Meaning and Kind of Person

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The term ‘person’ is derived from Latin word ‘persona’ which means a mask worn by actors playing different roles in a drama. In modern days it has been used in a sense of a living person capable of having rights and duties. Now it has been used in different senses in different disciplines. In the philosophical and moral sense the term has been used to mean the rational quality of human being. In law it has a wide meaning. It means not only human beings but also associations as well. Law personifies some real thing and treats it as a legal person. This personification both theoretically and practically clarifies thought and expression. There are human beings who are not persons in legal sense such as outlaws and slaves (in early times). In the same way there are legal persons who are not human beings such as corporations, companies, trade unions; institutions like universities, hospitals are examples of artificial personality recognized by law in the modern age. Hence, the person is an important category of concept in legal theory, particularly business and corporate laws have extensively used the concept of person for protection as well as imposing the liability.

Historical Background of the Concept of ‘Person’

The term ‘person’ and ‘personality’ has a historical evolution. Roman law, Greek law and Hindu law, has used the concept too. In Roman law, the term had a specialized meaning, and it was synonymous with ‘caput’ means status. Thus, a slave had an imperfect persona. In later period it was denoting as a being or an entity capable of sustaining legal rights and duties. In ancient Roman Society, there was no problem of personality as the ‘family’ was the basic unit of the society and not the individual. The family consisted of a number of individuals, but all the powers were concentrated with ‘pater familias’ means the head of the family. If a head of the family dies, and there is an interval between his death and devolution of property on the heir who accepted inheritance, the property will vest in a person during the interval. This was called hereditas jacenswhich was developed by the Romans. The hereditas jacens is considered by some scholars as similar to legal personality.Hereditas jacens means the inheritance during the interval between death of the ancestor and the acceptance of the inheritance by the heir. Some scholars are not ready to agree with the views that it has some connection with present doctrine of legal personality, even if it is there, it may be in a very limited sense. There was a provision in Roman law that other institutions or group who had certain rights and duties were capable to exercise their legal rights through a representative.

Under Greek law, an animal or trees were tried in court for harm or death done to a human being. It can be said on the basis of this practice that these objects were subject to duties even though they may not possesses rights. This is an element of the attribution of personality.

Under early English law, there are some incidences in it had found that an animal or tress or inanimate objects had been tried in Court under law. The trees and animals were subject to duty but not rights. After 1846, this system has modified and it was made clear that animals or tresses are capable of possessing rights and duties; therefore, there is no question of personality.

**Definition of ‘Person’**
The term ‘person’ is derived from the Latin term ‘Persona’ which means those who are recognized by law as being capable of having legal rights and being bound by legal duties. It means both- a human being, a body of persons or a corporation or other legal entity that is recognized by law as the subject of rights and duties. Savingy has defined person as the subject or bearer of right. But Holland has criticised this definition on the ground that persons are not subject to right alone but also duties. He says: the right not only resides in, but is also available against persons. There are persons of incidence as well as of inherence. Kelson rejected the definition of personality as an entity which has rights and duties. He has also rejected the distinction between human beings as natural persons and juristic persons. He says the totality of rights and duties is the personality; there is no entity distinct from them. However, Kelson’s view has been criticised for the reason that in law natural person is different from legal persons who are also capable of having rights and duties and constitute a distinct entity. Salmond’s definition seems to be more correct than the earlier definitions. In the words of Salmond: “So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person even though he be a man.” Salmond further explains that the extension of the conception of personality beyond the class of human beings is one of the most noteworthy achievements of the legal imagination.

Persons can be classified into (a) natural person, and (b) legal or artificial or juristic person. There are some natural persons who do not enjoy the status of legal persons and vice versa.

Law of status

Law of status is the law concerning the natural, the domestic and the extra domestic status of man in civilized society. The law of extra domestic status is the law that is concerned with matters and relations apart from those concerning the family.Thus this department of the law of status deals with the status of persons such as lunatics, aliens, deceased persons, lower animals etc.

These are persons who do not enjoy the status of legal personality but the society has some duties towards them.

Legal Status of Unborn Person

A child in mother’s womb is by legal fiction regarded as already born. If he is born alive, he will have a legal status. Though law normally takes cognizance of living human beings yet the law makes an exception in case of an infant in ventre sa mere.

Under English Law, a child in the womb of the mother is treated as in existence and property can be vested in its name. Article 906 of the French Civil Code permits the transfer of property in favour of an unborn person. But, according to Mohammedan Law a gift to a person not in existence is void. A child in the womb of the mother is considered to be a person both under the law of crimes and law of torts.

- Under section 13 of the Transfer of Property Act, property can be transferred for the benefit of an unborn person by way of trust. Similarly section 114 of the Indian Succession Act, 1925 provides for the creation of prior interest before the unborn person may be made the owner of property – corporeal or incorporeal, but no property will be deemed to be vested in the unborn person unless and until he is born alive. In Hindu Law also a child in the womb of the mother is deemed to be in existence for certain purposes. Under Mitakshara law, such a child has interest in coparcenary property.

Under section 315 of the Indian Penal Code, the infliction of pre natal injury on a child, which is capable of being born alive and which prevents it from being so could amount to an offence of child destruction. Section 416 of Criminal Procedure Code provides that if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may if it thinks fit, commute the sentence to imprisonment for life. It has been held that in a Canadian case that a child could succeed in tort after it was born on account of a deformity which was held to have been caused by a negligent pre natal injury to mother.

Though there is no Indian case on this point but it is expected that a liberal view would be taken on this line and a child would be getting the right to sue. In an African case it was held that a child can succeed in tort after it is born on account of a deformity caused by pre injury to his mother.

In India as well in England, under the law of tort an infant cannot maintain an action for injuries sustained while on ventre sa mere. However, in England damages can be recovered under Fatal Accidents Act, 1846 for the benefit of a posthumous child. In short, it can be concluded that an unborn person is endowed with legal personality for certain purposes.

Legal Status of Dead Man

Dead man is not a legal person. As soon as a man dies he ceases to have a legal personality. Dead men do not remain as bearers of rights and duties it is said that they have laid down their rights and duties with their death. Action personalis moritur cum persona- action dies with the death of a man. With death personality comes to an end. A dead man ceases to have any legal right or bound by any legal duty. Yet, law to some extent, recognises and takes account of the desires or intentions of a deceased person. Law ensures a decent burial, it respects the wishes of the deceased regarding the disposal of his property, protects his reputation and in some cases continues pending action instituted by or against a person who is now deceased.

- As far as a dead man’s body is concerned criminal law secures a decent burial to all dead men. Section 297 of Indian Penal Code also provides punishment for committing crime which amounts to indignity to any human corpse. The criminal law provides that any imputation aganist a deceased person, if it harms the reputation of that person if living and is intended to hurt the feeling of his family or other near relatives, shall be offence of defamation under sec 499 of the Indian Penal Code.

The Supreme Court in the case of Ashray Adhikar Abhiyan v Union of India has held that even a homeless person when found dead on the road, has a right of a decent burial or cremation as per his religious faith.

In English Law as well as in Muslim Law the violation of a grave is a criminal offence. As regards reputation of a dead man, it is to some extent protected by criminal law. Under Roman law any insult to the body of the deceased at the timing of funeral, gave the deceased’s heir a right to sue for the injury as it is treated as insult to the heir. Under the law of France the relative of the defamed deceased can successfully sue for damages, if they can prove that some injury it suited from the defamation. Thus, it is not the rights and the hence the personality of the deceased that the law recognises and protects but it is the right and interest of living descendants that it is protected.

So far trust is concerned English Law provides the rule that permanent trust for the maintenance of a dead man’s tomb is illegal and void and property cannot be tied up for this purpose. This rule has been laid down in the leading case of Williams v. Williams where it was said that a corpse is the property of no one. It cannot be disposed of by will or any other instrument. It was further held in this case that even temporary trusts are neither valid nor enforceable. Its fulfilment is lawful and not obligatory. It was held in Mathii Khan v. Veda Leiwai that worship at the tomb of a person is charitable and religious purposes amongst Muslims- hence trust is possible. In Saraswati v. Raja Gopal it was held that worship at the Samadhi of a person, except in a community in which there is a widespread practice of raising tombs and worshipping there at, is not a religious or charitable purpose according to Hindu Law and would not constitute a valid trust or endowment.

Regarding the property of the dead man the law carries out the wishes of the deceased example, a will made by him regarding the disposal of his property. This is done to protect the interest of those who are living and who would get the benefit under the will. This is subject to the rule against perpetuity as well as law of testamentary succession. Indian Transfer of Property Act, section 14 incorporates the rule against perpetuities, which forbids transfer of property for an indefinite time thereby making it alienable. Section 14 of the TPA restrains the power of creating future interests by providing in the rule against perpetuities that such interest must arise within certain limits. The rule of perpetuity looks to the date at which the contingent interest will vest, if it vests at all, and hold it to be void as “perpetuity if this date is too remote”.

Similarly, section 1 and 4 of the Indian Succession Act, 1925 forbids the creation of a will whereby vesting of property is postponed beyond the lifetime of one or more persons and the minority period of the unborn person.

Legal Status of Lower Animals

Law does not recognise beasts or lower animals as persons because they are merely things and have no natural or legal rights. Salmond regards them mere objects of legal rights and duties but never subjects of them. Animals are not capable of having rights and duties and hence they are not legal persons.

Ancient Law - However, in ancient times animals were regarded as having legal rights and being bound by legal duties. Under the ancient Jewish Code ‘if an ox gore (wound with a horn) a man or woman resulting in his or her death, then the ox was to be stoned and its flesh was not to be eaten. There are many examples in ancient Hebrew Codes where cock, bulls, dogs and even the trunk of trees which had fallen on human beings and killed him were tried for homicide.’

There are similar instances in India as well. In number of cases found that, animals were sued in courts in ancient India. There is popular story about the Mughal Emperor Jehangir in which the bullock was presented before the Emperor. However these instances are merely of historical interest and have no relevance in modern law.

Modern Law - Modern Law does not recognise animals as bearer of rights and duties. Law is made for human beings and all things including animals are for men. No animal can be the owner of property from a person to an animal. Animals are merely the object of transfer and are a kind of property, which are owned and possessed by persons. Of course, for the wrongs done by animals the master is held liable. This duty or liability of the master arises due to public policy and public expediency. The liability of the master is strict and not a vicarious liability. The animal could be said to have a legal personality only if the liability of the master is considered vicarious.

In certain cases, the law assumes the liability of the master for an animal as direct while in other cases, liability is not direct. Thus, for keeping animals that are not of dangerous nature the master is not liable for the damage it may do, unless he knows that it was dangerous. The knowledge of the defendant must be shown as to their propensity to do the act in question. However, if the animal is of ferocious nature, the master is responsible for the wrong if he shows negligence in handling it. The owner of animals of this class is also responsible for their trespasses and consequent damage. If a man’s cattle, sheep or poultry, stray into his neighbour’s land or garden, and do such damage as might ordinarily be expected to be done by things of that sort, the owner is liable to his neighbour for the consequences. A charitable trust can be created for the maintenance of stray cattle, broken horses and other animals. Such a trust is created with a view to promote public welfare and advancement of religion. However, if the charitable trust is created only for the benefit of a single horse or a dog, it cannot be regarded as public charitable trust for instance in Re Dean Cooper Dean v. Stevens a test of charged his property with the payment of annual sum of trustees for the maintenance of his horses and dogs. The court held that it is not valid trust enforceable in any way on behalf of these animals. It was observed that the trustee could/spend the money if they pleased in the manner desired by the testator. But if they did not spend the money it would not be considered a breach of trust and in such a situation the money so spent will be of the representatives of the testator.

Similarly, a bequest for the maintenance of the testator’s favourite black mare a bequest of an annual sum for the maintenance of testator’s horses and hounds for a period of 50 years if nay those animals should so long live a trust for the benefit of a parrot during the life of two trustees and survivor of them have all been held valid.

**Two kinds of persons are recognised by law and those are natural person and legal persons. Legal persons are also known as artificial, juristic or fictitious persons.**
(1) According to Holland, a natural person is “such a human being as is regarded by the law as capable of rights and duties—in the Language of Roman law, as having a status.” According to another writer, natural persons are “living human beings recognised as persons by the state. The first requisite of a normal human being is that he must be recognised as possessing a sufficient status to enable him to possess rights and duties. A slave in Roman law did not possess a personality sufficient to sustain legal rights and duties. In spite of that, he existed in law because he could make contracts which under certain circumstances were binding on his master. Certain natural rights possessed by him could have legal consequences if he was manumitted. Likewise in Roman law, an exile or a captive imprisoned by the enemy forfeited his rights. However, if he was pardoned or freed, his personality returned to him. In the case of English Law, if a person became an outlaw, he lost his personality and thereby became incapable of having rights and duties. The second requisite of a normal human being is that he must be born alive. Moreover, he must possess essentially human characteristics.

(2) Legal persons are real or imaginary beings to whom personality is attributed by law by way of fiction where it does not exist in fact. Juristic persons are also defined as those things, mass of property, group of human beings or an institution upon whom the law has conferred a legal status and who are in the eye of law capable of having rights and duties as natural persons.

Law attributes by legal fiction a personality of some real thing. A fictitious thing is that which does not exist in fact but which is deemed to exist in the eye of law. There are two essentials of a legal person and those are the corpus and the animus. The corpus in the body into which the law infuses the animus, will or intention of a fictitious personality. The animus is the personality or the will of the person. There is a double fiction in a juristic person. By one fiction, the juristic person is created or made an entity. By the second fiction, it is clothed with the will of a living being. Juristic persons come into existence when there is in existence a thing, a mass of property, an institution or a group of persons and the law attributes to them the character of a person. This may be done as a result of an act of the sovereign or by a general rule prescribed by the government.

A legal person has a real existence but its personality is fictitious. Personification is essential for all legal personality but personification does not create personality. Personification is a mere metaphor. It is used merely because it simplifies thought and expression. A firm, a Jury, a bench of judges or a public meeting is not recognised as having a legal personality. The animus is lacking in their case.

**Following are the differences between natural person and legal person:**
**Natural Person**
1. A natural person is a human being and is a real and living person.

2. He has characteristics of the power of thought speech and choice.

3. Unborn, dead man and lower animals are not considered as natural persons.

4. The layman does not recognize idiot, company, corporation, idol etc. as persons.

5. He is also a legal person and accordingly performs their functions

6. Natural person can live for a limited period i.e. he cannot live more than 100 years.

**Legal Person**
1. Legal person is being, real or imaginary whom the law regards as capable of rights or duties.

2. Legal persons are also termed “fictitious”, “juristic”, “artificial” or “moral”.

3. In law, idiots, dead men, unborn persons, corporations, companies, idols, etc. are treated as legal persons.

4. The legal persons perform their functions through natural persons only.

5. There are different varieties of legal persons, viz. Corporations, Companies, Universities, President, Societies, Municipalities, Gram panchayats, etc.

6. Legal person can live more than 100 years. Example: (a) the post of “American President” is a corporation, which was created some three hundred years ago, and still it is continuing. (b) “East India Company” was established in sixteenth century in London, and now still is in existence.

Legal personality is a fictitious attribution of personality by law, a sort of personification of law. Legal persons being artificial creations of law can be of as many kinds as the law devises. Continental jurisprudence recognizes three kinds of legal persons, namely:

i. Groups or series of men, usually called corporations: The first class of legal persons consists of corporations, namely those which are constitutes by the personification of groups (e.g., corporation aggregate) or series of individuals (e.g., corporation sole). In State Trading Corporation of India v. Commercial Tax Officer, the Court observed that corporation are undoubtedly legal persons but is not a citizen within the meaning of Article 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said article.

ii. Institutions like hospitals, libraries etc.: The second class is that in which corporations or object selected for personification not a group of series of persons but an institution is. The law may, if it pleases, regard a church, a hospital or a university or a library as a person. That is to say it may attribute personality not to any group of persons connected with the institution, but to the institution itself. In the tradition and practice of English Law, legal personality is not limited by any logical necessity or indeed by any obvious requirement of expediency to the incorporated bodies of individual persons. In India, institutions like university, temple, public authorities, etc. are considered as legal persons. Under Indian law, trade unions and friendly societies are legal entities. They own properties and suits can be brought in their names though not regarded as corporations.

iii. Funds or estates like the estates of deceased persons: The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses, a charitable fund for example, or a trust estate, or the property or a dead man or of a bankrupt.

Corporate sole

Corporation sole is a legal entity consisting of a sole incorporated office, occupied by a single man/women and it has legal continuity.

A corporation sole consists of one person only, and the successors of that person in some particular station or office. The King of England is a corporation sole; so is a bishop; and in the Church of England every parson and vicar is, in view of the law, a corporation sole.

To understand the concept of corporation sole one needs to deal with two yet similar questions: First, it was necessary to discover what application the concept had, which involved understanding why it had come into being in the first place; but Second, it was necessary to ask what forms of law the use of this concept had excluded. Law, in ruling some things in, is always ruling some things out (though it was by implication the English genius to stretch the terms of this proposition as far as they would go). Even English law could not conjure up terms of art that were infinitely adaptable. That the corporation sole was a term of art contrived to meet a particular practical problem rather than deduced from a set of general juristic precepts, could not be doubted. Nor could it be doubted that the application of this contrivance was rather limited. But what was surprising was how much, nonetheless, was ruled in, and how much ruled out.

The origins of the corporation sole Maitland traced to a particular era and a particular problem. The era was the sixteenth century, and coincides with what Maitland calls ‘a disintegrating process . . . within the ecclesiastical groups’, when enduring corporate entities (corporations ‘aggregate’, which were, notwithstanding the misleading terminology, more than the sum of their parts) were fracturing under political, social and legal pressure. However, the particular problem was not one of groups but of individuals; or rather, it was a problem of one individual, the parish parson, and of one thing, the parish church. Was this thing, a church, plausibly either the subject or the object of property rights? The second question – of objectivity – was the more pressing one, as it concerned something that was unavoidable as a cause of legal dispute, namely ‘an exploitable and enjoyable mass of wealth’.

But it could not be addressed without considering the other question, and the possibility that the ownership of this wealth does not attach to any named individuals but to the church itself. The law could probably have coped with this outcome, but the named individuals involved, including not only the parson but also the patron who nominates him and the bishop who appoints him, could not. It placed exploitation and enjoyment at too great a remove. Instead, an idea that had been creeping towards the light during the fifteenth century was finally pressed into service, and the parson was deemed the owner, not in his own right, but as a kind of corporation, called a ‘corporation sole’.

What this meant, in practice, was that the parson could enjoy and exploit what wealth there was but could not alienate it. But what it meant in theory was that the church belonged to something that was both more than the parson but somewhat less than a true corporation. That it was more than the parson was shown by the fact that full ownership, to do with as he pleased, did not belong to any one parson at any given time; that it was less than a corporation was shown by the fact that when the parson died, ownership did not reside in anybody or anything else, but went into abeyance. Essentially, the corporation sole was a negative idea. It placed ultimate ownership beyond anyone. It was a ‘subject less right, a fee simple in the clouds’. It was, in short, an absurdity, which served the practical purpose of many absurdities by standing in for an answer to a question for which no satisfactory answer was forthcoming.

The idea of the corporation sole gave legal ﬁctions a bad name; the corporation sole was a frivolous idea, which implied that the personiﬁcation of things other than natural persons was somehow a less than serious matter. It was not so much that absurdity bred absurdity, but that it accustoms us to absurdity, and all that that entails. Finally, however, the idea of the corporation sole was serious because it encouraged something less than seriousness about another office than parson. Although the class of corporations sole was slow to spread, it was found serviceable by lawyers in describing at least one other person, or type of person: the Crown. To think of the Crown as a corporation sole, whose personality is neither equivalent to the actual person of the king nor detachable from it, is ‘clumsy’. It is in some ways less clumsy than the use of the concept in application to a parson. The central difficulty, that of ‘abeyance’ when one holder of the office dies, is unlikely to arise in this case: when a parson dies there may be some delay before another is appointed, but when a king dies there is considerable incentive to allow no delay, whatever the legal niceties. Nor is it necessarily clumsier than other, more famous doctrines: it is no more ridiculous to make two persons of one body than it is to make two bodies of one person It makes a ‘mess’ of the idea of the civil service by allowing it to be confused with ‘personal’ service of the king; it cannot cope with the idea of a national debt ; it even introduces confusion into the postal service (by encouraging the view that the Postmaster-General is somehow freeholder of countless post offices). It also gets things out of proportion, for just as it implies that a single man is owner of what rightly belongs to the state, so it also suggests that affairs of state encompass personal pastimes.

The problem with absurd legal constructions is not simply that serious concerns may be trivialised, but also that trivial matters may be taken too seriously, which is just as time-consuming. ‘So long as the State is not seen to be a person [in its own right], we must either make an unwarrantably free use of the King’s name, or we must be forever stopping holes through which a criminal might glide.’

Therefore a corporation sole can be defined as a corporation sole consists of one person and his or her successors in some particular office or station, who are incorporated by law in order to give them certain legal capacities and advantages which they would not have in their natural person.

The Crown ﬁrst came to be identiﬁed as a corporation sole at a sinister time, during the reign of Henry VIII. In most important respects, as touching on the fundamental questions of politics, the British state had long been afforded its own identity as a corporation aggregate, distinct from the persons of any individuals who might make it up at any given moment. The British state had a secure national debt, which had been owed for some time by the British ‘Publick’, and the British public had been relatively secure since the end of the seventeenth century in the rights that it had taken from the Crown. The problems, such as they were, were problems of convenience and not of freedom. But precisely because the idea of the Crown as a corporation sole remained tied up in the domain of private law, it illustrated the gap that existed in England between legal and political conceptions of the state. The fact that the Crown was still understood as a corporation sole implied that there was some distinction to be drawn between matters of basic political principle and mere questions of law. This was unsustainable. It was not simply that it was not clear on what basis this distinction could conceivably rest – it was impossible, after all, to argue that the corporation sole was useful in matters of law, since it had shown itself to be so singularly useless. It was also far from clear where to draw the line Maitland devotes considerable attention to the problems that the British Crown was experiencing at the turn of the twentieth century in understanding its relationship with its own colonies. That they were its ‘own’, and had begun their life as pieces of property, meant that there was a legal argument for seeing them still as the property of the Crown, which was itself seen still as the corporate personality of Her Majesty the Queen. This was convoluted, unworkable and anachronistic. It was also ironic. It meant that in what was obviously a political relationship the supposedly dominant partner was still conceived as an essentially private entity, and therefore restricted by the conventions of private law; while the colony itself, which had begun life as a chartered corporation created by the Crown, was able to use that identity as a corporation aggregate to generate a distinct identity for itself as “one body corporate and politic in fact and name”.

**Corporate aggregate**
A corporate aggregate is an incorporated group of co-existing persons. Examples: all private limited companies, all public limited companies, multi-national corporations, public undertaking corporations.“Corporate aggregate” is a fictitious body and created by the policy of men. They may also be called as “body’s Politique”. A corporate aggregate has several members at a time. These are the private offices. The primary object of corporate aggregate is to do business. It is lesser permanent than corporate sole. Similarly, corporate aggregate also shall have its own properties, debts, with which the share holders are not concerned. The share holders are concerned corporation / company subject to the extent of their share amount, not exceeding that. They have their own properties. The debts of the company are not having any connection with their own properties. The debts, profits, losses are related to the share amount only.

So the perfect definition of corporate aggregate would be -
Corporation aggregate consist of two or more persons united in a society, which is preserved by a succession of members, either forever or till the corporation is dissolved by the power that formed it, by the death of all its members, by surrender of its charter or franchises, or by forfeiture. Such corporations are the mayor and aldermen of cities, the head and fellows of a college, the dean and chapter of a cathedral church, the stockholders of a bank or insurance company, etc.

A corporation aggregate, or body politic, or body incorporate, is a collection of many; individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence.

So basically a corporate aggregate consists of several persons, who are’ united in one society, which is continued by a succession of members. Of this kind are the mayor or commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. Going by the above description of corporations aggregate, it would logically follow that every form of concerted activity of willing individuals aimed at a particular end, would lead to their acts coming to known through the glass of incorporation which realises their combined operations as one single act, performed by a single personality. However, it is in this regard that the real limits of artificial personality are discernible. The law deems only certain forms of concerted action as eligible for recognition through incorporation; thus while joint stock companies are recognised as incorporated bodies, associations such as partnerships, trade unions and other organizations are not recognised as incorporated bodies for various reasons. These groups have come to assume the term ‘unincorporated associations’.

In **Saloman v. Saloman and Co**., a trader sold a solvent business to a limited company which consisted of the vendor, his wife and children only. In payment of the purchase money, the company issued debentures to the vendor. Later on, the company went into liquidation. The question for decision was whether this debenture holder was entitled to be paid in preference to the unsecured creditors. The question was answered in the affirmative. It is clear from this case that a man may become his own preferred creditor by taking debentures from a company of he holds practically all the shares. This is due to the fact that the company has a legal personality different from that of the shareholders. This case also shows that one can seek shelter behind this legal person without one’s real connection with the corporation being unmasked.

In **Daimler Company Ltd. v. Continental Tyre and Rubber Co. Ltd**., the respondent company was incorporated in England for the purpose of selling in England tyres made in Germany by a German company. Most of the shareholders of that company were Germans. After the outbreak of war in 1914 between England and Germany, an action was started in the name of the respondent company for the recovery of a trade debt. The action was resisted on the ground that the plaintiff was an “alien enemy” at war with England and hence the suit was not maintainable. The contention of the plaintiff was that the nationality of the company was distinct from that of its shareholders and as it was registered in England, the declaration of war had no effect on it. The decision was given against the company by the House of Lords. Lord parker observed: “What is involved in the decision of the Court of Appeals is that for all purposes to which the character and not merely the rights and powers of an artificial person are material, the responsibilities of natural persons who are its corporators, are to be ignored. An impassible line is drawn between the one person and the others. When the law is concerned with the artificial person, it is to know nothing of the natural persons who constitute and control it.” The House of Lords held that the enemy character of individual shareholders and their conduct could be material on the question whether the company’s agents and persons in de facto control of the company were adhering to the enemy. If the persons in control of the company were resident in an enemy country or were adhering to the enemy, that company would assume an enemy character. The House of Lords pierced the veil sought to be drawn over the physiognomy of the company for the purpose of ascertaining who the corporators behind the company were.

In **Wurzel v. Houghton Main Home Delivery Service Ltd**. and in **Wurzel v. Atkinson**, the difference between an incorporated and an unincorporated association with regard to legal consequences was brought out. Under the Road and Rail Traffic Act, 1933, the holder of a private carrier’s licence known as “C” licence, was forbidden from using the vehicle for the carnage of goods for hire or reward. A group of miners incorporated a company to get cheap delivery of coal from the colliery. A motor goods vehicle in respect of which the company held “C” licence was used for making delivery of coal at the houses of its members and charges for delivery were deducted from the wages of the members. It was held that as the society was an incorporated one, it was a legal entity distinct from its members and there was a breach-of condition under which “C” licence was held as the vehicle was used for carriage of goods for hire or reward. Another group of miners formed an association without incorporating it. They made use of the vehicle of the association for delivery of coal at the house of its members. It was held that each member was a part-owner of the vehicle and as co-owners could not be said to be carrying their own goods for hire or reward by contributing to the running expenses, there was no breach of the conditions of “C” licence.

The position of the Karta in a Hindu coparcenary is an example of corporate personality. In coparcenary system although each member of the joint Hindu Family has some rights and duties and even though it is a single familial unit, a Joint Hindu Family does not have a separate legal identity and is not a juristic person. It is not capable of holding property and the law does not attribute any personality to a Joint Hindu Family. The Karta is overall head of the joint family who manages the entire family property. He has a right to alienate the property and other members of the family are under his control. He can sue and be sued on the behalf of the joint family. In juristic terms, he is a corporation sole having a double capacity, i.e., as a natural person he is the eldest member of the family and as a legal person he is in the capacity of the Karta of the Joint Family.

According to the long established theory which was founded upon the religious customs of the Hindus, a Hindu idol is a ‘juristic entity’ having a ‘juridical status’ and it has the power to sue and being sued. But juridical person in the idol is not the material image but the image develops itself into a legal person when it is consecrated by the Pran Pratistha ceremony.According to Hindu law and various decisions of the courts, the position of idol is that of a minor and a manager is appointed to act on idol’s behalf. Like a minor, an idol cannot express itself and like a guardian, manager has some limitations under which he has to act and perform its duties. According to this rule, Shri Guru Granth Sahib is also a juristic person. But other religious texts such as Gita, Quran, Bible are not considered to be juristic persons.

**The Union of India and the States have also been recognized as corporate entities under Article 300 of the Constitution of India. Article 300 relating to Suits and proceedings is as follows:**
(1) The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

(2) If at the commencement of this Constitution

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) Any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

The President of India as also the Governor of the State is a corporation sole like British Crown. The Ministers of Union or State Government are not legal or constitutional entity and therefore, they are not corporation sole. The reason being that they are appointed by the President or the Governors and are ‘officers’ within the meaning of Articles 53 and 154 of the Constitution. Article 53(1) say that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Similarly, Article 154(1) say that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

Thus, they are not personally liable for their acts or omissions nor are they directly liable in a Court of law for their official acts. It is the State whether the Centre or the federated unit which is liable for the tort or the breach of contract committed by a Minister in his official capacity.

Partnership firm is not a legal person in the eye of law. There is no legal entity, standing over against the partners. The property and debts of the firm are nothing else than those of the partners. It can neither sue nor be sued in its own name. The member partners cannot contract with their partnership firm because a man cannot contract with himself.

Unlike a partnership firm which has no existence apart from its members, incorporated company has a distinct legal or juristic existence independent of its members. Under the law, a corporation or a company is a distinct entity (legal persona) existing independent of its members. An incorporated company exists as a complete being by virtue of its legal personality and is often described as an artificial person in contrast with a human being who is a natural person. A company being a legal entity by itself, is separate and distinct from its promoters, shareholders, directors, officers or employees and as such, it is capable of enjoying rights and being subjects to duties which are not the same as those enjoyed or borne by its members. It may sue or be sued in its own name and may enter into contracts with third parties independently and the members themselves can enter into the contract with the company.

1) RBI: The Reserve Bank of India has a corporate existence because it is an incorporated body having an independent existence.
2) UPSC: Union Public Service Commission is not recognized as a legal person as it cannot hold property in their own names and can neither sue nor be sued in a court of law.
3) A Fund dedicated for a Religious Purpose: it 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.
4) Registered Societies: Societies registered under Societies Registration Act, 1860 are also held to be legal persons.
5) Trade Union: Registered trade unions are considered as juristic persons.
6) Institutions like Church, University, Library etc.: these are considered as juristic persons.
7) Under the Indian law, Corporation Aggregate are all those bodies or associations which are incorporated under a statute of the Parliament or State Legislature. In this category comes all trading and non-trading associations which are incorporated under the relevant like the State Trading Corporation, Municipal Corporation, Roadways Corporation, the Public Companies, State Bank of India, the Life Insurance Corporation, the universities, Panchayats, Corporative Societies.

**Limitations to Legal Personality**
The limitations of a legal corporate personality have been an issue of constant debate. While the granting of personhood can help make corporations legally responsible for their actions, it also opens the door to many more intricate questions. For example, if a corporation has a personality separate from its shareholders or owners, some argue that it must also have individual rights, such as the right to vote. If granted the right to vote, however, then shareholders will in effect have the right to vote twice: once as private individuals, and once in the personality of the corporation. As this conflict with most voting systems, it remains a controversial issue throughout legal circles.

There are limitations to the legal recognition of legal persons. Legal entities cannot marry, they usually cannot vote or hold public office, and in most jurisdictions there are certain positions which they cannot occupy. The extent to which a legal entity can commit a crime varies from country to country. Certain countries prohibit a legal entity from holding human rights; other countries permit artificial persons to enjoy certain protections from the state that are traditionally described as human rights.

Special rules apply to legal persons in relation to the law of defamation. Defamation is the area of law in which a person's reputation has been unlawfully damaged. This is considered an ill in itself in regard to natural person, but a legal person is required to show actual or likely monetary loss before a suit for defamation will succeed.

In 2010, the United States Supreme Court rendered a decision that many legal scholars describe as a victory for corporation rights. The decision, Citizens United v. Federal Election Committee expanded the free speech rights of corporations by holding that it is unconstitutional to prohibit legal persons from engaging in election expenditures and electioneering. While critics see this ruling as tantamount to allowing corporate-sponsored candidates in the future, proponents argue that it is unfair to grant legal personality that grants equal responsibilities but not equal rights.

Though a company is a legal person, it is not a citizen under the constitutional law of India or the Citizenship Act, 1955. The reason as to why a company cannot be treated as a citizen is that citizenship is available to individuals or natural persons only and not to juristic persons. The question whether a corporation is a citizen was decided by the Supreme Court in State Trading Corporation of India v. Commercial Tax Officer. Since a company is not treated as a citizen, it cannot claim protection of such fundamental rights as are expressly guaranteed to citizens, but it can certainly claim the protection of such fundamental rights as are guaranteed to all persons whether citizens or not. In Tata Engineering Company v. State of Bihar it was held that since the legal personality of a company is altogether different from that of its members and share­holders, it cannot claim protection of fundamental rights although all its members are Indian citizens. Though a company is not a citizen, it does have a nationality, domicile and residence. In case of residence of a company, it has been held that for the purposes of income tax law, a company resides where its real business is carried on and the real business of a company shall be deemed to be carried on where its Central management and control is actually located.

**Conclusion**
The foregoing analysis makes it abundantly clear that incorporation had great importance because it attributes legal personality to non living entities such as companies, institutions etc. which help in determining their rights and duties. Clothed with legal personality, these non living personalities can own, use and dispose of property in their own names. Unincorporated institutions are denied this advantage because their existence is not different from the members.

Ordinarily, only an incorporated body can sue or be sued and an unincorporated body cannot sue or be sued in its own name. This rule was very useful for trade union organizations which were usually not incorporated associations. In the case of Taff Vale Railway Co. v. Amalgamated Society of Railway Servants, the House of Lords decided in 1901 that a trade union could be sued for damages arising out of the wrongful acts of its officials. The union concerned had to pay £ 2300 in damages and legal expenses in addition. The trade unions carried on an agitation against the decision and ultimately the Trade Disputes Act of 1906 gave complete protection against judgments like the Taff Vale Railway Company.

Keelson through his analytical approach to legal personality has concluded that there is no divergence between natural persons and legal persons for the purposes of law. In law personality implies conferment of rights and duties. Therefore, for the convenient attribution of rights and duties, the conception of juristic personality should be used in its procedural form.

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