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Corporate groups in India: a foundational enquiry

M. P. Ram Mohan[*]

Priyanshu Shrivastava[**]

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*I.C.C.L.R. 473 Abstract

Although corporate groups are widespread in India, the legal framework governing them remains fragmented. These groups encounter distinct agency issues due to concentrated ownership patterns and the significant influence of promoter groups. This paper offers a foundational analysis of understanding corporate groups in India, focusing particularly on listed entities. Drawing on the traditional 'entity view' and 'enterprise view', the paper examines how corporate groups are conceptualised and evaluates the Indian regulatory framework in light of the Companies Act 2013*, relevant judicial doctrines, and regulations issued by the Securities and Exchange Board of India. By outlining the existing framework, the paper aims to serve as a basis for further research on corporate group governance in India.*

I. Introduction

The corporate group form has long been established in India as a way of conducting business, tracing its origins back to the 19th-century.[1] This form remains currently dominant in the Indian market: listed companies in the NIFTY 50 index have an average of approximately 50 subsidiaries and step-down subsidiaries.[2] Despite the prevalence of corporate groups, Indian law lacks a consolidated statutory framework governing the 'corporate group' as a distinct legal subject.

The regulation of corporate groups presents unique challenges in the Indian context. Unlike the dispersed ownership structures often seen in the United Kingdom (UK) and United States (US),[3] Indian corporate groups are characterised by concentrated ownership (typically held tightly by 'promoters' and their families).[4] In this regard, Jayati Sarkar has made a pertinent observation: "*the defining characteristic of an Indian business group is the control exercised on a group of firms by an apex body, typically a family, through equity channels (equity ownership) as well as non-equity channels (administrative control through board of directors, interlocking directorships, and related-party transactions).*"[5] This structure presents an agency problem in the form of a conflict between controlling shareholders and minority shareholders (including retail investors).[6] The controlling block often exercises substantive control over the corporate group, creating opportunities for extracting private benefits of control, which is often to the detriment of minority shareholders and other stakeholders.[7]

While there exists a substantial body of scholarship on business groups, promoter control and related party transactions in India, there remains a relative lack of integrated legal analysis specifically addressing the identification and regulation of corporate groups as a distinct doctrinal category under the Indian legal framework. This gap seemingly stems from a historical focus of the Indian legal framework on a strict entity view.[8] Moreover, unlike other jurisdictions,[9] the issue of group liability has not particularly come into focus in India. This paper aims to dissect the legal understanding and regulation of corporate groups in India with a specific focus on listed entities. This paper is intended to be a foundational account on this topic, providing a starting point towards further research on the governance of corporate groups in India.

This paper is structured as follows. Section II examines the importance of 'control', which is a key characteristic of corporate groups. We begin our discussion with 'formal' and 'substantive' control models. Next, we discuss the definition of 'control' and its features under the Companies Act 2013.[10]

In this context, we discuss the significant influence Indian promoters often exercise in their companies. Lastly, we discuss important policy issues that arise from India's concentrated ownership structure, particularly the private benefits of control exercised by controlling shareholders. Section III traces the understanding of corporate groups in literature by taking into account the competing entity and enterprise views. Section IV maps the regulation of corporate groups in India by analysing the statutory scheme under the Companies Act 2013, the judicial application of the veil-piercing doctrine, and Securities and Exchange Board of India's (which is the securities regulator in India, referred as 'SEBI) specific regulations for listed entities. Since the regulatory framework for group governance is fragmented, we have attempted to provide a clear picture of how groups are currently regulated. Section V identifies the structural limitations in this fragmented framework and suggests areas for further research. ***I.C.C.L.R. 475***

By navigating through these issues, this paper aims to provide a starting point for further research into group governance tailored to the realities of the Indian market.

II. 'Control' in corporate groups

There is no universal meaning of a 'corporate group' as this depends on the corporate forms available in the relevant jurisdiction.[11] Historically, jurisdictions typically did not even define a 'corporate group';[12] currently, a few jurisdictions do.[13] However, there is a key element of corporate groups that is common in most jurisdictions: common control.[14] A typical corporate group includes a 'parent' or a 'holding' company that owns other companies or 'subsidiaries' (both directly or indirectly), with each company having its separate legal identity.[15] These entities do not function independently but with a "*unity of purpose*".[16] The structuring of these corporate groups to retain common control manifests in various ways, as Professor Harper Ho describes:

"*[The] [a]ssets of the corporate group may be held in trusts, special purpose vehicles, and other separate legal entities owned by one or more members of the corporate group. The corporate group may, and in fact typically does, include limited liability companies (LLCs) and other entities that are not formally corporations. Corporate groups can therefore be seen as 'hybrid arrangements between contract and organisation', having a 'paradoxical character of multiplicity and unity.'*"[17]

In India, controlling shareholders predominantly use pyramid and cross-holding structures to organise entities within a corporate group.[18] In this section, we first examine how 'control' is defined with 'formal' (or objective) and 'substantive' (or *de facto*) thresholds in the context of the statutes of a few jurisdictions. This provides important context for this paper, as these definitions relate to parent-subsidiary corporate relationships relevant to corporate groups. Next, we discuss the control provision under India's Companies Act, 2013 (CA-2013), including the importance of substantive control in this jurisdiction given the significant influence promoters exercise in Indian companies. Lastly, we discuss the central policy issues relevant to the regulation of corporate groups in the context of concentrated shareholding structure in Indian group entities. ***I.C.C.L.R. 476***

A. Types of control thresholds

Generally, two types of 'control' definitions are present in statutory frameworks: 'formal control' and 'substantive control'. We discuss these two below to illustrate how control manifests in different ways depending on the statutory scheme and how it may affect how 'common control' is exercised in corporate groups.

1. The 'Formal Control' model

'Formal Control' pertains to having objective, structural thresholds for establishing control. The UK's Companies Act 2006 is a good example where a parent-subsidiary relationship is identified through means of formal control, among others:[19]

The parent company holds the majority (i.e., more than 50%) of voting rights in the subsidiary.

The parent company has the right to appoint/remove a majority of the subsidiary's board of directors.

The parent company has the power to exercise influence in the subsidiary through the subsidiary's constituting documents or a contract.

Many commonwealth jurisdictions historically mirrored the old UK Companies Act in this regard.[20] For instance, Australia has a similar definition of parent-subsidiary relationships, primarily based on voting

rights and board composition.[21] Similarly, both Singapore and Hong Kong's company law statutes historically mirrored the UK's Companies Act 1948.[22] This includes the formal control element: both Singapore's Companies Act 1967 (revised in 2006) and Hong Kong's Companies Ordinance 2018 have similar thresholds for establishing parent-subsidiary relationships.[23] Singapore's Companies Act 1967 further mentions an "ultimate holding company", which is a company that has a subsidiary(ies) but is not itself a subsidiary of any company.[24]

The US has state-wise legislations to govern companies. These legislation provides rules for parent-subsidiary relationships in particular contexts, such as protecting minority shareholders or transferring shares, but they do not provide broad statutory definitions like those found in some other jurisdictions, as discussed in the previous paragraphs.[25] For example, Delaware's General Corporation Law ***I.C.C.L.R. 477*** defines "control" for share-transfer provisions as the power to influence management or the ownership of at least 20 per cent of voting rights.[26] This definition applies only to that specific provision—other sections that regulate different actions of a company use their own definitions of "control" or similar terms.[27]

Typically, jurisdictions adopt a hybrid statutory setup with a mix of formal and substantive control thresholds, and not just formal control. In fact, even the UK has some elements of substantive control. Apart from the objective thresholds discussed above, parent-subsidiary relationships can also be established in the UK if: first, the parent "*actually exercises*" control (indicating *de facto* control) over the subsidiary; or second, the parent and the subsidiary are "*managed on a unified basis*".[28] Moreover, tort law principles have recently been used to supplement company law principles in the UK for establishing control in certain cases.[29] A shift from formal to substantive control seems to be taking place in the US as well,[30] *albeit* impeded by statutes in a few states, e.g., Delaware.[31]

Overall, the jurisdictions that have formal statutory tests provide clarity and predictability, as one can simply check shareholding or voting rights to know if control exists. However, these objective tests can be tricky: they may deem control where a majority owner is passive and undermine control where an influential shareholder dictates board decisions without majority shareholding or voting rights. We discuss such instances under the next sub-section on substantive control.

2. The 'Substantive Control' model

Substantive control is based on the premise that "*it may be possible to control the organisation with much less than a 50% share depending on the shareholder structure, shareholder presence, voting behavior in the general assembly, and other economic facts.*"[32] Essentially, this pertains to the exercise of control over entities despite not meeting the objective thresholds (e.g., majority voting rights and power to appoint a majority of the board of directors). This can also manifest ***I.C.C.L.R. 478*** in the form of 'management control'. Professor Adolf Berle explains how this works in the context of the US: "*[w]here there is no substantial minority and the stock is widely scattered among a large number of stockholders, capacity to direct the proxy machinery is all that is necessary.*"[33] The Delaware Chancery Court's decision in Tornetta v Musk is an example of substantive control. Elon Musk was held to be a controlling shareholder of Tesla despite just holding 21.9% voting rights in the company.[34] The decision was based on Elon Musk's ability to influence the board's decision both inside the boardroom and in a managerial capacity.[35] In fact, the chairman of Tesla's board had lobbied shareholders in favour of a one trillion dollar pay package for Elon Musk,[36] which was later approved.[37] This instance shows the limitations of formal control in recognising the actual controllers.

A prime example of a jurisdiction with substantive control thresholds is Germany.[38] Germany has specific provisions for "*[g]roup of enterprises and group member companies*".[39] Among other things, the statute provides for *de facto* control, which is established when a company exercises control over another company factually.[40] This happens if the companies have a "common direction", i.e., "*[a] group may acquire common direction if the controlling enterprise has formulated a driving, uniting concept for the group, and then implements it*".[41] However, Germany's Stock Corporation Act is limited in scope as it only applies to stock corporations and not limited liability corporations, which is the more popular corporate form in Germany.[42] Despite the limited scope of this statute, Germany's codification of substantive control in corporate groups is prominent in the discussions on enterprise liability[43] and has influenced other jurisdictions.[44]

France is another country with a hybrid understanding of control. Apart from the elements of formal control,[45] the relevant statute mentions that an entity is deemed to control another entity "*[w]here it determines in fact, through the voting rights it holds, the decisions at general meetings of that company*" (emphasis supplied).[46] This means that a company can be deemed to control another

merely through *de facto* influence, irrespective of the percentage of voting rights it holds. This provision must be distinguished from another where (formal) control is ***I.C.C.L.R. 479*** established through a "*majority of the voting rights in that company by virtue of an agreement*".[47] Lastly, in Japan, control can be established, among other ways, through *de facto* influence over the management; but only if there are at least 40% of voting rights already present.[48] This is an instance of a jurisdiction which has elements of substantive control, but the substantive element is not sufficient alone to establish control-rather, the substantive element complements the objective threshold.

With this context, we discuss the 'control' framework in India.

B. Control in Indian framework

There has been some inconsistency in the interpretation of what 'control' entails under Indian law, depending on the specific statute and/or regulations applicable to the relevant case.[49] Under Indian law, the CA-2013 provides the following definition of control:

"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner[.] (emphasis supplied)[50]

This definition is quite broad, and the Supreme Court of India has stated that this provision has both formal and substantive elements.[51] The part relating to the right to appoint the majority of directors pertains to formal control and can be established through the memorandum and articles of association of a company.[52] The latter part of the definition—providing for the threshold of influence over management and policy decisions—pertains to substantive control:

So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control". A management decision is a decision to be taken as to how the corporate body is to be run in its day to day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e., long term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist. (emphasis supplied) ***I.C.C.L.R. 480*** [53]

The focus of this paper being on listed entities, the definition of 'control' in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) assumes importance. The definition of 'control' under the Takeover Regulations is almost the same as under CA-2013, as the latter seems to have adopted the definition present in the former.[54] The Report of the Takeover Regulations Advisory Committee, chaired by Mr. C. Achuthan (Achuthan Committee Report), which led to the adoption of the takeover regulations, provides important insight into this definition of control:[55]

the Committee felt that the existence or nonexistence of control over a listed company would be a question of fact, or at best a mixed question of fact and law, to be answered on a case to case basis. The Committee also recognised that any blanket provision whereby a right to say no is in all circumstances deemed to either constitute control or not to constitute control may be liable to misuse.

[…] The Committee observed that it was desirable to underline and emphasise that acquisition of de facto control, and not just de jure control should expressly trigger an open offer obligation.

The Achuthan Committee Report did not incorporate any strict, numerical thresholds for defining control to make sure the definition catches both formal and substantive control over companies. The application of the Takeover Regulations' definition of control is not confined to assessing open offer obligations.[56] It directly impacts the regulation of companies planning to list and listed entities under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR) and (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), respectively, as these regulations follow the definition of control mentioned under the Takeover Regulations.[57] We discuss how parent-subsidiary relationships are defined and these SEBI' regulations in further detail in the context of corporate groups under s.IV.[58]

This brings us to the importance of substantive control under Indian law. Indian corporate groups are held tightly by promoters along with their friends and relatives.[59] Sometimes, promoters exercise control over companies despite not ***I.C.C.L.R. 481*** having a majority stake due to (1) passive

shareholders with large stakes[60] and (2) their long-established influence over the management.[61]

Zee Entertainment (Zee), a listed entity, is a contemporary case in point. Zee's promoters hold only around 4% shareholding in the company.[62] However, more than 90% of Zee's shares are held by passive institutional investors (mostly mutual funds).[63] One of the promoters, Punit Goenka, is also Zee's managing director and CEO, controlling both the board and the management. Last year, the promoters failed to implement a ten-billion-dollar merger with Sony because one of the promoters (and also Zee's CEO), Punit Goenka, refused to give up a leadership position in the merged entity despite serious allegations placed on the promoters by SEBI of misusing funds of the Essel corporate group (of which Zee is a part).[64] After this fiasco, Zee's chairman stated that "*[t]he Board has complete faith in the highly experienced senior management of the Company and will continue to guide the team*".[65] We must caveat that, although such promoter influence is not uncommon in India,[66] Zee's example is relatively extreme regarding the extent of influence that promoters may be able to exercise over a company's board and management. In such circumstances, shareholders may take cognisance of the situation and attempt to proactively participate in the company's decisions. This occurred a few years ago with Dish TV India Ltd., where the public shareholders ***I.C.C.L.R. 482*** (who held around 96% of the stake) got into a deadlock with the promoters (who held around 4% of the stake) over the reconstitution of the company's board.[67]

In this light, we proceed to a discussion on the concentrated shareholding structure in India and the concomitant issues that arise from it.

C. Concentrated shareholding in India & private benefits of control

Jurisdictions with concentrated ownership structures are known to have an 'insider/control-oriented' system.[68] This is unlike jurisdictions with an 'outside/arm's length' system,[69] with separate control and ownership, as explained by the 'Berle-Means Corporation' view.[70] In an 'insider' system, a few controlling shareholders hold most of the shareholding in a company, with the rest of the shareholding being fragmented and passive, giving the former effective control over the operations of a company.[71]

Such a concentrated ownership structure is widely observed across the Indian corporate landscape.[72] Promoters dominate the shareholding and voting rights in the top listed entities in India.[73] Moreover, India has a relatively high shareholding and involvement in the management by family members.[74] Professor Umakant Varottil captures the ground realities of such an insider system:[75]

By virtue of their control rights, these dominant shareholders are in a position to exercise complete control over the company. They are virtually able to appoint and replace the entire board and, through this, influence the management strategy and operational affairs of the company. For this reason, the management will likely owe its allegiance to the controlling shareholders. ***I.C.C.L.R. 483*** *The controlling shareholders nominate senior members of the management, and even further, they often appoint themselves on the boards or as managers. It is not uncommon to find companies that are controlled by family groups to have senior managerial positions occupied by family members.*

Controlling shareholders enjoy some additional 'private benefits' of being in control.[76] This is one of the agency problems in companies with concentrated ownership, i.e., "*the conflict between the owners who possess the controlling interest in the firm and the minority who are the noncontrolling owners.*"[77] Controlling shareholders can extract such private benefits through certain self-dealing transactions at the cost of minority shareholders.[78] Some instances include high salaries and other perquisites for controlling shareholders who are also part of the company's board of directors.[79] The exercise of these benefits is not always in the best interests of the minority shareholders.[80] Some examples include transfers of assets to other group companies that do not benefit the transferring company's business, siphoning cash, entering into transactions that benefit one group company over another, etc.[81] These issues extend to Indian corporate groups as well.[82]

Among the issues discussed above, related party transactions (RPTs) are one of the main issues when it comes to the regulation of entities within corporate groups.[83] The problem lies with RPTs that facilitate *tunnelling*, which comprises multiple avenues (e.g., tunnelling of cash flow and assets) by the controlling ***I.C.C.L.R. 484*** shareholders to gain certain benefits and expropriate investors (e.g., minority shareholders):[84]

Tunneling by nature is clandestine, as promoters employ covert ways to conceal the diversion of funds. In the Indian case, this is likely to be further aggravated by the opaqueness of ownership structure caused by the fragmentation of holdings across a number of closely held entities that can make it difficult to track chains of control and thereby the flow of diverted funds, should such diversion

occur. [85]

Effective regulation of RPTs within corporate groups is a tricky exercise.[86] On one hand, RPTs within corporate groups are inevitable as they serve important organisational and operational needs.[87] On the other hand, RPTs in integrated groups are voluminous and intertwined,[88] which makes them prone to abuse by controlling shareholders.[89] RPTs remain one of the central issues related to the regulation of corporate groups in India as well.[90] Even though the regulatory framework in India is considered to be good on paper,[91] empirical evidence suggests that the framework remains prone to abuse by controlling shareholders.[92] Concentrated ownership over the group entities leads to relative ease in diverting funds to group entities,[93] especially to assist poor-performing entities.[94]

This is a serious governance issue in India, considering controlling shareholders' *de jure* control (through significant holdings) along with their *de facto* control over the board, including independent directors.[95] It gives them the power to drive decision-making without consideration of the minority's interests and without sufficient oversight. ***I.C.C.L.R. 485***

In light of the discussion in this s.on how the element of 'control' is defined and exercised in Indian corporate groups and the central issues relating to the governance of such groups, we proceed to a discussion on the legal understanding of corporate groups in literature.

III. Understanding of corporate groups: entity and enterprise views

The understanding of corporate groups has evolved in the last half-century in a significant manner.[96] However, a majority of the literature on this topic has focused on the imposition of liability on the parent company for the acts of the subsidiary company.[97] In this section, we discuss the competing entity and enterprise views.

A. Entity view

The entity view considers each company within the corporate group as a separate, independent entity.[98] In this regard, two key developments must be taken note of. First, the ability of companies to hold a stake in other companies.[99] Companies were not allowed to own shares of another company until the state of New Jersey brought in changes between 1888 and 1893 to its corporation law and expressly allowed this.[100] This development was a turning point for business entities and led to a widespread adoption of similar corporate law statutes, allowing a company to hold ownership over another company.[101]

The second key development is the UK company law case of Salomon v Salomon & Co. Ltd.[102] In this case, a company was incorporated by Mr. Salomon as a majority shareholder and his family members as other shareholders.[103] The House of Lords held that the company was validly incorporated under the Companies Act 1862 and was an entity distinct from its shareholders, i.e., separate legal personality.[104] The decision also stated that the statute created limited liability for the ***I.C.C.L.R. 486*** shareholders.[105] This principle protects shareholders by providing that they are not liable for anything (including the company's debt) except for any unpaid shares.[106]

Harper Ho observes how both of these principles have operated for corporate groups: "*[t]he fundamental principle that each corporation enjoys a separate legal personality with rights and obligations distinct from those of its owners, when combined with the grant of limited liability and the ability of one corporation to own shares in another, makes possible the formation of corporate groups.* "[107] These two developments were the key stepping stones for the formation of corporate groups and the entity view.

In this context, a brief discussion on the *veil-piercing doctrine*, where the legal separation between the company and the shareholders is disregarded by the courts and the shareholders are held liable for the acts of the company, is important.[108] However, this is rarely done by courts,[109] further incentivising entrepreneurs to adopt the corporate group structure.[110] In fact, these principles have been a crucial risk allocation tool for corporate groups.[111] For instance, as Blumberg points out, "*[t]he parent receives limited liability on its [shareholding] in the subsidiary, in addition to the limited liability the ultimate [shareholder] receives on his or her investment in the parent.*"[112] 'Asset partitioning' in corporate groups flows from these legal principles.[113] This includes isolating and dividing the assets of the corporate group within different entities.[114] This protects the assets not only from ***I.C.C.L.R. 487*** the individual promoters' creditors but also from the creditors of another entity within the same corporate group.[115]

While structuring entities in group form due to asset partitioning is popular, it has been argued that corporate groups have misused this flexibility by isolating key assets of the group away from subsidiaries that carry out risky and hazardous activities to avoid paying sufficient compensation.[116]

B. Enterprise view

The enterprise view first arose when Berle argued that the structure of companies being organised in multiple separate personalities, as it is present in contemporary corporate groups, would not have been consistent with early corporation laws.[117] The enterprise view, as explained by Professor Phillip Blumberg, is based on "*the realities of the complex business enterprise in which business activities are collectively conducted by interrelated and intertwined juridical entities under the 'control' of a dominant parent corporation.*"[118] Blumberg mentions the following factors (in addition to control) in an attempt to help in the identification of such 'enterprises'.[119]

The activities of the companies should be economically integrated.

There is a common public persona (e.g., name and logo).

The subsidiaries' financing is facilitated/carried out by the parent.

There is some administrative overlap.

The employees identify to be part of the corporate group and do not have a company-by-company identification.

Therefore, the enterprise view rests on the premise that corporate groups are being organised and managed on a unified basis, and the separation of entities within the group is merely a legal, on-paper tool to divide and insulate risks.[120] It has been argued that the veil-piercing doctrine excessively focuses on some formal requirements (e.g., parent being the alter-ego of the subsidiary and/or using the ***I.C.C.L.R. 488*** subsidiary to commit fraud/injustice) that can be easily avoided by corporate groups.[121]

The enterprise view has found its way in the US both through court decisions and statutory provisions.[122] However, the application of the enterprise view in the US has been narrow: courts' decisions or express statutory provisions have only been in the context of specific regulatory aims (e.g., antitrust and taxation).[123] The enterprise view has also not gained much traction in the UK, where the entity view has been strictly followed.[124]

There are some jurisdictions where a relatively broad understanding of enterprises is present. As we discussed before, Germany provides for an enterprise view in its corporate law, *albeit* with limited use.[125] Italy is another country that has incorporated an enterprise view of corporate groups in its statute.[126] This development in Italy is not only crucial for the protection of minority shareholders and creditors in Italian corporate groups, but it is also a significant acknowledgement of the economic reality of corporate groups.

Moreover, while France has not codified any special law for corporate groups like Germany and Italy, the French Supreme Court's *Rozenblum* doctrine is notable.[127] This doctrine was developed as a defence for the subsidiary's directors from criminal liability if they engaged in any intra-group dealings that were detrimental to the interests of the subsidiary itself.[128] This doctrine requires the following conditions: ***I.C.C.L.R. 489*** [129]

There must be a corporate group with business integration and the subsidiary must be a part of the corporate group.

The directors' decision must be in furtherance of the corporate group's interest.

The subsidiary should be provided with some reciprocal consideration and the decision must not be unfair to the subsidiary.

The decision must not exceed the subsidiary's financial capacity and risk of insolvency.

The *Rozenblum* doctrine has gained prominence for balancing the economic reality of corporate groups with the interests of minority shareholders and creditors.[130] This doctrine signifies an important acknowledgement of the enterprise view of corporate groups in practice.

In the late 20th century, there has been increased focus in literature on the enterprise view: from the

protection of minority shareholders to the protection of tort creditors. Meredith Dearborn explains the trigger behind this shift: "*[t]he increasing prevalence of tort liability over the past century has compelled corporations to reorganise in ways that enable them to limit or entirely avoid paying for their harms; evasion methods include sequestering hazardous activities in subsidiary corporations.*"[131] Even though other entities in the corporate group enjoyed the revenue coming from the hazardous activities, its important assets were consciously insulated away from the subsidiary engaging in such activities. The subsidiary performing hazardous activities could not pay more than its assets (which are intentionally minimal), and the shareholders (part of the corporate group) were not under an obligation to pay anything more than the capital they had brought in initially (due to limited liability).[132]

As a result, the discussion on enterprise view has become more varied and nuanced than the mere finding of economic/business integration among companies.[133] For example, while the UK company law follows a strict entity view, in Chandler v Cape the UK's Court of Appeal used tort law principles to establish that a parent company is liable for the subsidiary's act of compromising employees' safety.[134] Such enterprise liability for the corporate group's parent company is also ***I.C.C.L.R. 490*** present in India in the specific context of injuries resulting from hazardous activities.[135] Moreover, certain authors have proposed newer views, basing their proposed understanding on the extant views.[136]

From the standpoint of studying corporate groups from an enterprise view, this leads to confusion because of two key reasons. First, unlike the entity view, where the principles of separate legal personality and limited liability are well established in statutes almost all over the globe, codification of the enterprise view of corporate groups is limited.[137] Second, the enterprise view of corporate groups can be volatile and vague and has key characteristics that are difficult to dissect.[138] Therefore, despite its popularity in literature, the enterprise view of corporate groups (and enterprise liability) is still an exception.[139]

IV. Mapping the regulation of corporate groups in India

India does not have a special company law governing corporate groups.[140] Similar to the UK, corporate groups are formed in India through parent-subsidiary relationships, with each company having a separate, independent legal existence.[141] In this section, we discuss the statutory scheme under CA-2013, Indian courts' application of the veil-piercing doctrine, and relevant SEBI regulations on the governance of corporate groups.

A. Statutory scheme under the companies Act

Separate legal personality and limited liability have been codified under CA-2013.[142] At the same time, the CA-2013 provides definitions for 'holding company' and 'subsidiary company'. A 'holding company' is defined under s.2(46) as a company that has subsidiary companies.[143] A 'subsidiary company', in turn, is defined under s.2(87) as a company where the holding company either controls the board composition of the subsidiary or exercises more than 50% of the voting power; ***I.C.C.L.R. 491*** [144] under the latter condition, the holding company may have the voting power itself or together with one or more subsidiaries.[145]

In this regard, explanation (a) to s.2(87) provides that a company is deemed to be a subsidiary of a holding company if another subsidiary fulfils either of these requirements.[146] Under this provision, the Ministry of Corporate Affairs (MCA) has the power to impose restrictions on the number of layers of subsidiaries a holding company can have.[147] In furtherance of this power, MCA has restricted holding companies to have more than two layers of subsidiaries;[148] *albeit* one layer with a wholly owned subsidiary is not considered,[149] and a few types of companies are exempt from this restriction.[150] Moreover, an 'associate company' is also defined under s.2(6) as a company (which is not a subsidiary) in which another company has a 'significant influence';[151] this definition includes joint venture companies. 'Significant influence' means "*control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement*".[152] All of these interrelated companies discussed come under the ambit of a 'related party' under s.2(76)(viii).[153] Such related parties must meet certain requirements (e.g., approval by the audit committee and/or board resolution) to be able to deal with each other.[154]

The statutory scheme under CA-2013 reflects an acknowledgement of group realities. As we will discuss in the later section (s.IV.C), these definitions form the backbone of how corporate groups are regulated under various SEBI regulations.

B. Veil-Piercing doctrine

While Indian courts have historically followed the veil-piercing doctrine[155] consistent with Salomon v Salomon & Co. Ltd.,[156] they have carved out relatively broad grounds to invoke the same.[157] The Supreme Court, in LIC v Escorts, laid down scenarios in which the corporate veil may be pierced: first, if a statute provides for it; second, if there is fraud/improper conduct; third, if taxation is being ***I.C.C.L.R. 492*** evaded or a beneficial statute is being misused; last, "*where associated companies are inextricably connected as to be, in reality, part of one concern*".[158] In the LIC case about foreign investment, the relevant statute and scheme expressly provided for lifting the veil to check if at least 60% of the investing company's shares were held by a non-resident of Indian national or origin.[159] The court stated:[160]

[i]t is high time to reiterate that in the expanding horison of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horison of the doctrine of lifting of corporate veil is expanding.

[…] The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case [1897 A.C. 22] still visits frequently the hounds of Company Law but the veil has been pierced in many cases. (emphasis supplied)

Moreover, in the Supreme Court's decision in State of U.P. v Renusagar Power,[161] the parent company created a wholly owned subsidiary to generate and supply it with electricity, as there was less duty levied for a company's "own use".[162] The Supreme Court held that the two companies were to be treated as "one concern":[163]

"*[a]s the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition.*"

In other cases, the veil piercing doctrine has been applied to similar parent-subsidiary relationships in different scenarios.[164] Anirudh Krishnan observes the wording courts have used while invoking the veil-piercing doctrine:[165]

[w]hile the terms "lifting the corporate veil" and "piercing the corporate veil" have been used interchangeably, they do not mean the same thing. To pierce the corporate veil is an expression that is reserved for treating the rights and liabilities or activities of a company as the rights or liabilities or activities of its shareholders. On the other hand, to lift the corporate veil or look behind it means, to have regard to the shareholding in a company for some legal purpose, that although whenever each individual company is ***I.C.C.L.R. 493*** *formed, a separate legal personality is created, courts will on occasions, look behind the legal personality to the real controllers.*

To date, Indian courts have yet to clearly or consistently articulate a doctrinal divide between these concepts of 'lifting the corporate veil' and piercing the corporate veil'. While an in-depth discussion on this issue is outside the scope of this paper, it remains an important area for future research.

Moreover, relatively recent decisions have often imposed limits on the application of this doctrine.[166] For instance, in Balwant Rai Saluja v Air India Ltd., the Supreme Court added a caveat that the doctrine "*should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability*" (emphasis supplied).[167] In this case, the main issue was whether the workers of a contractor (a wholly owned subsidiary of Air India), which was providing canteen services to Air India, were to be treated as deemed employees of Air India.[168] The court stated that ownership and control are not sufficient as a sole ground to pierce the veil; additionally, the creation of the subsidiary must be "*a mere facade for the purpose of avoiding liability* ".[169] The court further stated that:[170]

"*[t]he mere fact that Air India has a certain degree of control over HCI, does not mean that the employees working in the canteen are Air India's employees. Air India exercises control that is in the nature of supervision. Being the primary shareholder in HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, Air India would be entitled to have an opinion or a say in ensuring effective utilisation of resources, monetary or otherwise. The said supervision or*

control would appear to be merely to ensure due maintenance of standards and quality in the said canteen." (emphasis supplied)

As courts have increasingly restricted the application of the veil-piercing doctrine, it has become an insufficient tool for addressing the economic realities of corporate groups.

C. SEBI regulations

Indian securities' regulations place special emphasis on the 'promoter'. Under Regulation 2(oo) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR), a promoter is defined as a person who has been (i) named as such in offer documents/annual returns or (ii) who has control over the company's affairs (directly or indirectly), or (iii) whose ***I.C.C.L.R. 494*** directions the board is accustomed to act on.[171] Further, "*promoter group*" is defined under Regulation 2(pp) of ICDR:[172]

If the promoter is a company, its parent and subsidiaries form part of the promoter group, as well as any companies where the promoter company holds at least 20% equity or vice versa.

If the promoter is an individual, any company in which the promoter or his family hold at least 20% of equity is included in the promoter group.

This definition of 'promoter group' applies not only to the ICDR, but also to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)[173] and Takeover Regulations, among others.[174] We have selected ICDR, LODR, and Takeover Regulations for our discussion and analysis for the following reasons: (i) They aim to address some of the agency issues[175] that exist between controlling shareholders and minority shareholders[176] and (ii) discuss definitions and concepts that are pertinent to our objective of mapping the current regulatory framework for corporate groups in India.[177] Our discussion is intended to provide a foundational understanding of how the current regulatory framework applies to corporate groups and is not intended to be exhaustive.

Issuance of securities under ICDR

The ICDR imposes group-level restrictions and obligations through the definition of 'promoter group'. A few instances include: restrictions to make an initial public offer if any person/entity in the promoter group is debarred, wilful defaulter or a fraudulent borrower, or a fugitive economic offender;[178] capital lock-in requirements apply to group entities part of the promoter group;[179] and disclosures by the entities in the promoter group, e.g., disclosures of their brief histories. ***I.C.C.L.R. 495*** [180]

Furthermore, ICDR supplements the definition of a 'promoter group' with the definition of "*group companies*", which are "*companies (other than promoter(s) and subsidiary/subsidiaries) with which there were related party transactions*".[181] Mandatory disclosures for issuing securities include the obligation to provide information about all group companies of the issuer.[182] Among other things, financial information of the top five group companies and any pending litigations in the group companies that materially impact the issuer also have to be disclosed.[183] There is also a sub-paragraph titled 'Common Pursuits' asking for the following detailed disclosures for business overlaps within the group:[184]

In case there are common pursuits amongst the group companies/ subsidiaries/associates companies and the issuer, the reasons and justification for the same shall be spelt out and the conflict of interest situations shall be stated.

The related business transactions within the group and their significance on the financial performance of the issuer.

If any of the other group companies/subsidiaries/associate companies has business interests in the issuer then the amount of commercial business that the said company has /proposes to have with the issuer may be quantified. If no, a distinct negative statement may be incorporated to this effect.

By requiring an issuer to disclose 'Common Pursuits', SEBI acknowledges that a promoter/promoter group may control multiple entities with overlapping business interests. In a way, the ICDR treats the group as a single economic enterprise for the purpose of risk assessment, ensuring that investors are not merely evaluating the issuer but the broader, intertwined interests of the group of which it is a part. This is significant as these disclosure requirements look through entity boundaries and

acknowledge the economic reality of corporate groups.

Governance of listed entities under LODR

Under LODR three pertinent issues exist for our discussion on the regulation of corporate groups. First, related party transactions. Entities falling under the umbrella of 'promoter group' are deemed to be a 'related party' under LODR.[185] As a result, related party transactions (RPTs) involving group entities require the approval of the independent directors in the listed entity's audit committee.[186] Such an approval is also needed even if the listed entity is not a party to the transaction, but the ***I.C.C.L.R. 496*** subsidiary is (provided certain numerical thresholds are met).[187] By extending the listed entity's audit committee's oversight to transactions involving only the subsidiary, LODR prevents promoters from using the subsidiary's separate legal personality as a shield to carry out RPTs without scrutiny.

Second, LODR mandates listed parent companies to closely monitor unlisted 'material subsidiary'(ies).[188] Among other things: one independent director from the listed parent's board needs to be on the board of such a subsidiary;[189] listed parent's audit committees is under an obligation to review such a subsidiary's financial statements;[190] such subsidiary's board's minutes need to be placed before the listed parent's board;[191] and, such subsidiary's management need to inform the listed parent's board about its "*significant transactions and arrangements*".[192] In fact, the listed parent cannot do away with its control over such a subsidiary[193] or sell off any significant assets[194] without a special resolution by its shareholders. The requirement of a special resolution by the parent's shareholders for the sale of a subsidiary's assets effectively dissolves the regulatory partition between the parent and the subsidiary, treating the subsidiary's core assets as the ultimate property of the parent's shareholders.

Lastly, there are strict disclosure requirements for a listed entity.[195] For instance, agreements involving promoter group entities, related parties, employees (of holding, subsidiary or associate company), etc., that can impact the management or control of, or create any restriction or liability on, the listed entity must be disclosed.[196]

These disclosures enable the minority shareholders to see the bigger picture of how the listed entity's business operations are being affected by group dynamics and enable them to participate in the decision-making of important group entities. ***I.C.C.L.R. 497***

Mandatory open offers under takeover regulations

In the context of acquisitions of listed entities, reg.2(q) of the Takeover Regulations defines "*persons acting in concert*" (PAC), which essentially identifies the relevant persons who are carrying out an acquisition together.[197] The following two categories, among others, are deemed to be PAC:[198]

a company, its holding company, subsidiary company and any company under the same management or control;

[…]

promoters and members of the promoter group;

This is central to the Takeover Regulations. The holdings of all persons and entities within the meaning of 'persons acting in concert' are taken into consideration to assess the threshold limits for an open offer obligation.[199] This includes indirect acquisitions as well.[200] The PAC concept is one of the most robust applications of the enterprise view in Indian law. By aggregating the holdings of all group entities to trigger an open offer, SEBI assumes a common direction between the group entities.

This section illustrates that, in the absence of a separate group law to regulate corporate groups, India has a fragmented regulatory framework. The CA-2013 provides the pertinent statutory scheme for the formation of corporate groups. Further, the scope of the veil-piercing doctrine has been restricted by courts in the past decade. Nevertheless, through the definitions of promoter/promoter group, group companies, related parties and PACs, SEBI effectively treats listed entities as being part of a wider economic unit by aggregating holdings for control and imposing disclosure and governance obligations that cut across group entities.

V. Limitations in the current framework

The current framework has a few limitations. First, there is an inordinate reliance on 'independent

directors' in the regulation of RPTs.[201] Such independent directors are likely to be appointed (and removed) by controlling shareholders: "*[a]lthough independent directors are expected to monitor the actions of the controlling shareholders in light of the interests of the minority, they are unlikely to do so if they owe their allegiance (and position) to the controlling shareholders in the first place.*"[202] The current reliance on independent directors in the audit committee to ***I.C.C.L.R. 498*** approve RPTs is a procedural safeguard that ignores the substantive influence of the promoter/promoter group. This creates a regulatory gap where transactions may meet the formal requirements of the LODR but fail to protect minority shareholders from the extraction of private benefits of control. The focus given to independent directors has been argued to be a misguided transplant of global standards that has not had any significant impact on corporate governance in India.[203] Future research may critique the current substantive and procedural norms and discuss ways in which the RPT framework could be designed in a manner that is both efficient and protects minority shareholders. Moreover, there seems to be a lack of any specific regulation of intra-group transactions. For instance, France's *Rozenblum* doctrine can be looked into as an alternative mechanism.[204] The doctrine performs a balancing act by considering the interests of the group as well as the individual group company that is involved in the specific transaction.[205] After the French Supreme Court's decision, this doctrine has found wide support and adoption in Europe.[206]

Second, the mandated monitoring[207] of unlisted material subsidiaries by the listed parent entity seems to be insufficient in the absence of any normative standards. In the absence of clear fiduciary duties extending across the group, 'monitoring' may become a box-ticking exercise performed by the controlling shareholders at the parent level. In this regard, the development in the US of the parent company's directors' fiduciary duties can be noted: "*act[ing] in the interest of the company entails an obligation to oversee liability-creating activities in subsidiaries in the same way as with respect to the parent company*".[208] It would be worthwhile to undertake an enquiry on the current monitoring norms and consider expanding downstream oversight duties of the directors to include normative thresholds and penalties for the directors when such duties are breached.

Third, there seems to be an overreliance on *ex ante* mechanisms, e.g., wide disclosures under ICDR and LODR and prior approval from the audit committee for a specific decision, without a reliable enforcement mechanism.[209] The few *ex post* measures that exist have not been utilised well. For instance, the utilisation of derivative suits in India has been rare due to multiple substantive and procedural issues.[210] This would provide the shareholders the opportunity to challenge decisions taken by company directors that are harmful to the specific group company due to its group integration. Double derivative suits, which enable the shareholder of the parent company to bring a suit against the directors of the subsidiary, can also ***I.C.C.L.R. 499*** be considered.[211] Further, a deeper enquiry into the *veil piercing* doctrine and also seeing the relevance of newer ideas of *veil peeking* can be useful in the context of effectively regulating corporate groups. It is outside the scope of this paper to propose concrete recommendations as the identified limitations warrant comprehensive studies.

VI. Conclusion

Corporate groups are not expressly defined under Indian law, and their regulatory framework is fragmented. In light of India's concentrated ownership structure and the concomitant policy issues in corporate groups, our intent has been to achieve two objectives in this paper. First, identify how corporate groups are understood in the Indian legal framework. The CA-2013 provides the statutory framework for the formation of group entities. SEBI provides some definitions in its regulations—'promoter group', 'group companies', and 'PACs'—that cover group entities on varying levels. Second, we briefly discuss how the legal framework pertains to corporate groups. Our findings indicate that courts have increasingly restricted the application of the veil-piercing doctrine, making it a tool with limited utility. Moreover, the regulation of listed group entities largely occurs through specific disclosure and governance obligations under SEBI Regulations.

At the same time, structural issues remain. The current framework relies heavily on procedural safeguards and *ex ante* disclosures, which often fail to address the substantive influence promoters exercise over the board and management. By dissecting the extant fragmented framework, this paper serves as a foundational starting point to explore a more cohesive group governance framework: one that establishes standards capable of addressing the substantive reality of Indian corporate groups.

M. P. Ram Mohan

Priyanshu Shrivastava

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*. Professor, Indian Institute of Management Ahmedabad.

**. Researcher, Indian Institute of Management Ahmedabad.

1. Surajit Mazumdar, "The Analysis of Business Groups: Some Observations with Reference to India" (Institute for Studies in Industrial Development, Working Paper No.2008/11, 2008), p.10. ("*[a]s far as India is concerned, multi-company entities have existed here since the 19th century, first in the form of European controlled managing-agency houses and then as the Indian business group. […] Indeed, behind the set of companies constituting an Indian business group at any point of time, their structure of connections, and the evolution of the group structure over time, has always been the guiding hand of the central controlling authority of the group. Group companies either include companies the group itself has promoted, or those that it has acquired.*").

2. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), p.9*, https://doi.org/10.1787/e9568d3c-en. ("*On average, Indian listed companies have more than tripled the number of subsidiaries during the past 15 years and, as of March 2020, listed companies in the NIFTY 50 index have an average number of approximately 50 subsidiaries/step-down subsidiaries.*") [hereinafter OECD Paper].

3. John C. Coffee Jr, "Dispersed Ownership: The Theories, the Evidence, and the Enduring Tension Between 'Lumpers' and 'Splitters'" (European Corporate Governance Institute, Working Paper No.144/2010).

4. See s.II.C.

5. *Jayati Sarkar, "Business Groups in India" in Asli M. Colpan (ed.), The Oxford Handbook of Business Groups (Oxford: Oxford University Press, 2010), p.299*.

6. Sarkar, "Business Groups in India" (2010).

7. See s.II.C.

8. See s.IV.A.

9. See s.III.B.

10. The Companies Act No.18 of 2013 (Ind.) [hereinafter CA-2013].

11. Klaus J. Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups", 2nd edn (European Corporate Governance Institute, Law Working Paper No.752, 2024), p.3.

12. Virginia Harper Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 885.

13. Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups" (2024), p.17.

14. Phillip I. Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 605, 609; Daniel D. Prentice, "Some Aspects of the Law Relating to Corporate Groups in the United Kingdom" (1999) 13 Connecticut Journal of International Law 305, 312.

15. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 886; *Janet Dine, The Governance of Corporate Groups (Cambridge: Cambridge University Press, 2000), p.40*.

16. Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 605, 606.

17. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 886.

18. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), pp.11–13*, https://doi.org/10.1787/e9568d3c-en.

19. Companies Act 2006, c.46, s.1162(2) (UK).

20. This is true for India as well. *See Umakanth Varottil, "The Stakeholder Approach to Corporate Law: A Historical Perspective from India" in Harwell Wells (ed.), Research Handbook on the History of Corporate and Company Law (Cheltenham: Edward Elgar, 2018)*. (*India enacted the Joint Stock Companies Act under colonial rule, which mirrored the English Companies Act 1844*).

21. Corporations Act 2001 (Cth), s.46 (Austl.).

22. Lee et al., "Modernising Company Law: The Singapore Experience" (2016) 34(2) Company and Securities Law Journal 157; *Vincent P.C. Kwan, "Hong Kong's Companies Ordinance Gets a Facelift" (Momentum, 2008)*, https://ssrn.com/abstract=2083446.

23. Companies Act 1967 (Singapore) s.5; Companies Ordinance (Hong Kong) Cap.622 (2014).

24. Companies Act 1967 (Singapore) s.5A.

25. Franklin A. Gevurtz, "Groups of Companies" (2018) 66 American Journal of Comparative Law 181, 181–182. ("*[i]n some instances, as for example with the corporate laws protecting minority shareholders or creditors, triggering rules relevant to parent or controlling shareholder status involves a fact-intense, case-by-case evaluation of actual control*

over the board or company. […] Moreover, the impact of triggering rules applicable to groups of companies in any given area of law depends upon the particular rule and area of law involved. […] Nor, given the disparate concerns and policies raised by corporate groups in these different areas of law, should the same criteria or impacts necessarily apply.").

26. Delaware Code Annotated tit.8 §203(c)(4).

27. Delaware Code Annotated tit.8 §203.

28. Companies Act 2006, c.46, § 1162(4) (UK).

29. Claudia Paduano, "From Equity to Influence: The Chimera of Corporate Control in Groups of Companies" (2025) 25(2) Journal of Corporate Law Studies 1, 7–8. ("*Control should not only be described formalistically, through majority shareholdings, but also in looser terms of control relations involving the parent company's interest or influence over the subsidiary's decisions and actions. Recent common law decisions have categorised this broader type of control as the parent company being actively involved in the subsidiary's management. […] The equity-based control test ascertains the de jure (legal) control a parent company may exercise, while extending tort liability requires demonstrating de facto (actual) control through involvement in the subsidiary's management.*").

30. *See* Jill Fisch and Steven Solomon, "Control and Its Discontents" (2025) 173(3) University of Pennsylvania Law Review 641, 680. ("*Tornetta and the cases on which it relies shift the analysis from voting control to domination, soft power, or even the capacity to influence. They also suggest that control can be context- or transaction-specific, meaning that a shareholder's status depends on the amount of influence that it can or does exert in a specific situation. We term this approach 'new' control to capture the types of control that do not depend on majority or near-majority stock ownership.* "); *see infra* text accompanying note 30.

31. *See* Stephen Bainbridge, "Delaware Senate Bill 21: What It Does and What Questions Remain Open" (UCLA School of Law, Law and Economics Research Paper No.25-02, 2025), pp.5 and 7. (In Delaware, Senate Bill 21 "*establishes a presumption of control for majority holders while setting a brightline requirement of at least one-third ownership for minority shareholders to be deemed controllers. It eliminates the growing risk that one could be deemed a controller despite owning nominal (or even no) stock.*")

32. Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups" (2024).

33. Adolf Berle, "Control in Corporate Law" (1958) 58(8) Columbia Law Review 1212, 1213.

34. Tornetta v Musk 310 A.3d 105 (Del Ch 2024) at 105–106. ("*Musk controlled only 21.9% of Tesla's voting power, so he lacked mathematical voting control. […] Mathematical voting control, however, is only one method of establishing controller status.*").

35. Tornetta v Musk 310 A.3d 105 (Del Ch 2024) at 108. (*the court uses the term "effective control" in its analysis*).

36. *Tabby Kinder and Stephen Morris, "Tesla Chair Warns Musk Could Quit if Shareholders Reject $1tn Pay Deal" (Financial Times, 28 October 2025*), https://www.ft.com/content/81fece48-0d1f-4164-b9aa-3a82ed9199fe.

37. *Lily Jamali et al., "Elon Musk's $1tn Pay Deal Approved by Tesla Shareholders" (BBC, 7 November 2025)*, https://www.bbc.com/news/articles/cwyk6kvyxvzo.

38. *See* Tobias H. Tröger, "Corporate Groups: A German's European Perspective" (Sustainable Architecture Finance in Europe, Working Paper No.66, 2014); Meredith Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 195, 215–219.

39. Aktiengesetz [AktG] [Stock Corporation Act] (Germany), 6 September 1965, s.18.

40. Aktiengesetz [AktG] [Stock Corporation Act] (Germany), 6 September 1965, s.18(2).

41. Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 195, 219.

42. Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 216.

43. See s.III.A.2.

44. Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 220–222. (*the German model has had an influence on, inter alia, Brazil, Portugal, France, and the European Union*).

45. Code de commerce [Commercial Code] (France), art.L233-1.

46. Code de commerce [Commercial Code] (France) art.L233-3(4).

47. Code de commerce [Commercial Code] (France) art.L233-3(3).

48. Ordinance of the Ministry of Justice No.12 of 2006 (Japan) art.3(3)(ii); Tomotaka Fujita, "The Regulation of Corporate Groups in Japan" (ICCLP Publications No.14). (*this provides an overview of how corporate groups are governed in Japan*).

49. *Ravi Prakash et al., "The Promoter Paradox: Mapping Control and Disclosure in India—Part I" (Mondaq, 28 October 2025)*, https://www.mondaq.com/india/shareholders/1697344/the-promoter-paradox-mapping-control-and-disclosure-in-india-part-i.

50. Companies Act 2013 (India) s.2(27).

51. ArcelorMittal India Private Ltd v Satish Kumar Gupta (2019) 2 SCC 1 at [47].

52. *A. Ramaiya, Guide to the Companies Act, 19th edn (Vol.1), s.2(28)*.

53. ArcelorMittal India Private Ltd v Satish Kumar Gupta (2019) 2 SCC 1 at [47]; Carborundum Universal Ltd v Wendt (India) Ltd and Others, National Company Law Tribunal, Bengaluru Bench, CP No.09 of 2011 and CP No.82 of 2013 (7 March 2019). *(the tribunal, among other things, held that private contractual mechanisms designed to maintain control (e.g., pre-emptive rights in a shareholders' agreement) cannot be enforced if they restrict the statutory provisions under Companies Act, 2013. The decision also discusses indirect acquisition of control in the context of an act of oppression or mismanagement).*

54. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg.2(e). [hereinafter Takeover Regulations] (the only differences is that it mentions "'*control' includes […]*" unlike CA-2013's "*'control' shall include […]*" and has the following proviso: "*[p]rovided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position*").

55. *Securities and Exchange Board of India, Report of the Takeover Regulations Advisory Committee (2010), paras 3.3 and 3.6*, https://www.sebi.gov.in/reports/reports/jul-2010/report-of-the-takeover-regulations-advisory-committee_717.html.

56. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg.4.

57. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.2(1)(i); Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.16(1)(a). [hereinafter LODR].

58. See Sections IV.A and IV.C.

59. Jayanth Rama Varma, "Corporate Governance in India: Disciplining the Dominant Shareholder" (1997) 9(4) IIMB Management Review 5, 8; *Ravi Prakash et al., "The Promoter Paradox: Mapping Control and Disclosure in India—Part I" (Mondaq, 28 October 2025)*, https://www.mondaq.com/india/shareholders/1697344/the-promoter-paradox-mapping-control-and-disclosure-in-india-part-i. ("*A promoter may exercise control not through direct shareholding but through a son who sits on the board, a daughter who manages operations, a family trust that holds shares, and a private company that acts as an investment vehicles. Each thread of this web must be traced, analyzed, and understood in the context of actual decision-making patterns, not just formal legal structures. […] A family patriarch may no longer hold formal office but may still whisper strategic directions that shape every major decision. A professional CEO may hold the title of managing director but operate entirely under the shadow of a dominant investor. A founder may have diluted their shareholding to negligible levels yet retain decisive influence through trust structures, nominee arrangements, or informal authority rooted in legacy and loyalty.*").

60. Varma, "Corporate Governance in India: Disciplining the Dominant Shareholder" (1997) 9(4) IIMB Management Review 5, 8. ("*In the Indian business groups, the concept of dominant shareholders is more amorphous for two reasons. First, the promoters' shareholding is spread across several friends and relatives as well as corporate entities. It is sometimes difficult to establish the total effective holding of this group. Second, the aggregate holding of all these entities taken together is typically well below a majority stake. In many cases, the promoter may not even be the largest single shareholder. What makes the promoters the dominant shareholders is that a large chunk of the shares is held by state owned financial institutions which have historically played a passive role. […] So long as the financial institutions play a passive role, the promoters are effectively dominant shareholders and are able to get general body approval for all their actions.*").

61. Neeti Shikha and Rishika Mishra, "Corporate Governance in India—Battle of Stakes" (2019) 10(1) International Journal of Corporate Governance 20, 27. ("*As in most cases, they [i.e., promoters] do not severe themselves from the management and day-to-day running of the company and wish to be the vanguards of the company. Often, this is a problematic scenario as it gives rise to the disputed territory between majority and minority shareholders. To add to the peculiarity, in India, the promoters most often do not even have the majority stake in company since the shareholding is spread between families, friends, relatives, etc.*").

62. *Menaka Doshi, "Zee Founders Burn India's Mutual Funds … Again" (Bloomberg, 25 January 2024)*, https://www.bloomberg.com/news/newsletters/2024-01-25/failed-sony-zee-merger-exposes-governance-gap-in-india-starting-with-ceo-goenk

63. Doshi, "Zee Founders Burn India's Mutual Funds … Again" (25 January 2024), https://www.bloomberg.com/news/newsletters/2024-01-25/failed-sony-zee-merger-exposes-governance-gap-in-india-starting-with-ceo-goenk

64. Doshi, "Zee Founders Burn India's Mutual Funds … Again" (25 January 2024), https://www.bloomberg.com/news/newsletters/2024-01-25/failed-sony-zee-merger-exposes-governance-gap-in-india-starting-with-ceo-goenk "Zee Entertainment: SEBI Investigation Reveals Rs800 Crore–Rs1,000 Crore May Have Been Siphoned, Says Report" (*Moneylife, 23 January 2024*), https://www.moneylife.in/article/zee-entertainment-sebi-investigation-reveals-rs800-crorers1000-crore-may-have-been-siphoned-says-report/

65. Zee Entertainment Enterprises Ltd, "Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, as Amended" (22 January 2024), https://assets.zee.com/wp-content/uploads/2024/01/22125113/SEIntimation22Jan24.pdf.

66. Shikha and Mishra, "Corporate Governance in India—Battle of Stakes" (2019) 10(1) International Journal of Corporate Governance 20, 25–26; *Hetal Dalal, "Board Permanency Gives Promoters Leverage against Investors" (Moneycontrol, 4 August 2022)*, https://www.moneycontrol.com/news/opinion/board-permanency-gives-promoters-leverage-against-investors-8950811.html; Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.31A.

67. *Nehal Chaliawala and Varun Sood, "Unhappy Shareholders Boot a Record 25 Directors from Dish TV Board in 3 Years" (LiveMint, 14 December 2024)*, https://www.livemint.com/companies/news/unhappy-shareholders-boot-a-record-25-directors-from-dish-tv-board-in-3-years-11734092786111

68. Brian Cheffins, "Does Law Matter? The Separation of Ownership and Control in the United Kingdom" (2001) 30(2) Journal of Legal Studies 459, 461; Stijn Claessens et al., "The Separation of Ownership and Control in East Asian Corporations" (2000) 58(1–2) Journal of Financial Economics 81, 110. (*the jurisdictions in the study: Hong Kong, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Taiwan, and Thailand*).

69. Cheffins, "Does Law Matter? The Separation of Ownership and Control in the United Kingdom" (2001) 30(2) Journal of Legal Studies 459, 461; Mark Roe, "A Political Theory of American Corporate Finance" (1991) 91 Columbia Law Review 10, 11.

70. *Adolf Berle and Gardiner Means, The Modern Corporation and Private Property (New York: Macmillan, 1932), pp.117 and 127*; Brian Cheffins, "The Rise and Fall (?) of the Berle–Means Corporation" (2019) 42 Seattle University Law Review 445, 496–498.

71. Umakanth Varottil, "A Cautionary Tale of the Transplant Effect on Indian Corporate Governance" (2009) 21(1) National Law School of India Review 1, 16.

72. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), pp.18–19*, https://doi.org/10.1787/e9568d3c-en; *Jayati Sarkar, "Ownership Control and Board Governance of Indian Business Groups: Continuity or Change?" in Achin Chakraborty and Indrani Chakraborty (eds), Indian Business Groups and Other Corporations (New Delhi: Springer, 2023), p.83* ("*Figure 4.5 presents trends in the ownership structure of group affiliates between 2006 and 2018. […] The overall impression that one gets from Fig. 4.5 is that the predominance of promoter control in group firms has persisted over a span of 12 years irrespective of structural changes from time to time in the institutional environment.*"); *see also* N. Balasubramanian and R.V. Anand, "Ownership Trends in Corporate India 2001–2011: Evidence and Implications" (IIM Ahmedabad, Working Paper No.419, 2013), p.25 (*this study is based on companies indexed in NIFTY 50 and Junior NIFTY companies and shows an increase in the number of companies having majority shareholding (i.e., >50%) by a shareholder/group between 2001 and 2011*).

73. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), pp.19–20*, https://doi.org/10.1787/e9568d3c-en.

74. Shantaram Hegde et al., "Ownership Concentration and Stock Returns: Evidence from Family Firms in India" (2020) 61 Pacific-Basin Finance Journal 1, 2.

75. Varottil, "A Cautionary Tale of the Transplant Effect on Indian Corporate Governance" (2009) 21(1) National Law School of India Review 1, 16–17.

76. Alexander Dyck and Luigi Zingales, "Private Benefits of Control: An International Comparison" (2004) 59(2) Journal of Finance 537, 540–541. ("*[t]he common feature […] is that some value, whatever the source, is not shared among all the shareholders in proportion of the shares owned, but it is enjoyed exclusively by the party in control.*").

77. Shanthy Rachagan, "Agency Costs in Controlled Companies" (2006) Singapore Journal of Legal Studies 264, 268; Zohar Goshen and Assaf Hamdani, "Corporate Control and Idiosyncratic Vision" (2016) 125 Yale Law Journal 560, 573; (authors provide an alternative perspective that the (legally permissible) private benefits are enjoyed by the controlling shareholders in exchange for their service of monitoring and operating the company for the minority shareholders); *but see* Ronald Gilson, "Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy" (2006) 119(6) Harvard Law Review 1641, 1651. (authors discuss that agency problems may be minimised in companies with controlling shareholder "*[b]ecause she holds a large equity stake, a controlling shareholder is more likely to have the incentive either to monitor managers effectively or to manage the company itself and, because of proximity and lower information costs, may be able to catch problems earlier.*").

78. Ernest Lim, "Controlling Shareholders and Fiduciary Duties in Asia" (2018) 18(1) Journal of Corporate Law Studies 113, 117–118.

79. Dyck and Zingales, "Private Benefits of Control: An International Comparison" (2004) 59(2) Journal of Finance 537, 540–541.

80. Rachagan, "Agency Costs in Controlled Companies" (2006) Singapore Journal of Legal Studies 264, 269.

81. Rachagan, "Agency Costs in Controlled Companies" (2006) Singapore Journal of Legal Studies 264, 269; Goshen and Hamdani, "Corporate Control and Idiosyncratic Vision" (2016) 125 Yale Law Journal 560, 571; Ronald Gilson and Jeffrey Gordon, "Controlling Controlling Shareholders" (2003) 152 University of Pennsylvania Law Review 785, 786.

82. Marianne Bertrand et al., "Ferreting Out Tunneling: An Application to Indian Business Groups" (2002) 117(1) Quarterly Journal of Economics 121, 121; Mazumdar, "The Analysis of Business Groups: Some Observations with Reference to India" (2008), p.10; Sarkar, "Ownership Control and Board Governance of Indian Business Groups: Continuity or Change?" (2023), p.86. ("*There are many methodological issues that can be raised in relation to this study [by Bertrand et al.]. […] The point of course is not that siphoning out of resources from public companies by those who control them does not happen in India. The problem with Bertrand et al's method instead lies in the fact that such siphoning out may be more commonplace than they presumed.*"); Sarkar, *supra* note 67, at86 ("*Further, the variations in promoter ownership within each group imply that theoretically tunneling incentives exist if the firms are structured as pyramids, with firms where promoters have the highest cash flows located at the top of the pyramid. All that is necessary for pyramidal structure to generate tunneling incentives is that the firm at the top of the pyramid has controlling rights on the firm below it, and the second firm has controlling rights on the firm below it and so on.*")

83. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), pp.23–24*, https://doi.org/10.1787/e9568d3c-en; *Jens Dammann, "Related Party Transactions and Intragroup Transactions" in The Law and Finance of Related Party Transactions (2019)*.

84. Alessio Pacces, "Procedural and Substantive Review of Related Party Transactions (RPTs): The Case for Non-Controlling Shareholder Dependent Directors" (European Corporate Governance Institute, Law Working Paper No.399/2018), pp.4–5.

85. Sarkar, "Business Groups in India" (2010), p.307.

86. Luca Enriques and Tobias Tröger, "The Law and (Some) Finance of Related Party Transactions: An Introduction" (European Corporate Governance Institute, Law Working Paper No.411/2018), p.9. (*the authors point out three fundamental questions when it comes to the regulation of RPTs: (1) 'who' screens RPTs? (2) 'how' does the screening work? and, (3) 'when' does the screening take place (i.e., before or after the RPT is entered into)?*).

87. Dammann, "Related Party Transactions and Intragroup Transactions" (2019), p.218. ("*In fact, the goal of facilitating contractual relationships can be a central reason for forming a corporate group in the first place. Making different companies part of the same corporate group can help overcome or attenuate various types of market failure in the contractual relationships between firms.*"); Enriques and Tröger, "The Law and (Some) Finance of Related Party Transactions: An Introduction" (2018), p.8.

88. Enriques and Tröger, "The Law and (Some) Finance of Related Party Transactions: An Introduction" (2018), p.8.

89. Pacces, "Procedural and Substantive Review of Related Party Transactions (RPTs): The Case for Non-Controlling Shareholder Dependent Directors" (2018), p.4. ("*Part of the reason lies in the sheer volume and frequency of such transactions. The more often a corporation engages in dealings with other firms that form part of the same group, the harder it becomes for minority shareholders and creditors of an affiliated firm to monitor the fairness of these transactions.*").

90. Organisation for Economic Co-operation and Development, *Company Groups in India (OECD Business and Finance Policy Papers No.55, 2022), pp.23–24*, https://doi.org/10.1787/e9568d3c-en.

91. Dan Puchniak and Umakanth Varottil, "Related Party Transactions in Commonwealth Asia: Complexity Revealed" (European Corporate Governance Institute, Law Working Paper No.404/2018, 2019), p.13.

92. Bertrand et al., "Ferreting Out Tunneling: An Application to Indian Business Groups" (2002) 117(1) Quarterly Journal of Economics 121; *Prasenjit Chakrabarti and Brijesh Mishra, "When Ease of Doing Business Aids Tunnelling" (Financial Express, 8 January 2026)*, https://www.financialexpress.com/opinion/when-ease-of-doing-business-aids-tunnelling/4100564/.

93. Umesh Mahtani, "Analysis of Related Party Transactions in India: A Group and Non-Group Company Perspective" (2018) 15(2) Corporate Ownership & Control.

94. Shashank Bansal and M. Thenmozhi, "Does Concentrated Founder Ownership Affect Related Party Transactions? Evidence from an Emerging Economy" (2020) 53 Research in International Business and Finance 17.

95. Harpreet Kaur and Divyanshu Sharma, "An Aimless Pursuit of Corporate Independence: A Critique of SEBI's Efforts to Strengthen Independent Directors" (2025) 46(1) Business Law Review 17.

96. *Frank Easterbrook and Daniel Fischel, The Economic Structure of Corporate Law (Cambridge, MA: Harvard University Press, 1991), p.13*.

97. Prentice, "Some Aspects of the Law Relating to Corporate Groups in the United Kingdom" (1999) 13 Connecticut Journal of International Law 305; Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 605.

98. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 894.

99. Melvin Eisenberg, "Megasubsidiaries: The Effect of Corporate Structure on Corporate Control" (1971) 84(7) Harvard Law Review 1577, 1590.

100. Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 605, 607; *Phillip I. Blumberg, The Law of Corporate Groups (Boston: Little, Brown, 1983), p.3*.

101. *Blumberg, The Law of Corporate Groups (1983), p.3*.

102. Salomon v A Salomon & Co Ltd [1897] A.C. 22; [1896] UKHL 1.

103. Salomon v A Salomon & Co Ltd [1897] A.C. 22.

104. Salomon v A Salomon & Co Ltd [1897] A.C. 22.

105. Salomon v A Salomon & Co Ltd [1897] A.C. 22; Ron Harris, "A New Understanding of the History of Limited Liability: An Invitation for Theoretical Reframing" (2020) 16(5) Journal of Institutional Economics 643, 658. ("*[i]n the British case, as we have seen, the Companies Act 1862 enabled incorporators to design the liability regime of a corporation in its Memorandum of Association. The Memorandum could establish a 'company limited by shares', in which shareholders were liable only for the unpaid balance on the shares, or a 'company limited by guarantee', in which shareholders undertook to contribute a set amount in the event of the winding-up of the company. The 1862 Act, which became a model for company acts throughout the British Empire, was thus an enabler.*" (emphasis supplied)).

106. *Ernest Lim, "Liability of Companies, Shareholders and Directors" in Sustainability and Corporate Mechanisms in Asia (2020), p.237*.

107. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 899.

108. Please note that the traditional understanding of the veil-piercing doctrine has come under critical scrutiny in contemporary literature. *See* Lim, "Liability of Companies, Shareholders and Directors" (2020), p.243. ("*[w]hen courts have imposed liability on a shareholder (whether corporate or personal) for the debts or wrongdoing of the company, they are, properly speaking, not piercing the corporate veil (ie disregarding the separate legal personality), even though that was what they claimed they were doing.*"); Eva Micheler, "Separate Legal Personality—An Explanation and a Defence" (2024) 24(1) Journal of Corporate Law Studies 301, 308–309. ("*[T]he language of veil piercing reveals itself as misleading. Rather than being examples of a – previously large now much diminished – doctrine justifying the*

'disregard' of the separate personality the cases turn out to all along have recognised the company as a separate legal entity. […] The term 'veil piercing' is merely used as a label. There is no corporate 'disregard'. The evasion principle also does not involve a 'disregard' of the company's separate legal personality. It applies, if it continues to have traction, to impose a liability on a company, the separate legal personality of which is fully recognised."); Stephen Bainbridge, "Abolishing Veil Piercing" University of Illinois Law Review 534. ("*Limited liability makes sense. Veil piercing does not.*").

109. Micheler, "Separate Legal Personality—An Explanation and a Defence" (2024) 24(1) Journal of Corporate Law Studies 304. ("*The veil piercing doctrine, while persistently appearing in case law and academic scholarship, had two fundamental flaws. Its boundaries were unclear, and it was rarely, if ever, applied.*")

110. Prentice, "Some Aspects of the Law Relating to Corporate Groups in the United Kingdom" (1999) 13 Connecticut Journal of International Law 305.

111. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 899.

112. *Blumberg, The Law of Corporate Groups (1983), p.5*.

113. Sharon Belenzon et al., "An Asset Partitioning Perspective on Corporate Groups" (30 September 2021), pp.7–8, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3934681. In this regard, literature has given inordinate focus to the veil-piercing doctrine, conflating the differences between asset partitioning and regulatory partitioning. For an understanding of regulatory partitioning, *see also* Mariana Pargendler, "The New Corporate Law of Corporate Groups" (2024) 14 Harvard Business Law Review 340, 345–346; Mariana Pargendler, "The Fallacy of Complete Corporate Separateness" (2024) 14 Harvard Business Law Review Online 1, 7; Mariana Pargendler, "Veil Peeking: The Corporation as a Nexus for Regulation" (2021) 169 University of Pennsylvania Law Review 717, 740.

114. Belenzon et al., "An Asset Partitioning Perspective on Corporate Groups" (2021), pp.7–8.

115. Larry Backer, "The Autonomous Global Corporation: On the Role of Organisational Law beyond Asset Partitioning and Legal Personality" (2013) 41 Tulsa Law Review 541, 544–549; Henry Hansmann and Reinier Kraakman, "The Essential Role of Organisational Law" (2000) 110 Yale Law Journal 387; Mariana Pargendler, "Regulatory Partitioning as a Key Function of Corporate Personality" (New York University, Law and Economics Research Paper Series Working Paper No.20-59, 2020), p.2. ("*Asset partitioning has three different facets: (i) shareholder creditors cannot attach the assets of the company (an attribute known as entity shielding); (ii) corporate creditors cannot resort to the personal assets of shareholders (an attribute known as limited liability); and (iii) shareholders cannot unilaterally withdraw assets from the company prior to liquidation (an attribute known as capital lock-in)*").

116. Lim, "Liability of Companies, Shareholders and Directors" (2020), p.240.

117. Adolf Berle, "The Theory of Enterprise Entity" (1947) 47(3) Columbia Law Review 343, 344. ("*[t]his is far from the original conception of a corporation. The legal doctrine of corporate personality was built around the idea of a sovereign grant of certain attributes of personality to a definable group, engaged in an enterprise. The so-called 'artificial personality' was designed to be the enterpriser of a project. Multiplicity of artificial personalities within an enterprise unit would probably have been impossible under most early corporation laws.*").

118. Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 609.

119. Blumberg, "The Transformation of Modern Corporation Law: The Law of Corporate Groups" (2005) 37 Connecticut Law Review 610.

120. Ho, "Theories of Corporate Groups: Corporate Identity Reconceived" (2012) 42 Seton Hall Law Review 879, 935.

121. *See* Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 208–209. ("*[i]f a subsidiary and a parent corporation take simple steps, like keeping adequate minutes of meetings and maintaining separate bank accounts, liability in a piercing claim is unlikely. While this structure may be adequately indicative of the classic 'sham' close corporation, in which a shareholder sets up a corporation for the sole purpose of shielding his personal assets from liability, it is well nigh meaningless in the context of a larger corporation with a watchful legal team. In fact, one case has even held that the analogous. […] In short, the doctrine is so focused on facial formalities and appropriate lines.*").

122. *See* Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 231–244; Berle, "The Theory of Enterprise Entity" (1947) 47(3) *Columbia Law Review* 354. ("*[i]f it be shown that the enterprise is not reflected and comprehended by the corporate papers, books and operation, the court may reconstruct the actual enterprise, giving entity to it, based on the economic facts. Thus one corporation may be shown to be in fact only an 'instrumentality' of a larger enterprise, or to be so intermingled with the operations of such larger enterprise as to have lost its own identity. On such reconstruction of the true entity, the court may assign the liabilities of the paper fragment to the economic whole*").

123. Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 245.

124. *See* Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups" (2024), p.16. ("*In the UK, the separate legal personality doctrine following the Salomon case has been firmly upheld for groups as well by a long list of court cases*"); Prest v Petrodel Resources Ltd [2013] UKSC 34; [2013] 2 A.C. 415 at [79]. (on the veil-piercing doctrine: "*[i]n these circumstances, I was initially strongly attracted by the argument that we should decide that a supposed doctrine, which is controversial and uncertain, and which, on analysis, appears never to have been invoked successfully and appropriately in its 80 years of supposed existence, should be given its quietus.*").

125. *See* notes 38–44.

126. Paola Fasciani, "Groups of Companies: The Italian Approach" (2007) 4(2) European Company and Financial Law Review 195, 201 and 217. ("*[t]he 2004 reform focuses on the central notion of the group of companies and introduces the liability of the holding company to the subsidiaries' shareholders and the creditors if the activity of direction and*

co-ordination violated the principle of correct management and was detrimental to the income and the value of the shareholders' stake, or the integrity of the assets for the creditors (Art. 2497 CC60). In return, the reform accepts the specific situation of groups and therefore allows that the individual companies pursue a group purpose. It expressly acknowledges that the activity of a group unitary direction and management – which is evaluated on the results of the group – may be exercised by entities which differ from those formerly managing the company.").

127. *Geneviève Helleringer, "Related Party Transactions in France—A Critical Assessment" in Luca Enriques and Tobias Tröger (eds), The Law and Finance of Related Party Transactions (2019), p.411*; Rozenblum and Allouche, Court of Cassation (Criminal Chamber), 4 February 1985, D. 1985, 478; JCP 1986, II-20585; (1985) Revue des Sociétés 648, noted by Bernard Bouloc (citation of the French Supreme Court's decision).

128. Helleringer, "Related Party Transactions in France—A Critical Assessment" (2019), p.411.

129. Helleringer, "Related Party Transactions in France—A Critical Assessment" (2019), p.411.

130. *Daryna Khodak, Liability Issues in Corporate Groups: Practice of the European Union Member States (PhD thesis, Mykolas Romeris University, 2021), p.26*. ("*[t]hus, the Rozenblum doctrine can be considered to be a relatively fair approach that reflects the economic reality of the corporate groups' activity on the one hand, and ensures protection of vulnerable stakeholders, namely, minority shareholders and creditors of the subsidiary company, on the other hand.*").

131. Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 198.

132. *See* Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 198–199.

133. *See* Dearborn, "Enterprise Liability: Reviewing and Revitalising Liability for Corporate Groups" (2009) 97(1) California Law Review 195. (delves into control based enterprise liability and 'true enterprise liability); Martin Petrin, "Some Thoughts on Control and Liability in Corporate Groups" (2017), https://discovery.ucl.ac.uk/id/eprint/1529876/. (discusses enterprise liability based on duty of care) [Petrin (2017)]; *see also* Lim, "Liability of Companies, Shareholders and Directors" (2020), pp.267–273. (proposes fault-based liability on controlling shareholders of the parent company); Henry Hansmann and Reinier Kraakman, "Toward Unlimited Shareholder Liability for Corporate Torts" (1991) 100 Yale Law Journal 1879. (proposes unlimited liability).

134. Chandler v Cape plc [2012] EWCA Civ 525; Petrin, "Some Thoughts on Control and Liability in Corporate Groups" (2017), p.12 (the test established by the court: "*[t]he factors formulated by the court are that (1) the businesses of the parent and subsidiary need to be in a relevant respect the same; (2) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (3) the subsidiary's system of work is unsafe as the parent company knew, or ought to have known; and (4) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection.*"); *see also* Vedanta Resources plc v Lungowe [2019] UKSC 20; [2020] A.C. 1045 at [52]–[56]..

135. M.C. Mehta v Union of India AIR 1987 S.C. 1965. ("*If the enterprise is permit- ted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. […] We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident.*").

136. *See* Virginia Harper Ho, "Team Production and the Multinational Enterprise" (2015) 38 Seattle University Law Review 499; Christian Witting, "The Corporate Group: System, Design and Responsibility" (2021) 80(3) Cambridge Law Journal 581.

137. *Virginia Harper Ho et al., "Corporate Groups: Toward Corporate Group Accountability" in Martin Petrin and Christian Witting (eds), Handbook of Corporate Liability. [hereinafter Ho et al.]*.

138. *See* James Henderson Jr, "The Boundary Problems of Enterprise Liability" (1982) 41 Maryland Law Review 659.

139. Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups" (2024), pp.14–27; Ho et al., "Corporate Groups: Toward Corporate Group Accountability", p.304. ("*[h]owever, even in the United States, Germany, and other jurisdictions where it has been more widely embraced, enterprise law remains the exception, not the rule*").

140. There are specific regulatory fields where group regulation is more direct. *See, e.g., Oorvi Mehta, "Application of the Single Economic Entity Doctrine to Anticompetitive Agreements" (IndiaCorpLaw, 9 February 2018)*, https://indiacorplaw.in/2018/02/09/application-single-economic-entity-doctrine-anticompetitive-agreements/. (discusses the doctrine of single economic entity in competition law).

141. *See Anirudh Krishnan, Commercial Dispute Resolution: State of the Law in India (2024), para.33.2.1*.

142. Companies Act 2013 (India) ss.9, 3(2)(a) and 2(22).

143. Companies Act 2013 (India) s.2(46).

144. Companies Act 2013 (India) s.2(87).

145. Companies Act 2013 (India) s.2(87).

146. Companies Act 2013 (India) s.2(87), Explanation (a).

147. Companies Act 2013 (India) s.2(87). ("*Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.*").

148. Companies (Restriction on Number of Layers) Rules 2017, Gazette of India, Extraordinary, Pt II, s.3(i), r.2 (20 September 2017).

149. Companies (Restriction on Number of Layers) Rules 2017 r.2(1).

150. Companies (Restriction on Number of Layers) Rules 2017 r.2(2). (banking companies, non-banking financial companies, insurance companies, and government companies).

151. Companies Act 2013 (India) s.2(6).

152. Companies Act 2013 (India) s.2(6)(a).

153. Companies Act 2013 (India) s.2(76)(viii).

154. *See* Companies Act 2013 (India) ss.177 and 188.

155. *See supra* text to accompanying note 108.

156. *See, e.g.,* SAE (India) Ltd v EID Parry (India) Ltd (1998) 18 SCL 481 at [23] ("*23. […] The separate legal personality of the company is the bedrock of the Company law and piercing the 'veil' of the company is permissible only in exceptional circumstances. It is not the normal rule that at the instance of creditors the corporate veil of the subsidiary be pierced in order to make the holding company liable to answer the claims of the creditors of a subsidiary.*"); *see also* Spencer & Co Ltd, Madras v CWT AIR 1969 Mad 359; Turner Morrison & Co Ltd v Hungerford Investment Trust Ltd AIR 1969 Cal 238.

157. *See C.R. Datta, Company Law (2017), para.7.52*; Ritu Birla, "Maine (and Weber) against the Grain: Towards a Postcolonial Genealogy of the Corporate Person" (2013) 40 Journal of Law and Society 92; Life Insurance Corporation Of India vs Escorts Ltd. & Ors (1986) 1 SCC 264; 1985 INSC 251 at [90]. ("*[w]hile it is firmly established ever since Salomon v A. Salomon & Co. Ltd. 1897 A.C. 22 was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances.*") [hereinafter LIC v Escorts].

158. LIC v Escorts Ltd (1986) 1 SCC 264 at [90].

159. LIC v Escorts Ltd (1986) 1 SCC 264 at [91].

160. LIC v Escorts Ltd (1986) 1 SCC 264 at [66] and [68].

161. State of Uttar Pradesh v Renusagar Power Co AIR 1988 S.C. 1737.

162. State of Uttar Pradesh v Renusagar Power Co AIR 1988 S.C. 1737 at 67.

163. State of Uttar Pradesh v Renusagar Power Co AIR 1988 S.C. 1737 at 66.

164. *See* U.K. Mehra v Union of India (1994) C.L.J. 1 263 (interim order against the parent company was also made applicable against the subsidiary for effectiveness); Bhatia Industries & Infrastructure Ltd v Asian Natural Resources (India) Ltd 2016 SCC OnLine Bom 10695 (execution proceedings against the parent company when the subsidiary did not cooperate); Cox and Kings Ltd v SAP India Pvt Ltd 2023 INSC 1051 (provides for the 'group of companies' doctrine in arbitration law where companies (other than the party involved in the dispute) within a corporate group can be joined in arbitrations).

165. *Krishnan, Commercial Dispute Resolution: State of the Law in India (2024), para.33.2.2*.

166. *See, e.g.,* Vodafone International Holdings BV v Union of India (2012) 170 Comp Cas 369 (SC) at [67] ("*[i]t is generally accepted that the group parent company is involved in giving principal guidance to group companies by providing general policy guidelines to group subsidiaries. […] Further, if a company is a parent company, that company's executive director(s) should lead the group and the company's shareholder's influence will generally be employed to that end. This obviously implies a restriction on the autonomy of the subsidiary's executive directors. Such a restriction, which is the inevitable consequences of any group structure, is generally accepted, both in corporate and tax laws.*").

167. Balwant Rai Saluja v Air India Ltd (2014) 9 SCC 407; AIR 2015 SC 375 at [74].

168. Balwant Rai Saluja v Air India Ltd (2014) 9 SCC 407 at [74].

169. Balwant Rai Saluja v Air India Ltd (2014) 9 SCC 407 at [82].

170. Balwant Rai Saluja v Air India Ltd (2014) 9 SCC 407 at [87].

171. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.2(oo).

172. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.2(pp).

173. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.2(1)(w).

174. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg.2(1)(t).

175. See s.II.C.

176. *See K. Shekhar, Guide to SEBI, Capital Issues, Debentures & Listing (2019), para.8.1*; Securities and Exchange Board of India, *Report of the Committee on Corporate Governance (2017), p.6*, https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html (the committee report recommended significant changes to LODR and stated that "*good corporate governance primarily helps overcome potential agency problems which can occur if managers who are agents of all shareholders*

(particularly the faceless, powerless ones) pursue their personal interests to the possible detriment of investors' interests."); Securities and Exchange Board of India, *Report of the Takeover Regulations Advisory Committee (2010), p.9*, https://www.sebi.gov.in/reports/reports/jul-2010/report-of-the-takeover-regulations-advisory-committee_717.html (the committee stated that one of the objectives of the Takeover Regulations is "*[t]o protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests*").

177. See Sections IV.C.1–IV.C.3.

178. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.5(1).

179. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.16(1)(a).

180. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, Sch.VI, para.9(G)(b).

181. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, reg.2(t).

182. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, Sch.VI, para.13.

183. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, Sch.VI, paras 13(A) and 13(D).

184. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, Sch.VI, para.13(G).

185. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.2(1)(zb).

186. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.23(2).

187. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, regs 23(2)(b) and 23(2)(c).

188. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(1) ("*[…] the term 'material subsidiary' shall mean a subsidiary, whose turnover or net worth exceeds twenty percent of the consolidated turnover or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.*").

189. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(1).

190. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(2).

191. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(3).

192. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(4). ("'*significant transaction or arrangement' shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.*").

193. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(5). ("*A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than or equal to fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting […]*").

194. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.24(6). ("*Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution […]*").

195. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg.30.

196. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, Sch.III, Pt A, para.A.5A.

197. Takeover Regulations, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg.2(q).

198. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, regs 2(q)(2)(i) and 2(q)(2)(iv).

199. *See* Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, regs 3 and 5.

200. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg.5; Securities and Exchange Board of India, *Frequently Asked Questions on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (2022), para.22*, https://www.sebi.gov.in/sebi_data/faqfiles/mar-2022/1648620806406.pdf ("*An indirect acquisition would be the acquisition of shares or control over another entity by an acquirer that would enable the acquirer to exercise or direct to exercise voting rights beyond the stipulated thresholds or control over the*

target company").

201. *See supra* text accompanying note 186.

202. *Vikramaditya Khanna and Umakanth Varottil, "Board Independence in India: From Form to Function?" in Dan Puchniak et al. (eds), Independent Directors in Asia: A Historical, Contextual and Comparative Approach (Cambridge: Cambridge University Press, 2017), p.376*.

203. Khanna and Varottil, "Board Independence in India: From Form to Function?" (2017), p.365.

204. *See supra* text accompanying notes 127–130.

205. *See supra* text accompanying notes 127–130.

206. Hopt, "Groups of Companies: A Comparative Study on the Economics, Law and Regulation of Corporate Groups" (2024), p.22; Pargendler, "The New Corporate Law of Corporate Groups" (2024) 14 Harvard Business Law Review 340, 387.

207. *See supra* text accompanying notes 188–192.

208. Pargendler, "The New Corporate Law of Corporate Groups" (2024) 14 Harvard Business Law Review 364.

209. *See, e.g.,* Puchniak and Varottil, "Related Party Transactions in Commonwealth Asia: Complexity Revealed" (2019), p.13. (Eur. Corp. Governance Inst., Law Working Paper N° 404/2018, 2019).

210. *See Vikramaditya Khanna and Umakanth Varottil, "The Rarity of Derivative Actions in India: Reasons and Consequences" in Dan Puchniak et al. (eds), The Derivative Action in Asia: A Comparative and Functional Approach (Cambridge: Cambridge University Press, 2012), p.396* ("*We find, however, that substantive law, procedural law and other economic, institutional and cultural factors place significant obstacles in the way of derivative suits, making them a rarity in India. Even existing proposals for reforming Indian company law do not appear to provide sufficient impetus to encourage the use of the derivative action mechanism*").

211. Pargendler, "The New Corporate Law of Corporate Groups" (2024) 14 Harvard Business Law Review 357.

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