LEGAL PERSONALITY

Personality is from Latin term 'persona' which means mask.

Indian Penal Code - Sec. 11 – The word person includes any company or association, or body of persons, whether incorporated or not.

Kinds of Persons

Natural persons

A human being is a natural person. All the living beings which are recognized as person by state, they are persons in law and persons in fact. But in ancient society, all humans were not considered as Persons eg. Slaves. They were treated as a movable property.

Legal persons;

They are persons only in the eyes of law. Legal persons are beings who are treated for purposes of law as human beings. Legal persons are created artificially by legal fiction. They have rights and obligations as natural person. They can sue and be sued. Some Examples:

Institutions – College, Hospital, Church, Idol, mosque etc.
Fund or estate – the corpus or the object personified is some fund or estate reserved for a particular purpose. Ex. Property of dead man, fund for charity, an estate under a trust etc.
Corporations (Will study in detail later)

What is the Legal Status of:

An Animal – Animals have no legal personality, they are incapable of having rights or duties, The owner of the animal has rights and duties, if you hurt the animal, you violate the owners right, if the animal hurts you the animal can't be held liable, his owner can be. Some animals in the wild are protected, but that doesn't mean they have rights, they are protected to protect the interest of the society in general.

A Dead Man - Dead men are no longer persons in the eye of law. They have laid down their legal personality with their lives and they don't have rights and liabilities.

There are three spheres where a man has anxieties after his death. These are the **dead man's body, his reputation and his property**. Hence law wants to protect such interests.

Dead Man's Body

Dead body i.e. the corpse is the property of nobody**.** It cannot be disposed of by will; and, wrongful dealing with it will not amount to theft or hurt BUT Criminal Law gives PROTECTION to a dead body, which includes a decent burial and the violation of the dead body or the grave is also a criminal offence.

A trust for maintenance of a particular tomb is void but a trust for repair of all graves in a graveyard would be a charitable trust and is allowed.

Dead Man's Reputation

de mortuis nil nisi bonum dicendum est

"nothing must be said about the dead except the good"

Defamation of the dead is punishable but it is because violating the reputation of a dead man would be a violation of rights of the living descendants and not the person who is dead, so this right is in reality not that of the dead person but his living descendants.

Property of Dead Man

In respect of the estate of a dead man, he is allowed to regulate the action of the successors under a will

An Unborn person- A person can own property before being born, the ownership is obviously contingent on him being born but it is a real and present ownership. A child in the womb of his mother is for many purposes regarded a legal fiction.

The unborn child has a contingent right and it must be born as a living human being. If the child is born dead the legal personality falls away ab initio. If the child dies in the womb or is still-born, his inheritance fails but he gets all the rights even if he is alive for an hour after birth.

An Idol – Idol is a juristic person and as such can hold property, but it is treated as a minor and the pujari or somebody else acts on its behalf as the guardian.

Guru Granth Sahib can hold property in its name and was considered a person

Gurudawara Prabandak committee v. Somnath Das (2000),

Mosque – Suit cannot be brought by or against the mosque as it is not considered a juristic person for that matter in eyes of law **(Masjid Shahid Ganj case (1940))** but the question of whether a mosque is a juristic person for any other purpose was left open by the court.

CORPORATE PERSONALITY

Kinds of Corporation

Corporation aggregate

Corporation aggregate is a group or collection of persons who become united to accomplish a task / purpose. There are several members at a time. Even if all members of this corporation die, it will remain alive and continue until death by law. Eg: Municipal Corporation or registered company. Liability of Corporation is limited.

Corporation sole

Corporation sole is series of successive persons or individuals. It consists of only one person at a time like Sovereign or king, Prime Minister. It is mere succession of officers or persons who eventually will be exercising the same right. A corporation sole is an example of dual personality. If a single human being has in one capacity legal relations with himself in another capacity

Difference between Corporation and Firm:

Status : A firm is not considered a legal person. A corporation has a separate personality of its own different from that of its members.

Members: It is possible for a corporation to enter into contract with its members. A firm cannot enter into contract with its members. A corporation can survive with even one member, a partnership firm cannot survive with just one member

Rights and duties: A corporation can acquire property and has distinct right and duties than its members, not the case in firms.

Existence: A corporation has permanent existence. A partnership firm comes to an end with the death of the members.

Theories of Corporate Personality

Fiction Theory (Savigny, Salmond, Coke, Blackstone and Dicey)

According to this theory, the legal personality of entities other than human beings is the result of a fiction.

Salomon v. A. Salomon & Co. Ltd. (1896)

Mr. Salomon made leather boots or shoes in a large establishment. His sons wanted to become business partners, so he turned the business into a limited company. (A Salomon co. ltd.)

Long story short the company later incurred losses and it was asked in court for Mr. Solomon to be responsible for companies' debts. Court held that as the company had fulfilled requirements of the law, the company is now a person in law which is independent and distinct from its members.

Lee v Lee's Air Farming Ltd. (1960)

Lee, a qualified pilot, formed a company "Lee's Air Farming Ltd." and was holding all shares except one. He was also the MD and got himself appointed as chief pilot at salary. While piloting the company's plane, he was killed in an air crash. As the workers of the company were insured, workers were entitled for compensation on death or injury. His wife filed a claim for insured amount for the death of her husband in the course of his employment.

Issue: While holding the position of MD, could Lee be treated as an employee for the purpose of insurance claim?

Judgment: It was held that: "Lee was a separate person from the company he formed and his widow was held entitled to get the compensation. In effect the magic of corporate personality enabled him (Lee) to be the master and servant at the same time and enjoy the advantages of both."

In both cases it may be noticed that the doctrine of dual personality operates so as to enable a single person (Mr.Salomon; Mr.Lee) to perform acts that are construed as acts by different legal persons thus enabling them in effect, to enter into contracts with themselves.

Concession Theory

Under the concession theory it is said that the state can bestow on or withdraw legal personality from other groups and associations within its jurisdictions as an attribute of its sovereignty. Hence, a juristic person is merely a concession or creation of the state.

It is a similar theory as Fiction theory, only difference is that fiction theory is a philosophical theory that a corporation is merely a name and a thing of intellect and is not real, concession theory focuses on the sources from which the power is derived to create such a fiction.

Purpose theory (E.I Bekker, Aloys Brinz and Demilius)

Purpose theory says that only human beings have personality. Juristic persons are no 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 (vacant inheritance) of Roman law.

The theory has no application to English or Indian law where judges have repeatedly held that corporation is persons.

Bracket Theory or Symbolist Theory (Ihering)

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
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. This is clearly in line with the principle of lifting of the corporate veil.

Realist Theory (Gierke, Maitland):

This theory has another name also i.e., **organic theory.** Under the realist theory, a corporation is a real entity and the law merely recognizes and gives effect to its existence. The realist jurist also contended that the law has no power to create an entity but merely having the right to recognize or not to recognize an entity. A corporation from the realist perspective is a social organism while a human is regarded as a physical organism.