in order to avoid the performance of that obligation. Such a method halts delivery of justice in the absolute form rather than a mere concealment where court could apply ordinary legal principles such as agency, trust, or statutory interpretation to do away with any illegal activity. The evasion principle, by contrast, recognises that the veil itself is being used to block justice and therefore must be set aside; this has been established in the judgment of the UK Supreme Court in *Prest v. Petrodel Resources Ltd.* (2013), where Lord Sumption explained that veil piercing is not a doctrine of general application but is confined to cases where there is a misuse of corporate personality to frustrate enforcement of existing rights⁸.

UK courts reliance of evasion principle is based on the doctrine of restraint as per which courts only pierce the veil as a last resort rather than undermining the process of incorporation and the protection it offers. Courts prefer to resolve disputes by applying traditional doctrines such as contract law, tort law, trust law, or statutory provisions wherever possible.

The importance of this doctrine appears in cases where parties tried to escape legal responsibilities by moving assets or obligations into companies. For instance, in *Gilford Motor Co. Ltd. v. Horne* (1933), an employee with a restrictive covenant created a company to target his former employer’s customers. The Court of Appeal recognised this tactic and viewed the company as a front aimed at avoiding legal obligations. Similarly, in *Jones v. Lipman* (1962), a man who agreed to sell land attempted to sidestep the contract by transferring the property to a company he controlled. The court ruled that the company was just a mask to dodge his

responsibilities and ordered specific performance against him. These cases show the evasion

⁷ Reem Kabour, *Revisiting the Inhibited Doctrine of Piercing the Corporate Veil in English Company Law*, 9 King's Student L. Rev. 59-73 (2019).

⁸ Khushal Suryawnshi, *Corporate Personality: An Analysis under Companies Act, 1956*, 4 Research J. Humanities & Soc. Sci. 140 (2013).

principle in action: the courts lifted the veil because the companies were not real business operations but tools for deception.⁹

In conclusion The UK approach thus preserves both the integrity of corporate law and the moral authority of the legal system, ensuring that the corporate form remains a shield for legitimate enterprise but never a sword for dishonesty.

THE US APPROACH - A DOCTRINE OF EQUITY: AN ANALYSIS OF THE “ALTER EGO” TEST In the United States, courts are willing to disregard corporate separateness when fairness requires it. Courts apply equitable principles, and one important tool they use is the alter ego test. Under this test, if a company is not functioning as an independent entity but is instead being used as a disguise for the personal affairs of its owners, the court may treat the company and the individual as the same. In simple terms, if someone uses their company as a “second self” to escape responsibility, the court can pierce the corporate veil and make them personally liable.

The alter ego test focuses on whether the company in existence is being used as a separate entity or as a means of personal front. Courts look at specific signs of misuse. For example, are the company's finances mixed up with the owner's personal finances? Does the company ignore basic legal formalities, like keeping records or issuing shares? Is the company deliberately underfunded so it can never pay its debts? Or is the company being used only to shield the owner from legal duties while they keep all the benefits? If the answer to these questions is “yes,” the court may decide that the company is nothing more than the alter ego of its owner. In that case, equity steps in to prevent injustice, and the corporate veil is pierced.¹⁰

American courts usually apply a two-step analysis. First, they examine whether there is sufficient overlap between the company and its controller such that they are essentially the same entity. Second, they consider whether treating the company as a separate entity would result in fraud or unfairness. This two-step analysis helps balance the principle of limited liability, which allows

⁹ Liton Chandra Biswas, *Approach of the UK Court in Piercing Corporate Veil* (Jan. 13, 2011), <https://ssrn.com/abstract=2438217>.

¹⁰ Nis Clausen, *Use of the American Doctrine of Piercing the Corporate Veil: An Argument in Danish Business Law*, 5 Int'l Tax & Bus. Law. 44 (1987).

businesses to operate and grow, with the need to prevent individuals from abusing the corporate form to avoid their responsibilities.

There are many cases in which the alter ego test has been applied, which includes the *United States v. Milwaukee Refrigerator Transit Co.* (1905), where the court held that if the company is an instrument or tool of the shareholder, then the veil could be pierced, its separate identity could be ignored. In *Anderson v. Abbott* (1944), the U.S. Supreme Court emphasised that shareholders cannot always hide behind the corporate veil, especially when their control and misuse of the company threaten creditors or the public. State courts in the U.S. have also applied this doctrine in numerous cases, especially with small, closely held companies where owners often blur the line between personal and corporate affairs.¹¹

THE INDIAN CONUNDRUM - AN ANALYSIS OF INCONSISTENCY IN INDIAN VEIL-PIERCING JURISPRUDENCE

India's courts have always been willing to depart from the principle of separate legal personality whenever it would be necessary to protect broader societal and policy interests. UK courts, being traditionally more restrictive and cautious, limit it to specific exceptions, while US courts base it on equitable principles like the "alter ego test." Sometimes, they have held the sanctity of the corporate structure in high regard, while other times, they have disregarded it for the sake of justice and equity. The absence of uniformity has resulted in what commentators have dubbed the Indian conundrum, which implies that the outcome of veil-piercing cases is difficult to predict.

In the early years of independence, Indian courts mostly adhered to the traditional Salomon approach. Cases like *Tata Engineering and Locomotive Co. Ltd. v. The state of Bihar* (1964) argued that a company is a separate legal entity and the veil can only be lifted in exceptional cases. The court noted that limited liability and separate personality are the basic principles of company law, which should not be lightly interfered with. This stance echoed English common law and protected the sanctity of incorporation in the early years of Indian company law.

¹¹ Richard L. Fox, *Twenty-First Century Equity: Tailoring the Corporate Veil Piercing Doctrine to Limited Liability Companies in North Carolina*, 48 Wake Forest L. Rev. 883 (2013).

However, from the 1970s to the 1990s, the courts became more activist. Courts increasingly pierced the corporate veil in cases where company structures were abused to circumvent laws, defeat employee rights, or commit fraud. For example, in *Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.* (1985), the Supreme Court looked behind the veil in order to prevent the company from depriving employees of their due rights. Similarly, in *Life Insurance Corporation of India v. Escorts Ltd.* (1986) it was stated that the principle of corporate personality should not be used as an instrument of fraud. Veil-piercing was an element of the courts' activist social and economic justice agenda, which they vigorously pursued in the context of a heavily regulated economy.¹²

The economic liberalisation of the Indian economy in the 1990s also brought about a recalibration. Courts became aware that excessive veil piercing could weaken the corporate framework and negatively affect investors. In *Balwant Rai Saluja v. Air India Ltd.* (2014), the court reiterated that veil piercing should be limited to specific instances like fraud, tax evasion, and sham companies. This was a return to orthodoxy and corporate law harmony. At the same time, in matters of public interest such as environmental law, labor welfare, and consumer protection, the courts disregarded the corporate form when it was used to perpetrate frauds.

One striking feature of Indian jurisprudence is its context-sensitivity. Courts are more likely to ignore corporate structure where the rights of weaker societal groups are at stake. For instance, in the "Bichhri Pollution Case," the court pierced the corporate veil to hold promoters personally liable for environmental devastation, underscoring that limited liability cannot undermine public

health. Similarly, courts have pierced the corporate veil in tax cases to prevent tax evasion, as in *CIT v. Meenakshi Mills Ltd.* (1967). But in other cases, like *Vodafone International Holdings v. Union of India* (2012), the Supreme Court declined to pierce the corporate veil in the absence of explicit statutory guidance. This fact underscores the absence of a uniform doctrinal approach.¹³

¹² Kunal Bhardwaj & Tharun Chowdhary, *Pardey ke Peechey kya hai- A Comprehensive Analysis of the Evolution of the Corporate Veil Doctrine in India*, Manupatra (Mar. 23, 2022), <https://articles.manupatra.com/article-details/Pardey-ke-Peechey-kya-hai-A-Comprehensive-Analysis-of-the-Evolution-of-the-Corporate-Veil-Doctrine-in-India>.

¹³ Id.

A COMPARATIVE SYNTHESIS - STRENGTHS, WEAKNESSES AND POINTS OF CONVERGENCE

The UK, the US, and India approach veil-piercing differently, and the differences reflect each country's legal philosophy. The UK model is one of restraint. Courts, however, only pierce the veil in limited cases of evasion. The benefit of this approach is the clarity and predictability that it affords, which promotes business stability. Its weakness is that it is rigid and therefore might not respond adequately when the corporate form is abused in ways other than to evade legal obligations.

The US model, by contrast, rests on equity and flexibility. Through the alter ego test, courts look at whether a company is nothing more than an "alter ego" of its owners and whether respecting corporate separateness would perpetrate fraud or injustice. This approach is equitable because it emphasises the essence of the contract rather than its form. Yet, due to its openness, courts use the test differently, which creates a lack of certainty for businesses and investors who cannot easily predict when the corporate veil will be pierced.

The Indian model is somewhere in the middle but inconsistent. Sometimes Indian courts stick to the orthodox Salomon approach and sometimes they use veil piercing widely (e.g. for protection of employees' rights, prevention of tax evasion or environmental damage). The greatest strength of the test is its responsiveness which enables courts to adjust to India's socio-economic realities. However, because there is no uniform standard for when courts should use the doctrine, its results

are unpredictable. Thus, businesses cannot be certain of the scope of their limited liability.

However, three legal systems agree on one thing - the corporate veil is a fundamental principle of company law but is by no means absolute. Each legal system has developed its own approach to ensure that the veil can be lifted in cases where failing to do so would lead to grave injustice. The UK is about certainty, the US is about fairness, and India attempts to balance social policy and corporate law.

CONCLUSION AND RECOMMENDATIONS - STRIKING A BALANCE FOR INDIA

As far as veil lifting is concerned, India lies somewhere between the traditional prudence of the UK courts and the equitable boldness of their US counterparts. Indian courts have oscillated

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between the strict application of the Salomon autonomy doctrine and legal activism to protect labour, tax, environmental and consumer rights. This duality has led to what is known as the Indian conundrum. case law that is based on context but lacks consistency and predictability in corporate regulation. While this flexibility has enabled courts to advance social justice in key cases, the fact that incremental judicial decisions cannot be harmonised into a coherent doctrinal system undermines investor confidence and legal certainty, which are critical for a growing economy.

A balanced path for India would focus on maximising the benefits of both approaches while minimising their disadvantages, particularly the lack of consistency and predictability in the application of veil-piercing principles. From the UK, which focuses on predictability, India can borrow the pointers by explicitly setting out in statutes or judicial pronouncements the situations when the courts can pierce the veil such as fraud, sham entities and deliberate evasion of law. From the US, it can borrow the equity-based principle that courts should not be impotent to stop injustice and therefore need tools to adapt to new types of corporate abuse.

Accordingly, three recommendations are proposed. First, either the Supreme Court or the legislature should establish a clear and uniform veil-piercing framework to guide the courts on when the doctrine should apply. This would provide consistency and guidance to the lower

courts. Second, India could adopt a tiered approach where veil-piercing is more accessible in cases impacting public welfare (e.g., labour rights, environmental and consumer protection) than in purely commercial cases. Third, courts must adopt a structured and balanced reasoning approach in order to ensure that each case decided under this doctrine will contribute to the doctrine's development rather than undermine it due to inconsistent application.

In conclusion, the path toward a harmonious India lies in balancing certainty and equity. By setting a standard while leaving room for judicial discretion when necessary, India can bolster corporate governance and social responsibility. The corporate veil is important but should not be used as an excuse to commit frauds or evade responsibility.