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CHALLENGES IN THE APPLICABILITY OF THE PRINCIPLE OF SEPARATE LEGAL ENTITY IN SINGLE SHAREHOLDER COMPANIES: A COMPARATIVE ANALYSIS BETWEEN TANZANIA AND INDIA

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Abstract

This article examines the principle of separate legal entity, offering a concise yet thorough analysis of its application within the Tanzanian corporate framework. Anchored in the landmark case *Salomon v A. Salomon & Co. Ltd* (1897), the paper explores the doctrinal significance and judicial interpretation of corporate personality as it pertains to Tanzanian companies. It further undertakes a comparative assessment of how this principle operates in the context of Single Shareholder Companies in Tanzania and One Person Companies in India. By highlighting the legal and practical divergences between the two jurisdictions, the study identifies gaps in Tanzania's implementation of the corporate personality doctrine and proposes targeted reforms to enhance its efficacy.

Keywords: Separate legal entity, corporate personality, judicial interpretation and Applicability, Corporate personhood principle

Introduction

The principle of separate legal entity is a principle that identifies the company as a legal person. The principle of corporate personality refers to the legal doctrine whereby a company, upon incorporation, is recognized as a distinct legal entity separate from its shareholders, directors, and other stakeholders.ⁱ This separate legal status enables the company to own property, enter into contracts, sue and be sued in its own name, and bear its own rights and obligations independently of its members. This doctrine was firmly established in *Salomon v. Aaron Salomon & Co. Ltd*ⁱⁱ, where the House of Lords affirmed that a legally incorporated company possesses a personality distinct from its incorporators, regardless of the number of shareholders.ⁱⁱⁱ

The doctrine of corporate personality serves as the cornerstone of contemporary corporate law, with its key legal implications including a) Limited liability, protects shareholders from personal financial liability, promoting investment and risk-taking in business ventures b) Perpetual succession ensures the continuous existence of a company, regardless of changes in ownership or

management, safeguarding the continuity of business operations , c) Ownership and asset separation differentiate between company assets and shareholder assets, reducing the potential for conflict and enhancing legal clarity in asset management and creditor claims.^{iv}

In jurisdictions like Tanzania and India, this principle is codified within their respective Companies Acts and reinforced through judicial interpretation.^v Its practical application affects everything from the formation of One Person Companies to the piercing of the corporate veil in cases of fraud or abuse since under one person company it is practically impossible to differentiate the acts of the owner of the company and that of the company.^{vi}

The Genesis of Corporate Personality

The origins of corporate law trace back to antiquity, with foundational forms of commercial activity and rudimentary legal structures emerging in Ancient Greece and subsequently in Ancient Rome. As noted by T.V. Kashanina, the concept of the corporation first took shape in the Greek context before extending to Roman society. However, these early corporate entities had limited



influence on the broader trajectory of economic development within their respective regions.^{vii}

The principle of separate legal entity, foundational to modern corporate law, finds its doctrinal roots in English common law, particularly in the case of *Salomon v A. Salomon & Co. Ltd.*^{viii} This doctrine has been adopted and codified within the legal regimes of both Tanzania and India, albeit with jurisdiction-specific nuances. In Tanzania, the Companies Act,^{ix} draws heavily from English legal tradition and affirms the distinct legal personality of a company upon incorporation. Tanzanian courts frequently cite *Salomon* to reinforce the autonomy of corporate entities, particularly in matters concerning liability and asset ownership.^x As demonstrated in *Yusuf Manji v Edward Masanja and Abdallah Juma*,^{xi} the Tanzanian judiciary affirms that companies possess distinct legal personality, granting them the capacity to initiate legal proceedings, be sued, and undertake binding obligations. However, this recognition is not without limitation. The courts retain the discretion to pierce the corporate veil, thereby scrutinizing the conduct of directors and shareholders, particularly where there is evidence of fault or misuse of the corporate form. The statutory framework, complemented by judicial interpretation, underscores the company's capacity to act independently of its shareholders.^{xii}

Much as the principle of separate personality is very much invested in the company's obligations and liabilities. A review of the literature highlights the potential difficulty in differentiating between the acts of an individual owner and those of their single shareholder company, particularly in cases where the owner is the sole director and shareholder of the company.^{xiii} Nevertheless, under the Indian legal framework, a One Person Company (OPC) enjoys the same rights and privileges as a company with multiple shareholders, including the principle of separate legal entity enshrined in the famous case of *Salomon v. Salomon & Co. Ltd.*^{xiv} This ruling established that a company is a separate legal entity from its shareholders, possessing its own legal personality.^{xv}

The principle of corporate personality within Tanzania's legal framework continues to present challenges. Although the Companies Act R.E 2023 and its accompanying regulation Government Notice No. 129 of 2014^{xvi} affirm the separate legal identity of companies, they also permit both the company and its owner to be held accountable in legal proceedings. This dual liability blurs the distinction between the company as an independent entity and its proprietor. In *Yusuf Manji v. Abdallah Juma and Edward Masanja*,^{xvii} the court reaffirmed that companies in Tanzania are recognized as legal persons, possessing the capacity to sue, be sued, and undertake contractual obligations. However, the doctrine of separate legal personality is not absolute. Shareholders or owners may be summoned in legal matters only when their involvement is necessary to establish facts an exception known as "lifting the corporate veil." This mechanism allows courts to look beyond the company's façade to hold individuals accountable when justice demands it.^{xviii}

Despite the foundational role of the principle of corporate personality in company law, existing literature tends to focus predominantly on its theoretical underpinnings and its articulation in landmark common law cases such as *Salomon v. Salomon & Co. Ltd.* While these discussions are doctrinally rich, they often lack jurisdiction-specific analysis, particularly in the context of developing legal systems such as Tanzania.^{xix}

India's statutory framework, particularly the Companies Act, 2013 and the Company (Incorporation) Rules, 2014, introduced significant reforms aimed at fostering entrepreneurship through recognition of OPCs. In contrast, Tanzania's statutory framework remains relatively under theorized, especially regarding its practical enforcement and judicial interpretation of corporate personality in single shareholding company. There is a notable absence of comparative legal analysis that critically evaluates how the principle of corporate personality is recognized, applied, and challenged within the statutory and judicial frameworks of Tanzania and India particularly in relation to emerging corporate forms such as OPCs otherwise recognized as Single Shareholder Companies.^{xx}

FOUNDATION OF THE PRINCIPLE OF CORPORATE PERSONALITY

The doctrine of separate legal entity transcends its procedural role in incorporation, functioning as a foundational theoretical construct within corporate law. It establishes a clear demarcation between the company and its members, allowing the legal system to treat the corporation as a distinct juridical person a conceptual abstraction with tangible legal implications. This abstraction underlies key corporate features such as limited liability, the segregation of assets, and the enduring nature of corporate existence independent of individual ownership or managerial control. Consequently, the principle operates as a normative cornerstone for structuring corporate governance, distributing legal and financial risk, and ensuring accountability within the corporate framework.^{xxi}

More over the Comparative legal scholarship benefits significantly from analyzing how various jurisdictions conceptualize, legislate, and implement the doctrine of separate legal entity; as such inquiry reveals the adaptability and structural resilience of corporate law systems.^{xxii} Tanzania and India offer a particularly instructive comparative framework, both jurisdictions are rooted in English common law traditions, yet they exhibit marked divergence in statutory development, judicial interpretation, and regulatory practice. Tanzania's approach is characterized by a more codified and restrained application of the doctrine, emphasizing procedural safeguards and formal compliance.^{xxiii}

In contrast, India's legal landscape reflects a more fluid and jurisprudentially active engagement with the principle, particularly in cases involving fraudulent conduct and the governance of single-member corporate entities.^{xxiv}

This paper is driven by a critical inquiry into the operational resilience of the doctrine of separate legal entity within the context

of emerging and transitional economies. Through a comparative examination of statutory frameworks, judicial interpretations, and practical enforcement in Tanzania and India, the research seeks to uncover both the doctrinal robustness and the structural fragilities embedded in each jurisdiction. In doing so, it aims to advance contemporary discourse on corporate accountability, statutory reform, and the interpretive role of the judiciary in delineating the contours of corporate legal personality.

Ultimately, the study aspires to bridge the gap between theoretical abstraction and practical enforcement, offering a nuanced understanding of how legal personality operates within distinct socio-legal contexts. It is hoped that the findings will inform both academic discourse and policy development, particularly in jurisdictions seeking to refine their corporate law regimes in response to evolving economic and regulatory demands.

Doctrine of separate legal entity

The principle of separate legal entity affirms that a company, upon incorporation, acquires a legal personality independent of its members. This doctrinal construct enables corporations to own property, incur liabilities, and engage in legal transactions autonomously. In *Salomon v. Salomon & Co. Ltd [1897] AC 22*, the doctrine has since become a foundational element of corporate jurisprudence. This article examines the theoretical underpinnings of the doctrine, its normative significance, and its practical implications in company law.^{xxv}

The doctrine emerged from the need to distinguish corporate obligations from personal liabilities of shareholders.^{xxvi} In *Salomon*, the House of Lords decisively held that once a company is legally incorporated, it becomes a separate person in the eyes of the law. This ruling rejected the notion that a company's identity is merely an extension of its shareholders, thereby establishing a precedent for corporate autonomy.^{xxvii}

Subsequent cases^{xxviii} reinforced the principle, confirming that even a sole shareholder can be legally distinct from the company. These decisions laid the groundwork for the development of corporate personhood and limited liability.^{xxix}

Theories governing the principle of separate legal entity

The principle of separate legal entity has been broadly discussed thoroughly through the fiction and concession theory. These theories offer diverse perspectives on the nature and extent of a corporation's legal personality.

Fiction Theory

According to this theory, corporate personality is merely a legal fiction created by the state, serving as a useful tool for legal convenience and practicality. The Fiction Theory of corporate personality posits that corporations are not actual living beings but rather legal fictions created by the state. This means that corporations are considered "persons" in the eyes of the law solely for the purposes of legal convenience and ease of administration, allowing them to enter into contracts, sue and be sued, own property, and engage in other activities associated with legal persons. This approach treats corporations as legal constructs

rather than real entities, acknowledging their fictional status while also affording them certain legal rights and responsibilities.

This theory traces its intellectual lineage to medieval canon law and was notably advanced by jurists such as Pope Innocent IV, Von Savigny, Blackstone, and Salmond. These scholars argued that corporations are intangible, invisible, and devoid of physical or mental attributes, yet are treated as persons by legal necessity. A classic articulation appears,^{xxx} where Chief Justice Marshall described the corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law."

Concession Theory

This view holds that corporate personality is a privilege granted by the sovereign, implying that the state has significant power to regulate and control corporate behavior. The Concession Theory of corporate personality views corporations as entities that exist and function solely due to the consent and regulation of the state. This theory holds that the state has the power to create and regulate corporations, thus treating them as extensions of the state's own sovereignty.

As such, corporations are seen as concessionaires, to which the state grants certain privileges and powers in exchange for compliance with the state's laws and regulations. This perspective emphasizes the idea that the state has significant authority over corporations and can revoke their corporate status if they fail to adhere to the conditions imposed by the state.^{xxxi}

Generally, The Concession Theory posits that a corporation derives its legal personality not inherently, but through a formal grant or concession by the state. Under this view, the company exists as a legal person because the sovereign authority has conferred that status upon it making corporate personality a privilege rather than a natural right. Moreover this theory emerged prominently in the 19th century, particularly in civil law jurisdictions and early Anglo-American corporate jurisprudence. It was shaped by jurists such as Von Gierke and Chief Justice Marshall, the latter famously describing a corporation^{xxxii} as "an artificial being, invisible, intangible, and existing only in contemplation of law." The theory reflects a statist conception of corporate existence, emphasizing that incorporation and legal personality are contingent upon state authorization.^{xxxiii}

STATUTORY FRAMEWORK GOVERNING THE PRINCIPLE OF CORPORATE PERSONALITY

Tanzania legal regime

Tanzania's legal framework recognizes the principle of separate legal entity for corporations, including single shareholder companies. The Companies Act^{xxxiv} and its subsequent amendment in 2012 serve as the primary legal instruments governing the formation and operation of corporations in Tanzania. The Act incorporates the principle of separate legal entity, granting corporations their own legal personality, rights, and obligations separate from those of their shareholders.

While the principle of separate legal entity is not explicitly articulated within the parent Act, its essence is implicitly embedded in the statutory provisions governing company formation. Specifically, the Act provides that “any two or more persons, associated for any lawful purpose, may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability save for a limited liability single shareholder company formed by an individual.”^{xxxv} This formulation, though procedural in nature, encapsulates the foundational concept of corporate personality by affirming that incorporation is reserved for persons acting in association for lawful ends.

Furthermore, Section 3^{xxxvi} reinforces the doctrinal premise by defining a corporation as “any legal person that possesses corporate personality status.” This statutory recognition affirms the autonomous legal identity of the company, distinct from its incorporators, and thereby reflects the core attributes of the separate legal entity doctrine namely, independent legal capacity, perpetual succession, and the ability to own property and incur liabilities in its own name.

Although the Companies Act ^{xxxvii} does not explicitly codify the doctrine of separate legal entity, Tanzanian courts have consistently affirmed its application through judicial interpretation. The jurisprudence reflects a commitment to the foundational premise that a company, once incorporated, acquires a distinct legal personality, capable of owning property, incurring liabilities, and initiating legal proceedings in its own name. Application of *Foss v. Harbottle*^{xxxviii} in Tanzanian Jurisprudence stipulates that the company itself is the proper plaintiff in actions concerning corporate wrongs has been judicially acknowledged in Tanzania. Courts have invoked this precedent to reinforce the autonomy of the corporate entity and to limit shareholder intervention in corporate litigation, except under statutorily defined exceptions such as derivative actions.

Moreover other cases includes *TIB Development Bank & Another v. House and Homes Ltd & Others*^{xxxix} In this case, the High Court of Tanzania addressed the procedural requirements for derivative suits under Sections 233 and 234 of the Companies Act. The court emphasized that shareholders or directors may not act on behalf of the company without judicial leave, thereby affirming the company’s independent legal status. This decision underscores the procedural safeguards surrounding corporate representation and the judiciary’s role in preserving the integrity of corporate personality. And the case of *Safina Ally v. Daku Abdallah*^{xl} In a matrimonial dispute involving company assets, the High Court declined to treat corporate property as matrimonial property, holding that the company being a registered legal entity—is distinct from its shareholders. The court’s reasoning reaffirmed the separation between personal and corporate ownership, illustrating the practical implications of the doctrine in non-commercial contexts.

These cases collectively demonstrate that Tanzanian courts uphold the principle of separate legal entity not merely as a theoretical

construct but as a functional doctrine with tangible legal consequences. The judiciary has shown restraint in piercing the corporate veil, reserving such measures for instances of fraud, abuse of incorporation, or statutory exceptions. This approach aligns with common law traditions while reflecting the statutory architecture of Cap. 212.

Indian legal regime

The principle of corporate personality in India is primarily codified under the Companies Act, 2013, which governs the incorporation, regulation, and dissolution of companies. Upon registration, a company acquires the status of a juristic person, distinct from its shareholders and directors. This legal identity enables the company to: a) Own property in its own name b) Enter into contracts c) Sue and be sued d) Enjoy perpetual succession. Section 2(20) of the Act defines a “company” as a legal entity incorporated under the Act, thereby affirming its autonomous legal status.^{xli}

Different case laws under the Indian legal regime have established the principle of corporate personality, including the case of *Salomon v. Salomon & Co. Ltd.*^{xlii}, this case is foundational and has been repeatedly cited by Indian courts to affirm the doctrine of separate legal entity. Moreover in the case of *State Trading Corporation of India Ltd. v. CTO, Visakhapatnam*,^{xliii} The Supreme Court held that a company, being a juristic person, is distinct from its shareholders. The Court emphasized that corporate personality is a legal construct, not a natural one, and that the company’s rights and liabilities are independent of its members.

Generally Indian jurisprudence aligns with the Fiction Theory and Concession Theory, recognizing corporate personality as a legal fiction granted by statute. The company is treated as an artificial person, capable of legal action but dependent on statutory authorization for its existence and powers.

APPLICABILITY OF THE PRINCIPLE OF SEPARATE LEGAL ENTITY ON SINGLE SHAREHOLDING COMPANY

Applicability of Corporate Legal Identity in Tanzanian and Indian Company Law

Having established the statutory foundations and judicial endorsement of the principle of separate legal entity in both Tanzania and India, it becomes essential to examine how this doctrine operates within the practical realities of corporate governance, liability, and regulatory enforcement. While the legal recognition of corporate personality affirms autonomy and limited liability, its implications extend far beyond incorporation formalities. The functional application of this principle influences how companies engage with creditors, regulators, and the broader economic environment. In this context, a comparative analysis of Tanzania and India reveals not only the doctrinal strength of the principle but also its operational consequences particularly in areas such as insolvency, taxation, fraud prevention, and the treatment of single-shareholder entities.

The principle of separate legal entity, while doctrinally entrenched in both Tanzanian and Indian company law, assumes its true

significance in the practical operation of corporate entities. Its implications permeate various dimensions of commercial activity, including liability allocation, asset ownership, regulatory compliance, and dispute resolution. A comparative examination of Tanzania and India reveals both convergence in foundational application and divergence in interpretive and enforcement practices.

In Tanzania, the recognition of corporate personality enables companies to own property, enter contracts, and sue or be sued in their own name. This autonomy facilitates commercial certainty and investor confidence, particularly in cross-border transactions. The 2012 amendment to the Companies Act which introduced single shareholder companies, further underscores the practical utility of the doctrine by allowing individuals to engage in limited liability enterprise without requiring multiple incorporators. However, Tanzanian jurisprudence has yet to develop a robust framework for addressing abuses of corporate personality. Instances of fraudulent use of the corporate form such as asset shielding or evasion of statutory obligations are often addressed through regulatory mechanisms rather than judicial veil piercing. The courts remain cautious in disregarding corporate personality, with limited precedent guiding such interventions.

By contrast, India's legal system demonstrates a more active engagement with the practical boundaries of corporate autonomy. The Companies Act, 2013, in conjunction with the Insolvency and Bankruptcy Code (IBC), 2016, provides a comprehensive framework for managing corporate liability and restructuring. Indian courts have frequently pierced the corporate veil to prevent misuse of legal personality, particularly in cases involving tax evasion, fraudulent transactions, or circumvention of statutory duties. In *Delhi Development Authority v Skipper Constructions (P) Ltd. (1996)*, the Supreme Court held that the corporate veil could be lifted where the company was used as a device to conceal fraud or evade legal obligations. Similarly, in *Life Insurance Corporation of India v Escorts Ltd. (1986)*, the Court emphasized that the veil may be disregarded when the corporate structure is manipulated to defeat public interest.

The recognition of One Person Companies (OPCs) under Section 2(62) of the Indian Companies Act further illustrates the practical evolution of corporate personality. OPCs enable individual entrepreneurs to access the benefits of incorporation such as limited liability and perpetual succession while maintaining operational simplicity. Regulatory safeguards, including restrictions on conversion and mandatory compliance thresholds, ensure that the corporate form is not misused.

In comparative terms, both jurisdictions affirm the utility of corporate personality in facilitating economic activity and legal certainty. However, India's jurisprudential and regulatory landscape offers a more nuanced and responsive approach to managing the risks associated with corporate autonomy. The proactive use of veil piercing, coupled with statutory mechanisms for insolvency and fraud prevention, reflects a mature understanding of the doctrine's practical dimensions. Tanzania,

while conceptually aligned, presents opportunities for further development particularly in judicial interpretation and enforcement to ensure that the principle of separate legal entity does not become a shield for misconduct.

Comparing Legal Approaches to Corporate Personality in Tanzania and India

Both Tanzania and India formally recognize the principle of separate legal entity through their respective company law statutes, reflecting a shared doctrinal inheritance from English common law. In Tanzania, the Companies Act provides the statutory foundation for corporate personality, affirming that a company acquires a distinct legal identity upon incorporation, with perpetual succession and autonomy from its members. The 2012 amendment further introduced single-shareholder companies, which are treated as separate legal entities under the Act. Judicial endorsement of this principle is evident in Tanzanian courts' reliance on *Salomon v A. Salomon & Co. Ltd [1897]*, though jurisprudential development remains relatively restrained.

India's Companies Act, 2013 offers a more expansive statutory framework. Section 34 codifies the legal effect of incorporation, affirming the company's independent personality, limited liability, and perpetual succession. The Act also recognizes One Person Companies under Section 2(62), reflecting a deliberate legislative effort to accommodate individual entrepreneurship within the corporate form. Indian courts have not only adopted Salomon as a foundational precedent but have also actively reinforced the doctrine through case law, contributing to a more dynamic and interpretive legal environment.

This comparative statutory overview sets the stage for a deeper examination of how each jurisdiction applies the principle in practice particularly through judicial interpretation, veil piercing, and regulatory enforcement. The contrast between Tanzania's predominantly codified approach and India's blend of statutory clarity and jurisprudential evolution invites further analysis of the doctrine's functional role in corporate accountability and legal reform.

Lifting of Corporate Veil

According to the case of *Yusuf Manji v Abdallah Juma and Edward Masanja*^{xliv} the court was of the view that, much as the companies in Tanzania are viewed as corporate personnel read together with section 3 of the Law of Interpretation.^{xlv} This principle is not absolute and companies are not immune to legal action there are circumstances where courts can call in the directors or owners of the company and question them in case of any fraud or misrepresentation of any sort otherwise regarded as lifting of corporate veil.

Piercing the corporate veil constitutes a judicial exception to the doctrine of separate legal personality. In Tanzania, this exception empowers courts to scrutinize the actions of company directors and other stakeholders where there is a reasonable indication of fraud, misrepresentation, or abuse of the corporate form in the conduct of business affairs. While the doctrine of separate legal personality remains a cornerstone of corporate law, Tanzanian courts recognize

that this principle is not absolute. The judicial mechanism of lifting the corporate veil serves as an exception, enabling courts to look beyond the formal legal identity of a company and examine the conduct of its directors and shareholders particularly in cases involving fraud, misrepresentation, or abuse of the corporate form.

This position was firmly articulated in *Yusuf Manji v Edward Masanja and Abdallah Juma, Civil Appeal No 78 of 2002 (CAT)*, where the Court of Appeal held that it was in the interest of justice to disregard the corporate shield when directors were found to be concealing company assets under their personal names. The court emphasized that the corporate veil should not be used as a tool to evade legal obligations or perpetrate misconduct.

Further reinforcement of this principle is found in *Musa Shaibu Msangi v Sumry High Class Ltd and Another [2016] TLS LR 430*, where the High Court permitted veil lifting after the respondent company failed to satisfy a judgment debt for over a year. The court was “highly persuaded” that the directors were deliberately neglecting payment and ruled that they could not hide behind the corporate veil to avoid personal liability.

In *Millicom Tanzania NV v James Allan Russels Bell and Others, Civil Reference No 3 of 2017 [2018] TZCA 355*, the Court of Appeal reiterated that veil lifting is warranted where the corporate form is used fraudulently or dishonestly. The court stated: “These cases collectively affirm that while corporate personality grants autonomy and protection, Tanzanian courts retain the discretion to pierce the veil in exceptional circumstances to uphold justice and accountability”.

Under Tanzanian law, the Companies Act^{xvi} affirms the separate legal personality of incorporated entities, including SSCs. However, jurisprudence such as *Yusuf Manji v Edward Masanja and Abdallah Juma, Civil Appeal No 78 of 2002 (CAT)*, demonstrates that the court may pierce the veil when directors or shareholders conceal assets or engage in fraudulent conduct. The risk is heightened in SSCs due to the concentration of control in a single individual, which may facilitate misuse of the corporate form.

In *Millicom Tanzania NV v James Allan Russels Bell and Others, Civil Reference No 3 of 2017 [2018] TZCA 355*, the Court of Appeal emphasized that veil lifting is justified where the company is used dishonestly. This principle applies with equal force to SSCs, where the absence of internal checks may necessitate judicial intervention to uphold accountability.

Challenges to the Principle of Separate Legal Entity in Single Shareholder Companies in Tanzania

The principle of separate legal entity, enshrined in Tanzanian corporate law through the Companies Act, Cap 212 (R.E. 2023), affirms that a company exists as a distinct legal person, independent from its shareholders. However, the introduction of Single Shareholder Companies (SSCs) via the Business Laws (Miscellaneous Amendments) Act No. 3 of 2012 has raised doctrinal and practical challenges to the consistent application of this principle.

1. Fusion of Ownership and Control

In SSCs, the sole shareholder often serves simultaneously as the director, blurring the line between the company and its controller. This fusion undermines the conceptual separation between the company’s legal personality and its human agents, making it difficult to distinguish personal actions from corporate conduct.

2. Increased Risk of Abuse and Fraud

The absence of internal checks and balances in SSCs heightens the risk of misuse of the corporate form. Courts may be compelled to lift the corporate veil more frequently to investigate fraudulent activities, asset concealment, or evasion of legal obligations. Tanzanian jurisprudence, such as *Yusuf Manji v Edward Masanja and Abdallah Juma*, affirms this judicial discretion where misconduct is evident.

3. Weak Corporate Governance Structures

Unlike multi-member companies, SSCs are not required to appoint a company secretary, and may operate with minimal oversight. This regulatory leniency can lead to poor record-keeping, non-compliance with statutory obligations, and challenges in enforcing accountability.

4. Judicial Ambiguity in Veil Lifting Standards

While Tanzanian courts recognize veil lifting as a legitimate remedy, there is limited jurisprudential clarity on the threshold for intervention in SSCs. The lack of codified criteria creates uncertainty for litigants and may result in inconsistent judicial outcomes.

5. Limited Public Confidence and Creditor Protection

The perception that SSCs are closely tied to individual personalities may erode public trust in their independence. Creditors may be reluctant to engage with SSCs due to concerns over asset separation and enforceability of claims, especially where the sole shareholder’s personal and corporate dealings are intertwined.

6. Statutory Gaps and Regulatory Oversight

Although Section 26A of the Companies Act along with the regulations^{xvii} recognizes SSCs, there remains a need for more guidelines on their formation, governance, and dissolution. The original jurisdiction to wind up SSCs lies with lower courts (District or Resident Magistrate’s Courts), which may lack specialized expertise in corporate matters.

COMPARATIVE ANALYSIS BETWEEN TANZANIA AND INDIA ON THE APPLICABILITY OF THE PRINCIPLE OF SEPARATE LEGAL ENTITY ON SINGLE SHAREHOLDING COMPANY

Conceptual Foundations

The principle of separate legal entity constitutes a foundational doctrine in corporate law, establishing the legal autonomy of a company from its shareholders, directors, and other stakeholders. Upon incorporation, a company is vested with its own legal personality, enabling it to own property, incur liabilities, enter into

contracts, and initiate or defend legal proceedings independently of its members. This conceptual separation serves as the basis for limited liability, perpetual succession, and the distinct treatment of corporate rights and obligations.^{xlviii}

The doctrine finds its origins in English common law, most notably in *Salomon v A. Salomon & Co. Ltd [1897] AC 22*, where the House of Lords affirmed that a duly incorporated company is a separate legal person, even if wholly owned and controlled by a single individual. This decision laid the groundwork for modern corporate jurisprudence and has been adopted across common law jurisdictions, including Tanzania and India.

In the context of this comparative study, the principle serves not only as a legal abstraction but also as a practical mechanism for structuring economic activity, allocating risk, and regulating corporate behavior. Its relevance is particularly pronounced in the treatment of single-shareholder companies, where the tension between formal legal autonomy and substantive control invites scrutiny of how the doctrine is applied, interpreted, and enforced.^{xlix}

By examining the Tanzanian and Indian legal regimes, this study seeks to explore how the principle of separate legal entity is conceptualized, codified, and operationalized within two distinct yet historically connected jurisdictions. It further interrogates the extent to which statutory frameworks and judicial practices reinforce or challenge the autonomy of corporate entities, especially in contexts of fraud, regulatory evasion, and shareholder protection.ⁱ

Similarities and divergences in statutory treatment

Both Tanzanian and Indian company law frameworks affirm the principle of corporate personality, recognizing the company as a distinct legal entity upon incorporation. In Tanzania, this recognition is implicit within the Companies Act [Cap. 212 R.E. 2023], which outlines procedural requirements for registration and formation, thereby conferring legal status. Similarly, India's Companies Act, 2013 explicitly defines a company as a juristic person under Section 2(20), affirming its capacity to own property, sue and be sued, and enjoy perpetual succession. In both jurisdictions, incorporation results in limited liability for shareholders, insulating them from personal responsibility for corporate debts unless the corporate veil is pierced under exceptional circumstances. Courts in Tanzania and India have demonstrated caution in lifting the veil, reserving such measures for cases involving fraud, abuse of incorporation, or statutory violations.^{li}

Despite these shared foundations, notable divergences exist in statutory articulation and regulatory sophistication. India's legal framework offers a more explicit and detailed treatment of corporate personality, supported by robust jurisprudence and administrative guidance. For instance, the recognition and regulation of One Person Companies (OPCs) under Section 2(62) of the Companies Act, 2013 contrasts with Tanzania's more limited statutory treatment of single-shareholder companies. Furthermore, India has developed mature mechanisms for

beneficial ownership transparency through Securities and Exchange Board of India (SEBI) regulations and corporate governance reforms, whereas Tanzania's disclosure requirements remain in developmental stages.^{lii} Judicial development also differs: Indian courts have cultivated a rich body of case law interpreting corporate personality and its boundaries, while Tanzanian jurisprudence continues to rely heavily on imported common law precedents. These distinctions underscore the need for statutory refinement and doctrinal elaboration in Tanzania to align with evolving corporate realities and international best practices.^{liii}

Comparative insights on the applicability of the principle of separate legal entity between Tanzania and India

The principle of separate legal entity, though foundational to corporate law, encounters nuanced challenges when applied to single-shareholder structures. In Tanzania, the statutory recognition of Single Shareholder Companies (SSCs) under Section 26A of the Companies Act^{liv} as amended by the Business Law^{lv}, represents a significant development in corporate formalism. However, the practical enforcement of corporate personality in SSCs remains doctrinally fragile. The concentration of ownership and control in a single individual raises legitimate concerns about the conflation of personal and corporate interests, particularly in the absence of robust internal governance mechanisms. Although the Companies (Limited Liability Single Shareholder Company) Regulations, 2014 attempt to mitigate these risks by requiring at least two officers and prohibiting a sole director from acting as company secretary the regulatory safeguards are limited in scope and enforcement.

A particularly salient challenge arises under Rule 10, which permits the lifting of the corporate veil where unlawful acts are committed, thereby exposing the sole shareholder to personal liability. This provision, while necessary for accountability, introduces tension between the formal recognition of corporate personality and the substantive reality of individual control. The lack of judicial clarity and limited jurisprudence on SSCs further compounds interpretive uncertainty, leaving courts and regulators without a consistent doctrinal framework to adjudicate disputes involving SSCs. Consequently, the principle of separate legal entity, though statutorily acknowledged, remains vulnerable to erosion in practice.

In contrast, India's treatment of One Person Companies (OPCs) under the Companies Act, 2013 reflects a more structured and coherent approach. Section 2(62) formally defines an OPC as a company with only one person as its member, and the Act provides detailed provisions governing its incorporation, governance, conversion, and compliance. Despite its single-member composition, the OPC is statutorily recognized as a private company and enjoys full corporate personality upon registration. The legal framework ensures that the OPC possesses independent rights and liabilities, including the ability to own property, enter into contracts, and initiate legal proceedings in its own name. Moreover, the Act mandates the appointment of a nominee to

ensure continuity in the event of the member's death or incapacity, thereby reinforcing the principle of perpetual succession.

Indian jurisprudence has consistently upheld the separate legal status of OPCs, treating them as distinct from their sole members. Regulatory bodies such as the Ministry of Corporate Affairs and the Institute of Company Secretaries of India have issued interpretive guidance affirming that OPCs are not mere extensions of their founders but autonomous legal entities. While veil piercing remains available under judicial discretion, it is applied cautiously and typically in cases involving fraud, tax evasion, or abuse of incorporation.

The comparative analysis reveals that while both Tanzania and India recognize single-shareholder corporate forms, India's statutory and regulatory architecture offers greater doctrinal clarity, procedural safeguards, and jurisprudential support for the principle of separate legal entity. Tanzania's framework, though conceptually aligned, requires further refinement particularly in judicial interpretation, regulatory enforcement, and internal governance to ensure that the autonomy of SSCs is not merely formal but substantively upheld.

CONCLUSION AND RECOMMENDATION

The comparative examination of single shareholding companies (SSCs) in Tanzania and OPCs in India reveals a shared statutory commitment to the principle of separate legal entity, yet diverging levels of doctrinal clarity, regulatory sophistication, and judicial engagement. While India's Companies Act, 2013 provides a robust framework that affirms corporate autonomy even in single-member structures, Tanzania's statutory and regulatory provisions remain comparatively underdeveloped, leaving the principle vulnerable to interpretive ambiguity and practical erosion. To strengthen the legal integrity of SSCs, Tanzanian company law would benefit from targeted reforms that clarify the boundaries of corporate personality, enhance internal governance requirements, and establish jurisprudential consistency in veil-piercing doctrine. Additionally, judicial elaboration and administrative guidance are essential to ensure that the recognition of corporate personality in SSCs is not merely formal but substantively upheld. Such reforms would not only align Tanzanian practice with international standards but also reinforce investor confidence, regulatory accountability, and the doctrinal coherence of corporate law in the domestically.

ENDNOTES

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