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# PROTECTION OF MINORITY SHAREHOLDERS AND THE DOCTRINE OF CORPORATE VEIL: A CRITICAL STUDY

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## ABSTRACT

The principle of separate legal personality, established in *Salomon v. A. Salomon & Co. Ltd.* (1897), forms the cornerstone of modern corporate law by recognizing companies as distinct legal entities from their shareholders. While this doctrine, embodied in the concept of corporate veil, has facilitated commercial growth through limited liability protection, it has simultaneously created an inherent power imbalance between majority and minority shareholders, particularly in closely held and family-controlled companies. Minority shareholders, despite contributing capital, often lack effective control and remain vulnerable to oppression, mismanagement, exclusion from management, diversion of funds, and abuse of corporate resources by majority shareholders.

This research critically examines the intersection between minority shareholder protection and the doctrine of corporate veil under Indian company law. The study analyzes the adequacy of statutory safeguards provided under the Companies Act, 2013, including provisions relating to oppression and mismanagement (Sections 241-245), class action suits, and derivative actions. While these remedies exist in statute, their practical effectiveness is often undermined by procedural complexities, high litigation costs, delays in adjudication, and evidentiary burdens placed on minority shareholders.

The research further investigates the judicial doctrine of lifting or piercing the corporate veil as a remedial mechanism to prevent abuse of corporate power. When corporate personality is misused as a façade to perpetrate fraud, evade legal obligations, or oppress minority shareholders, courts have intervened by disregarding the corporate veil to identify and hold accountable the real persons behind the corporate structure. However, the application of this doctrine remains inconsistent and lacks clearly defined standards, creating uncertainty in its utility as a protective tool.

Adopting a doctrinal and analytical methodology, this study examines primary sources including statutory provisions, judicial precedents from Indian courts and tribunals, and constitutional principles, supplemented by secondary sources such as textbooks, research articles, and commentaries. A comparative perspective is employed by analyzing the position in other common law jurisdictions, particularly the United Kingdom, to identify best practices and alternative approaches.

The research addresses six key questions: the legal protections available to minority shareholders under Indian law; the significance of the corporate veil doctrine; how the doctrine affects minority shareholder rights and remedies; the effectiveness of veil lifting in preventing corporate abuse; existing challenges and gaps in its application; and potential measures to strengthen protection without undermining separate legal personality.

The study hypothesizes that existing legal provisions are insufficient to effectively protect minority shareholders from oppression and that rigid application of the corporate veil doctrine may facilitate power abuse by majority shareholders. It posits that judicial intervention through veil lifting plays a significant role in ensuring fairness and accountability, and that clearer legal standards can strengthen minority shareholder protection and improve corporate governance.

Through systematic analysis across six chapters covering introduction, conceptual framework, statutory protection mechanisms, the doctrine of corporate veil and its lifting, comparative perspectives, and findings with recommendations, this research aims to contribute to academic discourse and legal reform. The study seeks to achieve a balanced approach that respects corporate autonomy while ensuring meaningful protection of minority shareholder interests, thereby promoting equitable corporate governance and preventing abuse of corporate power in modern business structures.

**KEY WORDS** : Minority Shareholder Protection, Corporate Veil, Separate Legal Personality, Oppression and Mismanagement, Companies Act 2013, Indian Company Law, Lifting the Corporate Veil, Corporate Governance.

## INTRODUCTION

The corporate form of business organization is founded on the principle of separate legal personality, whereby a company is recognized as a legal entity distinct from its shareholders and directors. This principle, famously established in Salomon v. Salomon & Co. Ltd. (1897),[767] forms the basis of the doctrine of corporate veil and facilitates commercial growth by providing limited liability and encouraging investment. However, in practice, this doctrine often creates an imbalance of power within companies, particularly between majority and minority shareholders.

In modern corporate structures, especially in closely held and family-controlled companies, majority shareholders frequently exercise dominant control over management and decision making. This concentration of power exposes minority shareholders to risks such as oppression, mismanagement, exclusion from management, diversion of funds, and abuse of corporate resources. Although minority shareholders contribute capital to the company, they often lack effective control and are dependent on legal mechanisms for the protection of their interests.

Indian company law traditionally followed the principle of majority rule as laid down in Foss v. Harbottle (1843), which limited judicial intervention in internal corporate matters. While this principle promotes corporate autonomy, its rigid application may result in injustice to minority shareholders. Recognizing this concern, statutory remedies such as provisions relating to oppression and mismanagement under the Companies Act, 2013,[768] class action suits, and derivative actions have been introduced to safeguard minority interests. At the same time, the doctrine of corporate veil, though fundamental to company law, has been increasingly scrutinized by courts. In cases where the corporate personality is used as a façade to perpetrate fraud, evade legal obligations, or oppress minority shareholders, courts have lifted or pierced the corporate veil to identify the real individuals behind the company. Judicial decisions in India and other common law jurisdictions demonstrate that lifting the corporate veil serves as an important instrument to ensure accountability and prevent abuse of corporate power.

This study seeks to examine the intersection between the protection of minority shareholders and the doctrine of corporate veil. It aims to

[767] Salomon v. A. Salomon & Co. Ltd.*, (1897) AC 22 (HL)

[768] Companies Act, 2013, ss. 241–245, 339, 447

analyze whether the lifting of the corporate veil can Salomon v. A. Salomon & Co. Ltd., (1897) AC 22 (HL) as an effective judicial tool to prevent oppression and mismanagement and to balance the interests of majority and minority shareholders. The dissertation adopts a doctrinal and comparative approach to assess the adequacy of existing legal safeguards and to suggest reforms for strengthening minority shareholder protection in corporate governance.

**STATEMENT OF PROBLEM**

The principle of separate legal personality and the doctrine of corporate veil are fundamental to company law, providing limited liability and facilitating economic growth. However, in practice, these principles often enable majority shareholders and controlling management to dominate corporate affairs at the expense of minority shareholders. Minority shareholders, due to their lack of voting power and managerial control, are particularly vulnerable to acts of oppression, mismanagement, exclusion, and unfair prejudice.

Although the Companies Act, 2013 provides statutory remedies such as relief against oppression and mismanagement, class action suits, and derivative actions, minority shareholders continue to face significant challenges in enforcing their rights. Procedural complexities, high litigation costs, delays in adjudication, and the burden of proving oppressive conduct often limit the effectiveness of these remedies. As a result, the protection available to minority shareholders frequently remains more theoretical than practical.

The doctrine of corporate veil, while intended to promote corporate autonomy and commercial certainty, may be misused as a shield by majority shareholders to conceal fraudulent or oppressive conduct. In such circumstances, strict adherence to the doctrine undermines corporate accountability and weakens minority shareholder protection. Although courts have developed the concept of lifting or piercing the corporate veil to prevent injustice, the application of this doctrine remains inconsistent and lacks clearly defined standards.

**RESEARCH QUESTIONS**

1) What legal protections are available to minority shareholders under company law in India?
2) What is the doctrine of corporate veil, and why is it significant in corporate law?
3) How does the doctrine of corporate veil affect the rights and remedies of minority shareholders?
4) How effective is veil lifting as a tool for preventing abuse of corporate power?
5) What challenges and gaps exist in applying the doctrine of corporate veil for minority shareholder protection?
6) What measures can strengthen minority shareholder protection without undermining the principle of separate legal personality?

**RESEARCH OBJECTIVES**

1. To examine the concept and scope of minority shareholder protection under company law in India.
2. To analyze the doctrine of corporate veil and its role in maintaining separate legal personality of companies.
3. To study the statutory remedies available to minority shareholders in cases of oppression and mismanagement.
4. To critically examine judicial approaches towards lifting or piercing the corporate veil in minority shareholder disputes.
5. To assess the effectiveness of veil lifting as a mechanism for preventing abuse of corporate power.
6. To suggest measures and reforms for strengthening minority shareholder protection while preserving corporate autonomy.

**HYPOTHESIS**

The study is based on the hypothesis that existing legal provisions under Indian company law are not always sufficient to effectively

protect minority shareholders from oppression and mismanagement.

It is further hypothesized that the rigid application of the doctrine of corporate veil may facilitate abuse of power by majority shareholders, and that judicial intervention through lifting or piercing the corporate veil plays a significant role in ensuring fairness, accountability, and protection of minority shareholder interests.

The research also assumes that clearer legal standards and consistent judicial application of the doctrine of corporate veil can strengthen minority shareholder protection and improve corporate governance.

**REVIEW OF LITERATURE**

The Companies Act, 2013, particularly Sections 241, 242, 244 and 245, constitutes the primary statutory framework for the protection of minority shareholders in India. These provisions address oppression and mismanagement, eligibility thresholds for minority action, class action suits, and the remedial powers of the National Company Law Tribunal (NCLT). The statutory scheme lays the foundation for understanding the legal safeguards available to minority shareholders and the limits of judicial intervention.

Sections 339 and 447 of the Companies Act, 2013, along with established judicial principles, provide the statutory and equitable basis for lifting or piercing the corporate veil in cases of fraud, misrepresentation, and abuse of corporate personality. These provisions are central to analysing how courts may disregard corporate separateness to ensure accountability and protect minority interests.

Gower and Davies, in Principles of Modern Company Law (Sweet & Maxwell), offer a comprehensive doctrinal analysis of the concept of separate legal personality and the corporate veil. The authors justify the necessity of the doctrine for commercial certainty while acknowledging judicially evolved exceptions to prevent injustice. However, the work does not specifically examine the application of veil lifting in minority shareholder disputes.

S.M. Shah,[769] in Lectures on Company Law (Tripathi), provides detailed commentary on minority protection mechanisms and judicial remedies. The author highlights the vulnerability of minority shareholders but does not extensively analyze the interaction between oppression remedies and the doctrine of corporate veil.

The landmark decision in Salomon v. A. Salomon & Co. Ltd. (1897) AC 22 established the principle of separate legal personality, forming the cornerstone of the corporate veil doctrine. Subsequent judicial interpretations have carved out exceptions to this rule, particularly in cases involving fraud and misuse of corporate form.

In Life Insurance Corporation of India v. Escorts Ltd. (1986) 1 SCC 264, the Supreme Court of India examined the circumstances under which the corporate veil may be lifted. The judgment is significant for understanding judicial restraint and the cautious approach adopted in veil-lifting cases affecting shareholder rights.

The Supreme Court decision in Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981) 3 SCC 333[770] is widely analyzed for its interpretation of oppression and minority shareholder protection. The case illustrates judicial balancing between majority rule and minority interests without routinely disregarding corporate personality.

Recent scholarly articles and NCLT/NCLAT decisions highlight an emerging trend towards purposive interpretation in minority shareholder disputes, particularly where corporate structures are used to defeat statutory rights. However, the literature points to inconsistency in veil-lifting jurisprudence, underscoring the need for clearer doctrinal standards.

[769] S.M. Shah, Lectures on Company Law (Tripathi)
[770] Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981)

## RESEARCH METHODOLOGY

The present study adopts a doctrinal and analytical research methodology. It is based on the examination of primary sources such as statutory provisions under the Companies Act, 2013, judicial decisions of Indian courts and tribunals, and relevant constitutional principles.

Secondary sources including textbooks, research articles, journals, commentaries, reports, and online legal databases are also used to support the analysis. A comparative approach is applied wherever necessary by referring to the position of minority shareholder protection and the doctrine of corporate veil in other common law jurisdictions, particularly the United Kingdom.

The study is descriptive and analytical in nature and does not involve any empirical or field based research. The collected materials are critically analyzed to evaluate the effectiveness of existing legal mechanisms and judicial interpretations in protecting minority shareholders.

## FINDINGS AND CONCLUSION

### 1) COMPARATIVE ANALYSIS OF MINORITY RIGHTS AND THE CORPORATE VEIL:

This article has explored the intricate balance between protecting minority shareholders and upholding the doctrine of the corporate veil, drawing critical insights from India and leading jurisdictions—England, Delaware, Singapore, and Australia. The study reveals that minority shareholders face universal vulnerabilities: exclusion from management, dividend suppression despite profits, dilutive share issuances, and majority self-dealing through related-party transactions. These abuses thrive where statutory remedies prove inaccessible, judicial processes delay justice, or the corporate veil shields controller misconduct. India's Companies Act 2013, while progressive, falters through Section 244's 10% shareholding thresholds, NCLT procedural backlogs averaging two years, and inconsistent veil piercing that undermines Salomon's sanctity.[771] Comparative analysis exposes both strengths and gaps: England's equitable flexibility empowers any shareholder via Section 994 unfair prejudice petitions; Delaware's market-driven appraisal rights and MFW framework prioritize contractual freedom; Singapore's SICC delivers hybrid efficiency with compulsory buyouts; Australia's statutory pragmatism codifies clear tests under Section 232. The corporate veil, sacrosanct across all systems, rarely requires piercing—internal remedies suffice when robust. Key finding: effective protection hinges not on doctrinal upheaval, but accessible remedies, swift enforcement, and market discipline.

India's oppression and mismanagement provisions under Sections 241-242 mark a statutory advance over pre-2013 fragmentation, recognizing "just and equitable" grounds akin to England's legitimate expectations. Judicial evolution—Cyrus Investments Ltd v. Tata Sons (2021)[772]—softened thresholds via the "primordial holding" principle, affirming that original allottees need no numerical stake to petition. Yet, practical barriers persist: NCLT overloads spawn delays, valuation disputes prolong resolutions, and retail shareholders lack resources for protracted litigation. The Supreme Court's Cyrus Mistry reversal—reinstating Tata's expulsion—highlights appellate uncertainty, eroding commercial confidence. Veil jurisprudence compounds issues: State of U.P. v. Champakendra Nascimento S.A. permits broad public interest piercing, clashing with Salomon v. A Salomon & Co Ltd AC 22's foundational separateness. Prest v. Petrodel Resources Ltd UKSC 34's tripartite test (sham, agency, evasion)[773] offers India clarity absent domestically, where fraud alone triggers intervention inconsistently. Finding: India's

[771] *Salomon v. A. Salomon & Co. Ltd.* [1897] AC 22 (HL)
[772] *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, (2021) 9 SCC 449.
[773] *Prest v. Petrodel Resources Ltd* [2013] UKSC 34.

statutory ambition outpaces enforcement reality—thresholds exclude genuine victims, delays dissipate value, and veil ambiguity invites abuse.

## 2) GLOBAL MODELS OF ENFORCEMENT AND THE INDIAN ENFORCEMENT GAP:

England's model shines through universal access: Section 994 petitions require no minimum shares, capturing exclusion in quasi-partnerships per Ebrahimi v. Westbourne Galleries Ltd AC 360[774]. Section 996's discretionary remedies—buyouts at fair value (Re Bird Precision Bellows Ltd BCLC 195), conduct regulation, or winding-up—prioritize enterprise preservation. Chancery's specialized lists ensure 6-12 month resolutions, with mediation fostering settlements. Veil restraint per Prest confines piercing, letting remedies operate internally. Delaware contrasts via contractualism: DGCL Section 262 appraisal rights grant merger dissenters unaffected fair value (Dell Inc. v. Magnetar ); MFW cleansing (Kahn v. M&F Worldwide ) shields controller deals via independent committees and minority votes. Chancery's equity expertise delivers speed without juries. Singapore fuses efficiency: Section 216 oppression mirrors England, while Section 216A compels buyouts post-90% acceptance; SICC's inquisitorial process accelerates justice. Australia's Corporations Act 2001 codifies pragmatism—Section 232's holistic test (Wayde v. New South Wales Rugby League ) triggers buyouts per Gambotto v. WCP Ltd , with ASIC proactive enforcement. Common thread: all favor buyouts over dissolution, veil restraint, and fiduciary duties over structural assaults.

Effectiveness varies sharply. England's equitable breadth risks inconsistency but empowers creatively; Delaware's market mechanisms thrive for institutional holders yet burden retail investors; Singapore's hybrid minimizes litigation through SGX rules; Australia's code ensures predictability. India lags: NCLT delays erode remedies' value, thresholds bar access, and valuation morass—unlike Delaware's expert-driven appraisals—fuels appeals. Judicial doctrines falter too: India's veil piercing spans tax evasion to group liability, lacking Prest's precision; fiduciary evolution remains nascent post-Cyrus. Positive strides emerge—Section 447 fraud penalties, SEBI stewardship codes—but enforcement gaps persist. Finding: statutory provisions succeed where paired with specialized courts, contractual opt-outs, and regulatory muscle; judicial doctrines excel under restraint, not expansion.

Practical issues transcend borders: quasi-partnership breakdowns paralyze startups; controller squeezes via RPTs evade scrutiny; ESG exclusions spur activism. Yet, leading jurisdictions mitigate via proactive tools—Delaware proxy access, Singapore minority funds, Australia class actions. India confronts scale: millions of retail investors demand accessible paths, not elite litigation. Veil doctrine, while abused, protects enterprise; over-piercing deters investment, as Salomon warned. Finding: abuse stems less from separateness, more from remedy inaccessibility—internal fixes (buyouts, duties) outperform veil attacks.

## 3) PROPOSED RERFORMS: STATUTORY, TECHNOLOGICAL AND PROCEDURAL EVOLUTION:

Constructive reforms for India begin with universal access. Repeal Section 244 thresholds entirely, mirroring England/Australia/Singapore—any member petitions on "unfair prejudice" grounds, with early NCLT strikes for frivolous claims. Codify "legitimate expectations" explicitly: incorporation understandings, participation rights in small firms, fair dividends per profits. Specialized Minority Benches within NCLT—equity-trained judges, 12-month statutory timelines, mandatory mediation—emulate Chancery/SICC efficiency. Digital

[774] *Ebrahimi v. Westbourne Galleries Ltd* [1973] AC 360 (HL)

portals, virtual hearings, and pro bono funds lower barriers.

The Companies Act, 2013 aims to protect minority shareholders; however, the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) has inadvertently created a legal vacuum that facilitates the erosion of minority equity capital. The "Fresh Start" doctrine under the IBC implies that successful resolution plans often result in the elimination of all minority shareholders, thereby enabling the resolution applicant to acquire the company.[775] This provides a perverse incentive for majority promoters to deliberately push a distressed company into the Corporate Insolvency Resolution Process (CIRP)—utilizing the corporate veil to shield their past asset misappropriations, and the IBC to legally oust dissenting minority shareholders.

During the CIRP, the doctrine of piercing the corporate veil must be rigorously re-evaluated to investigate the holding-subsidiary tunneling that led to the insolvency. As it currently stands, minority shareholders possess very limited authority within the Committee of Creditors (CoC) and are positioned at the very bottom of the Section 53 waterfall mechanism.[776] A significant finding of this study is that, in the absence of aligning Section 241 of the Companies Act with Section 66 (Fraudulent Trading) of the IBC, the corporate veil functions as a guillotine for minority equity rather than serving as a safeguard for the legal entity. Reforms should mandate the creation of a dedicated equity recovery fund for minority shareholders—to be financed by the personal assets of delinquent promoters—should forensic audits conducted during the CIRP uncover instances of oppressive promoter tunneling.

According to a comparative analysis, jurisdictions such as Australia and Delaware perform exceptionally well due to their market-oriented litigation frameworks and the presence of highly skilled plaintiff-side attorneys. Although Section 245 (Class Actions) was incorporated into Indian legislation in 2013, it remains rarely utilized.[777]

This study posits that this impediment has shifted from being merely a matter of legal limitations to one rooted in behavioral economics—specifically, the "rational apathy" exhibited by retail investors. When the cost of pursuing litigation before the NCLT (a process that may span several years and entail substantial fees for senior counsel) exceeds the value of a minority shareholding, it becomes a prudent choice for shareholders to exit at a loss rather than resort to legal action.

To bridge this enforcement gap, India must officially recognize and regulate Third-Party Litigation Funding (TPLF) for cases involving corporate oppression and mismanagement.[778] If specialized litigation funds can finance collective lawsuits filed by minority shareholders against an oppressive majority, corporate accountability would immediately become far more democratic. The mere threat of well-funded lawsuits—aimed at lifting the corporate veil—would serve as a powerful deterrent against promoter tunneling, thereby shifting the financial risk of enforcement from vulnerable retail investors to sophisticated risk-bearers.

This study proposes a specific legislative amendment to rectify a judicial inconsistency plaguing Indian tribunals, wherein the corporate veil is inappropriately lifted based on vague grounds such as "public interest" or "tax evasion." Specifically, it advocates for the inclusion of a new Schedule within the Companies Act, 2013, delineating the precise criteria for lifting the

[775] *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* (2020) 8 SCC 531

[776] Umakanth Varottil, "The Intersection of Corporate Law and Insolvency: Implications for Minority Shareholders," *National Law School of India Review* (2021).

[777] Ministry of Corporate Affairs, *Annual Report 2023-2024*.

[778] *Bar Council of India v. A.K. Balaji* (2018) 5 SCC 379.

corporate veil. Ranging from the conservative approach adopted in the *LIC v. Escorts* case to the expansive scope seen in the *State of U.P. v. Champakendra* case, the ad hoc nature of veil-piercing in India undermines business predictability.[779]

This proposed schedule should formally codify the UK Supreme Court's *Prest v Petrodel* "evasion principle" test. It should permit the piercing of the corporate veil only in instances where a controller utilizes the corporate structure to evade a pre-existing legal or fiduciary obligation owed to minority shareholders.[780] Furthermore, it should incorporate a rule termed the "presumption of an oppressive structure": if a holding company and its subsidiary share identical directorships, engage in unaudited Related Party Transactions (RPTs), and such transactions result in a diminution of 20% or more in the subsidiary's net worth, the NCLT should automatically presume an abuse of the corporate veil. This would effectively shift the burden of proof—to demonstrate that the corporate structure is commercially justifiable—onto the majority promoters.

A critical issue that traditional Indian corporate law has failed to adequately address is the nexus between Environmental, Social, and Governance (ESG) practices and the rights of minority shareholders. Recognizing that deficiencies in ESG-related practices can undermine a company's long-term commercial value, minority institutional investors are increasingly exercising their voting rights to advocate for sustainable business practices. However, when subsidiaries engage in environmental violations or grave governance-related misconduct, majority shareholders often take refuge behind the legal shield of the 'corporate veil' to insulate themselves and the parent company.[781]

Against the backdrop of ESG-driven oppression, this study recommends the adoption of the 'Upward Penetration' doctrine. This approach draws inspiration from recent rulings by the UK Supreme Court, wherein parent companies have been held liable for the actions of their foreign subsidiaries on the grounds of perceived duties of care. India's National Company Law Tribunal (NCLT) should begin to recognize gross ESG negligence as a form of corporate mismanagement that adversely impacts the interests of minority shareholders. Where majority shareholders employ complex and opaque corporate structures to evade ESG compliance—thereby eroding the company's value and undermining the economic interests of minorities—the corporate veil must be lifted. This would pave the way for holding the ultimate holding company accountable under Section 241.[782]

The protection of minority shareholders hinges upon proactive technological measures. The "corporate veil"—the legal construct shielding a corporation—relies heavily on information asymmetries and delays in disclosure to facilitate oppressive practices. By mandating the use of Blockchain's Distributed Ledger Technology (DLT) to manage statutory records and monitor Related Party Transactions (RPTs) in real-time, the corporate veil becomes significantly more transparent.[783]

If the Ministry of Corporate Affairs (MCA) were to utilize smart contracts to automatically enforce "tag-along" rights, facilitate dividend distribution, and prevent Related Party Transactions (RPTs) that exceed statutory thresholds from proceeding without the requisite approvals from independent directors, minority rights could be enforced without the need for intervention by the National Company Law

[779] *Life Insurance Corporation of India v. Escorts Ltd.* (1986) 1 SCC 264
[780] *Prest v. Petrodel Resources Ltd* [2013] UKSC 34
[781] Martin Petrin, "Corporate Veil Piercing and the Rise of ESG," *Journal of Corporate Law Studies* (2022).
[782] *Okpabi and others v. Royal Dutch Shell plc and another* [2021] UKSC 13 and *Vedanta Resources PLC and another v. Lungowe and others* [2019] UKSC 20.
[783] Mark Fenwick et al., "The End of 'Corporate' Governance: Hello Platform Governance," *European Business Organization Law Review* (2019).

Tribunal (NCLT). The key takeaway here is significant: in the 21st century, the most effective strategy for combating the abuse of the corporate veil lies not merely in enhanced legal frameworks, but in technological solutions that render it impossible for the corporate structure to conceal financial fraud from minority shareholders.[784]

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