

Course Name- B.A.LL.B 6TH SEM

Subject- Jurisprudence

Teacher- Mrs. Aakanksha

Concept - THE CONCEPT OF LEGAL PERSONALITY

THE CONCEPT OF LEGAL PERSONALITY

A person can be defined as an entity recognised by the law as separate and independent, with legal rights and existence including the ability to sue and be sued, to sign contracts, to receive gifts, to appear in court either by themselves or by lawyer and generally, other powers incidental to the full expression of the entity in law. In common parlance we use person as only human beings, either male or female. The prime case of a person is a human being, and personality would seem to entail the possession of those characteristics belonging particularly to mankind, i.e., the power of thought, speech and choice.

Salmond observes that a person is any being whom the law regards capable of rights and duties. Any being that is so capable is a person whether a human being or not. So by this way we can distinguish persons into two natural and legal persons.

A natural person is a being to whom the law attributes the personality in accordance with reality and truth.

Legal persons are beings to whom the attributes personality by way of fiction, when there is none in fact.

In the advanced context of natural person means male, female or transgender. However all human beings do not possess legal personality. The exceptions are, under Roman law slaves are not considered as persons. They were treated as chattels destitute of any personality. Infants and lunatics enjoy a restricted personality. Another example for restricted personality is under the traditional Hindu Mitaksara joint family women's are not entitled to any right except right to maintenance and residence. Conversely entities other than human beings enjoyed full legal personality, e.g.; corporations, joint stock companies, partnership firms etc. A fictitious legal personality is assigned to these institutions that are why we call it as a juristic person.

Legal statues of an animal

The next question is whether an animal can be considered as person. If we take the aforesaid proposition of Salmond, we can very well say animals are not persons since they are incapable to hold rights and duties. But some jurist argues that animals are persons since the law prohibits cruelty towards animals and English law recognizes a trust for the benefit of a particular animal. But this argument is deceptive. The duties of prevention of cruelty to animals and enforcing trusts in their favour as a public and charitable trust are regarded by the law as duties towards the society itself.

Legal status of dead men

Anything which is capable to hold rights will be considered as a person. If it is so the question that would arise is whether dead men are persons or not. It is the recognized principle that the personalities of a human being commences on his birth and cease to exist at death. The only exception which we can say is personality of unborn child. The rationale behind this rule is a

dead person has no rights and interest. The word and expression 'person' in Art.21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead person by allowing the body of person to be treated with dignity and unless it is required for the purposes of establishing a crime to ascertain the cause of death and be subjected to postmortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and its disposal in accordance with human dignity. Under the Indian criminal law, disrespect towards dead body is an offence and it ensures decent burial.

However the reputation of a dead person is protected both under civil as well as criminal law. The Latin maxim indicates that it is socially inappropriate to speak ill of the dead, *De mortuis nil nisi bonum* means "Of the dead nothing but good is to be said"⁴ A libel upon a dead person will be punished. The duty to protect the reputation of the deceased is vested with relatives and it is the inherent right of the living descendants. Further the interest of the deceased is protected through testamentary succession. It will regulate the enjoyment and disposition of property which he owned while living.

The legal status of an unborn person.

There is no legal impediment to prevent unborn person to hold the properties of their ascendants. His ownership is necessarily contingent because he may or may not be born. If a person died intestate his posthumous son is entitled to inherit property and not otherwise but in a case where a person died testate, the testator can allot his legacy to unborn descendants to any generations. A child in its mother's womb is for many purposes regarded by a legal fiction as already born, in accordance the maxim; *Nasciturus pro jam nato habetur* means foetus is legally presumed to have been born for the purpose of inheritance. Under the law of property, there is a fiction that a child en ventre sa mere is a person in being for the purpose of (1) the acquisition of property by the child itself, or (2) being a life chosen to form part of the period in the rule against perpetuity.

The right of the unborn person to hold property varies in different jurisdictions. In the United States, the word "person" does not have the same meaning as "human being" until the process of live birth has been completed. The Fourteenth Amendment to the Constitution ensures right of equal protection and due process so that no person is deprived of his life or liberty. This does not include any human being who is not defined a person – all unborn human beings. However, the United States Supreme Court's decision in *Roe v. Wade*⁸ and as modified by *Planned Parenthood v. Casey*⁹, held that the States are free to confer legal rights upon unborn children. So now the interpretation goes person includes unborn person also. However the US Supreme Court interpreted and held that "persons" to include all human beings born or unborn and are entitled to get protection under the Fourteenth Amendment. In India also recognised the rights of unborn person under Constitutional as well as statutes.

Miscarriage or willful injury to unborn child is a serious offence in India. A posthumous child may inherit but if he dies in the womb or is stillborn, his inheritance fails to take effect and no one can claim through him and the property shall devolve upon the existing living heirs

Legal persons

A legal person is any subject matter other than a human being to which the law attributes personality. The thing personified may be termed the corpus of the legal person so created; it is the body into which the law infuses the animus of a fictitious personality. Under Indian criminal law, person includes any company or Association or body of persons, whether incorporated or not. It recognizes the personality of a legal person. Like natural person legal persons are also entitled to rights and liabilities and can sue and be sued.

According to Professor Keeton Juristic persons are those things or groups of persons which the law deems capable of holding rights and duties. He further observed that artificial persons are now usually composed of human beings, the group comprising either human beings associated contemporaneously.

According to Holland a legal person is of two kinds:- (1) universitates bonorum, such as funds left to pious uses without trustee (2) universitates personarum, such as the state itself, departments or parishes, college, churches etc. Such juristic people come into being when there exists a mass of property or a group of persons and law attributes to the mass or group in question the character.

The term “legal person” is applied also to natural persons, the argument being that all legal personality is the creation of law, so that it does not matter whether the substratum of the lawyers “person” is a human being or something else. This is merely a question of terminology.

There are three classes of juristic person recognised by legal system:-

1. Corporations.
2. Institutions
3. Charities etc.

It is pertinent to note that English law recognises only one class of legal person’s viz. Corporations.

Corporations are constituted by the personification of groups or series of individuals. The individuals thus who form the corpus of the legal person are termed its members. The corporation may be corporation aggregate and corporation sole.

The second category is which the corpus, or object selected for personation, is not a group of person, but an institution. Church, Hospitals, Universities, Library etc. The fictitious personality is attributed not to the group of persons connected with the institution but to the institution itself. The English law attributes fictitious personality not to the institution but to the incorporated human beings namely chancellor, Vice chancellor etc.

The third kind of legal person is that in which the corpus is some fund or estate reserved to particular uses. Trust estate or property of a dead man or of bankrupt, funds for charity etc is the examples. Under Roman law, the estate of a deceased person was regarded as having a legal personality by the notion of hereditas jacens till it was vested in the legal heirs. In the same way the stiftung, an incorporated fund for charitable purpose, was vested with rights and duties and was itself personified although the property was vested in nobody else. The English law personifies not the fund or the estate but the body of persons who administer it namely, the official receiver, board of trustees etc.

Corporations

As we discussed above, under English law, corporations are of two types, corporate aggregate and corporate sole. Indian law follows the English law. A corporation aggregate is an incorporated group of co-existing persons, and a corporation sole is an incorporated series of successive persons. The former consisted of group of members at a time, e.g. Registered company and municipal corporation etc, and the latter consisted of single member, e.g. President of India, Post master general etc. Corporation sole are found only when the successive holders of some public office are incorporated so as to constitute a single, permanent and legal person.

A **corporation sole** does not require a seal, but a corporate aggregate can only act or express its will by deed under its common seal. The power to possess and use a seal is incidental to a corporation. The existence of common seal is evidence of incorporation and non existence of evidence is against incorporation. A property owned by a person as a corporate sole is distinct from individual property which he acquired from his individual capacity and after his demise the property owned by him under his former capacity will devolve upon his successors in the office.

The acts and liabilities of a corporation

In ordinary cases principal can appoint an agent through will or with the consent of the principal. However a legal person like a corporation is unable to act in propria persona and can only confer, limit and determine its authority upon agents and representatives either by wills of some human beings who are for this purpose identified in law with the corporation, or by the law itself.

Generally, the rights of the individuals are not limited and the only exception is if the source of such right is from a contract his rights will be limited to the terms of the contract. But in the case of companies their powers are restricted by law. Any act which lies beyond these legally appointed limits is said to be ultra vires of the corporation and such corporate act will be null and void. Ultra vires rule is a necessary consequence of the fact that the corporation itself has no will. However, although there is no will, the law can and does regard certain human beings as the equivalent of the corporations for certain purposes.

Under the common law system a corporation may be held liable for wrongful acts, and that this liability extends even those cases in which malice, fraud or other wrongful motive or intent is necessary element.

A corporation may have both civil as well as criminal liability. Corporations, no less than man, are within the reach of the arms of the criminal law. If its human representatives do an act on behalf of and in the name of the corporation with a guilty mind, such mental condition would be imputable to the corporation and, therefore, even in a case in which mens-rea is the essence of an offence i.e. Fraud, malice, or other wrongful acts, the corporation would be liable for the offence so committed. The corporation is responsible not only for what its agents do, but also for the manner in which they do it. If its agents does an act negligently or fraudulently that which they might have done it lawfully and with authority, the law will hold the corporate liable.

Two objections are raised with regard to the fixing of criminal responsibility on a corporation. The first objection is whether it is natural justice to punish corporate body for the acts of its agents, when the ultimate result of such punishment is bound to fall on the shoulders of beneficiaries. But this objection doesn't seems sound, according to Salmond, the

representatives of a corporation, though in legal theory its agents, are in fact the agents of beneficiaries. Just as the principle is held liable for the acts of the agents, so also in the case of a corporation it is held liable for the acts of the directors.

The second objection is that a corporation which from its very nature is incapable of acting or authorizing should not be made liable for wrongful acts of its agents outside the limits of its authority. Salmond offers two different solutions for this objection. He says in the first place, although a fictitious person cannot do acts which go beyond the scope of his authority, he certainly can fail to do what he has been authorized to do and can be punished for such omission. In the second place, the liability of a corporation for the acts of its agents is a perfectly logical application of the laws as to an employer's liability for the acts of its servants. The corporation is liable not because it authorized its agents to commit the wrongful act, but because it was wrongful for it to select careless and dishonest agents.

Objects and use of incorporation

The object of incorporation is twofold, general and special. The general purpose of incorporation of a group of persons is to reduce the complex form of collective ownership in several men into the simple form of individual ownership. Collective ownership is cumbersome to law as well as the owners will have to act and will result in various difficulties in their management and protection. These difficulties can overcome by incorporation. Incorporation, therefore, secures permanency, uniformity and unity in the personality of the group of owners.

The special purpose is that it helps commerce. It enables the members to trade with limited liability, without risking their whole fortunes. In a corporation the liability of the members being limited the shareholders are immune from any further liability beyond the unpaid amount of the shares.

Theories of incorporation

There are four theories of incorporation of corporate personality. They are hereunder:

The Fiction Theory

The exponents of this theory are Salmond and Holland, which says that a personality is attached to groups and institutions by a pure legal fiction, and this personality is distinct from personality of the individual beings. An idol is a legal person because the law describes it as such. Salmond said that group has reality or existence, but that it has no real personality in the philosophical sense. Not being a real person, the corporation cannot have any "personality" of its own; it has no will, no mind, no ability to act. It can have only so much as the law imputes to it by a fiction as though it were a real person.

The Realistic Theory

This theory expounded by Gierke holds that the group or institutions has an existence beyond the aggregate of the individualities of person forming the group. A corporation has a real existence and not a fictions construction of the law. Its personality exists not by a figment of imagination but is independent of recognition by the state, for law has taken notice of it to keep pace with the realities. This theory says a corporation is nothing more than the aggregate of its members conceived as unity, and this unity – the organisation of human beings-is a real person and a living organism, capable of actions. This view apparently excludes corporation sole from

its purview. Even in corporate aggregate nobody disputes the reality of a company as the group of shareholders, which although a real thing, is a fictitious person.

The Concession Theory

This theory expounded by Savigny holds that the sovereign and the individual are the only realities. All intermediate groups and institutions cannot claim recognition as persons. They derive their existence from the sovereign and as such as corporate personality arises only as a result of state acts and exists merely by concession of sovereign.

Bracket Theory

It rests on the proposition that only human beings can have interest and right, and that a corporation is only a legal device or formula which will enable very complex juristic relations to be comprehended more simply or otherwise the members of the corporation as the bearers of the rights, and as being bound by the duties, which are for convenience referred to the corporation itself. A, B, and C form a company, as it is inconvenient to refer always to all of them, a bracket is placed around them to which a name is given- but, in order to understand the real position, we must remove the bracket. One of the advantages of this theory is that it emphasizes that it may be necessary for the law to look beyond the entity to discover the real state of affairs. But while ultimately we may regard legal personality as merely a convenient device of the law, nevertheless it is a very important device, for it sets up a new unit and makes possible a clear distinction between the property, rights and duties of the corporation on the one hand and of the individual on the other. One can hardly make a contract with a bracket. It is socially and economically false, as well as legally untrue, to say that only individual men can be the bearers of legal rights.

Hence we can say a person means who has the capacity to hold rights and duties. The best example for this concrete principle is the decision given by the US court. Recently there is a decision by the New York court of appeal that chimpanzee is not entitled to the rights of a human and does not have to be released from the cage in which he is housed. The three judge panel ruled unanimously to deny chimps a writ of habeas corpus and "legal personhood". Further added a writ of habeas corpus is designed to protect from being held against their will.

CORPORATIONS

Extent of Liabilities

Ultra Vires doctrine

In the case of companies, individual's powers are restricted by law. Any act which lies beyond these legally appointed limits is said to be ultra vires of the corporation and such corporate act will be null and void. Ultra vires rule is a necessary consequence of the fact that the corporation itself has no will.

Civil and criminal liability.

If its human representatives do an act on behalf of and in the name of the corporation with a guilty mind, such mental condition would be imputable to the corporation and, therefore, even in a case in which mens rea is the essence of an offence i.e. Fraud, malice, or other wrongful acts, the corporation would be liable for the offence so committed.

Vicarious liability

If companies agents does an act negligently or fraudulently and they might have done it lawfully and with authority, the law will hold the corporate liable.

Conclusion

The conclusion is that all the rules of liabilities applicable to the ordinary people in the ordinary circumstance are equally applicable in the case of a corporation.