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## TWO NATIONS, ONE VEIL: A COMPARATIVE EVOLUTION OF THE CORPORATE VEIL DOCTRINE IN INDIA AND THE UK

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### INTRODUCTION: THE VEIL AS SHIELD AND SWORD

The corporate structure, anchored in the doctrines of separate legal personality and limited liability, is foundational to modern corporate law. By treating a company as a distinct legal entity, the law shields shareholders from personal liability, thereby encouraging entrepreneurship and investment. Yet, this legal separation is not without its caveats. When used as a façade to commit fraud, evade taxes, or circumvent the law, courts in both India and the United Kingdom have occasionally lifted or pierced the corporate veil to hold the real wrongdoers accountable. While both countries draw from a shared common law tradition, their paths in the development and application of the corporate veil doctrine reveal both important similarities as well as significant distinctions.

### THE UK FOUNDATION: FROM SALOMON TO PREST

The doctrine's roots can be traced back to the UK's landmark decision in *Salomon v. Salomon & Co. Ltd.* (1897)<sup>1</sup>, where the House of Lords confirmed that a duly incorporated company enjoys a legal personality distinct from its shareholders. This decision solidified the concept of limited liability, ensuring that business risks did not translate into personal ruin for shareholders. However, the courts soon recognized that this corporate shield could be misused. In *Gilford Motor Co. v. Horne* (1933)<sup>2</sup>, the veil was pierced when a company was used to bypass a non-compete

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<sup>1</sup> *Salomon v. Salomon & Co. Ltd.*, [1896] UKHL 1.

<sup>2</sup> *Gilford Motor Co. Ltd. v. Horne*, [1933] Ch 935.

agreement. Similarly, in *Jones v. Lipman (1962)*<sup>3</sup>, a company was found to be a sham created to dodge contractual obligations.

The UK's jurisprudence matured significantly with *Adams v. Cape Industries plc (1990)*<sup>4</sup>, which outlined three limited grounds for veil piercing: agency, façade, and statutory exceptions. A landmark clarification came with *Prest v. Petrodel Resources Ltd. (2013)*<sup>5</sup>, where Lord Sumption introduced a pivotal distinction between the “evasion” and “concealment” principles—providing a more refined and principled framework for judicial discretion in such matters.

### **INDIA'S PRAGMATIC FLEXIBILITY AND JUDICIAL INNOVATION**

India, adopting the corporate personality doctrine from English common law, has developed its own jurisprudence with contextual nuances. Early recognition came in *In Re: The Kondoli Tea Co. Ltd. (1886)*<sup>6</sup>, where the Calcutta High Court upheld the separate legal identity of a company. In *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1964)*<sup>7</sup>, the Supreme Court acknowledged the necessity of piercing the veil in cases of misuse. The doctrine took a broader turn in *LIC of India v. Escorts Ltd. (1986)*<sup>8</sup>, where the Court emphasized economic realities over legal formality.

A significant example came in *State of U.P. v. Renusagar Power Co. (1988)*<sup>9</sup>, where the Court treated a parent and subsidiary company as a single economic unit for taxation purposes. These rulings reveal an Indian judicial philosophy that prioritizes public interest and equitable outcomes over rigid adherence to corporate form.

### **LEGISLATIVE REINFORCEMENT IN INDIAN LAW**

Unlike the UK, where veil-piercing remains largely a judicial remedy, India supplements common law principles with explicit statutory support. The Companies Act, 2013<sup>10</sup> includes several

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<sup>3</sup> *Jones v. Lipman*, [1962] 1 W.L.R. 832.

<sup>4</sup> *Adams v. Cape Industries plc*, [1990] Ch 433.

<sup>5</sup> *Prest v. Petrodel Resources Ltd. & Others*, [2013] UKSC 34.

<sup>6</sup> *In Re: The Kondoli Tea Co. Ltd. v. Unknown*, (1886) ILR 13CAL43.

<sup>7</sup> *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors.*, 1965 AIR 40.

<sup>8</sup> *Life Insurance Corporation of India v. Escorts Ltd. & Ors.*, 1986 AIR 1370.

<sup>9</sup> *State of U.P. & Ors. v. Renusagar Power Co. & Ors.*, 1988 AIR 1737.

<sup>10</sup> The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

provisions — such as Sections 7(7)<sup>11</sup>, 251<sup>12</sup>, and 339<sup>13</sup> — which allow tribunals to impose personal liability in cases involving fraud, misconduct, or wrongful incorporation.

Additionally, the Income Tax Act<sup>14</sup>, FEMA<sup>15</sup>, and SEBI<sup>16</sup> Act provide mechanisms for regulators to disregard corporate identity in cases of tax evasion, foreign exchange violations, and securities fraud. For instance, Section 179 of the Income Tax Act<sup>17</sup> makes directors personally liable for unpaid taxes if they are found negligent. Similarly, under FEMA<sup>18</sup> and SEBI<sup>19</sup> regulations, authorities can act against individuals operating behind shell companies, ensuring that sophisticated corporate layering does not become a tool for evading legal accountability.

### **DOCTRINAL UNCERTAINTY AND CRITICISM**

Despite its value, the veil-piercing doctrine has attracted criticism for being inconsistently and, at times, arbitrarily applied. This unpredictability particularly affects smaller businesses that may be unfairly burdened by judicial assumptions regarding their intent. Courts may sometimes penalize procedural irregularities rather than substantive misconduct, undermining the doctrine's credibility.

Further, without codified criteria for veil lifting, courts risk overstepping and blurring the foundational distinction between a company and its members. Critics argue that alternative legal mechanisms — such as fraudulent transfer laws or tort-based remedies — might offer more targeted and objective solutions without compromising the predictability of corporate law.

### **A CALL FOR BALANCE AND CLARITY**

Both India and the UK would benefit from adopting a more structured and principled approach to veil piercing. This includes introducing objective statutory tests based on factors such as fraudulent intent, proportionality of harm, and presence of sham transactions. Enhancing judicial training and ensuring consistent appellate oversight can also reduce the risk of arbitrary application.

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<sup>11</sup> The Companies Act, 2013, § 7(7), No. 18, Acts of Parliament, 2013 (India).

<sup>12</sup> The Companies Act, 2013, § 251, No. 18, Acts of Parliament, 2013 (India).

<sup>13</sup> The Companies Act, 2013, § 339, No. 18, Acts of Parliament, 2013 (India).

<sup>14</sup> The Income-tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

<sup>15</sup> The Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).

<sup>16</sup> The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

<sup>17</sup> The Income-tax Act, 1961, § 179, No. 43, Acts of Parliament, 1961 (India).

<sup>18</sup> The Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).

<sup>19</sup> The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

Most importantly, courts must differentiate between genuine entrepreneurial failures and deliberate abuses of the corporate form. Doing so would preserve the benefits of limited liability while upholding accountability in exceptional cases.

### **CONCLUSION: A SHARED VISION FOR CORPORATE ACCOUNTABILITY**

The evolution of the corporate veil doctrine in India and the UK reflects a shared legal and moral concern: to balance the sanctity of legal personality with the imperative of accountability. While the UK emphasizes doctrinal clarity and restraint, India takes a pragmatic and statutory-augmented route. Despite these differences, both jurisdictions affirm that incorporation must not serve as a refuge for fraud. As globalization deepens corporate complexity, refining the veil-piercing doctrine remains vital. A calibrated approach, rooted in fairness, clarity, and economic realism, will help foster ethical corporate governance while supporting innovation and enterprise.