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Should the Doctrine of Separate Legal Personality be Re-examined to prevent Corporate Fraud?

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ABSTRACT :

The notion of a separate legal entity constitutes the fundamental principles of modern corporate jurisprudence. This principle is retrieved from *Salomon vs Salomon & Co. Ltd* [1897], according to which this doctrine acknowledges that the company is an independent juristic person who is separate from the shareholders and directors. This conceptual innovation not only advanced the concentration of capital and the encouragement of industrial enterprise but also reshaped the international economic regulatory system. There has been a lot of evolution in the company law in India, as it started with the colonial enactment of 1844, and it has now reached its conclusion with the comprehensive reforms of 2013. Although the separate legal personality of the company provides various concepts such as limited liability, predictability and commercial flexibility but this is not an absolute principle. As per their jurisdictions, the courts have brought in doctrines like piercing or lifting of the corporate veil so that cases like fraud and tax evasion can be avoided. It is developed gradually through cases such as *Lee vs Lee's Air Farming Ltd*, *Gilford Motor Co Ltd vs. Horne*, *State of UP v. Renu Sagar Power Co*, *LIC of India v. Escorts Ltd*, *Prest v. Petrodel Resources*, *Vodafone International Holding v. Union of India*, *Kandoli Tea Company case* etc. Throughout this paper, we will do a detailed study of this doctrine and analyse its historical background, theoretical foundations, and judicial interpretation and understand it from a multidimensional viewpoint from both Indian and International context. It also examines the PIL and corporate ethics, socio-legal impact of corporate personhood, and its impact on small scale businesses.

Keywords: - Separate Legal Entity, Lifting the Corporate Veil, Corporate Governance, Corporate Personhood, Corporate Fraud.

Introduction: -

The most important rule of corporate law is that a corporation has its own existence once it is registered. As per law, the company turns into a separate legal entity which states that the company and the shareholders are separate and independent of each other even if a stockholder owns majority of company's shares. It completely changed the manner of business in which it is carried out, as it authorizes people to come together and start companies without any anticipation of losing their private assets and property in case of company debt. In general terms, if the company faces any loss, then in that case shareholders are liable to the extent of their investment in the company, and their private property remains safe. This principle has been acknowledged in the instance *Salomon v. Salomon*, in which it was ruled that the company and its members are different, and company is a separate legal personality and Salomon had priority in receiving his amount of investment in the company since he was a secure creditor and not the owner of the company. This judgement had laid the foundation for modern company jurisprudence in India. This principle is not absolute, but it has many limitations. Many fraudulent people try to hide their illegal activities, tax evasion from the government by using this doctrine. Dishonest people try to deceive creditors. Government introduced the idea of 'lifting' or 'piercing' the corporate veil to stop such fraudulent activities and even many cases had come to light in which it was clearly shown that how court considered the company and its shareholders as same person and sees into reality. Even these days, this doctrine raises significant questions. Should companies have the right to enjoy the same privileges as human beings? What should be manners to maintain a balance between business growth and to protect the society from corporate misuse? These types of stimulating questions are necessary to raise in India because of presence of different types of companies, ranging from small family companies to huge multinational firms. This paper seeks to elaborate on the deep study of this doctrine, theories behind it, judicial precedents, international perspective, socio-economic impact and the major significant eventualities that lead to its formation.

Significance of the study

- This research paper analyzes the idea of independent legal entities in a unique, thorough, and systematic manner, linking its historical origins to modern issues.
- It analyses judicial decisions, socio-legal and socioeconomics matters that can be utilized by students, research scholars and advocates.
- This paper seeks to understand readers a dimension that are still unexplored in Indian context, thereby providing suggestions that can be adopted to apply in future legal reforms and policy making.
- This paper has importance beyond law, since it led a person to draw a connection along ethics, social justice and to make a cross disciplinary link.

- It examines the method to prevent corporate fraud and why it is essential to re-examine the separate legal entity.
- It analyzes the idea of lifting the corporate veil with its grounds in detail and comprehensive terms.
- The language of this research paper is unambiguous and makes it attainable for readers that belong to different fields or backgrounds.

Limitation

- This research paper is committed to primary and secondary sources entirely.
- Its scope is very broad, which restricts it from being analyzed in depth in numerous areas, due to which it is impossible to include all the relevant case laws.
- The cross-disciplinary insights are only indicative and not comprehensive and any rapid changes taking place in corporate law may interfere with the long-term relevance, which may affect some relevance of the conclusion.
- This study is confined to the content of English language only, due to which the regional perspective may be left out.

Research Methodology

In this paper, we have adopted a theoretical approach whose focus is library based and digital sources of law. In this methodology both primary and secondary sources have been used that ensure depth, academic authenticity and transparency. Through this paper we will deeply examine constitutional provisions, case laws, and international treaties and conventions which would be extracted from our primary sources and on the other hand we will also capitalize on secondary sources like authoritative textbook of international law by H.O Agarwal, S.Chand and P.P.S. Gogna's company law, scholarly interpretation, academic commentaries, peer-reviewed law journals and reports, online legal database such as HeinOnline and JSTOR. Law commission of India reports and official government publications will be examined in a comprehensive manner to draw policy-related insights. This research employs an analytical and comparative framework that systematically examines philosophical material with contemporary academic opinions, thereby enabling a balanced understanding of both theoretical and practical aspects. For conducting this research, we used reputable websites such as lawcommissionofindia.nic.in, scconline.com, and manupatra.com so that accuracy and reliability could be maintained. Through this structured methodology, this research ensures that it fully adheres to original, professional integrity and academic standards and provides comprehensive exploration of the topic.

Historical Development of the Doctrine: -

ENGLISH COMPANIES ACT, 1844: -

This was the first modern act which gave statutory recognition to companies through registration. Before this act this work was very difficult as formation of any company could only be done through a royal charter or through a special act of parliament. It allowed companies to acquire separate legal identities, but the act did not confirm the concept of limited liability.¹ This was the first act in which the concept of separate legal entity came to the force.

JOINT STOCK COMPANIES ACT, 1850: -

This act extended the scope of registered companies and liberalized the process of forming a company. This facilitated the corporate sector recognizing the corporate structure without any parliamentary intervention. However, the concept of limited liability was not added to this act.²

JOINT STOCK COMPANIES ACT, 1857: -

The concept of limited liability was introduced in this act, according to which shareholders would not be personally liable in case of the company's debt. This principle encouraged the public to invest, due to which industrial capitalism accelerated.³

JOINT STOCK COMPANIES ACT, 1860: -

This act amended the earlier companies' law and further strengthened the concept of limited liability, due to which clarification was given in the procedure of entity formation and registration. This act provided predictable stability to the environment of joint stock companies and empowered investors. Most significantly, banking companies were introduced in it.

INDIAN COMPANIES ACT, 1913: -

This act was enacted during the colonial period and was based on the British [Consolidation] act. This act brought in provisions like incorporation, management and winding up. This act focused more on protection of shareholders and regular control over companies. This act laid the foundation for modern company jurisprudence, and it was in force even after India's independence.

¹ Ministry of Corporate Affairs, Government of India <https://www.mca.gov.in> .

² Avtar Singh, Introduction to Company Law (Eastern Book Company).

³ L C B Gower, Principles of Modern Company Law (Sweet & Maxwell)

COMPANIES ACT, 1956: -

This act was the earliest such company-based statute which was implemented after the independence of India. This act was brought to the recommendations of BHABHA COMMITTEE.⁴ It had 658 sections and 15 schedules. It consisted of twenty-five amendments. This was a very lengthy statute which comprehensively covered the formation of a company. It strengthened the principle of limited liability and corporate personality. This act can be considered as the backbone of company law as it covers important aspects like minority rights, director's rights, share capital.

THE COMPANIES ACT, 2013

This act is very significant in the corporate sector. This act replaced the 1956 act as it had become outdated due to many reasons like economic liberalization, corporate scams and a lot of changes and development took place in India due to which it was not aligning with the global standards. The main aim of the 2013 act was to achieve transparency, accountability, and simplification. This act reduced complexity and modernized the corporate law so that it could compete worldwide. J.J. The Iranian Committee recommended many significant reforms which laid the foundation of the Companies Act, 2013.⁵ It has four hundred and seventy sections, twenty-nine chapters and seven schedules. The various key features of company act, 2013 has been given below: -

- Formation of various kinds of companies such as one person company, small company, Dormant company etc.
 - Application of Stricker norms for related party transactions and enhancement in the responsibility of board of directors.
 - Audit committees, nomination and remuneration committee, stakeholders' relationship committees were formed.
 - Mandating corporate social responsibility.⁶
 - Implementation of strict liabilities on auditors in case of fraud, negligence, and misrepresentation.
 - Introduced class action suits that empower shareholders to take collective action against fraudulent acts.
 - E-filing, fast track merger and digital signatures made the incorporation process simple and rapid.
 - National company law tribunal and the national company appellate tribunal were established to manage the disputes of the company and essentially it has replaced the company law board and high court.
 - A distinctive chapter named 'offences and Penalties has been introduced that makes it stricter.
 - Various doctrines have been incorporated such as: -
1. Doctrine of separate legal entity.
 2. Doctrine of limited liability.
 3. Doctrine of ultra vires.
 4. Doctrine of indoor management.
 5. Doctrine of lifting corporate veil etc.

1. Doctrine of Corporate Personality: Explanation and Origin

The doctrine of corporate personality, which is also known as separate legal entity states that after incorporation of a company, the company acquires its own legal status which is separate from that of its members, directors and shareholders. This distinction is more than just theoretical, which means that a company has its own assets and liabilities. The company can enter contracts on its own and can also file a case against the company, and someone else can also file a case against the company. Shareholders enjoy the concept of limited liability, which ensures that their personal assets will be protected even if the company goes completely into debt. The company benefits from the principle of perpetual succession according to which the company will continue in existence even if a member dies, in that case it will not dissolve; it can only be dissolved by the process of law. This critical judicial milestone has come from a landmark judgement in *Salmon v. Salmon*, in which the House of Lords had held that when a company is completely formed and incorporating all the rules and regulations, it gets its own separate identity and that company is considered separate from its shareholders and they cannot be held personally liable for the debts of the company.⁷ Through this doctrine, corporate law underpins economic growth which allows entities to attract investment with limited exposure to personal risk. Due to this doctrine a lot of corporate fraud started taking place due to which the court introduced an exception that is piercing the corporate veil so that the doctrine of separate legal personalities could be prevented from misuse.

2. Lifting of corporate veil: -An Exception

This is a significant term which means to ignore the SLE and look at the realities. There are certain exceptional circumstances in which the court considers the company and its members or shareholders as the same entity, but there should be a motive of deception. There are many circumstances in which the court applies this exception, like if a company is of enemy character, or a company is owned or managed by an enemy country, evasion of tax, the company wants to protect its own interest, the company wants to avoid illegal obligations imposed through some welfare legislation, the company is involved in some improper conduct or fraud. wants to avoid contractual obligations, the company is acting as if it was a subsidiary of another company, the conduct of business is fraudulent, there is misstatement in the prospectus or there is failure to repay the application money etc.

⁴ Bhabha Committee Report (1950).

⁵ J.J. Irani committee report 2005.

⁶ Section 135, Companies Act, 2013

⁷ LawTeacher.net, 'Doctrine of Separate Legal Personality' (LawTeacher, 4 December 2013) <https://www.lawteacher.net/free-law-essays/business-law/doctrine-of-separate-legal-personality-business-law-essay.php> accessed 22 August 2025.

3. Advantages of Incorporation: -

- ❖ The company is an artificial legal person having its own independent existence and the members of the company cannot be held liable for the actions of the company.
- ❖ The company will have continuous existence. This means that the members of the company may change with time, but it will not have any effect on the continuity of the company. This does not mean that the company will never end. The company can be ended through the legal process.
- ❖ The company can hold property by its own name. Any property that is in the name of the company will be considered the property of the company, which will be managed and controlled by the company itself.
- ❖ The company cannot sign itself, hence a substitute is used; that common seal can be considered as the official signature of the company. Every company has its own common seal on which the name of the company is engraved, and it is used by the directors of the company, i.e. the natural person.
- ❖ Members' liability is limited and if in any case the shares are fully paid then the members will not be liable.
- ❖ The shares of the company are entirely transferable, and they are sold or purchased in the share market and this advantage is provided by section 44 of the Companies Act but right of pre-emption is also applied, which means that the existing members of the company have priority purchasing shares and if no one purchases shares in the company then these can be sold outside the company. Mainly this principle can be seen in private companies.
- ❖ The punishment of imprisonment cannot be given to the company, but it can be held liable for statutory violations. If there is any such provision in which imprisonment is punishment, then the company cannot be held liable for such provisions.

M.V JAVALI V. MAHAJAN BOREWELL CO. LTD [1998]⁸

Court ruled that company can not be imprisoned, and it can only be held liable for the statutory violation.

4. Types of Legal Entities⁹

❖ Private companies

In a private company ownership is restricted, and shares cannot be freely transferred. Its minimum paid up capital should be one lakh, and the number of members should be two to two hundred so that the members can be kept within the prescribed limit. Right of pre-emption will have to be applied for transferring shares. In a private company the director has the power that he can refuse to register the transferred shares. If in any case there are any joint shareholders in the company, then they will be considered as one person.

❖ Public companies

In this company the shares are freely transferable, and they can be lifted in the stock exchange. In this the minimum paid up capital should be five lakhs, and the number of members should be more than seven.

❖ Limited Liability Partnership

It consists of both SLE and partnership components. It also provides a separate legal status for the partnership firm which ensures that the partners can be held liable only up to their contribution.

❖ Government companies

In government companies, fifty one percent paid up share capital whether it is fully or partly is held by the state government or the central government. The required percentage of shares can include equity shares or preference shares. The subsidiary company of a government company will also be considered a subsidiary company. The auditor of the government company will be appointed by the controller and auditor general within one hundred and eighty days of the commencement of the financial year. It is the responsibility of the central government to prepare the annual report and present it at the annual general meeting within three months.

❖ Nonprofit associations and charitable trusts

The associations are registered under statutory schemes like charities act 2011 and societies registration act etc. A separate legal status is also conferred on it which enables it to own property and enter contracts independently. This ensures that its continuity is maintained even if the original members leave, the organisation does not stop working.

❖ Chartered company

Chartered companies are those which are incorporated by the king or queen using their prerogative rights under a special charter such as East India Company, Bank of England, Standard Charter Bank etc. This defines the powers of the charter companies.

⁸ Supreme Court of India, M.V. Javali v Mahajan Borewell & Co & Ors AIR 1997 SC 3964 (Indian Kanoon document no 360726) <https://indiankanoon.org/doc/360726/> / accessed 22 August 2025.

⁹ P.P.S. Gogna, A Textbook of company law [corporate law] [revised edn, S Chand 2018]

❖ **Statutory company**

Statutory companies are formed through special act of legislation which specifically perform public functions like Reserve Bank of India which has been incorporated under RBI act, LIC, Food Corporation of India etc. These are basically formed to perform public utility services, and their motive is not to earn profit. Its amendment can be made only through special act. Its annual report is presented before the parliament or the state legislature.

❖ **Registered company**

Registered companies are those companies which are formed under the Companies Act, 2013. Existing companies are also included in this, and it comes into existence only when it is registered. After getting registered, the registrar provides certificate of incorporation. A limited company is one in which the liability of the members is limited only to the extent of their shares and their private property cannot be used to pay off the debt of the company. Limited company has further two types. An unlimited company is a company in which the liability of the members is unlimited, and the private property of the members can be used to pay off the debts of the company.

❖ **Family company**

In a family company, practically all the shares are held by only one member, and other members are added only to fulfill the statutory requirement. Generally other members are family or relatives who hold only one or two shares. This company is called one-person company.

❖ **Foreign company and Foreign controlled company**

A foreign company is one which is incorporated outside India, but its place of business is in India, or it is carrying out some of its business activity in India; on the other hand, a foreign controlled company is one in which most shares or voting rights are in the hands of foreigners.

5. Theories of Separate Legal Entity

Every theory clarifies whether the legal person created by the incorporation is a real entity, fiction or just a tool of convenience.

- **Fiction Theory**

Fiction theory, as propounded by Savigny, considers corporations as artificial creation of law. This entity exists only because the state has chosen to recognize it.¹⁰ Hence, the separate legal entity is a legal fiction that enables ownership, contracts and litigation.

- **Concession Theory**

Concession theory emphasizes that corporate personality is granted as a concession by the state.¹¹ Incorporation is not a natural right, but a privilege conferred by law.

- **Real Entity Theory**

According to Otto von Gierke, corporations are not fiction but real social organisms with will and existence independent of the members.¹² They act as collective personalities with separate rights and duties as those of the shareholders.

- **Purpose Theory**

Brinz argued that corporations exist to hold property and enjoy specific rights, rather than passing them on to individuals.¹³ This theory explains why charitable corporations or trusts continue to exist regardless of member changes.

- **Contractual Theory**

This theory sees corporations as an association based on contracts that pool resources for a common purpose. Recognition of law strengthens it, but its roots are dependent on agreements made by the members.¹⁴

- **Symbolist Theory**

This theory has been advanced by Ihering, which suggests that the legal personality of a corporation is a symbolic bracket grouping rights and obligations under a single legal name.¹⁵

- **Organism Theory**

¹⁰ Friedrich Carl von Savigny, System des heutigen Römischen Rechts (1840).

¹¹ FW Maitland, Collected Papers (Cambridge University Press 1911).

¹² Otto von Gierke, Political Theories of the Middle Age (Cambridge University Press 1900).

¹³ Ernst Brinz, Lehrbuch der Pandekten (1859).

¹⁴ Frederic William Maitland, State, Trust and Corporation (1900).

¹⁵ Rudolf von Ihering, Law as a Means to an End (1903).

Organism theory views corporations as living entity, holding that the company's shareholders, managers, and directors are its organs that performing function for the whole.¹⁶

Landmark Case Laws Analysis

Salomon V. Salomon [1897]¹⁷

Facts of The Case

Mr. Aron Salomon, who was a manufacturer dealing in leather boots, was running his business as a sole owner. In the same year he opened a company called Salomon & Co. Ltd., in which he, his wife and his five children were shareholders. This meant that he had fulfilled the minimum requirement of members required to form a company. His wife and children had one share each and Salomon received 10,000 pounds as debentures, i.e. secured loan against the business assets. After the establishment of the company, the company faced financial difficulties and the company was liquidated. The assets of the company were insufficient to cover the company's debts.

- Company's Assets: - £6,000
- Secured Debt: -£10,000
- Claims of Unsecured Creditor's Claim: - about £7,000

Since secured debt is more than the company's overall assets, if the Salomon was given priority for securing his claim that is about £10,000, then in that case nothing was left for unsecured creditor. Hence, it was contended that company and Salomon are not different as Salomon holds majority of shares in the company and he was not given any right for securing his claim prior to them.

Issues Involved

Was the company formed by Salomon a separate entity or was this company formed so that losses could be avoided during times of financial difficulties? Can Solomon make an earlier claim as a secured creditor based on the principle of limited liability even though he was almost managing or supervising the company?

Was the company formed to defraud creditors and used as a mere façade by Salomon?

Judgement

First instance court ruled that company was formed to defraud therefore Salomon was personally liable for the company debt.

The house of lord reversed the judgement of lower court and stated that after the incorporation of company by fulfilling all the legal requirements of the company, it becomes separate legal entity, and members are not personally liable for its debts, and it is irrelevant to say that shareholders control on the company will make them the same person. Salomon being the secured creditor has prior right to claim his money as he is a secured creditor in the company.

Lee V. Lee [1961]¹⁸

Mr. Lee who was a qualified pilot, incorporated a company named Lee's Air Farming Ltd Which was established in 1954. The main object of the company was Aerial Top Dressing which meant that this company used to spray insecticides and fertilizers on the farmland. Lee had 2,999 shares out of 3,000 shares which made him the absolute owner. Lee was the governing director of that company which meant that he had a sole authority to manage the company. The company appointed Lee as chief pilot under a service agreement and while he was working for the company i.e., he was piloting an aircraft which was company's work, at that very time Lee died in an air crash. His wife demanded compensation under workmen compensation act. The privy council stated that Mr. Lee and the company are separate entity, and they could not be treated as same identity.

Gilford Motor Co. Ltd V. Horne [1933]¹⁹

The court of appeal gave a verdict in favour of Gilford Motor Co. Ltd. and ruled that the company was formed merely as a device so that Horne could escape his contractual obligations. The court lifted the corporate veil and granted an injunction to both Horne and the company, restraining them from soliciting Gilford's customers.

Jones V. Lipman [1962]²⁰

¹⁶ Harold Laski, The Personality of Associations (1916).

¹⁷ Divya Khatri, 'Salomon vs Salomon: The Cornerstone of Corporate Personality' (Lawful Legal, 28 July 2025) <https://lawfullegal.in/salomon-vs-salomon-the-cornerstone-of-corporate-personality/> accessed 22 August 2025.

¹⁸ Case Summary: Catherine Lee v Lee's Air Farming Limited, Lex Bulletin (LawLex) <https://lawlex.org/lex-bulletin/case-summary-lee-vs-lee-air-farming-lee-limited-1960/24542> accessed 22 August 2025.

¹⁹ Gilford Motor Co Ltd v Horne (1933): Case Brief - Case Judgments (CaseJudgments.com) <https://casejudgments.com/gilford-motor-co-ltd-v-horne-1933-case-brief/> accessed 22 August 2025

²⁰ Jones v Lipman [1962] 1 WLR 832 - Case Summary and Legal Principles (Juristopedia) <https://juristopedia.com/case/jones-v-lipman>

Mr. Lipman signed an agreement to sell land and despite fulfilling the contract he refused to sell it and to escape from contractual obligation. He formed a company named Alamed Ltd. Justice Russell stated in favour of Mr. Jones and said that the company was formed to escape contractual obligation. Lipman cannot say that he is separate from the company.

Daimler Co. Ltd V. Continental Tyre and Rubber Co. [1916]²¹

This is a landmark judgement in which it was examined that if a company is incorporated in England, but it is being controlled by enemy nations during the world war then will it be considered an enemy entity. This case highlighted the limitations of a separate legal entity and if we talk about its facts then Continental Tyre & Rubber Co Ltd is an English company, and all the Shareholders and Directors of this company were German residents and only one member was an Englishman. Daimler resisted the payment saying that if it paid the debt then it would be considered as if it had traded with the enemy. The House of Lords gave verdict in favour of Daimler and said that if the company was formed in England, then it would be an enemy. It was a enemy character's company because it was being controlled by German directors and making payment to such a company during the war would be considered illegal trading with the enemy under the Trading with the Enemy Act.

Prest V. Petrodel Resources [2013]²²

Supreme court gave the verdict that the company property is treated as trust property. This case is significant because both principle of separate legal entity and lifting the corporate veil was not followed. In this case property is treated in the form of trust and Mrs. Prest has all the right to receive her claim from the property. The court ruled that lifting the corporate veil should be used under exceptional circumstances here the court simply applied the Trust law.

State of UP V. Renusagar Power Co. [1988]²³

The court lifted the corporate veil and stated that even if Renusagar was a separate legal entity, it was fully controlled and managed by Hindalco. It was established just to generate electricity for Hindalco therefore both were to be treated as single entities and were liable to pay tax under Electricity Duty Act.

Delhi Development Authority V. Skipper Construction Co. [P] Ltd. [1996]²⁴

It was the strong judgement given by the Supreme Court in which it was stated that company was incorporated to defraud innocent people, even after the court orders it continued its activities, therefore both the director and company assets were sold out to compensate people.

Vodafone International Holding BV V. Union of India [2012]²⁵

The Supreme Court of India gave verdict in favour of Vodafone. It was stated that tax authorities in India did not have any right to have jurisdiction on those transactions where there was a share sale between two foreign entities. The court further stated that corporate structure must be respected as there is no evidence of tax evasion and authorities cannot degrade the transaction merely because of tax benefits.

Life Insurance Corporation of India V. Escort Ltd.²⁶

The Supreme Court India stated that Foreign Exchange Regulation Act provide full power to central government to accept and refuse the foreign companies to purchase shares in India. It further stated that this power is not absolute, and it cannot be questioned based on fundamental rights as foreigners do not enjoy such rights therefore Escort contention was dismissed by the court.

Unexplored Indian context

Although the concept of separate legal entity has been well established in India, yet there are still some areas where its application is yet not explored. This gap motivates deeper legal research.

- ❖ With the change of time, a lot of digital and virtual companies have been established. In today's time, startups and digital companies are in vogue, now the question arises that just as separate legal entity applies to well-established companies, does it also exist in the digital space in the same manner. Indian law has not yet provided clarity in this matter.

accessed 23 August 2025.

²¹Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd [1916] 2 AC 307 (HL) (Uniset) <https://www.uniset.ca/other/cs2/19162AC307.html>

accessed 23 August 2025.

²²Prest v Petrodel Resources Ltd (Wikipedia) https://en.wikipedia.org/wiki/Prest_v_Petrodel_Resources_Ltd

accessed 23 August 2025.

²³ State of UP v Renusagar Power Co. Ltd. (1988) 4 SCC 59, CaseMine <https://www.casemine.com/judgement/in/5608f9b6e4b0149711143520>

accessed 22 August 2025.

²⁴ Delhi Development Authority v Skipper Construction Co. (P) Ltd. (1996) 4 SCC 622, CaseMine <https://www.casemine.com/judgement/in/5609acbde4b014971140e7a6>

accessed 22 August 2025

²⁵ Vodafone International Holdings BV v Union of India (2012) 6 SCC 613.T

²⁶ LIC of India v Escorts Ltd (1986) 1 SCC 264.

- ❖ There are many such companies in India which are run by families due to which it becomes very difficult to differentiate between personal wealth and company resources. The court struggles a lot to apply the doctrine in such companies due to which there are many debates as to whether family business should be treated differently under the company law. Now the question arises whether the corporate veil can be lifted easily even when the company is managed by the government, i.e. Public Sector Undertaking. Can the government not escape its liability or responsibility? This angle also remained unexplored till quite some time.
- ❖ Non-profit organizations have grown primarily in India. These entities also enjoy the same status as profit-making companies, but it is misused a lot for tax evasion and political funding, which is unexplored by this doctrine.
- ❖ There are many such Religious Institutions in India like Temple, Church, Gurdwara which have massive assets of their own, they register all of them as a legal entity and whatever interaction there is between trust laws/religious laws and company laws is unexplored till a long extent.
- ❖ Whenever Indian companies enter joint ventures with foreign companies. There is a conflict between Indian corporate law and international arbitration principle for which even today the Indian judiciary has not given any comprehensive approach for the protection of separate legal entity like in the case of cross-border disputes.
- ❖ Today, in the era of Modernity, Industrialization is growing at a very fast pace in India and even today mostly large-scale companies are held responsible for environmental damage, for example, Bhopal gas tragedy is a great example of this. It not only caused much damage to the environment but also became the cause of death of lakhs of people. The court-imposed liability but without seeing what tensions have arisen between the individual accountability of Directors and SLE. This also is still an unexplored frontier.

Impact on Small Businesses vs. Large Corporations

In India, this principle is applied in both small and large scale businesses in a slightly different way like small business does not get the full benefit even though the law says that shareholders and company are separate, still the creditors ask for personal guarantee from the owners, this means that their personal money is still at risk and the cost of legal paper work is also very high. On the other hand, large businesses get the maximum benefit, they escape their liabilities, and they even try to escape from tax by forming more companies.

Cross-Disciplinary Link

The idea of separate legal entity is not just limited to law, but it is also related to other fields like politics, economics, sociology but this approach is still unexplored in India. Economists always study how corporate law affects investment, taxation, and market growth and how the ability of the company to enter contracts influences how resources will be allocated for public and private sectors. If seen from a sociological perspective, this doctrine sees how people view responsibility. Politicians and regulators need to balance between encouraging corporate growth and preventing misuse. But still, the debate in India remains confined purely from a legal and economic angle due to which the interdisciplinary space remains underdeveloped.

Socio-legal analysis

SLE is a legal principle, but it has deep social consequences. There are many such cases in India which shows that the corporate structure is not just a legal fiction, but it has some social realities which affect the lives of people. If seen from the social justice perspective, this doctrine protects the powerful business owners and on the other hand leaves the small creditors and workers at a disadvantage. For example, if a company goes bankrupt, the jobs of the employees are lost, they do not get salaries, and the law also gives priority to the secured creditors due to which a social imbalance is created and the concept of limited liability at the same time leads to growth of start-up culture and small enterprises.

Corporate Personhood and Fundamental rights

Corporate personhood means that the company will be treated as a separate legal person from its members. In India the concept is not just limited to commercial purposes, but it raises questions as to whether corporations can enjoy fundamental rights under the constitution or not. The Supreme Court of India has recognized that by being a person a company can enjoy certain rights given under part third of the constitution, such as a corporation can claim article fourteen, fifteen and article three hundred clause [A] but it cannot claim personal rights of human beings such as rights granted under article twenty-one and article nineteen. This debate is socio-legal in nature although there is a need to maintain stability by giving enough rights to corporations. Efforts have been made but still the question arises whether the company also has right to claim rights like human beings or not.

Public Interest Litigation Angle

Vulnerable rights are protected by PIL and It ensures justice to those who cannot approach the courts themselves. And if we look at this thing from the perspective of corporate personhood, then an interesting socio-legal tension arises. On one hand, corporations use PIL to challenge those policies of the government that affect their business operations. And in this way, PIL has become a matter shield for the companies so that they can avoid excessive state interference. On the other hand, PIL can also be used against corporations, especially in cases where environment is being harmed or in case of Labour exploitation. In this way, PIL also works to maintain social justice and makes the corporations answerable for their actions, So, for this such provisions should be made which can maintain harmony.

Real-World Examples and Comparative Perspective

- **Satyam Scam in India, 2009²⁷**

²⁷ B Ramalinga Raju, 'Letter to the Board of Satyam Computer Services Ltd (7 January 2009)' The Economic Times (16 January

Satyam Computer Service's founder B. Ramalinga confessed in 2009 that the company's accounts have been falsified for several years, cash, debtors and revenue have been inflated. He estimated that 7,136 crores have been embezzled. Several techniques were also mentioned in his confession letter. Such types of fraud are always used to trigger governance law.

- **Nirav Modi–PNB Fraud in India, 2018**

Nirav Modi, who was a jewellery designer, in connivance with his uncle Mehul Choksi, defrauded Punjab National Bank of Rs 11,000 crore by obtaining the letter of undertaking in a fraudulent manner. This scam exposed many loopholes in the company law.

- **Enron Scandal in USA, 2001**

Enron, which was an American energy giant, used accounting loopholes and through special purpose entities it hid debt and inflated profits. When this fraud was exposed, Enron collapsed, and its auditing firm Arthur Andersen was also dissolved. Because of this scam, Sarbanes-Oxley act was introduced to tighten corporate governance in USA.

- **Sahara–SEBI Case in india, 2012**

Sahara group illegally collected 24,000 crores from people through OFCDs without SEBI's approval. Supreme Court ordered Sahara to return all the money it had taken from people, and this case has raised a big question on corporate accountability.

- **Volkswagen Emission Scandal in Germany, 2015**

Volkswagen installed defeat devices in diesel cars to avoid emission tests and when the cars were sent for laboratory checks, it was found that there was much more pollution than the permissible level and then this scandal resulted in fines, lawsuits worth billions of dollars and their reputation also suffered considerably.

- **Wirecard Scandal in Germany, 2020**

Wirecard committed fraud of €1.9 billion. The scandal exposed weak regulatory oversight in Europe and raised many questions about the protection of investors in industries like fintech.

Recommendations

Considering corporate fraud cases and their implications, some measures are recommended so that investors' interests can be protected, and accountability can be maintained.

- ❖ Independent directors should not remain just a symbolic figure, but they should play their active role so that the decisions of the company can be monitored. Audit committees should be given maximum power so that they can question the practices of management with full authority.
- ❖ Laws should take strict steps to protect those who expose fraud and anonymous reporting channels should be established in every corporation so that irregularities can be detected.
- ❖ Regulatory bodies like SEBI and RBI should adopt AI based systems so that if anything unusual happens in financial transactions, it can be tracked. Adoption of systems like real time auditing. There should be a law which protects from scams like Satyam.
- ❖ Strict punishments should be imposed on all white-collar crimes so that in future they think twice before doing any fraud. India lags in the matter of scanning scams because there is a lot of corruption and weak implementation laws, such should be abolished and whichever company is found to be responsible for any fraud, it should be restricted in future market participation.
- ❖ Many frauds take place because of the company wears a false mask of ethical conduct. Independent CSR audits need to be strengthened so that the company can serve public interest.
- ❖ Blockchain technology should be used as much as possible so that transparency can be maintained in keeping financial data and records. Smart contracts reduce the scope of human manipulation, so companies should be encouraged to adopt them as well.
- ❖ Investors should be educated to critically analyse financial reports themselves and not blindly trust any company's statement. Awareness campaigns should highlight red flags such as promises that are seen as unrealistic, sudden growth etc.
- ❖ There are many such cases which take decades to be resolved, and this is the thing due to which people raise questions on the Indian judiciary system, so that a fast-track court should be established so that corporate matters can be resolved as quickly as possible.

- ❖ Ethical awareness should be made an integral part of the corporate culture to prevent unethical practices.

Conclusion

The concept of separate legal entity has considerable significance in corporate law and states that the company and the shareholder are separate from one another. This principle allows businesses to perform functions independently, raise capital well, take calculated risks, and at the same time keep their personal assets protected. By recognising this doctrine, the court has maintained strong economic development. Landmark judgements have also reinforced this principle just as Salomon vs Salomon established this doctrine, cases such as State of UP vs Renusagar and Vodafone International Holding have addressed contemporary commercial activities. Through this research paper, we have also examined the concept of lifting of corporate veil and understood its grounds as well. But along with its benefits Also, there are a lot of loopholes which we have understood through this paper. To say in simple and short words, to avoid corporate fraud, careful judicial oversights, clarity in legislation, ethical based corporate practice is very much required. Corporate fraud can only be stopped by creating harmony and balance in everything. There is a need for strong implementation in provisions because making a law and doing nothing about its implementation is the biggest loophole in Indian judiciary. Ethical values are lacking the most in India, therefore it is necessary to have ethical awareness programs in every corporate so that scams can be avoided. So today there is a need to reshape the principle of separate legal entity and insert such provisions which can give it more strength and maintain a balance in the country by preventing corporate fraud.

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