UNIT – I: JURISPRUDENCE

Legal Personality
# TABLE OF CONTENTS

INTRODUCTION ........................................................................................................................................... 1

CONCEPT OF PERSON ................................................................................................................................. 1

Types of persons ........................................................................................................................................... 2

Natural Person ............................................................................................................................................. 2

Legal person ................................................................................................................................................ 2

Legal status of unborn persons .................................................................................................................. 3

Legal status of dead man .............................................................................................................................. 3

Legal status of animals ................................................................................................................................. 5

Legal status of idol and mosque .................................................................................................................. 5

DISTINCTION BETWEEN LEGAL PERSON AND JURISTIC PERSON ...................................................... 6

CORPORATE PERSONALITY ....................................................................................................................... 7

Distinction between corporation sole and corporation aggregate ............................................................ 7

Theories of corporate personality ................................................................................................................ 8

Fiction theory .............................................................................................................................................. 8

Realistic theory .......................................................................................................................................... 9

Concession Theory .................................................................................................................................. 9

Bracket Theory ......................................................................................................................................... 10

Purpose Theory ......................................................................................................................................... 10

INTERPRETATION OF THE TERM “LEGAL PERSON” BY THE INDIAN JUDICIARY ... 11

PRACTICE QUESTIONS ............................................................................................................................... 11
LIST OF AUTHORITIES

1. Som Prakash Rekhi v. Union of India
2. Elliot V. Joicey
3. Pramatha Nath Mullick V. Pradymumna Kumar Mullic
4. Yogendra Nath Naaskar V Commissioner of income tax
5. Maula Bux V. Hafizudding
6. Masjid Shahid Ganj case
7. Shriomani Gurudwara Prabandhak Committee V. Somnath Das
INTRODUCTION

The main purpose of the law is to govern the relationship between individuals in the society. The law is concerned with regulating human conduct, the concept of legal personality constitutes an important subject matter of jurisprudence as there cannot be right and duties without a person.

Personality in the philosophic sense means the rational substratum of a human being. In law it means a right and duty bearing unit. Personality should be distinguished from humanity. Humanity means only the natural human beings but personality has a technical meaning and it includes inanimate objects also. Thus personality is wider than humanity. Sometimes, humanity and personality coincide and sometimes, they do not. In the same way there are legal persons who are not human beings, such as an idol or a corporation.

CONCEPT OF PERSON

The word person is derived from the latin word persona which means a mask worn by actors while playing different roles in drama. At a later stage, it started to be used in the sense of a living being capable of having rights and duties.

Various definitions of person given by various jurists are:

Austin: the term persons includes physical or natural person including every being which can be deemed human.

Gray: a person is an entity to which rights and duties may be attributed.

Savigny: person is a subject or bearer of rights.

Holland: rights are not only for human but also against the person.

Kelson: totality of rights and duties are the personality and there is no entity different from them.

Salmond: person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person even though he be a man.
However, Section 11 of IPC, includes any company or association or body of persons, whether incorporated or not within the meaning of persons.

**Types of persons**

**Natural and legal persons:** Natural persons mean human being. Legal persons mean beings and things which are treated as persons by law. Thus ‘legal person' includes those things which are treated in the same way as human beings for the legal purposes.

**Natural Person**

A natural person is a human being possessing natural personality. According to Holland, a natural person is a human being as is regarded by the law as capable of rights and duties. Requisite of normal human being is that he must be born alive moreover, he must possess essentially human characteristics. Generally a person/human being who has a capacity to sue and be sued is person.

**Legal person**

A legal person is any subject-matter other than a human being to which law attributes personality. It includes an object, a mass of property, an institution, a group of human beings etc. Law treats them as right and duty bearing units or entities like a natural person. Though legal personality, first of all, requires personification, a personification in common speech does not mean that the legal personality has been conferred upon it. We speak a bench (of judges) or a cabinet (of ministers) as a person but they have no legal personality.

A legal person is any subject matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality... is one of the most noteworthy feats of the legal imagination. Corporations are one species of legal persons invented by the law and invested with a variety of attributes so as to achieve certain purpose sanctioned by the law. *(Som Prakash Rekhi v. Union Of India, (1981) SCC 449)*
Legal status of unborn persons

A child in the mother’s womb has for many purposes been regarded by a legal fiction as already born, in accordance with the maxim *Nasciturus Pro Jam nato baelor*.

In criminal law, too, an unborn child has been recognized in a number of offences. By the time of COKE, it was well settled law that killing a child in mother’s womb was a crime but not a felony and if the child was born alive and thereafter died of the pre-natal injuries, it was murder.

In *Elliot V. Joicey (1935)*, seven months pregnant woman, who while descending from the term, was injured by the negligence of Montreal Tramways servants and with the result she gave birth to a child with deformed feet, was allowed, in an action on behalf of the child, to recover for the pre-natal injuries.

Sections 13 to 16 of the transfer of property act deal with the limitations and provisions concerning gifts made in favour of unborn persons and they correspond to sections-113 to 116 of the Indian succession act concerning wills. All these sections which are similar in substance assume that gifts and wills made in favour of unborn children are valid under certain limitations and provisions contained in these sections. From this what can be inferred is that the interests and benefits of an unborn are well protected under Indian law.

Unborn children are persons in the eye of law. Property can be transferred in favour of unborn children. Unborn children become contingent owners. The ownership become vested in them of their birth. But the personality of an unborn person is contingent on his being born as living being.

Legal status of dead man

In law, the dead are things, not persons. Being not punished after their death, they is not entitled to any rights, though in following cases they have been given some rights.

1) Right of reputation.
The respect of a dead man receives some degree of protection from the criminal law. Defamation of a dead man will be punished as misdemeanor but the condition is when it attack upon the interest of the living persons, which means the right so attacked and so defended is in reality not that of the dead but that of his living descendants.

2) Right of will
The law respects the wishes of the deceased, i.e., the will made by him regarding the disposal of his property. This is done in order to protect the interest of those who are living and who would benefit under the will. In India section 14 of the Transfer of Property Act talks about the Rule of Perpetuity which restrains the power of creating future interests by providing in the rule against perpetuity that such interest must arise within certain limits.

Under section 1 and 4 of the succession Act 1925 forbids the creation of will whereby vesting of property is postponed beyond the lifetime of one or more persons and the minority period of the unborn person.

3) Right of decent burial.
In Indian Law, section 297 of the IPC provides for punishment for committing any crime which amounts to indignity to any human corpse. In English law as well as in Muslim law the violation of a grave is a criminal offence.

SALMOND observes that generally speaking, the personality of a human being may be said to commence with his birth and cease with his death. Therefore dead men are no longer persons in the eyes of the law. The reputation of dead man is to some extent protected by the law. The defamation against a dead person is no doubt punishable under the criminal law but only when it affects the interests of his relatives and near-ones who are living.
Legal status of animals

Law does not recognize beasts or lower animals as persons because they are merely things and have no natural or legal rights. SALMOND regards them as merely objects of legal rights and duties, but never the subjects of them.

The law, however seeks to extend protection to animals in two ways, namely, Cruelty to animals is an offence and a trust for the benefit of a particular class of animals as opposed to one for individual animals is valid and enforceable as public and charitable trust.

Section 11 of the Prevention of Cruelty to Animals Act, 1960 made the acts which are harmful and subjecting animals to unnecessary pain of suffering through tortures, beats, kicks, over-rides, overloads, or any such other acts. It also includes mutilating any animal or killing of any animal by using the method of strychnine injections in the heart or in any other unnecessary cruel manner. This section have to be read along with article 51A (g) of the Indian Constitution, which is also considered as the Magna Carta of Animal Rights.

In Animal welfare Board of India V. Nagraja (2014) 7 SCC 1947, the Apex Court held that article 21 of the Indian Constitution along with preserving life of the human also protects the life. The court by reading into the provision, expanded the definition of life by including all forms of life, including the animal life. According to the Court, all the animals have honor and dignity and every species has an inherent right to live and it is the duty of the law to protect them. The court further added that the right and privacy of animals are to be respected and protected from unlawful attacks.

Legal status of idol and mosque

It has been judicially held that idol is a juristic person and as such it can hold property. Its position is, however, like that of a minor and the priest, i.e. pujari acts as a guardian to look after its interests.
The Privy Council, in historic case of *Pramatha Nath Mullick V. Pradymumna Kumar Mullic* held that an idol is juristic person and its will as to its location must be duly respected. The court directed that idol be represented by "a disinterested next friend to be appointed by the court to put up its point of view.

The supreme court of India in *Yogendra Nath Naaskar V Commissioner of income tax*, where in it was held that an idol is a juristic person capable of holding property and of being taxed through its "shebaits ” who are entrusted with the possession and management of its property. An idol can be treated as a unit of assessment for assessing its liability under the income tax act.

In *Maula Bux V. Hafizudding* the high court of Lahore held that a Mosque was a juristic person capable of being sued. But the Privy Council held a contrary view in *Masjid Shahid Ganj case* and observed that mosques are not artificial persons in the eyes of law and, therefore, no suit can be brought by or against them. However the Privy Council left the question open whether for any purpose a mosque can be regarded as juristic person.

**DISTINCTION BETWEEN LEGAL PERSON AND JURISTIC PERSON**

<table>
<thead>
<tr>
<th>LEGAL PERSON</th>
<th>JURISTIC PERSON</th>
</tr>
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<tbody>
<tr>
<td>Legal person is any subject matter other than a human being to which the law attributes personality.</td>
<td>Subject matter to which the law attributes a fictitious personality.</td>
</tr>
<tr>
<td>Creating legal persons personifies some real thing or objects and then confers upon it a fictitious personality.</td>
<td>Personification of juristic person does not necessarily implies legal personality.</td>
</tr>
</tbody>
</table>

Can Gurudwara and Guru Granth Sahib be considered as the juristic person?

In *Shriomani Gurudwara Prabandhk Committee V. Somnath Das (2000)*, it was held that Gurudwara and Guru Granth Sahib is a legal person unlike other holy books of other religions.
because Guru Granth Sahib is not distinct from Gurudwara and is treated and worshipped as Guru and considered as the heart and the soul of Gurudwara.

**CORPORATE PERSONALITY**

A corporation is an artificial being created by a group of individuals with the aim to do business. Being an artificial person, it has been given life through the legal clauses and thus it has been deemed to have a corporate personality through law. This concept has been recognised both in English and Indian law. Thus, a corporation is an artificial person enjoying in law, having the capacity with rights and duties and holding property. The individuals forming the corpus of the corporation are called is Corporate Personality. Juristic personality of corporations must contain three essential conditions.

1. Firstly, there must be a group or body of human beings associated for a certain purpose;
2. Secondly, there must be organs through which the corporation functions, and
3. Thirdly, the corporation is attributed will/animus by legal fiction.

In England, there are two main types of juristic persons:

1. Corporation Sole.
2. Corporation Aggregate.

**Distinction between corporation sole and corporation aggregate**

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<thead>
<tr>
<th>CORPORATION SOLE</th>
<th>CORPORATION AGGREGATE</th>
</tr>
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<tbody>
<tr>
<td>Incorporated series of successive persons.</td>
<td>Group of co-existing persons.</td>
</tr>
<tr>
<td>One person can be the member at a given point of time.</td>
<td>There are several persons as the members at a time.</td>
</tr>
<tr>
<td>Example: The Crown, The president of India,</td>
<td>Example: Joint Stock Company, Railway</td>
</tr>
</tbody>
</table>
Theorists of corporate personality

The theorists and jurists have often expressed conflicting views regarding the true nature of corporate personality of corporations. These views find expression through different theories of corporate personality which they have propounded from time to time. Even though these are solely theories which attempt to explain the nature of corporate personality, none of them can be said to be dominant. It is claimed that while each theory contains elements of truth but none by itself sufficiently interpret, the phenomenon on juristic personality. There are five most important theories of corporate personality, namely.

1. Fiction theory
2. Realistic theory
3. Concession Theory
4. Bracket Theory
5. Purpose Theory

Fiction theory

1. Main supporters of this theory are Savigny, Salmond and Dicey.
2. Only human beings are properly be called as persons.
3. Any group of persons or institutions are regarded as persons for a purpose only by fiction of law, they are not real personalities
4. According to this theory, when there is no real person (human being), then there is no personality, no will, no rights, no ability to act beyond what law imputes to it by a fiction.
5. Criticism: it fails to answer satisfactorily the civil and criminal liability of corporations. If it is assumed that the will of the corporation is attributed to it by the fiction of law, then it leads one to infer that it must always be lawful as the will conferred by law can never be used for unlawful or illegal ends.
**Realistic theory**

1. This theory is also known as the organic theory.
2. Main supporters of this theory are Gierke and Maitland.
3. According to this theory, corporation is a representation of physical realities which the law recognizes and not create. This theory also concludes that, the group has a real mind, a real will and a real power of action.
4. It may be stated that Realist theory is closely connected with Institutional theory which marks a shift of emphasis from an individualist to a collectivist outlook. According to this theory, an individual is integrated into the institution and becomes part of it. They believed in the existence of many independent institutions within State which is the supreme institution.
5. Criticism: Professor Gray denies the reality of collective will. According to him, the corporate will is a figment. A corporation is not a fictitious or juristic person; it is simply a series of natural persons some of whom have rights which are different and devolve in a different way from of natural persons in general.

**Concession Theory**

1. The theory is linked with the philosophy of sovereign state According to this theory, the only realities are the sovereign and the individual. They are treated as persons merely by a concession on the part of the sovereign.
2. This theory is an allied to the fiction theory.
3. Every such body (recognized by the law), has to fulfill all the legal requirements laid down by the state for its continuance.
4. State has the discretionary power to recognize a corporation
5. Criticism: This theory is often termed as dangerous due to its over-emphasis on State discretion in the matter of recognising corporation which are non-living entities. This may lead to dictatorship and arbitrary restrictions on corporate bodies, particularly the political entities.
Bracket Theory

1. This theory is also known as the symbolist theory of corporate personality and is associated with the well-known German jurist Ihring.
2. According to this theory, juristic personality is a symbol to facilitate working of a corporation.
3. As per this theory, only the members are the persons in true sense but around them a bracket is put so as to consider them as a single (one) unit.
4. A bracket is placed around them to which a name is given. That bracket is the corporation.
5. The American jurist Hohfeld has advocated this theory in a different form. In his view, corporate personality is the creation of arbitrary legal rules designed to facilitate proceedings by and against an incorporated body in law court.

Purpose Theory

1. The theory is based on the fundamental principle that corporations can be treated as persons for certain specific purposes.
2. According to this theory only living persons can be the subject-matter of rights and duties, and since corporations are non-living entities, they do not have any rights and duties.
3. Duguit interpreted purpose theory in a different way. In his opinion, the endeavor of law in its widest sense is to achieve social solidarity. If a given group is pursuing a purpose which conforms to social solidarity, then all its activities falling within the purpose need to the protected by law by conferring it legal personality.
4. Criticism: law protects only certain purposes and interests of the human beings and not all the purposes.
INTERPRETATION OF THE TERM “LEGAL PERSON” BY THE INDIAN JUDICIARY


Challenges the failure of the Governments of Uttar Pradesh and Uttarakhand in constituting the Ganga Management Board as stated in the Section 80 of the Uttar Pradesh Reorganisation Act, 2000.

The court recognised the fact that the rivers are of utmost significance to the Hindus by stating, “Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep spiritual connection with Rivers Ganges & Yamuna. The bench further stated “All the Hindus have deep ‘A斯塔’ in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well-being. Finally the rivers Ganga and Yamuna were given status of a legal person by the Court. The order set out was “…while exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.”

PRACTICE QUESTIONS

1. Which of the following is not a theory relating to corporate personality? (July 2018)
   1) Fiction Theory
   2) Realistic Theory
   3) Purpose Theory
   4) Functional Theory

2. Who among the following said that there is in essence no difference between the legal personality of a company and that of an individual? (December 2014)
   1) Maitland
2) Dicey
3) Gierke
4) Kelson

3. “Corporate personality is a mere procedural form which is used to work out a convenient way for immediate purpose” It was stated by (September 2013)
   1) Holland
   2) Austin
   3) Starke
   4) Honfield

4. “A legal person is any subject matter other than a human being to which law attributes personality.” Who said these words? (June 2013)
   1) Savigny
   2) Bentham
   3) Austin
   4) Salmond

5. The purpose theory is based on the assumption that “person is applicable only to human beings; they alone can be the subjects of rural relations” Who developed this theory of Brinz in England? (June 2013)
   1) Barker
   2) Duguit
   3) Salmond
   4) Hoffman