

LEGAL STATUS OF UNBORN, MINOR, AND LUNATIC PERSON.

Introduction

The word "**person**" is taken from the Latin word persona. Initially, it meant a mask. Later, it was used to denote the part played by a man in life. In Roman law, the term became synonymous with caput.

Many philosophers have tried to define the term "person." According to German writers, "will is the essence of a personality. **"A legal person is capable of will."** According to Salmond, "a person is any being whom the law regards as capable of rights or duties." Under the Indian Penal Code, the word "person" includes any company or association, or body of persons, whether incorporated or not.

So, in simple words, a person is anyone who has certain legal rights and duties. This research paper attempts to analyze the legal status of unborn, minors, and lunatics as persons. Whether they fall under this ambit of definition of a person or not.

The legal status of an unborn person

The legal definition of a "**person**" or "**personality**" revolves around the possession of rights and the ability to carry out legal duties. The personality of a human being comes into existence at birth and ceases to exist at his death. Hence, dead men are not legal persons and do not possess any legal personality. However, the case with unborn persons is not the same. Nothing in the law prevents an unborn from owning property before he is born.

A child in the mother's womb is for many purposes regarded by a legal fiction as already born, i.e., he is granted a certain legal personality based on the maxim *Nasciturus pro jam nato habetur*. His ownership is contingent as he may never be born at all.

Various provisions for the unborn under Indian laws.

Transfer of Property Act

It allows for the transfer of immovable property to an unborn child. However, it is transferred 'for the benefit of' the unborn through a way of trust.

The transfer of property should not be a direct transfer. Creating a prior life interest is essential, and the transferee has to transfer the whole of the remaining interest in the property to the unborn.

Indian succession act

As per section 114, we may create a property interest in the name of the unborn child. However, the property interest can only be vested after the child is born alive.

Hindu Law

A child in the womb of his/her mother is considered to be alive. Under the Hindu undivided family, as per the Mitakshara rule, such a child has a coparcenary property interest.

An unborn person's rights (proprietary or personal) are contingent on his birth as a living human being. A wilful injury inflicted on a child in the womb because of which the child dies after being born alive amounts to murder. Abortion or child destruction are crimes but do not amount to murder. A pregnant woman who is sentenced to death is given a reprieve before her child is born.

The legal status of a minor

Humanism is one of the essential law concepts in modern jurisprudence since a civilized society is a foundation for the development of a person's rights. Minors are legal subjects, and their position in a legal and social society should be at the heart of the legal system. Their key characteristic is that they are unable to perform legal connections on their own thoroughly. This is due to their lack of total capacity as they enter essential legal relationships through their parents or someone who may replace their place.

Minors are natural persons with a legal identity. They are, however, deemed incapable of entering into a contract. In India, minors are usually under the age of 18 because they cannot comprehend the essence and implications of their acts.

Various provisions for a minor under Indian Laws

Indian Contract Act

The person who is a citizen of India and whose age is under 18 years, then that person is called a minor. A minor is an incompetent person to enter into a contract. Any agreement made with the minor is void-ab-initio, i.e., void from the beginning. In the case of a minor agreement, the court cannot allow the specific performance of a contract because it is completely void.

Transfer of property act

A minor is not competent to transfer a property under this act, but A minor may accept an immovable property as a gift without his guardians' intervention.

Legal status of a lunatic person

The word "person" is taken from the Latin word persona. Which means a mask worn by artists for playing different roles.

According to the judicial system the legal definition of insanity is that a person who has been labelled insane is incapable of distinguishing between right and wrong. The status of a lunatic is different. They are natural persons with legal identity, but they are incapable of contracting. Suppose at the time of entering into a contract a lunatic person is incapable of understanding the nature of a contract. In that case, they are deemed incapable of entering into a contract.

Various provisions of the Indian laws

Indian contract act

A sane person is one who, when entering into a contract, knows the essence of the contract and, as a result, can make a reasonable judgment. Therefore we can say that a lunatic person is the one who is of unsound mind and incapable of understanding the nature of contract and is incapable of forming a reasonable judgment. If a person of unsound mind enters into a contract, it is void.

Difference between a lunatic and an idiot

Idiot – A person of unsound mind can be an idiot if he is by birth or permanently of unsound mind. As a result, any contracts he enters into are void-ab-initio.

Lunatic- A person who is of unsound mind can be a lunatic person if he is not permanently of unsound mind or by birth. It means during specific periods he is capable of forming a rational judgment. He is allowed to enter into a contract during that time when he was of a sound mind. Therefore, the contract entered upon by him is not void-ab-initio.

The Representation of People Act, 1950

The right of a person with mental incapacity to vote or hold public office is invalidated by the Representation of People Act, 1950, given that a competent court declares such mental incapacity.

The Indian Succession Act, 1925

It is considered for the purpose of this act that except at lucid periods, the mentally ill person cannot understand the nature of the testamentary document and therefore cannot render a valid will.

Conclusion

According to law, a legal person is one who is capable of will. Or in simple words, a person is anyone who has certain legal rights and duties. The concept of a dead person and an unborn one is not the same. Where on one hand personality ceases to exist at death, it begins with the birth. A child in his mother's womb is regarded by legal fiction as already born for different purposes. On the other hand, minors are natural persons with a legal identity. They are, however, deemed incapable of entering into a contract due to their lack of full capacity, as they enter essential legal relationships through their parents or someone who may replace their place.

Lastly, lunatic person are natural persons with legal identity, but they are incapable of entering into a contract. A person who may be a lunatic does not have to be an idiot. There is a difference between both of them. A lunatic person is capable of making rational judgments, and he is not permanently of unsound mind. He can enter into a contract during that period when he is of a sound mind.