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# THE CORPORATE VEIL IN REVERSE: A COMPARATIVE ANALYSIS AND A CASE FOR CODIFIED REFORM IN INDIA

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## I. ABSTRACT

*The principle of separate corporate personality, a cornerstone of modern commerce, has long been protected by a conceptual "veil" separating the entity from its members. While the traditional piercing of this veil to hold shareholders liable for corporate debts is a well-established, if inconsistently applied, doctrine, its corollary – reverse piercing – remains far more controversial. This doctrine, which holds a corporation liable for the debts of its controlling shareholders, presents a profound challenge to corporate law's foundational tenets of entity shielding and separate patrimony. This article undertakes an exhaustive comparative analysis of the judicial treatment of reverse piercing across three key common law jurisdictions: the United States, the United Kingdom, and India. It demonstrates a significant and hardening divergence in judicial approaches. The United States exhibits a pragmatic but increasingly fractured and entity-dependent jurisprudence, while the United Kingdom has, following the landmark decision in *Prest v. Petrodel Resources Ltd.*, adopted a highly restrictive "evasion principle" that has rendered the doctrine nearly obsolete. In contrast, India's judiciary and tribunals, driven by the economic exigency of large-scale corporate fraud and mounting non-performing assets, are developing functional equivalents to reverse piercing through ad-hoc mechanisms in insolvency and arbitration law. This article argues that these global trends, particularly the move towards judicial conservatism in the US and UK, coupled with India's unique economic challenges, create a compelling imperative for legislative intervention. It concludes by proposing the codification of a clear, safeguarded "Trigger Test" in India a framework designed not to weaken the corporate veil, but to reinforce its integrity by ensuring it serves as a shield for legitimate enterprise, not a cloak for fraud.*

## II. KEYWORDS

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Reverse Piercing, Corporate Veil, Alter Ego Doctrine, Corporate Personality, and Insolvency Law.

### **III. INTRODUCTION: BEYOND SALOMON'S VEIL**

For over a century, the axiom that a corporation is a legal entity separate and distinct from its shareholders has been the bedrock of global commerce. This principle, authoritatively cemented in the House of Lords' decision in

*Salomon v. Salomon & Co.*, underpins the modern market economy by capping investor liability to the value of their shareholding, thereby encouraging capital formation and entrepreneurial risk-taking. The "veil of incorporation" is the powerful metaphor used to describe this legal fiction, which creates a conceptual barrier between the assets and liabilities of the corporation and the personal estates of its members.

Yet, the very advantages of this legal separation have, since its inception, been exploited by individuals with mala fide intentions. The corporate form, designed to be a vehicle for legitimate business, can be repurposed as an instrument to defeat public convenience, justify wrong, protect fraud, or defend crime. In response, courts developed the equitable doctrine of "piercing the corporate veil," allowing them to disregard the corporate personality and impose liability directly upon the individuals hiding behind it. This traditional form of piercing is a crucial, albeit exceptional, judicial tool.

This article, however, departs from the well-trodden ground of traditional piercing to explore its more contentious and less understood counterpart: the reverse piercing of the corporate veil. Unlike the traditional doctrine, which makes individuals liable for company debts, reverse piercing does the opposite: it makes the company's assets available to satisfy the personal obligations of its controlling shareholders. This action directly confronts the principle of "entity shielding," which protects corporate assets from the shareholders' personal creditors, a rule considered essential for the stability and predictability of corporate finance.

Despite its controversial nature, the doctrine is of increasing relevance to India's

contemporary financial landscape, which is beleaguered by a persistent non-performing asset (NPA) crisis, a series of high-profile corporate frauds, and the pervasive use of complex, multi-layered corporate structures and shell companies to siphon funds and frustrate creditors.<sup>1</sup> While Indian regulators have introduced measures to enhance transparency, these stop short of providing an effective remedy for recovery once assets have been funnelled into a corporate web.

This article posits that a carefully calibrated doctrine of reverse piercing is not an attack on the corporate form but a necessary mechanism to preserve its integrity. The core purpose of the Salomon principle is to facilitate legitimate commerce, not to provide a blueprint for sophisticated asset evasion. By developing a framework to hold abusers accountable, the law reinforces the legitimacy of limited liability for honest enterprises. A well-regulated reverse piercing doctrine is therefore not anti-Salomon; it is a pro-integrity doctrine that ensures the principle remains a shield for legitimate business, not a sword for wrongdoers. To build this case, this article will first explore the theoretical foundations of the doctrine before embarking on a deep comparative analysis of its evolution and current status in the United States, the United Kingdom, and India. It will demonstrate that a global trend towards judicial conservatism makes legislative action in India not merely desirable, but imperative.

### **A. Research Problem**

The principle of separate corporate personality, as established in *Salomon v. Salomon & Co.*, forms the bedrock of modern corporate law by insulating shareholders from corporate liabilities. While Indian courts recognise traditional veil piercing in limited circumstances, there exists no coherent doctrinal or statutory framework governing the reverse piercing of the corporate veil, where corporate assets are used to satisfy the personal liabilities of controlling shareholders.

The central research problem addressed in this paper is the absence of a clear, consistent, and codified legal mechanism in Indian corporate law to deal with sophisticated forms of asset shielding and corporate abuse, particularly in cases involving complex group

structures, shell companies, and promoter-driven fraud. This lacuna has become especially problematic in the context of India's persistent non-performing asset (NPA) crisis and large-scale financial scandals, where existing remedies under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 remain fragmented, ad hoc, and largely indirect.

### **B. Research Objectives**

The primary objectives of this research are:

1. To conceptually analyse the doctrine of reverse piercing of the corporate veil and distinguish it from traditional veil piercing.
2. To undertake a comparative study of the judicial treatment of reverse piercing in the United States, the United Kingdom, and India.
3. To evaluate the adequacy of existing Indian legal mechanisms in addressing promoter-led asset shielding.
4. To identify emerging "functional equivalents" of reverse piercing within Indian insolvency and arbitration jurisprudence.
5. To propose a structured and codified statutory framework for reverse piercing tailored to the Indian corporate environment.

### **C. Research Questions**

This study seeks to answer the following research questions:

1. What is the theoretical and doctrinal basis of reverse piercing of the corporate veil?
2. How have courts in major common law jurisdictions approached the doctrine of reverse piercing?
3. Why does the Indian corporate legal framework currently lack an effective direct remedy for reverse piercing?

4. Can developments such as substantive consolidation under the IBC and the “group of companies” doctrine in arbitration be understood as functional substitutes for reverse piercing?
5. Should India formally codify a reverse piercing doctrine, and if so, under what conditions and safeguards?

#### **D. Research Hypotheses**

The research proceeds on the basis of the following hypotheses:

1. That the absence of a codified reverse piercing doctrine in India enables systemic corporate abuse and asset shielding by controlling shareholders.
2. That comparative judicial trends demonstrate increasing formalism and conservatism, making judicial evolution alone insufficient for India’s needs.
3. That existing Indian mechanisms such as group insolvency and arbitration doctrines implicitly acknowledge the economic reality of corporate unity.
4. That legislative codification of a structured reverse piercing framework would strengthen, rather than undermine, the integrity of the corporate veil.

#### **E. Research Methodology**

This study adopts a doctrinal and comparative legal research methodology.

The doctrinal method is employed to analyse statutory provisions, judicial precedents, and academic literature relating to corporate personality and veil piercing. The comparative method is used to examine and contrast developments in three jurisdictions: the United States, the United Kingdom, and India.

The research is primarily based on:

1. Judicial decisions of constitutional courts and appellate tribunals.
2. Statutory materials including the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016.

### 3. Scholarly articles, working papers, and authoritative textbooks.

No empirical or field-based data has been used, and the study remains purely doctrinal and analytical in nature.

#### **F. Literature Review**

The doctrine of reverse piercing of the corporate veil has generated significant academic debate, particularly in American corporate law scholarship. Gaertner (1989) argues that reverse piercing allows shareholders to enjoy the benefits of limited liability while selectively avoiding its burdens, thereby threatening creditor certainty. Conversely, Allen (2011) defends the doctrine as a necessary equitable tool to prevent sophisticated asset shielding.

In the UK context, Cabrelli (2010) strongly critiques outsider reverse piercing, arguing that it undermines the principle of affirmative asset partitioning and unjustly prejudices corporate creditors. This scepticism was later reflected judicially in *Prest v. Petrodel Resources Ltd.*, where the UK Supreme Court virtually confined veil piercing to cases of deliberate evasion of pre-existing obligations.

Indian scholarship has largely focused on traditional veil piercing, with limited engagement on reverse piercing as an independent doctrine. Most Indian commentary treats veil piercing as an exceptional remedy for fraud or tax evasion, without addressing modern group structures and promoter dominance. Recent analyses in insolvency literature, however, have begun recognising substantive consolidation and group liability as de facto forms of reverse piercing, though without a unified theoretical framework.

This paper situates itself within this gap in Indian scholarship by integrating comparative jurisprudence with emerging domestic practices and advancing a normative case for codified reform.

## **IV. CHAPTER I: THE DOCTRINAL LABYRINTH OF REVERSE PIERCING**

The doctrine of reverse piercing of the corporate veil exists as a corollary to its traditional counterpart, representing a distinct and more challenging application of the courts' equitable power to disregard the corporate fiction. Its theoretical underpinnings are complex, drawing from a confluence of established legal theories while simultaneously pushing against the foundational principles of separate patrimony and asset partitioning that are essential to organisational law.

At its core, reverse piercing can be categorised into two primary forms. The first is "insider" or "voluntary" reverse piercing, where the controlling shareholder or the corporation itself requests that the veil be disregarded. This is often done to allow the shareholder to claim a corporate asset or benefit as their own. The seminal case of *Macaura v. Northern Assurance Co.* stands as a stark example of the judiciary's traditional reluctance to permit such an action. In *Macaura*, the sole shareholder of a company insured corporate assets (timber) in his own name. After the timber was destroyed by fire, he sought to reverse pierce the veil to establish his insurable interest. The House of Lords refused, strictly upholding the doctrine of separate legal identity and ruling that even a sole shareholder has no direct legal interest in the company's property. The second, and more common, form is "outsider" or "involuntary" reverse piercing. This is initiated by a third-party creditor of the controlling shareholder who seeks to reach the corporation's assets to satisfy the shareholder's personal debt. This action directly challenges the rule of affirmative asset partitioning, which dictates that corporate assets are reserved for corporate creditors.<sup>1</sup> It is this form of piercing that is the focus of modern debate and the primary subject of this article.

To justify such an extraordinary remedy, courts have relied on several interconnected legal doctrines, often using the terminology interchangeably to describe the same fundamental problem: the substantive collapse of the distinction between the owner and the company. The difference is frequently more rhetorical than substantive, as the legal outcome is identical regardless of the label applied. An effective analysis must therefore focus on the objective factual matrix the "badges of fraud" rather than the specific

doctrinal label a court chooses to apply.

The most prominent of these doctrines include:

### **A. The Alter Ego Doctrine**

This is the most frequently cited justification for piercing the veil in either direction. The doctrine applies where the corporation and its owner have such a "unity of interest and ownership" that their separate personalities effectively cease to exist. The corporation is deemed to be a mere "alter ego" or "business conduit" of the individual, rendering adherence to the fiction of separate existence a sanction for fraud or the promotion of injustice.

As seen in *Platts Inc. v. Beatrice Platts*, where a husband transferred assets to a newly formed corporation to shield them from his ex-wife's divorce settlement, the court found the company was the husband's "alter ego" and refused to let the corporate form be used to block the rightful transfer of assets.

### **B. Instrumentality or Façade Theory**

Closely related to the alter ego doctrine, the instrumentality theory applies when a corporation is so dominated and controlled by its shareholder that it has no separate mind, will, or existence of its own and is merely a tool or "puppet" of its controller.<sup>1</sup> The key question is whether this control was used to commit a fraud or wrong that caused injury to the plaintiff.

The corporate form is viewed as a "façade" or "sham" created to conceal the true nature of the shareholder's activities. The UK Supreme Court in *Prest v. Petrodel Resources Ltd.* would later refine this concept, distinguishing between using the company as a façade for "concealment" versus "evasion" of legal obligations.

### **C. The Doctrine of Attribution**

This doctrine provides the conceptual mechanism for how the actions and mental state of individuals are attributed to the corporation. As articulated by Viscount Haldane in

Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd., a corporation has a "directing mind and will," and the actions of those senior individuals who represent this "brain and nerve centre" are deemed to be the actions of the corporation itself.<sup>1</sup> While traditionally used to establish corporate liability for torts or crimes (a form of traditional piercing), the logic is inverted in reverse piercing cases. The court effectively determines that the individual's mind and will are so completely dominant that the corporation is merely their embodiment, justifying the attribution of the individual's liabilities to the corporation.

In practice, courts across jurisdictions have identified a series of factual indicators or "leitmotifs" that signal the kind of abuse that warrants piercing.<sup>1</sup> The "Fontana Rule," derived from US jurisprudence, provides a useful, non-exhaustive checklist of these "badges of fraud":

1. Failure to comply with corporate formalities and maintain proper records.
2. Significant undercapitalization of the corporation.
3. Commingling of corporate and personal funds and assets.
4. Absence of arm's-length transactions between the corporation and its controllers.
5. Diversion of corporate assets for personal use.
6. The use of the corporate form to evade existing personal obligations.

Ultimately, a court's decision to reverse pierce involves a delicate balancing act. It must weigh the evidence of a unity of identity and wrongdoing against the potential harm to innocent third parties particularly the corporation's own creditors, who relied on the principle of separate entity and consider whether less drastic legal remedies have been exhausted.

## **V. CHAPTER II: A COMPARATIVE JURISPRUDENCE OF JUDICIAL DIVERGENCE**

The global legal landscape for reverse piercing is characterised not by consensus, but by

profound and growing divergence. An examination of the jurisprudence in the United States, the United Kingdom, and India reveals three distinct trajectories, shaped by differing judicial philosophies, economic contexts, and statutory frameworks.

### **A. The United States: A Pragmatic but Fractured Approach**

American courts have historically demonstrated a greater willingness than their English counterparts to disregard the corporate form when required by the interests of justice, resulting in a pragmatic but highly fragmented body of case law that varies significantly from state to state. The doctrine's evolution can be traced from early twentieth-century cases that established foundational tests.

In *Kingston Dry Dock Co. v. Lake Champlain Transp. Co.*, the court, while ultimately refusing to pierce, laid down a test for control, scrutinising the "corporate paraphernalia" of common ownership and management but demanding more than mere commonality to fuse two entities. A few decades later, cases like *Platts Inc. v. Beatrice Platts* and *Shamrock Oil & Gas Co. v. Ethridge* firmly established the "alter ego" theory as the dominant framework, allowing courts to pierce the veil where a corporation was used as a "business conduit" or "dummy corporation" to perpetrate a public wrong or shield assets from legitimate claims.

The doctrine gained significant traction in cases involving government claims. In the landmark Supreme Court case *G.M. Leasing Corp. v. United States*, the Internal Revenue Service (IRS) was permitted to recover tax dues from a corporation that was found to be the alter ego and asset repository of a tax fugitive, even though he was not formally a director or shareholder. This demonstrated a higher judicial tolerance for piercing in the face of tax evasion or other wrongs against the state.

In recent years, however, the jurisprudence has become increasingly complex, marked by two critical and seemingly contradictory developments that have created a bifurcated, entity-dependent landscape.

The first is the watershed decision of the California Court of Appeals in *Curci*

*Investments, LLC v. Baldwin*. In this case, a creditor held a multi-million-dollar judgment against an individual, James Baldwin, who was the 99% owner and manager of a limited liability company (LLC), JPBI. Baldwin used his control over the LLC to cease all distributions to himself, thereby frustrating the creditor's "charging order" the standard remedy against an LLC member's interest, which only entitles the creditor to receive distributions when they are made. The creditor sought to reverse pierce the LLC's veil to add it as a judgment debtor. The court, in a significant move, distinguished its own precedent.

*Postal Instant Press, Inc. v. Kaswa Corp.*, which had prohibited reverse piercing against a corporation.<sup>3</sup> The court's rationale was pivotal: for a corporation, a creditor has the remedy of foreclosing on and seizing the debtor's shares, thereby gaining the shareholder's rights. For an LLC, particularly a single-member LLC, the charging order is a weak and easily thwarted remedy. To disallow reverse piercing would be to allow an individual to shield personal assets with blanket immunity by simply placing them in a wholly owned LLC.

Curci thus established that the availability of this equitable remedy may now hinge on the specific corporate form used, making reverse piercing a more compelling necessity where alternative creditor remedies are inadequate.

The second, and more recent, development is the US Supreme Court's decision in *Dewberry Group, Inc. v. Dewberry Engineers, Inc.* (2025). This case served as a reaffirmation of orthodox corporate separateness principles, restricting the attribution of affiliate profits in the absence of traditional veil piercing, rather than a judicial expansion or clarification of group liability doctrines. The lower court, in a trademark infringement case, had awarded a disgorgement of profits that included those of the defendant's non-party corporate affiliates, treating the entire group as a "single corporate entity." The Supreme Court unanimously vacated this decision, holding that non-party affiliates could not be held liable for a defendant's damages without either being formally joined as parties to the litigation or a rigorous factual finding that the traditional standards for

veil piercing had been met. The Court explicitly rejected the "single entity" theory as a shortcut around procedural requirements and the formal respect for separate corporate personalities. This decision reinforces a return to formalism, demanding procedural rigour and a proper veil-piercing analysis before group liability can be imposed. However, a concurrence by Justice Sotomayor left the door ajar for future claims, encouraging lower courts to consider the "economic reality" of non-arm's-length relationships between a defendant and its affiliates, suggesting that the debate is far from settled.

The combined effect of *Curci* and *Dewberry* is a US legal landscape that is both complex and uncertain. The choice of corporate form (LLC vs. corporation) may dictate the availability of the remedy, while the Supreme Court's insistence on procedural formalism creates a higher bar for plaintiffs. This complexity itself underscores the value of a clear, codified approach, as the current case-by-case, state-by-state adjudication creates unpredictability for creditors and businesses alike.

### **B. The United Kingdom: The Evasion Principle and a Doctrine in Retreat**

The United Kingdom's jurisprudence on veil piercing stands in stark contrast to the American approach, having evolved into a highly restrictive, formalistic, and sceptical doctrine. This conservative turn was decisively cemented by the UK Supreme Court in its seminal 2013 judgment in *Prest v. Petrodel Resources Ltd.*, a decision that has since become the sole and definitive authority on the subject in English law.

In *Prest*, a case arising from a matrimonial dispute, the wife sought the transfer of properties legally owned by companies wholly controlled by her husband. The Supreme Court unanimously overturned the lower court's order, which had pierced the veil on the grounds that the husband's control made the companies his "alter ego." In his leading judgment, Lord Sumption conducted a sweeping review of the case law and concluded that the doctrine had been plagued by "inadequate reasoning" and a lack of coherent principle. To remedy this, he articulated a new, highly constrained framework, dividing the cases into two distinct principles:

1. **The Concealment Principle:** This principle applies where a company is used to hide the identity of the real actors. In such cases, the court may look "behind the veil" to discover the true facts and attribute liability accordingly. Lord Sumption clarified, however, that this is not true piercing, as it does not disregard the corporate personality but rather seeks to understand the reality of the situation (e.g., finding that an asset legally owned by the company is, in fact, held on a resulting trust for the shareholder). This was ultimately the basis on which Mrs Prest succeeded; the court found the properties were held on trust for her husband.
2. **The Evasion Principle:** This, according to Lord Sumption, is the only true and legitimate ground for piercing the corporate veil. The principle is narrowly defined and applies only when two stringent conditions are met: (a) there is a pre-existing legal obligation or liability which a person is subject to, and (b) that person deliberately interposes a company under their control with the express purpose of evading or frustrating the enforcement of that obligation. The court may then pierce the veil, but only for the specific purpose of depriving the controller of the advantage they would have obtained by using the company's separate personality.

The Prest framework, while lauded for providing much-needed doctrinal clarity, has had the practical effect of rendering the piercing doctrine nearly moribund in the UK. By setting the bar at the deliberate evasion of a pre-existing obligation, it creates a significant lacuna in the law. It fails to address the far more common scenario of corporate abuse, where a company is established from the outset for a fraudulent purpose or to incur liabilities that it has no intention or ability to meet. For example, if a fraudster incorporates a shell company, uses it to take money from a victim (thereby creating a new obligation for the company), and then dissipates the funds, the evasion principle, strictly applied, does not offer a remedy. The fraudster had no pre-existing personal obligation to the victim that was evaded by the interposition of the company; the obligation arose

concurrently with the fraudulent transaction itself.

Post-Prest case law has confirmed this restrictive approach. Successful instances of piercing are exceptionally rare. The case of *Akhmedova v. Akhmedova* stands as a notable exception that proves the rule. In that case, the court did pierce the corporate veil, but it did so by explicitly applying the evasion principle, finding that the husband had used a complex web of corporate structures with the clear and deliberate intention of evading his enforcement obligations under a pre-existing matrimonial court order. The case fit squarely within Lord Sumption's narrow exception.

The overwhelming trend, however, has been one of judicial scepticism, with many academic commentators and even senior judges expressing doubt as to whether an independent doctrine of veil piercing truly exists at all, suggesting it is merely a label for other legal rules and may be inching towards abolition. The UK's rigid and narrow approach, therefore, offers an unsuitable model for a jurisdiction like India, which is grappling with precisely the types of forward-looking corporate fraud that the evasion principle fails to address.

### **C. India: An Emerging Framework Driven by Economic Exigency**

The Indian approach to veil piercing has traditionally followed English common law principles. Early Supreme Court decisions, such as *Life Insurance Corporation of India v. Escorts Ltd.*, affirmed the Salomon principle while acknowledging that the veil could be lifted in exceptional circumstances, such as to prevent fraud, tax evasion, or improper conduct. In subsequent years, Indian courts have gradually adopted and applied related doctrines, such as the doctrine of attribution, to establish corporate criminal liability for the acts of employees, as seen in *Iridium India Telecom Ltd. v. Motorola Inc.*

However, the judiciary has remained cautious, clarifying in cases like *Sunil Bharti Mittal v. Central Bureau of Investigation* that the mere holding of a senior corporate position is insufficient to attribute liability; there must be evidence of active involvement or "consented criminality."

While the direct jurisprudence on reverse piercing remains nascent, the Indian legal system, spurred by acute economic pressures, has begun to develop powerful "functional equivalents" to the doctrine in adjacent areas of law. This ad-hoc, needs-based evolution is a direct result of economic crises outstripping the development of traditional corporate law remedies. This phenomenon is most evident in two critical areas:

**1. Substantive Consolidation under the Insolvency and Bankruptcy Code (IBC),**

**2016:** The collapse of major corporate conglomerates like Infrastructure Leasing & Financial Services (IL&FS) and Jaypee Infratech exposed vast, labyrinthine structures of group companies where assets, liabilities, and cash flows were hopelessly entangled. Faced with this complexity, traditional, entity-by-entity insolvency proceedings were deemed unworkable and would have failed to provide a meaningful resolution for creditors. In response, the National Company Law Tribunal (NCLT) and its appellate body (NCLAT), exercising their broad powers under the IBC, ordered the "substantive consolidation" of the group entities. This process involves pooling the assets and liabilities of multiple distinct legal entities and treating them as a single economic unit for the purpose of resolution. This is, in effect, a mass reverse piercing event, driven not by doctrinal theory but by sheer practical necessity to untangle complex financial webs and maximise creditor recovery.

- 2. The "Group of Companies" Doctrine in Arbitration:** A parallel development has occurred in the law of arbitration. In the landmark 2023 decision of a five-judge bench in *Cox & Kings Ltd. v. SAP India Pvt. Ltd. & Anr. (Cox & Kings II)*, the Supreme Court of India definitively affirmed the "group of companies" doctrine.<sup>12</sup> This doctrine allows a non-signatory company to be bound by an arbitration agreement entered into by another member of the same corporate group. The Court held that this determination should be based on a holistic assessment of the "single economic reality" of the group, considering factors like the mutual intent of the parties, the relationship between the entities, and their common

participation in the transaction. While the case was not about veil piercing in a litigation context, the Court's extensive discussion of veil piercing as a related concept and its emphasis on looking beyond formal corporate separateness to the underlying economic reality provides powerful doctrinal support for a more robust and realistic approach to group liability in Indian law.

These parallel developments in insolvency and arbitration law demonstrate a clear trend: the Indian legal system is increasingly willing to look through complex corporate structures when formal adherence to the Salomon principle would lead to inequitable results or frustrate the purpose of the law. This evolution is occurring not through a linear development of the traditional veil-piercing doctrine, but through a form of "doctrinal spillover" from other fields. This creates a compelling argument that the time is ripe to consolidate these fragmented, context-specific approaches into a single, codified reverse piercing doctrine within general corporate law, providing clarity, consistency, and a much-needed direct remedy against corporate fraud.

**Table 1: Comparative Overview of Reverse Piercing Jurisprudence**

Feature	United States	United Kingdom	India
<b>Prevailing Judicial Attitude</b>	Pragmatic but Fractured & Formalistic	Highly Restrictive & Sceptical	Developing & Context-Driven
<b>Key Legal Test(s)</b>	Alter Ego / Instrumentality + Injustice; Inadequacy of alternative	The "Evasion Principle": Deliberate use of a company to evade a pre-existing	Alter Ego / Attribution doctrines; "Functional Equivalents" via

	remedies (especially for LLCs); Procedural formalism required for group liability.	legal obligation.	Substantive Consolidation (Insolvency) and the "Group of Companies" doctrine (Arbitration).
<b>Landmark Case(s)</b>	Curci Investments, LLC v. Baldwin (2017); Dewberry Group, Inc. v. Dewberry Engineers, Inc. (2025)	Prest v. Petrodel Resources Ltd. (2013)	Iridium India Telecom Ltd. v. Motorola Inc. (2011); IL&FS Insolvency (2018-); Cox & Kings II (2024)

## VI. CHAPTER III: THE IMPERATIVE FOR REFORM IN INDIA

The case for codifying a reverse piercing doctrine in India is not merely academic; it is an economic and regulatory imperative driven by systemic challenges within the nation's corporate ecosystem. The current legal framework, while evolving, remains inadequate to tackle the scale and sophistication of modern corporate fraud and asset shielding.

### A. The Economic Exigency: Corporate Webs and Hollow Shells

India's financial sector continues to grapple with a significant NPA crisis, where a substantial portion of bad loans is linked to corporate borrowers who have wilfully defaulted. A common modus operandi involves promoters and controlling shareholders using complex, multi-layered corporate structures and a web of Special Purpose Vehicles (SPVs) to achieve several malicious objectives: siphoning funds borrowed for a specific

project into unrelated personal ventures, diverting corporate assets to other group companies, and ultimately leaving the lending institutions with a "hollow shell" a debtor company with no valuable assets left to recover.

The high-profile collapses of entities like IL&FS and Dewan Housing Finance Corporation Ltd. (DHFL) serve as stark case studies.

These were not simple business failures but catastrophic implosions of vast corporate groups where liabilities were systematically hidden, funds were diverted through hundreds of subsidiary and associate companies, and the lines between corporate and promoter assets were deliberately blurred. In such scenarios, by the time fraud is discovered, the valuable assets have been placed several corporate layers away from the original debtor entity, putting them beyond the reach of creditors through traditional recovery mechanisms. Reverse piercing provides a direct legal tool to cut through these layers and hold the beneficiary entities (which are often the alter egos of the promoter) liable for the debts.

### **B. The Inadequacy of the Current Framework**

While Indian regulators have taken steps to improve corporate governance and transparency, these measures are primarily preventative and disclosure-based, rather than remedial. The Companies (Significant Beneficial Ownership) Rules, 2018, for instance, aim to identify the ultimate individual owners behind corporate structures. Similarly, the Securities and Exchange Board of India (SEBI) has tightened regulations governing Related Party Transactions (RPTs) to prevent tunnelling of funds. While these are crucial reforms, they do not, in themselves, provide a mechanism for creditors to recover assets that have already been fraudulently transferred. Disclosure improves transparency but does not guarantee recovery.

The current judicial approach, relying on ad-hoc solutions like group insolvency under the IBC, while effective in specific large-scale cases, is not a panacea. It creates legal uncertainty, as the power to substantively consolidate is not explicitly codified and

depends on the discretion of the tribunal. It is an inefficient, case-by-case approach that is ill-suited to address the more routine instances of asset shielding that plague the banking system. What is needed is a clear, statutory tool available to courts and creditors in general civil and commercial litigation, not just in the specialised context of insolvency. Furthermore, the global judicial trend towards conservatism creates a new and pressing urgency for Indian reform. As established in the comparative analysis, the highest courts in both the UK (Prest) and the US (Dewberry) have recently signalled a move towards greater formalism and a restriction of broad, equitable veil-piercing remedies. Historically, Indian courts have often looked to English precedents for guidance in corporate law. If this trend continues, the organic, common-law development of a robust reverse piercing doctrine in India is likely to be stalled or even reversed. India's economic problems, however, are acute and require an effective remedy now. Waiting for a slow and uncertain judicial evolution is a strategy fraught with risk. The legislature must therefore intervene to create a clear, codified remedy tailored specifically to India's economic context and challenges.

## **VII. CHAPTER IV: A PROPOSED FRAMEWORK FOR INDIA: THE TRIGGER TEST AND LEGISLATIVE ROADMAP**

To address the identified gaps in Indian corporate law, this article proposes the legislative codification of a "Trigger Test" for reverse piercing. This test is designed to provide courts with a clear, structured, and principled framework for applying this extraordinary remedy, balancing the need to combat fraud with the imperative to protect the integrity of the corporate form and the interests of innocent third parties. The proposed framework is an amalgamation of the most effective elements observed in comparative jurisprudence, tailored to the Indian context.

### **A. The Codified Trigger Test**

It is proposed that courts should be empowered to reverse pierce the corporate veil where a plaintiff can establish, by a high evidentiary standard, the existence of one or more of

the following conditions:

1. **Use of the Corporate Form for Fraud or Evasion:** This is the foundational element, requiring proof that the corporate form was used to conduct illegal or fraudulent activities, or with the specific objective to deceive creditors or evade existing statutory or contractual obligations. This ground directly targets the core abuse that veil piercing is meant to remedy.
2. **Alter Ego Status:** This requires a showing of such complete control and domination by the individual shareholder(s) that the entity effectively has no separate mind, will, or existence of its own. The court would assess this based on the established "badges of fraud," including the commingling of funds, failure to observe corporate formalities, and diversion of assets for personal use. This test is well-grounded in both US and emerging Indian jurisprudence.
3. **Function as an Asset Shielding Vehicle:** This condition specifically targets the modern practice of using companies, particularly SPVs, not for legitimate business operations but primarily as a device to shield the personal assets of the controller from their creditors. The focus would be on the purpose for which the entity is maintained and operated.
4. **Commingling and Fraternisation of Funds:** This provides a specific, objective test focusing on the intermingling of corporate and personal affairs to an extent that it establishes a clear nexus and demonstrates that the corporate entity is being used as a personal purse or to unlawfully funnel monies.
5. **Exhaustion of Alternative Remedies:** As a crucial safeguard, the plaintiff must demonstrate that traditional legal remedies for recovery (such as execution against the debtor's personal assets or a charging order) are inadequate or have been exhausted. This ensures that reverse piercing remains a remedy of last resort, addressing the judicial concerns about its exceptional nature seen in cases like *Curci*.

## B. Essential Safeguards

The codification of the Trigger Test must be accompanied by robust safeguards to prevent its misuse and address the most potent criticism of the doctrine: the potential harm to innocent third parties.

- 1. Protection of Innocent Third-Party Interests:** The most significant risk of reverse piercing is prejudice to the legitimate, non-culpable creditors of the pierced corporation, who extended credit in reliance on the company's separate assets. The legislation must explicitly require the court to consider and protect these interests. This could be achieved by, for instance, subordinating the claim of the shareholder's creditor to the claims of the corporation's creditors, or by ordering a pro-rata distribution of assets that ensures fairness to all stakeholders.
- 2. Proportionality of Remedy:** The statute should mandate a principle of proportionality, requiring courts to favour the least intrusive remedy necessary to achieve justice. Before ordering a full reverse pierce that makes the entirety of the company's assets available, the court should consider alternatives such as imposing a constructive trust over specific assets or issuing a charging order with enhanced enforcement powers.
- 3. High Evidentiary Standard:** Given the exceptional nature of the remedy, the legislation should require the plaintiff to prove the elements of the Trigger Test by a standard of "clear and convincing evidence," a higher bar than the usual "preponderance of the evidence" standard in civil cases.

## C. A Legislative Path Forward

To implement this framework, a clear legislative roadmap is necessary. This would involve targeted amendments to key corporate and commercial statutes:

- 1. The Companies Act, 2013:** A new section should be introduced to Part XVIII ("Winding Up") or as a standalone provision in the general chapters, explicitly

defining the doctrine of reverse piercing and codifying the Trigger Test and its accompanying safeguards. This new provision would complement existing sections that already contemplate disregarding the corporate form, such as Section 7(7) (liability for fraudulent incorporation), Sections 34 & 35 (liability for misstatements in a prospectus), and Section 339 (liability for fraudulent conduct of business during winding up).

2. **The Insolvency and Bankruptcy Code, 2016:** The IBC should be amended to formally recognise and define the powers of the NCLT to order substantive consolidation of group companies in insolvency. The criteria for such consolidation should be harmonised with the principles of the reverse piercing Trigger Test to create a consistent and predictable legal framework across both general corporate law and insolvency proceedings.
3. **Empowering Regulators:** Consideration should be given to granting statutory standing to regulators like the Ministry of Corporate Affairs (MCA), SEBI, and the Reserve Bank of India (RBI) to seek interim orders from courts or tribunals to freeze corporate assets where there is prima facie evidence that an entity is being used as a façade for fraud or asset shielding.

## VIII. CONCLUSION: REINFORCING THE VEIL BY KNOWING WHEN TO PIERCE IT

The journey from the foundational principle of *Salomon v. Salomon & Co.* to the complex realities of its modern-day abuse reveals the constant tension in corporate law between facilitating enterprise and preventing fraud. The doctrine of reverse piercing of the corporate veil lies at the heart of this tension. The comparative analysis undertaken in this article has exposed a stark and widening divergence in judicial philosophies across major common law jurisdictions. The restrictive formalism of the UK and the recent turn towards procedural rigour in the US stand in contrast to the pragmatic, necessity-driven evolution occurring in India's insolvency and arbitration regimes.

This global trend towards judicial conservatism makes it clear that India cannot afford to wait for its courts to slowly develop a common law remedy that may never fully mature. The economic exigencies of the NPA crisis and sophisticated corporate fraud demand a more direct, certain, and immediate solution. The proposed codification of a "Trigger Test," complete with robust safeguards, offers a principled path forward. It provides a framework that is tailored to India's unique challenges, drawing lessons from international jurisprudence while avoiding its pitfalls.

Ultimately, a carefully calibrated and statutorily defined reverse piercing doctrine does not weaken the corporate veil. On the contrary, it strengthens its integrity. By creating a credible deterrent and an effective remedy against those who would abuse the corporate form, it ensures that the veil remains what it was always intended to be: a shield for legitimate enterprise, not a cloak for malfeasance.

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