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# COMPARATIVE LOOK AT REVERSE PIERCING OF CORPORATE VEIL ACROSS JURISDICTIONS

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## ABSTRACT

The whole premise and primary advantage of going through the rigors of drafting incorporation documents and filing the requisite forms are to form an entity with an identity separate and distinguishable from that of its members, it is a registered association of persons solely incorporated to create a status of this entity being recognized as an artificial legal person distinct from its members existing in perpetuity.

Most advantages are exploited by people with ill intentions to conduct malicious acts that must lead to the discovery of loopholes and the creation of legal doctrines, tests, and principles to be applied by various courts of law. This article intends to best explain the concept of reverse piercing of the corporate veil of an entity with the context of precedents passed in various nations' jurisdictions coupled with a showcase of consolidated research of a range of legal practitioners and scholars.

The desired result is for the reader to have clarity on the difference in the event individuals are held liable for the actions committed by them behind the corporate veil as compared to corporations being held liable for actions of the actions of individuals affecting their corporate veil.

## CHAPTER-I: INTRODUCTION & CONCEPTUAL LOOK

*“Where the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will disregard the corporate entity and treat it as an association of persons”* – Justice Sanborn, U.S Circuit Court for the Eastern District of Wisconsin<sup>1</sup>.

In most Indian corporate law materials, almost identical explanations, and structures to the act of lifting the corporate veil are published. Herein, the doctrine of a separate legal entity is introduced with a metaphor for the veil being laid out to emphasize on the difference between the corporate and personal identity that is followed by the Salomon<sup>2</sup> case which explains the capping of shareholder liability being to the unpaid value of their holding<sup>3</sup>. This is commonly known as traditional piercing<sup>4</sup>. The applicable situations that warrant such piercing are described with the usual common law cases along with the exceptions to the rule.

This article aims to depart from the homogenous material by introducing the reverse piercing of the corporate veil and its legal origin in relation to the above doctrine along with its differences from the traditional method and relation to the doctrine of ego and attrition. It will go into detail about its prerequisites and the various tests that have been accepted and/or laid down by the courts across jurisdictions.

This article’s research objective is to shed light on the common and distinct aspects of the concept, interpretation, and ruling by the courts of the USA, UK & India through a timeline and legal interpretation and deviation for the courts to acknowledge the possibility of the application of the reverse piercing of an entity’s corporate veil, apply various tests to see if the entity meets the criteria for its corporate veil to be pierced in reverse, the differentiation and change in the language of court interpretations and orders to justify the allowance or dismissal of a piercing claim.

It is important to do so as when compared to other topics of corporate governance, there is little that is written about reverse piercing due to the absence of a clear set of principles or any bright

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<sup>1</sup> *U.S v. Milwaukee Refrigerator Transit Co.* United States Circuit Court for the Eastern District of Wisconsin (1905) 142 F. 247, 247.

<sup>2</sup> *Saloman v. Saloman & Co.* House of Lords, (1987) A.C 22.

<sup>3</sup> Nicholas B. Allen, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice* 85 *St. John’s Law Review* (2011).

line test. This is why this article shall connect the conceptual research and its relationship to other legal doctrines or rules, and the ratio decidendi of cross-border cases with emphasis on Indian jurisprudence.

This article shall be divided into three chapters. The first and current will provide a brief introduction and conceptual look at the reverse piercing of the corporate veil. The second will feature a comparative study of reverse piercing in the USA, UK & India-Provides explanation and context of case laws w.r.t their respective interpretation, arguments, and *ratio decidendi* spread across different countries and their different legal systems. The final chapter shall consist of conclusions and a suggested trigger test.

A corporation exists only in a metaphysical sense where its identity is created as a legal fiction to create a degree of separation between it and its members<sup>5</sup>.

Reverse piercing is a form of corporate veil lifting as a corollary to the traditional method as liability is affixed on the company for the actions or omissions of its individual(s) who may be the company's member or management. It involves the successful application of the doctrine of attribution<sup>6</sup> wherein Saloman's principle was reiterated by Lord Denning<sup>7</sup> in addition to comparing a company to a human body where it cannot perform actions of its own without the intent of the action and its consequences being formed and envisioned by its management holding fiduciary positions as the brain which is deemed to be that of the company<sup>8</sup>. This attribution of actions or omissions involves disregarding the distinction of identities between the company's artificial legal personality and the individual(s) resulting in the debts of the individual(s) now being the debts of the company contrary to the Principle of Separate Patrimony. They are not acting on behalf of the company via a relationship of agency but rather are now classified as the embodiment of the company, speaking through it by controlling its mind and will<sup>9</sup>.

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<sup>5</sup> *Bligh v. Brent* (2011) 2 Y&C Ex. 268.

<sup>6</sup> As explained in *Lennard's Carrying Co. Limited v. Asiatic Petroleum Co. Limited* (1915) House of Lords, AC 705.

<sup>7</sup> *H.L Bolton Limited v. T.J Graham & Sons*, House of Lords (1956) (1) QB 159.

<sup>8</sup> As laid down by the Bombay High Court in *Esso Standard Incorporated v. Bhagwan Japanwalla*, Bombay High Court, (1975) 45 CompCas 16.

<sup>9</sup> *Tesco Supermarkets v. Natrass*, House of Lords (1971) AC 153.

It enables these individual(s)' creditors to reach the company's assets to satisfy their dues which is known as "outside" reverse piercing as these creditors are external third parties to the company thereby disregarding the Rule of Affirmative Asset Partitioning<sup>10</sup>. Reverse piercing may be voluntary when initiated by the company itself or involuntary when applied for by parties external to the company.

Considering the extreme nature of this action, courts, at their discretion, have allowed it sparingly by setting parameters on its subjective application as further detailed in Chapter-2. However, it can be observed that the following two elements<sup>11</sup> have been as leitmotifs by courts across jurisdictions<sup>12</sup>:

1. The applicant(s) would have to show a unity of identity of the company and individual(s) by the degree of the convergence of their interests<sup>13</sup> at the level of being identical leading to the company being classified as the individual's alter ego serving as their façade. The wrongful and/or illegal actions of this combined identity must have caused damage to the applicant(s). This has also been upheld in where the parent superseded the discretion<sup>14</sup> of the subsidiary company acting through it with actions that may be against its interests leading to conditions in dispute. In such an event, one company is using the other as a device for complete entity/asset shielding to disable the subsidiary's creditors from claiming the parent's assets as they are technically not the parent's creditors<sup>15</sup>.
2. The court will also have to assess the judicial weight and strike a balance between the existence and exhaustion of alternative legal remedies along with consequential harm to non-applicants who as creditors carried out or agreed to carry out dealings with the company on the sole reliance of the doctrine of separate legal identity is strictly upheld<sup>16</sup>.

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<sup>10</sup> Henry Hansmann & Reinier Kraakman, The Essential Role of Organizational Law, 110, Yale Law Journal (2000) 387-440.

<sup>11</sup> As detailed by Justice Humphrey in *United States Trustee v. Zhang*, United States Bankruptcy Court, Southern District of Ohio (2012) Case No. 09-31153.

<sup>12</sup> Identical to Gaertner's suggested Unitary Test for reverse piercing the corporate veil.

<sup>13</sup> Shweta Sahu, 'Piercing the Corporate Veil: A Necessity Today in India And Abroad' (2013) National Law University, Odisha.

<sup>14</sup> *Trossman v. Philipsborn* 1<sup>st</sup> District Appellate Court of Illinois (2007) 373 Ill. App.3d 1020.

<sup>15</sup> Hansmann, Kraakman & Squire, 'Law and the Rise of the Firm' (2006) 119 Harvard Law Review at 1338.

<sup>16</sup> Michael Gartner, 'Reverse Piercing the Corporate Veil: Should Corporation Owners Have It Both Ways?' (1989) 30 William & Mary Law Review.

Osborn brings light to the “Fontana Rule”<sup>17</sup> which emphasizes this corporate instrumentality and unity of interest test that would validate reverse piercing if met with the following list that may constitute badges of fraud:

1. Failure to comply with corporate compliance and lack of records;
2. Capitalization below regulatory minimum;
3. Failure to issue stock or refund application amount;
4. Intermingling of corporate and personal funds;
5. Absence and non-compliance of arms’ length transactions with related entities and individual(s);
6. Presence of control and domination of related entities and individual(s); and
7. Diversion of assets and/or funds to members, managers, or third parties detrimental to creditors.

With the above intellectual diversity among judiciary, practitioners, and academics, there is no common ground or objective test to validate reverse piercing due to the subjective nature of the people, entities, and transactions involved which is why it is key that we first understand the development of this action and its elements across jurisdictions detailed in the next chapter.

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<sup>17</sup> Joseph & Angela Fontana v. TLD Builders Limited, Appellate Court of the 2<sup>nd</sup> District of Illinois (2005) 1 MR 45.

**CHAPTER-2: COMPARATIVE STUDY OF PRECEDENTS**

Considering that numerous precedents broach the aspect of reverse piercing of the corporate veil, for the purposes of the research has been relegated to a limited but specific number of cases<sup>18</sup> that were considered landmarks with respect to the year of the concerning uniqueness of case text language, and *ratio decidendi* around which the judgement was so declared.

1. **Macaura<sup>19</sup>:** The Macaura plaint is centered around the ex-owner of a timber estate who sold all the products of this estate to a company he incorporated in exchange for its shares. This produce was insured in the name of this owner. With the goods being destroyed by fire and to recover the loss, a claim was filed by the owner that was later rejected by the insurance company contending that the identity of the owner is separate and distinct from that of the incorporated company which makes the owner devoid of any insurable interest that is the cornerstone of indemnity contracts leading to the claim not being sustainable. What makes Macaura the most unique precedent is that it is only the first case of its kind but also the fact that the owner, himself requested the incorporated company’s veil to be lifted to reveal that he was the company’s sole shareholder and one of its creditors to substantiate his claim. The House of Lords affirmed the order of the Court of Appeal, Northern Ireland by dismissing the claim on grounds of strict construction of the separate legal identity doctrine. The owner’s insurable interest was held to be distinct from his corporation even in his position as its sole shareholder and part of its creditors.

<b>Action</b>	Rejection of insurance claim
<b>Key Contribution</b>	First well-known case for reverse piercing of the corporate veil in addition to being out of the owner of the corporation’s application for voluntary piercing.

2. **Kingston<sup>20</sup>:** Kingston had performed boat repairing services for a subsidiary of Lake Co. by the name of Inland Marine Co. The above was captured into a contract entered between

<sup>18</sup> **Note:** Even though it has been advised to progress with this comparative study via classification of cases by jurisdiction, the Author, in his subjectivity, considers a timeline-based approach to give context to the judicial origin and development of the reverse piercing against the corporate veil.

<sup>19</sup> *Macaura v. Northern Assurance Co.* House of Lords (1925) AC 619.

<sup>20</sup> *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.* 2<sup>nd</sup> Circuit Court of Appeals, Eastern District, New York (1929) No. 189, 31 F.2d.

Kingston & Lake Co. where later, Lake Co. defaulted in making payments. The Eastern District Court of New York ruled to reverse pierce Lake Co. to make its subsidiary company liable for the acts of its holding company committed for and on behalf of this subsidiary. Even though it was not stated explicitly, Justice Hand ruled against this reverse pierce. Commonalities of ownership of shares and management were termed “corporate paraphernalia”<sup>21</sup> wherein the test for control would be placed in form rather than substance exercised immediately or left to the initiative of this paraphernalia. It was shown that holding and subsidiary companies have six directors in common, but the court believed control through ownership of shares does not fuse corporations even if common board members. This judgement severely limited the scope of reverse piercing of the corporate veil as the court emphasized on the probability of a Kingston situation warranting its exercise of such reverse piercing to be rare.

<b>Action</b>	Recovery of service fees from corporate subsidiary not privy to contract but a beneficiary of service.
<b>Key Contribution</b>	The first case to lay down a test for control by deciding on holding-sub subsidiary liability in the context of reverse piercing of the corporate veil with the usage of terminology of “corporate paraphernalia” for elements of control like common ownership and/or management coupled with an acknowledgment of the limited use of this action due to the rarity of case situation.

3. **Platts<sup>22</sup>**: Willard Platts had incorporated W.G Platts Inc. and transferred his assets to this company in lieu of 99.7% of its shares. This was coincidentally done before his ex-wife, Beatrice, could enforce the court order to place her husband’s properties in her possession. She was sued by the above company to recover damages caused by her executing liens on these properties. The company’s motion would have succeeded had the court not ruled that Platts Inc. was the “alter ego” of the husband for asset protection and avail shielding

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<sup>21</sup> Factors including but not limited to a holding-sub subsidiary relationship like treatment of profits, decision making, degree and duration of authority, etc. as observed by Barber S, Company Law, Old Bailey Press 15 (2001 3<sup>rd</sup> edn 15).

<sup>22</sup> *Platts Inc. v. Beatrice Platts*, Supreme Court of Washington (1956) 298 P.2d 1107.

nature<sup>23</sup> of the separate legal identity doctrine as observed in *Craven v. Knight*<sup>24</sup>. Willard had complete control and domination over this company via his ownership in the absolute majority of company stock and knowingly placing liens for blocking asset transfer arising out of Beatrice’s successful divorce action. The court referred to *Platt v. Bradner Co*<sup>25</sup>. wherein it was stated that where one person/corporation controls a corporation to such an extent to render the other as a mere instrument, this corporate form abuse will not be tolerated, and the courts will look beyond the legal fiction of this corporation’s separate existence from its controller to determine the structure of the agency. The court ruled in favour of the wife by its own precedent in *Clark v. Schwaegler*<sup>26</sup> where the reverse piercing was ordered of the husband’s identity to hold his corporate identity liable for the division of assets.

<b>Action</b>	Securing of property out of court-ordered division from successful marital dispute judgement.
<b>Key Contribution</b>	The first mention of a corporate entity is being the alter-ego of the owner with elements like control and domination over an entity would be future tests of reverse piercing the corporate veil.

4. **Shamrock**<sup>27</sup>: The above judgement was reiterated to suit a *replevin*<sup>28</sup> action for the right to ownership and possession of an oil drill right and its ancillary accessories. Shamrock was incorporated by Mr. Phillips who transferred his interest in multiple oil rigs to the company without any consideration. Mr. Phillips was Shamrock’s president since its first board meeting and later became its majority shareholder via the sale of an oil rig to the company. The company entered a contract with Mr. Phillips’s company, Phillips Drilling Co. to operate these rigs on Shamrock’s behalf on a profit-sharing basis. It was later discovered that no such profits were shared with Shamrock with an absence of documents to support Mr. Phillips with Shamrock showing a no-profit situation since the term of the

<sup>23</sup> David Cabrelli, 'The Case Against 'Outsider Reverse' Veil Piercing in Company Law (2010) University of Edinburgh School of Law.

<sup>24</sup> (1683) 21 Eng. Rep. 664 (Ch).

<sup>25</sup> Superior Court of King County (1924) 131 Wash. 230 Pac. 633.

<sup>26</sup> Superior Court of King County (1918) 104 Wash. 175 Pac. 300.

<sup>27</sup> *Shamrock Oil & Gas Co. v. Ethridge*, District Court of Colorado (1958) 159. F 693.

<sup>28</sup> Common law procedure for the seizure of assets for the provisional restoration of ownership, possession, or recovery of outstanding dues or losses.



above agreement. Phillips’s creditor secured a replevin judgement against him. By relying on *Carlesimo v. Schwebel*<sup>29</sup>, the court stated that a corporation’s separate legal existence will be disregarded in situations that warrant it where the parties in question shall be regarded as an aggregation of persons. The corporate personality cannot be used to bar our and pervert the truth that Mr. Phillips was using Shamrock as a business conduit to conduct his drilling operations. Shamrock is not only governed and influenced by Mr. Phillips, but also to such an extent that there is a unity of interest between the ownership, and control of Shamrock and the individuality of Mr. Phillips. The court will ignore the legal fiction of corporations to promote justice and prevent fraud. The alter ego theory has been adopted only in those cases where the corporate entity is being used as a subterfuge to perpetuate a public wrong<sup>30</sup>. With the alter ego theory, the act of one is attributed to both by contract, judgement or otherwise, equally binding both. Shamrock involves actions via contract and judgement through Mr. Phillips where the company’s sole function was to hold “naked title” for him that justifies in the court in piercing the corporate veil and declaring Shamrock as a dummy corporation.

<b>Action</b>	Replevin from the company of creditor being used for creditor’s service operations.
<b>Key Contribution</b>	Details the rule of law for corporate veil piercing to situations that warrant it like the appearance of an aggregation of persons and promotion of justice and prevention of fraud. The first case to explain jurisprudence when it comes to the alter ego theory and use its linguistic variants like “naked-title”, “dummy corporation”, and “business conduit”.

5. **G.M Leasing**<sup>31</sup>: Mr. George Norman had incorporated G.M Leasing Corporation to run a car leasing business as its general manager. However, as most of these cases go, no cars were leased, no employees were hired, no board meetings took were held and no shares were allotted. The cars that were purchased were in the name of the company but registered Mr. Norman and his wife. These cars were vintage cars that were not standard of the leasing

<sup>29</sup> California Court of Appeals, First District, Division One (1948) Civil Application No. 13777

<sup>30</sup> *Pickwick Corp v. Welch*, Southern District Court of California (1937) 21 F. Supp. 669.

<sup>31</sup> *G.M Leasing Corporation v. United States*, United States Supreme Court (1977) 429 U.S 338.

market. The Internal Revenue Services proved that this company was the alter ego of Mr. Norman and served as a repository for his personal assets.

Mr. Norman was also a tax fugitive whose dues were also recovered from this corporation even in the event he was not a director or director of the corporation.

<b>Action</b>	Writ petition for unlawful entry and seizure of assets in lieu of alleged tax dues.
<b>Key Contribution</b>	The first case for recovery of government dues showed a higher degree of acceptance to reverse pierce in the event of governmental action. Perfect contrasting precedent to the traditional piercing as seen in <i>Dinshaw Maneckjee Petit</i> <sup>32</sup> .

6. **Escorts**<sup>33</sup>: The court ruled that conditions and the exigent situations required for the lifting of the corporate veil in whichever direction could only be done to ascertain the nationality or origin of the shareholders or to prevent fraud, improper conduct, tax evasion, etc. The court also stated that it is not sound to create actionable lists that require the lifting veil as no statute specifically provides for it and must be adjudged on a case-to-case basis.

<b>Action</b>	Corporate identity determination of non-resident portfolio investment schemes, which existed under the erstwhile Foreign Exchange Regulation Act, 1973.
<b>Key Contribution</b>	First Indian case where a separate legal identity doctrine was confirmed, and the Supreme Court of India affirms the action of lifting or piercing the corporate veil in exceptional circumstances. when it is used for subverting justice. Reference to allowing the action of the lifting veil for the benefit of companies <sup>34</sup> .

<sup>32</sup> Bombay High Court (1927) 29 BOMLR 447.

<sup>33</sup> *Life Insurance Corporation v. Escorts Limited* (1985) AIR SC 1370.

<sup>34</sup> *State of Uttar Pradesh v. Renuagar Power Co.* (1988) AIR 1737.

7. **Easton<sup>35</sup>**: State of New York was the judgement creditor of Mr. Karl Easton and had issued a recovery action to claim fraudulent gains made by him by being the president of two healthcare companies that gained access to various welfare funds for mental healthcare beneficiaries and exploited them with unlawful billing and other malicious activities. He was their majority shareholder who transferred his holdings to his infant children to escape this payment. The court found his two companies to exist as mere facades of his creation without any will of their own to be used as a laundry service to embezzle government funds. Their corporate identity was disregarded as the court remarked that labels tend to obfuscate the true and real interrelationships that give character to actions. Court added to the control and domination test by stating that it shall be piercing the veil if this domination is being used to commit fraud or wrong against third parties. His companies were made liable for his debt because of this reverse pierce.

<b>Action</b>	Recovery of fraudulent gains
<b>Key Contribution</b>	Fraud or wrong is an addition to the domination test. The court stated that the direction of the pierce is immaterial where its test has been met.

8. **Floyd<sup>36</sup>**: Mr. Thomas Bridges founded two companies to develop and license software. He was their sole director and shareholder. His salary was paid to a third company that he incorporated of which he was again, the sole director and shareholder. This relationship between Mr. Thomas and his companies was described by the court as “so intimate” and mingled beyond recognition as distinct to result in injustice to third parties. All of them were treated as a single unit.

<b>Action</b>	Asset attachment from companies to recover personal back taxes.
<b>Key Contribution</b>	Corporate affinity and nexus were widened beyond the alter ego doctrine to include a situation where the relations between the parties were so close that one could not distinguish between the corporation and the individual. This also included the first

<sup>35</sup> *State of New York v. Easton*, Supreme Court, Albany County (1995) 647. N.Y.S 2d 904.

<sup>36</sup> *Floyd v. Internal Revenue Services*, Court of Appeals (1998) 10<sup>th</sup> Circuit, 151 F.3d 1295.

	<p>judiciary critique of reverse piercing where the action would bypass normal collection procedures and be unfair to the other third parties like creditors of the companies who relied on the company being a distinct entity from the individual. The veil should not be pierced in reverse to cause prejudice to innocent third parties.</p>
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9. **First Flight<sup>37</sup>**: Two companies as judgement creditors against Mr. Barrie Peterson file an action to recover judicial claims against several entities incorporated, wholly owned, and controlled by him. It was proved that these entities were the alter ego of Mr. Peterson and served him to evade collections from lawful judgements to deceive creditors and government agencies. The court termed him as a corporate insider who abused its form, held these entities captive, and ordered reverse piercing for the creditors to reach the assets of these entities to satisfy their claims.

<b>Action</b>	Enforcement of judicial awards of an individual from his corporations.
<b>Key Contribution</b>	Extension of the alter ego standard to further include evasion of personal obligations, and act of deceiving stakeholders and government authorities. The corporate form was interpreted to be subject to abuse and being captive to the ulterior intentions of its controller. First known case was where the plaintiff was termed as “outsider reverse piercing” with the controller being the “corporate insider”.

10. **Hashem<sup>38</sup>**: The court laid down the following definite test elements to pierce the corporate veil:
- i. Ownership and control.
  - ii. Piercing may only take place to promote justice.

<sup>37</sup> *C.F. Trust Inc. v. First Flight Limited Partnership*, District Court for the Eastern District of Virginia (2000) 111. F. Supp. 2d 734.

<sup>38</sup> *Hashem v. Shayif*, High Court of Justice for Family Disputes (2008) EWHC 2380.

- iii. Abuse of corporate form.
- iv. Control by the wrongdoer does not suffice in isolation, impropriety must be established simultaneously.
- v. Deceptive intention leading to incorporation and/or operation of the corporate form leading to a corporation becoming an instrument for deception.

<b>Action</b>	Asset claim arising out of matrimonial disputes.
<b>Key Contribution</b>	The court formally laid down and accepted the elaborate tests for traditional and reverse piercing of the corporate veil.

11. **Damenti**<sup>39</sup>: A restaurant was incorporated with the stock being split between spouses along with the incorporation of a for-profit Limited Liability Company (“LLC”) for events and exhibitions which later filed bankruptcy. A recovery action of reverse piercing was initiated by the plaintiff who was the government-appointed trustee for the dissolution of this LLC.

The trustee wanted to recover creditor dues of the LLC from the incorporated restaurant by reverse piercing the corporate veil and bringing individuals and the above entities under the single entity theory as all purchases were made under the personal accounts of the spouses and the required paperwork was not maintained. The court stated that reverse piercing requires the elements of undercapitalization, absence of corporate records, non-compliance of corporate formalities, the intermingling of corporate and personal affairs, and the use of corporate identity to perpetrate fraud. In the current case, a departure from corporate formalities did not harm the creditors leading to the individual corporate identities of the above being upheld and rejection of traditional and reverse piercing. The court ordered creditors to follow the established recovery process.

<b>Action</b>	Insolvency trustee to recover creditor dues of LLC from another incorporated entity.
<b>Key Contribution</b>	The court stated the definitive elements required for reverse piercing and affirmed the harm principle for creditors to avail the

<sup>39</sup> *William G. Schwab v. Kevin McDonald & Damenti’s Inc.* Unites States Bankruptcy Court, Pennsylvania (2009) 405. B.R 555.

	procedure established by law for recovery and not resort to reverse piercing.
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12. **Iridium**<sup>40</sup>: Motorola Inc. was sued with criminal liability for cheating another company on a business venture where its employees made false representations that led to the venture being commercially unviable. Iridium cited *Standard Chartered Bank v. Directorate of Enforcement*<sup>41</sup> to state that the company cannot be immune from criminal prosecution of the acts of its authorized representatives. The court stated that a company can be held criminally liable in the event the offense is related to the business the company is engaged in that would have to be preceded with control so mingled that both would fall under the alter ego doctrine and doctrine of attribution. Iridium’s argument is that a company “has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre”. Contextually, this would refer to Motorola’s employees, without a prior determination, only the actions of the “brain” will be attributed to the company.

Iridium was required to establish that they have been deliberately induced into making huge investments based on Motorola employees’ representations and its representatives, which representations to affirmatively apply the doctrine of attribution to hold the company liable.

<b>Action</b>	A criminal complaint for cheating to holds the company liable for the actions of its employees.
<b>Key Contribution</b>	Supreme Court of India affirmed the criminal liability of companies for acts of its employees if tests of standard alter ego and attribution are met.

13. **Godfather**<sup>42</sup>: The court ruled that specific statutes like the Negotiable Instruments Act of 1881, attribute liability nature to the company and its officers who are deemed to be guilty of the act’s non-compliance. A company is a juristic person, and its intention is determined

<sup>40</sup> *Iridium India Telecom Limited v. Motorola Incorporated* (2011) 1 SCC 74.

<sup>41</sup> AIR (2005) SC 2622.

<sup>42</sup> *Aneeta Hada v. M/s Godfather Travels & Tours* AIR (2007) SC 1481.

by its human agents. In the event a company commits an offence, the offence can only be committed via these agents and are to be held liable as an extension of vicarious liability where criminal and monetary penalties were laid on the company after reverse piercing the veil of these agents by establishing the principle that vicarious liability is inextricably intertwined with the liability of the principal which in this case, is the company. If the company and its employees are treated separately, it would be violence to the provision's language.

<b>Action</b>	Criminal liability due to dishonour of cheque.
<b>Key Contribution</b>	Court examined the relationship between the doctrine of vicarious liability of the company with respect to the lifting of the corporate veil and criminal liability.

14. **Prest<sup>43</sup>**: Distribution of assets arising out of divorce led the wife to allege that her spouse had parked assets in several incorporated associations that were wholly owned and controlled by a company that was under the complete control of her spouse. Corporate form cannot be used to take unfair advantage of entity shielding for assets to avoid statutory dues and obligations if the alleging party has a beneficial interest in the same. The court also stated that it cannot be laid down definitive tests other than the ones that already exist due to the subjective nature of piercing.

<b>Action</b>	Motion to compel the court to pierce the corporate veil of the husband to the reveal the true representation of holdings for divorce litigation.
<b>Key Contribution</b>	Test of dishonesty for established that had to be succeeded by the corporate identity being used as a façade or special purpose vehicle to perpetuate a fraud of disguising ownership property. Evasion of statutory liability leading to corporate concealment would have to be proved to pierce if a such piercing is the last resort.

<sup>43</sup> *Prest v. Petrodel Resources Limited* (2013) UKSC 34.

15. **Airtel<sup>44</sup>**: Contrary to the Iridium ruling, the court stated in this 2G case that reverse application of the alter ego doctrine can only be applied if there is sufficient incriminating evidence of the company’s authorized representative as to their specific role, coupled with criminal intent on their part to act for and on behalf of the company termed as “consented criminality” or if the statute provides for the unity of liability for offences as seen under the Godfather case.

<b>Action</b>	Criminal litigation against a non-named person in FIR.
<b>Key Contribution</b>	The court can attach persons not named in an FIR as parties to a suit. The Supreme Court of India ruled against invoking the doctrine of attribution on the sole reliance of the corporate position of being a Chairman of the bearing should lead to a presumption of control and domination. The above test must meet to invoke the same.

16. **Curci<sup>45</sup>**: Mr. James Baldwin exclusively incorporated an LLC to hold his assets along with those of his wife. He was the Chief Executive Officer and held a majority of its shares. He had also incorporated numerous entities that had ties to this LLC. The LLB defaulted in the repayment of an amount borrowed from Curci leading to Curci initiating enforcement of charging orders on all his entities that had business relations with the LLC. Curci pleaded outside reverse piercing the identity of this LLC to hold the entities that it held all the shares and exercised complete domination over to be responsible for claim satisfaction. The trial court agreed to Curci’s interpretation of reverse piercing to enforce charging orders as these entities, after observing their management and shareholding were clearly a nexus as “pass-through entities” to avoid payment of dues. Mr. Baldwin’s entities held the transferable interest that flowed from his LLC and referred the issue to the appeals court.

<b>Action</b>	Charging order against entities of judgement debtor.
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<sup>44</sup> *Sunil Bharati Mittal v. Central Bureau of Investigation* AIR (2015) SC 923.

<sup>45</sup> *Curci Investments LLC v. James Baldwin*, California 4<sup>th</sup> District Court of Appeal (2017) G052764.



<b>Key Contribution</b>	Lead to a state which previously did not allow outsider to reverse piercing of the corporate veil to refer the same to an appeals court for exceptional approval when considering previous precedents by other American courts. Currently ongoing litigation.
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<b>Comparative Judicial Approaches</b>		
<b>US</b>	<b>UK</b>	<b>India</b>
<p>Considering the liberal judicial language observed in the above cases, various US state courts have been enthusiastic to pierce the corporate veil on either the exhaustion of other legal remedies or clear precedent tests being met on a case-to-case basis.</p>	<p>Even with the creation of the doctrine occurring in this jurisdiction, UK courts have been directly reluctant to enforce the action of piercing the corporate veil, regardless of its direction.</p>	<p>A developing concept requires much discovery through white papers and precedents.</p>

<p>At first, US state courts applied common law doctrines but later, developed their own interpretation to make up for their deficiency. They relied on indicators that enabled entities in question to use their corporate existence as special purpose vehicles for the purpose of asset shielding tactics resulting in the lifting of the corporate veil and charging orders against them. This instrumentality and alter-ego based approach for the corporate form to reallocate and/or misappropriate assets has been considered as its prime basis.</p>	<p>Courts will hold up the doctrine of separate legal identity and the corporate veil is to be pierced only in the most exceptional circumstances, one of them, being fraud and establishment of nexus via an agency.</p>	<p>Indian courts have followed common law principles and the criteria of fraud and test of agency laid down by the US courts but are now diverging towards aspects like corporate purpose and asset shielding as cases develop.</p>
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**Comparative Judicial Approaches**

<b>US</b>	<b>UK</b>	<b>India</b>
<p>Leading jurisdiction with progressive and subjective tests.</p>	<p>Even Hashem, exercised in the rarest of cases limited to fraud or matrimonial disputes being the primary cause of action.</p>	<p>Infancy stage, requires further research, and possible codification through future precedents.</p>

### CHAPTER-3: CONCLUSION & SUGGESTED TRIGGER TEST

We must redefine the wheel before we reinvent it.

Considering the above, nothing new or original can be written about this concept or its subjective application as with time. It is to be fleshed out across jurisdictions. However, idea amalgamation would be reasonable where a “**Trigger Test**” is recommended to be followed for identifying a potential case for reverse piercing the corporate veil based on the IF/OR<sup>46</sup> tests and strict penalties found in stringent regulations like the SAST<sup>47</sup> & Competition Act, 2000.

The following Trigger Test would be a combination of the case law elements of Chapter 1 & 2 amongst Zhang, Fontana Rule & Hashem where the action of reverse piercing should be allowed by courts in the event the corporate form:

1. Is used to conduct activities that are illegal, fraudulent with an objective to deceive creditors or with mala fide intention<sup>48</sup>; OR
2. Meets the test of control and domination resulting in the entity being a façade or alter ego of its individual(s); OR
3. Is being used a special purpose vehicle to conduct asset shielding activities or carry out illegal or bad faith conveyances; OR
4. Meets of the test of fraternization of funds to the extent to establish a nexus to funnel monies from one entity to another individual or entity; OR
5. Is abused to take advantage of allowable corporate structuring and its separate legal identity benefit to place assets out of creditor reach or defeat audit or claims procedure.

**Legislative Premonition:** In a matter like this, which involves cross-border legalese and precedent analysis, it is predicted that only a national fraud would be the catalyst to create an

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<sup>46</sup> To counter the subjectivity of the regulation’s application, under Section 5 of the Competition Act, 2000 & SAST have been drafted as tests in the format of listed elements or scenarios that would result into an entity falling under the provision if either of these elements is met in singularity or combination as detailed in the respective sections.

<sup>47</sup> Substantial Acquisition of Shares & Takeover Regulations, 2011.

<sup>48</sup> To be interpreted w.r.t applicable contract act, commercial code, torts, and criminal law.

ideal scenario for a legitimate white draft to arise out of the results of an expert committee created with multi-agency support of the Ministry of Corporate Affairs & Reserve Bank of India to resolve the Non-Performing Asset crises plaguing the banking and non-banking financial services industry by potentially amending:

1. **Section 2 (76) of the Companies Act, 2013:** Defines “**Related Party**”.
2. **Section 188 of the Companies Act, 2013:** Contains provisions for Related Party Transactions in relation to corporate compliance, internal policy formulation, the duty of care, etc.
3. **Accounting Standards 18 & 22:** Accounting treatment, reporting, and disclosures for Related Party Transactions.

In the case of public companies or companies aiming to list on the stock exchanges, the above would have to also have to be read with Regulation 23 & Schedule V of Securities & Exchange Board of India (Listing Obligations & Disclosure Requirement) Regulations, 2015.

Reverse piercing may be a developing concept in India that is still in its infancy. It is pertinent to start the pre-legislative dialogue because when this unexplored concept is paired with non-compliant financing activities arising from lending policies that require an overhaul in matters of due diligence and transaction-based justification with borrowers being related parties to:

1. Creating an obligation on the borrowers to create and comply with extensive policies governing these transactions.
2. Ensuring that lending institutions adopt stricter due diligence, contract covenants, and escrow policies for financing activities of parties having business dealings with their related parties based on internal credit and risk matrixes.
3. Prevent structured monies and assets from being lent are out of the kept out of the lenders’ reach because of this action or failure of pre-existing legal remedies.

It is a long road to the conceptual discovery and possible codification for Reverse Piercing of the Corporate Veil with its conclusion summed up by emphasizing on individual risk impact

assessment on transactions by picturing the illusions of the Matryoshka dolls and reminding oneself of W.H Auden's famous quote:

*There is more than meets the eye.*

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Michael J. Gaertner is a Chicago based attorney who got his J.D from William & Mary Law School. In his review, he describes the evolution of the concept of separate corporate identity to its modern version that we know now and how courts have applied the rule of estoppel against individuals while granting traditional and reverse piercing orders. He closes the review out by recommending a unitary test which is a method to combine the courts' strict adherence, traditional, and equitable approach to piercing the veil that inform the reader of the implications of applying this doctrine to pierce the veil and set aside such shielding.

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