

Unveiling the Corporate Veil Piercing: Exploring the Boundaries of Limited Liability

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Introduction:

Piercing the corporate veil is a legal concept wherein courts do not consider the protection of limited liability and assign personal liability to a corporation's shareholders or directors for the company's actions or financial obligations. This separation is crucial because it allows businesses to operate with limited liability, protecting shareholders from personal liabilities. However, there are certain circumstances in which this protective corporate veil can be pierced, potentially making shareholders personally accountable. Courts usually demand significant misconduct on the part of corporations to warrant the piercing of the corporate veil.

The company's corporate personality may be used to commit fraud, etc. Therefore, it becomes essential to remove the facade of a corporate character to identify the guilty. Usually, courts do not interfere and adopt the doctrine of separate identity, except when the interference is in the general interest. It may either be under statutory provisions or under judicial interpretations.

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The Doctrine of Lifting the Corporate Veil:

After its incorporation, the company attains a distinct legal personality, and the fundamental essence of this concept is that no one should undermine this separate legal identity unless there are valid reasons to do so. This principle implies that this identity can be interfered with only under rare circumstances.

Lifting the corporate veil is, in effect, disregarding the company's legal personality and allowing anyone to analyse the internal workings of the business. In different circumstances, this is done to find important information, especially to understand illegal activities. There is no mention of or procedure for lifting the corporate veil in the Act.

No petitioner has the right to claim for the lifting of the corporate veil, as it is only done at the discretion of the Court. This is because the veil is an essential element of the Company, comparable to the right to privacy. Since the Company is non-living, the corporate veil gives it a personality. Hence, no person can be given the right to deprive the Company of its personality, and courts only do this to ensure that no illegal or unlawful activities are undertaken in the garb of the corporate personality.

The case of *Solomon v. Solomon*^[1] is a landmark judgment that acknowledged the company's separate legal identity. In this case, the House of Lords held that Solomon was different from Solomon and Company and that the company had its own independent legal identity as an entity. Hence, the court upheld that upon incorporation, the company was covered by the corporate veil. Consecutively, the concept of the corporate veil was developed from the corporate identity principle.

Scope and extent of corporate veil piercing: A legal exploration:

Lifting a corporate veil is not a legal remedy; it is a tool used by the judiciary to know the unknown facts, reveal the relevant information, and trace the information that is not traceable. It, therefore, becomes crucial to check whether the information which has been demanded is accessible or not.

In certain circumstances, for example, when corporate fraud occurs, the regulators intervene and conduct the investigation, which reflects lifting the corporate veil. Hence, this doctrine can be manifested in two

circumstances: one is during an investigation process by the regulator, and the other is during prosecution in a court where the court can use this doctrine at its discretion to unravel the truth.

The lifting of the corporate veil principle allowed for the disregarding of the corporate identity under certain 'exceptional circumstances via Statutory provisions and Judicial intervention:

Statutory Provisions:

The Companies Act includes provisions for imposing fines and penalties in cases of director and shareholder misconduct, necessitating the piercing of the corporate veil to determine individual liability for such actions. These statutory provisions include Section 34 of the Companies Act 2013[\[2\]](#), which provides for criminal liability, and Section 35 provides for civil liability.

Judicial Intervention:

Till 1968, the Supreme Court believed that this doctrine should not be used in the judicial process. However, it was then changed in **State of UP v Renusagar**[\[3\]](#), where the court discarded the reluctance to use this doctrine considering the new horizon of corporate entities in today's Indian corporate world. In the case of State of UP v Renusagar, The Electricity Act in UP allowed certain exemptions for companies that use electricity produced independently. Hindalco, a subsidiary of Renusagar, claimed this exemption; however, the court held that they could lift the corporate veil to investigate the relationship between the companies to decide.

The case of **Iridium India Telecom Ltd v Motorola Incorporated &Ors**[\[4\]](#), also known as the Motorola Case, expands on the scope of this doctrine. The court ruled that the Doctrine should not be confined solely to the wrongful actions of a company's directors. Instead, it could also encompass acts committed by the company's promoters, individuals with substantial influence over its crucial operations, concealing their activities behind the corporate veil, and playing a pivotal role within the organisation.

In **Life Insurance Corporation of India v Escorts Ltd. & Ors**[\[5\]](#), the honourable Supreme Court held that the corporate veil doctrine can only be applied to the extent of the information needed for the case, i.e., corporate personality cannot be blatantly disregarded.

When can the doctrine be disregarded?

The Doctrine must not be applied arbitrarily, as a company fundamentally remains an autonomous legal entity separate from its shareholders. The court must strike a delicate balance between the adaptable concept of piercing the corporate veil and the fundamental principle that a corporation possesses its distinct legal identity.

In the **A.P. State Road Transport Corporation v The Income-Tax Officer**[\[6\]](#) case, the Supreme Court highlighted that the concept of a corporation having its distinct legal identity is so firmly established in our legal framework

that it requires minimal elaboration or extensive discussion.

Hence, the scope and extent of piercing a corporate veil is highly situation-specific, i.e., there needs to be a straight jacket formula to ascertain its exact and appropriate application. However, it is crucial for the courts to exercise caution and not resort to this course of action indiscriminately.

Conclusion:

Courts employ this doctrine when individuals with significant authority within a company attempt to exploit the corporate structure as a disguise to avoid personal liability. In such instances, the courts lift the corporate veil and hold accountable those individuals who genuinely control the company to rectify any wrongdoing they have committed.

The concept of piercing the corporate veil is a well-established exception to the idea of company's separate legal identity. As stated by the Supreme Court in the **Balwant Rai Saluja v. Air India**^[7] case, there was no requirement to pierce the corporate veil because the employment status of hotel services employees could be determined by examining the Memorandum of Association (MOA) and Articles of Association (AOA) of both companies.

In this instance, the court applied the principle established in the Solomon case, emphasising that the corporate veil should only be lifted when the company is being used as a shield by its owners to evade liability and *"the intent of piercing the veil must be to remedy a wrong done by the persons controlling the company."*

Therefore, while Indian courts have discussed various factors for applying the doctrine of piercing the corporate veil, these factors are not rigid and rely on the specific details of each case. It is crucial to note that this doctrine is only applied in extraordinary situations, as it disregards the separate legal identity of a company.

^[1] Salomon v. A Salomon & Co Ltd, (1896) UKHL 1, (1897) AC 22.

^[2] <https://www.mca.gov.in/content/dam/mca/pdf/CompaniesAct2013.pdf>

^[3] State of UP v. Renusagar, (1988) AIR 1737, 1988 SCR Supl. (1) 627.

^[4] <https://main.sci.gov.in/judgment/judis/37034.pdf>

^[5] Life Insurance Corporation of India v. Escorts Ltd. & Ors, (1986) AIR 1370, 1985 SCR Supl. (3) 909.

^[6] A.P. State Road Transport Corporation v. The Income-Tax Officer, (1964) AIR 1486, 1964 SCR (7) 17.

^[7] Balwant Rai Saluja v. Air India, (2014) LLR 1009.