

LEGAL PERSONALITY

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.

Thus legal personality in law involves two questions. The first question is as to whom law recognizes as persons and what are the principles or theories upon which the recognition is based. The second question is as to what is the extent of rights and duties of these (legal) persons.

Summary

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 persons: In ancient times, in some societies, the persons declared 'outlaws' were not considered as persons in the eye of law, and therefore, to kill them was not homicide. In ancient Hindu law, persons having certain physical disabilities were considered as disqualified to inherit property. (Impotent persons and outcastes blind and deaf: as well as mad men, idiots, the dumb, and those who have lost a sense or a limb). Lunatics and infants have only a restricted legal personality. The legal personality granted to human beings begins at birth and ends with the death.

Personality starts with birth: When a child is born alive he is considered to be a person in the eye of law. In Hindu law a child in womb is considered in existence and he inherits the property if he is born alive. If a partition takes place among the co-parceners a share is to be reserved for him. If the share is not reserved then the partition would reopen and the new born boy would take the same share which he would have taken if he was born before the partition.

If a pregnant woman is awarded death sentence, the execution of the sentence shall be postponed till she is delivered of the child. Abortion and child destruction are crimes. Killing of a child amounts to murder only when the child is completely born alive. In England it was held that a posthumous child is entitled to compensation under Lord Campbell's Act for the death of his father.

Personality ends with death: Certain rights protected after death, the rights are generally created at birth and they extinguish at death. But the law, in certain matters, recognizes and protects the desires and interests of the deceased. There are three rights in this respect, i.e., about the deceased.

There are three rights in this respect, i.e., about the deceased's body, his reputation and his estate. The libel to the dead is not an offence in the eye of law, but if the publication of a defamatory matter about the deceased brings scandal on his family and provokes them to commit breach of peace, it is a misdemeanor in English law. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of the family. The law respects the desires of the dead person regarding his estate and his estate devolves according to his will if he has left any.

Animals: Animals are not persons in the eye of law and therefore, they are not subjects of legal rights and duties.

Status: Personality should be distinguished from status and capacity. **Status** is a word which is given various meanings. Salmond says that generally there are four meanings of the word:

1. Legal condition of any kind, whether personal or proprietary.
2. Personal legal conditions, excluding proprietary relations.
3. Personal capacities and incapacities as opposed to other elements of personal status.
4. Compulsory as opposed to conventional legal position.

Capacity means the rights and powers of a person by virtue of his being at a particular position. A person can have many capacities. If a person is a judge he has the capacity of a judge as well as the capacity of a citizen at the same time. But the double capacity does not mean double personality. His legal personality is only one.

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.

Legal personality is attained which law recognizes a single entity over and above the group of the individuals or the thing which though represents the group of the individuals or the thing, is distinct from them. There is a clear distinction between the individuals who compose the group (corporation); the group or corporation as a legal person. A company might go bankrupt but the shareholders would retain their millions.

Idols and funds: Idol was considered to be juristic person. It owned property. It could sue and could be sued. A fund dedicated for a religious purpose was also of the nature of a legal person. It had certain rights and received certain protection from law, such as the property dedicated to a math.

State: State is a juristic person. It can sue and can be sued. Idol is a juristic person and as such it can hold property. But it is treated as a minor and Pujari or somebody else acts on its behalf as its guardian. Mosque is not a juristic person.

Companies, associations and many other kinds of groups are legal persons. They have been expressly so recognized in a number of statutes. Companies incorporated in accordance with the Indian Companies Act are juristic persons. Societies registered under Societies Registration Act, 1860 are also held to be legal persons. Sections 2, 5, 6, 8, 9, 10, 11 and 13 of the said Act make it amply clear.

Groups such as registered trade unions and friendly societies also are legal entities. They own properties, and suits can be brought in their names. Apart from these, there are associations, institutions and many kinds of autonomous bodies upon whom legal personality has been conferred by statutes.

Corporations are legal persons. It means that they have rights and liabilities. So far as rights are

concerned there is no difficulty in their enforcements. But the liabilities of corporations present very complicated problems.

Prologue

Meaning of personality: Personality is a very vague and wide term and it has a variety of meanings. It is derived from the Greek word persona. Persona meant the (Greek) actor's mask through which his voice must be sounded. Later on, it came to be used for those who could play part in the legal drama, those who could bear rights and duties.

But it did not remain so, and came to be used in other senses also. 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. There are human beings who are not persons in the legal sense, such as slaves (in early times). In the same way, there are legal persons who are not human beings, such as an idol or a corporation. Thus, legal personality in law involves two questions.

The first question is as to whom law recognizes as persons and what are the principles or theories upon which the recognition is based. The second question is as to what are the extent or rights and duties of these (legal) persons.

Kinds of Person: Persons are of two kinds:

1. Natural and
2. Legal

. A natural person means human beings. 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 Persons: All human beings are not legal persons. In olden days, the slaves were not considered legal persons. They were treated as chattel of their masters. A person who takes religious or holy order is, for some purposes, considered to be civilly dead in many societies.

For example, in Hindu society, when a person becomes as ascetic (sanyasi), his proprietary rights extinguish and his property goes to his heirs as if he were dead. In ancient times, in some societies, the persons declared 'outlaws' were not considered as persons in the eye of law, and therefore, to kill them was not homicide. In ancient Hindu law, persons having certain physical disabilities were considered as disqualified to inherit property.

Manu **said;**
Impotent persons and outcastes are excluded from a share of the heritage and so are persons born blind and deaf, as well as mad men, idiots, the dumb and those who have lost a sense or a limb.

Lunatics and infants have only a restricted legal personality. They do not have many of the civil rights,

for example, the right to vote. In some cases, they are immune from criminal liability also (Indian Penal Code 1860, Section 82 to 84). In modern times, with very few exceptions legal personality is granted to all the human beings. The legal personality granted to human beings begins at birth and ends with the death.

Personality starts with birth: When a child is born alive, he is considered to be a person in the eye of law. For some purpose, the maxim **nasciturus pro im nato habetur** also applies.

In English law, it is applied to enable the child only if he is to take a benefit. Such child (in the womb) is considered as a life chosen to form part of the period in the rule against perpetuities. In Hindu law, a child in womb is considered in existence (in case of partition) and he inherits the property if he is born alive.

If a partition takes place among the co-partners (while the child is in womb), a share is to be reserved for him. If the share is not reserved then the partition would reopen and the new born boy would take the same share which he would have taken if he was born before the partition. Apart from these rights, he is considered to be capable of owning personal rights also. If a pregnant woman is awarded death sentence, the execution of the sentence shall be postponed till she is delivered of the child (The Code Of Criminal Procedure, 1973, Section 416).

Abortion and child destruction are crimes. In English law, killing of a child amounts to murder only when the child is completely born alive. The offence is the same (murder) where the injuries are inflicted while the child is in the womb, but he is born alive and dies afterwards due to the injuries so inflicted. In India the law is different.

The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or be completely born.

Indian Penal Code 1860, Section 299). It means that if any part of the body of the child has emerged from the mother's body, to cause any injury to the child which causes death of the child is homicide. So far as the rights of an unborn child to sue for torts are concerned, the law is still unsettled on this point. In England, it was held that a posthumous child is entitled to compensation under Lord Campbell's Act for the death of his father.

Personality ends with death: Certain rights protected after death. The rights are generally created at birth and they extinguish at death. But the law, in certain matters, recognizes and protects the desires and interests of the deceased.

There are three rights in this respect, i.e.

1. Deceased's body
2. His reputation.
3. His estate.

Law secures decent burial for all dead men and the violation of a grave is criminal offence. In certain societies, law permits the creation of trusts for worship at the tomb of the deceased and it enforces

such trust. The reputation of the deceased receives protection from law in certain cases. According to the maxim **De mo tius nil nisi bonum** (dead have no rights and can suffer no wrong), the libel to the dead is not an offence in the eye of law, but if the publication of a defamatory matter about the deceased brings scandal on his family (on living persons) and provokes to commit breach of peace, it is a misdemeanor in English law.

There are similar provisions in India law. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of the family. Indian Penal Code, 1860, Section 499). The law respects the desires of the dead person regarding his estate, and his estate devolves according to his will if he has left any. Subject to these expectations, the general theory is that the personality begins at birth and ends at death.

Animals

Animals have no legal personality. Animals are not persons in the eye of law and therefore, they are not subjects of legal right and duties. In ancient times, animals for some purposes were treated as persons. In ancient Greek law, animals and trees were tried in courts for their wrongful acts.

In Roman law also, in some cases, inanimate objects were considered as having rights and subject to duties. For example, 'hereditus jacens' was treated as a person. In Middle Ages also, we find instances of the trial of the birds and animals.

Keeton, in his book has given some cases of this nature. In Germany, a cock was placed in the prisoner's box and was accused of contumacious crowing and as the counsel of the bird could not establish its innocence, so the bird was destroyed. There are a number of instances of this kind in ancient Indian stories where animals were sued in courts.

There is a very popular story about the Mughal Emperor Jahangir where an animal was treated as capable of owning rights. A chain which was got hung by the Emperor to be pulled by any person who wanted justice from the Emperor, happened to be pulled, by chance, by the horns of a bullock. The bullock was presented before the emperor. It was decided that the bullock might have pulled the chain to complain against his master for making him carry heavy load. The master of the bullock was summoned and he was ordered to reduce the load which he made his bullock to carry.

In modern times, no legal system recognizes animals as persons. Therefore, they have no rights and liabilities. The human acts which are considered by law as wrongs against animals are, really speaking, not wrong against the animals, but are wrongs either against the person who owns that animal or against the society. An animal cannot own property.

A trust made in favour of animals is a trust of imperfect obligation, it cannot be enforced. However, a trust for the benefit or particular classes of animals as opposed to one for individual animals is enforceable as a public trust in England.

In India, cruelty against animals (as defined in various statutes) is an offence but as observed earlier, this duty is not a duty towards animals; it is a duty towards the society or the state. In our country, a trust for the benefit of animals can be legally created (**Jamanabai v. Khimji, 14 Bom. And Lalla Pd. v.**

Brahmanand, AIR 1953 All. 499).

Status

Personality should be distinguished from status and capacity. **Status** is a word which is given various meanings.

Definitions By Various Authors.

Salmond says that generally there are four meanings of the word:

1. Legal condition of any kind, whether personal or proprietary.
2. Personal legal conditions, excluding proprietary relations.
3. Personal capacities and incapacities as opposed to other elements of personal status.
4. Compulsory as opposed to conventional legal position.

According to Austin, the complex of rights and duties, capacities and incapacities which specially affect a narrow class are termed as **status**.

Dr. Allen says that: status may be described as the fact or condition of membership of a group of which the powers are determined extrinsically by law, status affecting not merely one particular relationship, but being a condition affecting generally though in a varying degree a member's claims and power.

In short, **status** is a condition which arises due to the membership of a class or group and affects the rights and duties of the members of that class. In other words, status indicates those rights and liabilities which a person has by virtue of his being a member of a particular class, or group. There are number of grounds which lead to the creation of a status such as minority, marriage, office and profession etc.

A person can have a number of statuses at the same time. He might be a husband, a father, and an officer at the same time. The general principle of status is that when created by the law of one country, it is or ought to be judicially recognized as being the case everywhere, all the world over.

Capacity.

Capacity means the rights and powers of a person by virtue of his being at a particular position. A person can have many capacities. If a person is a judge, he has the capacity of a judge as well as the capacity of a citizen at the same time. But the double capacity does not mean double personality. His legal personality is only one. Therefore, a person in one capacity cannot enter into a contract or any other alike legal transaction with himself in his other capacity. On the same principle, where a creditor became his debtor's executor, he could not sue himself. But, later on, this hardship was mitigated by giving the creditor a right of retainer. Similarly, in many other cases this rule has been relaxed.

Legal

Person

A legal person says Salmond, 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. It is by a fiction of law that they are treated as persons. The law in creating legal persons personifies some real thing or object and then confers upon it a fictitious personality. The former can be called the corpus and the latter the animus of the legal personality.

Though legal personality, first of all, requires personification, (the use of) a personification in common speech does not mean that the legal personality has been conferred upon it. We speak of a bench (of judges) or a cabinet (of ministers) as a person but they have no legal personality.

Legal personality is attained when law recognizes a single entity over and above the group of the individuals or the thing which though represents the group of the individuals or the thing, is distinct from them. There is a clear distinction between the individuals who compose the group (corporation) and the group or corporation as a legal person. A company (it is a legal person) might go bankrupt but the shareholders would retain their millions.

About legal person, the Supreme Court has expressed the view that a legal person is any entity other than a human being to which the law attributes personality; it was stated: Let us be clear that the jurisprudence bearing on corporations is not myth but reality. What we mean is that corporate personality is reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed, 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)

In another case it was stated: Thus, it is well settled and confirmed by the authorities on jurisprudence and courts of various countries that for a bigger thrust of socio-political-scientific development, evolution of a fictional personality to be juristic person became inevitable. This may be any entity, living, inanimate object or thing.

It may be a religious institution or any such useful unit which may impel the courts to recognize it. This recognition is for sub serving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with right and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law (**Shiromani Gurudwara Prabandak Committee v. Som Nath Das**, (2000) 4 SCC 146)

Evolution of Corporate Personality
Roman Laws, Pater familias; the idea of legal personality can be traced in Roman and ancient Hindu law. The ancient Roman society was undeveloped and its organization was not very complex, therefore the problem of legal personality did not bother them much. The family was the unit of the society. Though family consisted of a number of individuals, all the powers were centered in 'pater familias'. He represented the whole family; therefore, there was no theoretical difficulty about his position. Hereditas jacens; Fiscus, collegia, etc.

However, the **hereditas jacens** of Roman law is considered by many as having some resemblance with the legal personality. The 'hereditas jacens' was used by Romans to mean the inheritance in between the death of the ancestor and the acceptance of inheritance by the heir. It was a legal person or not is a controversial point.

Whether it represented the persona of the ancestor (deceased) or of the heir (taking effect retrospectively after his acceptance of the inheritance) is a question about which there is disagreement

among the jurists. According to Ihering, the original doctrine was that the title of the heir related back to the death of the ancestor but, later on there came a change and a theory that the hereditas jacens' represented the ancestor developed. However, there is no direct evidence to establish that it was a legal person. On the basis that hereditas jacens never appears to have been made party to any proceeding nor to have been called in action. Savigny and Sohm say that it was not a juristic person.

From the opinion expressed by ancient Roman jurists, it is gathered that 'hereditas jacens' had certain rights such as the right to receive protection. Therefore, it may be considered as a legal person in a very limited sense. Other objects and institutions or groups who had certain rights and duties were fiscus (pious foundations), collegia, sociatates publicanorum etc. Their rights were exercised through a representative. From the above discussion we can conclude that in Roman law there arose no occasion or necessity to theorize and develop the concept of legal personality, but the germs of the idea were, undoubtedly present in Roman law.

English

Law

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

1. Corporation Sole.
2. Corporation Aggregate.

Corporation sole: Corporation sole is defined as an 'incorporated series or successive persons'. The concept of **corporation sole** seems to have come into existence somewhat accidentally, and comparatively late. It came into being to solve the problem of the devolution of land held by ecclesiastics in right of their ecclesiastical office.

Later on, the same theory was applied on certain public offices. In some cases this was done through special statutes. A very popular example of **corporation sole**, in England, is the King. He is so by common law. There is a distinction between the King as an individual and the King as the head of the state. In the later capacity, he is corporation sole. The King never dies and the King is dead, long live the King are based upon the King's position as **corporation sole**.

The distinction between the two capacities of the King is drawn in the Crown Proceedings Act, 1947, Section 40, Commonwealth has created another peculiarity in the personality of the King. The Crown is considered as the symbol of the unity of the Commonwealth nations. It means that for some purposes the Crown is regarded not as one person, but as unity or combination of many personalities, each representing one part of the Commonwealth (except the countries which are republics). Other examples of Corporation Sole are the Post Master General of England, the Solicitor of the Treasury etc. They have been made Corporation Sole by special statutes. In Continental law, there is no such concept as **Corporation Sole**.

Corporation aggregate: corporation aggregate means **an incorporated group of co-existing persons**.

The personality is conferred upon groups by law. In the thirteenth and the fourteenth centuries, in England, there were various kinds of groups such as 'boroughs' and 'merchant guilds'. Though they possessed corporate characteristics, they had no legal personality. Even in the time of Bracton the concept of the corporate personality had not occurred to jurists. It was in the sixteenth century that the idea of incorporation took birth and it developed very rapidly.

By the time of Coke it was established that the corporations cannot arise at their own initiative. There must be some constitutive act or authority to create a corporation. They could be created either under common law, or by a Royal Charter, or by a statute, or by prescription. Thus, in every case there must be some lawful authority for their incorporation.

A large number of corporations were made in Britain during this time and afterwards. These corporations played a very important part in the development of British Empire. They received some setback due to **South Sea Bubble**. The stupendous growth of commerce and industry in 19th century again caused growth and development of corporations.

The first Companies Act was passed in 1862. According to this Act, persons could combine together for the purposes of commerce etc. by fulfilling the conditions given in the Act. In this way incorporation takes place. These corporations are legal persons. The Interpretation Act, 1889, Section 19 says; the expression 'persons' shall unless the contrary intention appears include any body of persons corporate or unincorporated.

Now a corporation can be created by:

1. A Royal Charter.
2. By some special statute.
3. By registration under the Companies Act.

The last is the most prevalent and popular method of creating a corporation.

Personality on objects and things: Apart from the corporation's (corporation sole and corporation aggregate) the legal personality has been conferred upon certain objects and things also. A fund dedicated for a special purpose, such as a trust, or a charitable fund is a legal person. Certain objects or institutions, such as a church or a university are also legal persons.

Trade Unions and friendly societies: Trade unions and friendly societies are not expressly recognised as legal persons. However, some protection to the members is given by law on some other principles. The law of contract, the law of agency and the law of co-ownership come to the rescue of the members. For example, if subscriptions are paid by the members and the parties intend to enter into a legal relation, the rules of society are treated as the terms of the contract between them, and the members can get them enforced against the society.

The second principle which comes to help the members is that where a right of property is involved (it is involved in these societies because the members pay subscriptions) equity grants injunction to restrain the society if it prevents any member from enjoying the society life. Sometimes, the members vest the property (of society) in trustees on such terms as they deem fit and behind this device they get the benefit of corporate life. Keeping in view these things, Salmond observes about the position of the trade unions and friendly societies that the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations.

Concept of Legal Personality in India

In ancient India, like Roman law, the concept of legal personality was not clearly understood nor was there any necessity for it. The coparcenary system of Hindu law may be considered to be more or less, a corporation. The head or the karta of the family acted in a representative capacity and in this capacity he sued and could be sued. There were many kinds of groups also where some members of it acted in a representative capacity. But they cannot be said to be legal persons in the modern sense of the term.

Corporations: However, in ancient Hindu system some form of corporation was recognised.

We find its evidence in certain text, as:
(Among heretical sects, trading corporations, trade guilds, unions, troops, tribes and other associations-the King should maintain the conventions, as also in regard to fortified towns and the open country-Narada, 10, 2).
(Whatever is obtained by a member of the corporations shall belong to all in common-Bhrihaspati).

Idols and Funds: Idol was considered to be a juristic person. It owned property. It could sue and could be sued. A fund dedicated for a religious purpose was also of the nature of a legal person. It has certain right and received certain protection from law, such as the property dedicated to a math. Now a brief account of the position of legal personality in modern times shall be given.

State: state is a juristic person. It can sue and can be sued. Article 300 of the Indian Constitution provides;

The Government of India may sue or be sued by the name of the Union of India and the Government of State may sue or be sued by the name of the State In Civil Procedure Code, 1908, provision has been made for making parties in suits by and against the State.

Idol: idol is a juristic person and as such it can hold property (**Pramatha Nath v. Pradyumn**, (1925) L.R. 52). But it is treated as a minor and Pujari or somebody else acts on its behalf as its guardian.

Mosque: mosque is not a juristic person. In a Lahore decision (**Maula Buksh v. Hafiz-ud-din**, AIR 1926 Lah. 372) it was held that a mosque was a juristic person and could sue and be sued, but in the **Masjid Shahid Ganj Case** (1940, 67 I.A. 251) it was decided by the Privy Council that suits cannot be brought by or against mosques, for they are not 'artificial' persons in the eye of the law. However, they left the question open whether a mosque could for any purpose be regarded as 'juristic' person. 'In **Masjid Shahid Ganj v. Shiromani Gurudwara Prabandhak Committee**, (AIR 1938 Lah. 369) a Full bench of the High Court held that a mosque was juristic person. This decision was taken in appeal to the Privy Council which confirmed the said judgment.

Sir George Rankin observed:
In one of these cases was a mosque party to the suit and in one except perhaps the last is the fictitious personality attributed to the mosque as a matter of decision. But so far as they go these cases support the recognition as a fictitious person of a mosque as an institution-apparently hypostatizing an abstraction. This, as the learned chief justice in the present case has pointed out, is very different from conferring personality upon a building so as to deprive it of its character as immovable property.

Guru Granth Sahib
In **Gurudwara Prabandhak Committee v. Somnath Das**, (2000) 4 SC 146, the Supreme Court stating the historical background and sanctity of Guru Sahib held it to be a juristic person. It was stated:

The last living Guru, Guru Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru. The Guru Granth Sahib would be the vibrating Guru. He declared that henceforth it would be your Guru from which you will get all your guidance and answer. It is with this faith that it is worshipped like a living Guru. It is with this faith and conviction, when it is installed in any gurudwara it becomes a sacred place of worship.

Sacredness of the gurudwara is only because of placement of Guru Granth Sahib in it. This reverential recognition of Guru Granth Sahib also opens the hearts of its followers to pour their money and wealth for it. It is not that it needs it, but when it is installed, it grows for its followers, who through their obeisance to it, sanctify themselves and also for running the (anger which is an inherent part of a Gurudwara).

Companies, associations and groups: Companies, associations and many other kinds of groups are legal persons. They have been expressly so recognised in a number of statutes. For example, Transfer of Property Act, 1882 (Sec. 5, para II) says; in this section **living person** includes a Company or association or body of individuals, whether incorporated or not.

Companies and Registered Societies: Companies incorporated in accordance with the Indian Companies Act are juristic persons. An incorporated company has a separate existence and the law recognises it as the legal person separate and distinct from its members.

This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the memorandum of association and other persons joining as members are regarded as a body corporate or a corporation aggregate and this new person begins to function as an entity. Societies registered under Societies Registration Act, 1860 are also held to be legal person.

Sections 2, 5, 6, 8, 9, 10, 11 and 13 of the said Act make it amply clear. Such a society has a separate name and can hold property through trustees, it can sue and be sued and any person having a claim against it must look to its property and not that of its members for satisfaction of his dues (**Ganga Sahai v. Bharat Bhan & Others**, AIR 1950 All. 480).

Thus, a society registered there under even if not a corporation in the full sense is certainly a legal person. However, all kinds of societies cannot be registered under the Societies Registration Act 1869
Section 20.

The societies that can be registered are **charitable societies** the military orphan funds or societies established at the several Presidencies of India, societies established for the promotion of the science, literature or the fine arts, for instruction, the diffusion of useful knowledge, the political education, the foundation or maintenance of laborers or reading rooms for general use among the members or open to the public, or public museums and galleries or paintings and other works or arts, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Groups, Personalities by statutes: Groups, such as registered trade unions and friendly societies also are legal entities. They own properties, and suits can be brought in their names. Apart from these there are associations, institutions and many kinds of autonomous bodies upon whom legal personality has been conferred by statutes.

Company not a citizen: However, an incorporated company or a group recognised as juristic entity is

not necessarily a citizen of India though all the members constituting it may be Indian citizens. It has been held in **S.T. corp. of India v. Commercial Tax Officers**, AIR 1963 SC 1811,

But the members who form the incorporated company do not pool their status or personality. If all of them are citizens of India, the company does not become a citizen of India any more than if all are married the company would be a married person. The personality of the members has little to do with the personality of the incorporated company.

The person that comes into being is not the aggregate of the persons either in law or in metaphor. The corporation really has no physical existence, it is a mere abstraction of law.

Accordingly it has been held that the State Trading Corporation case, a company registered under the Indian Companies Act, 1956, is not a citizen within the meaning of Art.19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said article.

Advantages of Incorporation

The vast growth of corporations in recent years is an evidence of its usefulness. Incorporation has a number of advantages:

1. The first great advantage of incorporation is that it simplifies and cheapens the legal proceedings (by or against it). In any dispute with a corporation, a person proceeds against one person only i.e., the corporation, and not against a number of persons who compose the corporation. Similarly, the corporation also sues as a single person. The 'corporation sole' (in England) has also its uses. It maintains the continuity of a particular office irrespective of the fact that the individuals who hold the office remain changing. Many claims and liabilities, which might have lapsed at the vacation of office by a holder, do not lapse due to this device.
2. Secondly, incorporation has greatly helped development of commerce and industry. A member (shareholder) is liable only to the extent of his share, or to the extent of the amount guaranteed by him if it is a company limited by a guarantee. Under these conditions, members have little risk and they do not hesitate in taking enterprises.
3. Thirdly, the death of, or withdrawal or transfer of share by a member does not affect the functioning or the existence of the corporation as it causes in a partnership. The coming going changing increasing and decreasing of members in no way affects the life of the corporation. It has its own life and existence which can come to an end only by certain specific defined methods.
4. Fourthly, it facilitates the functioning and management of the corporation. Due to incorporation, it is possible that the whole management is done by one skilled person. This not only keeps the members free from the botheration but helps in increasing production also. In short, modern commerce would be impossible without incorporation.

Theories of Corporate Personality

There are various theories of corporate personality which have attempted to theories the nature and authority of it. This might make one to gather that theoretically all the legal problems regarding persons have been fully explored but this is not true. There is a great divergence between theory and practice. Any one theory alone is not capable of solving the problems fully. Therefore, the courts have not followed any one theory consistently.

The reason of the gap between theory and practice is that the theorists have kept themselves more occupied with either a philosophical explanation of legal personality, or in making it to fit in some political ideology than with the practical problems.

Following are the principal theories of corporate personality:

1. **Fiction Theory:** This theory says that only human beings can properly be called 'persons'. Some kinds of groups etc., are regarded as persons, for certain purposes only by a fiction of law and they have no real personality. Main supporters of this theory are Savigny, Salmond and Dicey. This theory is most applicable to English law where the courts have not proceeded on any hard and fast principle in their recognition of juristic persons. There is much flexibility in the theory and it can accommodate the various decisions (Which are sometimes divergent also) on legal personality. This theory is very popular because it is not based on any metaphysical notion or argument. It is argued on the basis of this theory that as a juristic person has only a fictitious will, it cannot commit crimes.
2. **Concession Theory:** This theory is allied to the **fiction theory**. The supporters of both theories are almost the same jurists. This theory says that corporate bodies have legal personality only to the extent granted by law. Here law means the State. In other words, the law is the exclusive source or authority which confers juristic personality. Though this theory states a truism, by leaving the creation of juristic personality absolutely at the discretion of state, it leaves room for mischief. This theory has been used in many cases to suppress autonomous institutions. It differs from the fiction theory in one important respect. It is that the former identifies law with the state which the latter does not.
3. **Realist Theory:** This theory has another name also i.e., **organic theory**. The main exponent of this theory is Gierke. Maitland also supports it. This theory says that a group has a real will, real mind, and a real power of action. A corporation has all the characteristics which a natural person has. Therefore, juristic person are real in the same sense in which human beings are. Legal personality is not fictitious, nor does it depend upon state's recognition. The emphasis, in this theory on corporate life contains elements of reality (at least in the modern age), but to attribute real will to the corporation and to compare it with biological organism leads the theory to absurdity. Closely linked with 'realistic theory' is **institutional theory**. It has been propounded by a French jurist Hauriou.

This theory is based on collectivist outlook. It says that the individual is integrated into the institution and becomes a part of it. Different interpretations have been given to the theory and have been used to serve divergent purpose. Pluralist interpretation is that there can be independent institutions within the institution of state (they consider state only as a supreme institution). Fascist interpretation is that the state is the only institution and other institutions within it are parts of it, and therefore, they must function according to the direction of the state. By putting interpretation they used the theory to suppress other institutions.

4. **Bracket Theory or Symbolist Theory:** This theory says that the members of the corporation are the only persons who have rights and duties. The granting of juristic personality means putting a bracket round the members in order to treat them as a unit. This is done for purposes of convenience. In other words, juristic personality is only a symbol which helps in effectuating the interest or the purpose of the group. The theory speaks great truth when it says that the groups are only to effectuate the interest of its members, but it has certain weaknesses also.

The contention of the theory that only human beings have personality and not the group is far from the truth. In modern times, it is agreed on all heads and is fully established that corporation has a legal Personality which is separate and distinct from its members and it has entirely different rights and duties. It is the separate personality that enters into contract and other legal transactions with others. How can a person enter into contract with a bracket? This question hits at the very root of the theory. An important implication of the theory is that law can remove the bracket at any time and can look behind the entity to discover the real state of affairs.

Certain other theories
 There are many other theories of corporate personality.
Purpose theory: Purpose theory says that only human beings have personality. Juristic persons are not persons at all. They are simply subject less properties' meant for certain purposes. This theory was formulated mainly to explain the **stifung** (foundations) of German law and hereditas jacens of Roman law. The theory has no application to English or Indian law where judges have repeatedly held that corporation is persons.

Hohfeld's theory: Hohfeld has also given a theory about corporate personality. His theory is closely related to the Bracket theory. He says that only human beings have rights and duties and corporate personality is merely a procedural form, which is used to work out in a convenient way for immediate purpose, a complex class of jural relation.

Kelsen's theory: Kelsen makes an analytical and formal approach to the concept of personality. He says that for legal purposes there is no contrast between natural and juristic persons. Personality is always a matter of law. In law personality means the totality of rights and duties. Any entity which bears the totality is a person in the eye of law. To make a distinction between natural and legal persons is meaningless.

Law individualizes certain parts of the legal order and establishes a unity in the rights and duties pertaining to it. This device is for procedural facility and it is the rights of (human) individuals that are real. Kelsen's theory does not throw any light on the nature of the group personality nor does it help in solving practical problems. It is submitted that to do this is not in the province of the 'pure theory of law', therefore, Kelsen did not bother himself with actual working or practical problems.

Problems of Corporate Personality

A corporation is, in law, quite distinct and separate from the members who compose it. Its rights and liabilities are different for those of the members. A shareholder of a company can legally enter into a contract with the company as such. Shares holders might be entirely changed, or their number might

greatly reduce, but it would make, in no way, any change in the identity of the company. The company might go bankrupt but the shareholders would retain their millions.

The real position of a company can be understood only if we make a comparison of it with an unincorporated firm. In an unincorporated firm, there is not much difference between the rights and obligations of the firm and its partners. Even the separate property of the partners is liable for the debts of the firm. Change of any one partner causes the reconstitution of the firm. There can be no firm of only one partner, whereas a company may be of only one member. This special position of the company is due to the fact that a company is a juristic person, therefore, it is distinct and separate from its shareholders but the unincorporated firm is not a juristic person, therefore, it does not have the above-mentioned advantages.

Salomon v. Salomon and Farrar v. Farrar: In short, the essential character of the corporation is that it has a distinct personality from its members. In **Salomon v. Salomon and Co. Ltd**, 1897 A.C 22) the House of Lords refused to identify the company with its shareholder. It was held that 'he could Claim the preferential rights of a bondholder against the company which was in reality he himself, to the detriment of genuine creditors'.

Again, in (**Farrar v. Farrar Ltd**. 14 (1889) 40 Ch. D. 395) it was held A sale by a person to corporation of which he is member is not either in form, or in substance as sale by a person to himself, the idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation itself is in every sense, valid in equality as well as in law.

People's Pleasure Park Co. v. Rohleder: An important American case in which the same principle was laid down is (**People's Pleasure Part Co. v. Rohleder**, 61 S.E.R. 794). In this case the question was as to whether a restrictive covenant that title to land should never pass to a coloured person operated to prevent transfer to corporation of which all the members were Negroes. It was held that the transfer to the corporation was valid, because a corporation is distinct from its members as mentioned in In re Europe (1932 V.L.R. 443).

Principle not consistently followed And Lifting the veil:

The principle given has, however,, not been consistently followed: Greater familiarity with the problems implicit in the incorporations of groups has compelled the courts to retract from the simplicity of the doctrine and in some cases to 'pierce the veil' of legal personality in order to lay bare the realities behind it.

This has made the law about legal personality considerably complicated. There have been cases in USA, England and other countries where courts lifted the veil of legal personality and examined the reality behind it.

The veil can be lifted when it becomes necessary to know the character of a corporate person; or when a corporation has been created to avoid some legal obligation; or when the device of corporate personality is used to perpetuate fraud, as to evade tax; or when it is used to evade a statute or to delay creditors; or when it is necessary to promote justice or to obviate inequitable results.

Daimler Co. v. Continental Tyre Co.: In **Daimler Co. v. Continental Tyre Co.**, ((1916) 2 A.C. 307) the

House of Lords lifted the veil of legal personality of a company as all its shareholders (with an insignificant exception) and directors were enemies (Germans, during the World War 1).

U.S. v. Lehigh Valley Road Co.: In U.S.A. in **1.1.8. v. Lehigh Valley Rail Road Co.**, (220 N.S. 257) the court pierced the veil of legal personality where a railway Company attempted to evade a statute which forbade the transporting of CO₂ by the person who was mining it by acquiring all the shares of a coal company whose coal it was transporting.

In England, a number of statutes have been passed to disregard the corporate entity where it has been created as a device to evade tax. Convenience and policy is the basis. It is thus clear that courts have not followed any theory consistently and have proceeded mostly according personality to convenience and on the basis of policy.

They have disregarded legal personality in a number of cases, where law had conferred one, and on occasions they attributed legal personality to groups where it was not so provided by law (statute). In modern times, the law is very lenient in conferring legal personality upon groups, but at the same time, it does not hesitate in lifting the veil if it is necessary in the interest of justice or as a matter of policy.

Liability of Corporation

Corporations are legal persons. It means that they have rights and liabilities. So far as rights are concerned, there is no difficulty in their enforcements. But the liabilities of corporations present very complicated problems. How are the liabilities of an entity which is treated as person only by a fiction of law to be enforced against it? This problem shall be discussed under three headings:

1. Liability of corporations in contract;
2. Liability of corporations for torts;
3. Liability of corporations for criminal acts.

1. Liability of Corporations in Contract

For entering into a contract two things are of vital importance, i.e., the form of the contract and the capacity of the parties. A corporation has no material existence; therefore, it always acts through its agents. It signifies its assent through its seal. Therefore, the presence of the seal is considered as the evidence of the assent of the body corporate. Subject to certain exceptions, this is the general rule.

The form of the contract is same in every case, whether the parties are the natural persons or one or both parties are corporations. So far as the capacity of a corporation to enter into a contract is concerned, in England, it depends upon the source of the creation of the corporation. They are created either by a charter, or by a statute. In common law a corporation created by a Royal Charter can bind itself and can deal with its property in the same manner as a natural person.

The power of a corporation, created by a statute to enter into a contract is limited to what the statute grants. Thus a company incorporated under the Companies Act is limited in its capacity to the objects

set out in its memorandum of association. Any contract made beyond memorandum is ultra vires and void, although it is agreed upon by all the members unanimously. Such act (contract) is incapable of ratification (**Ashbury Railway Carriage and Iron Co. v. Rich, L.R.**, (1875), 7 H.L. 563).

Such a limitation upon a corporation's power to contract has been criticised by the jurists. However, in modern times, the rule is not working as a great impediment upon corporation's power because memorandum is drafted very comprehensively. In India, there is no common law; therefore, the power of corporation to enter into a contract depends upon the statute.

2. Liability of corporations of Torts

A corporation acts always through its agents. Therefore, liability of a corporation for the torts is based on, the principle of vicarious liability. A corporation is liable for the acts of its servants done in course of employment. But this rule applies only for those acts which are intra vires the corporation. The difficulty arises in determining the liability for the acts which are ultra vires.

The strict view of English law is that if a tram company has no power to run buses, then any bus' drivers engaged are not in law the servants of the Company, and therefore the company is not liable for their torts.

Such acts (ultra vires acts) are divided into two classes, the acts done under the express authority of the corporation .and acts done without any authority. As far as the acts done without any authority from the corporation are concerned, the corporation is not liable for these acts.

About the liability for acts done with the authority of the corporation, there is a difference of opinion. Goodhart's view is that the corporation is liable. In America, this view has been rejected. Winfield says that the corporation is liable as a joint tortfeasor. A decided case on the point is **Campbell v. Paddington Corp.**, ((1911) 1 K.B. 869) in which it has been held that the corporation is liable.

3. Liability of Corporation for Criminal Acts

The earlier view was that a corporation cannot be made liable for a crime. There are theoretical as well as procedural difficulties. How can mens rea be attributed to a body corporate and how can it be punished? Were the questions which created difficulties in holding a corporation liable for criminal acts?

In England, the Procedural difficulties have been removed by statutes and theoretical difficulties have been overcome partly by statutes and partly by court decisions on the point.

Now, in recent years, corporations have been held criminally liable (even in cases where mens rea is involved) for the criminal acts done by the persons acting on behalf of the corporation. In any case, there is no difficulty in holding them liable for the offences for which a fine is an alternative punishment.

In **D.P.P. v. Kent and Sussex Contractors Ltd**, ((1944) K.B. 146) the manager of the company had sent in false returns for the purpose of obtaining petrol coupons. The Court held the company liable and

said that through its manager the company committed the offence.

In **R. v. C.R. Haulage Ltd.**, ((1994) K.B. 551) a company was held liable for conspiracy to defraud. Its managing directors and some others had conspired to practice fraud upon another company.

In **Moor v. Bresler Ltd**, ((1994) 2 All E.R. 515) the company was held guilty for the criminal act of its secretary.

In India, in statutes containing penal provisions, specific provisions have been made with respect to offences by the companies.

For example, Section 140 of the Customs Act provides as follow:

Offences by companies:

1. If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of and was responsible to the' company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
2. Notwithstanding anything contained in sub-section (1) where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section, (a) **company** means a body corporate and includes a firm or other association of individuals; and

(b) **director** , in relation to firm, means a partner in the firm. Thus, though some of the problems regarding the criminal liability of corporations have been solved and some principles have been established, how far this evolution will go is still uncertain.

3. Corporation and Fundamental Rights Any company or society, if it is a Government company or society, is subject to Fundamental Rights in Part III of the Indian Constitution. It has been observed:

Corporations are one species of legal persons invented by the law and invested with varieties of attributes so as to achieve certain purposes sanctioned by the law. The characteristics of corporations, their rights and liabilities, functional autonomy and juristic status are jurisprudentially recognized as of a distinct entity even where such corporations are State agencies or instrumentalities.

But merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, the court should not scan the real character of the entity; and if it is found to be controlled by the State and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Article 112 that any authority controlled by the Government of India is itself a State (**Som Praksah Rekhi v. Union Of India**, (1981) SCC 449).

Suit or complaint by Corporation

There is no doubt about the capacity of a juristic person to file a civil suit. This can be filed by a person authorized by it. So far as the question of filing criminal complaint by a juristic (corporation) person is concerned, the Supreme Court has stated that: the complainant must be a corporeal person who is capable of making physical presence in the court. Its corollary is that even if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person presents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings.

The person representing the juristic person can be changed also. In the said case (**Associated Cement Co. Ltd. V. Keshwan**, (1998) 1 SCC 68) the Supreme Court further said: No magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone, can continue to represent the company till the end of the proceedings.

There may be occasions when a different person can represent the company e.g. the particular person who represents the company at the first instance may either retire from the company's services or may otherwise cease to associate therewith or he would be transferred to a distant place. In such cases it would be practically difficult for the company to continue to make the same person represent the company in the court. In any such eventuality it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court.