

A STUDY ON THE CONCEPT OF JURISTIC PERSONALITY

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ABSTRACT

This paper deals with juristic personality. The term juristic people, also used as persona ficta or personne morale are the terms most generally employed to designate the organization through which corporate action is effected. Those which exist for the purpose of administering governmental powers are known as public corporations. Those which are conducted for the purpose of enriching private individuals are known as private corporations. For the purposes of the present inquiry the distinction is not important, our problem being to determine the nature of the person, being, or group, through which the will of the collection of members of the corporation finds expression. Personality is considered therefore, an attribute not only of men, but of groups of men, acting as a unit for the attainment of a common end. This person, which is not a human being, is called technically, a juristic person to distinguish it from the physical personality of mankind. As mentioned earlier, the core of the corporate or juristic personality is the body corporate. But what exactly is it? It is very difficult to find an exact definition for body corporate as there is controversy entangled with the very term, with differences of opinion existing on whether it has a real personality or is its juristic personality a mere legal fiction.

KEY WORDS : Jurist , Corporation , Governmental Powers , Controversy , Legal Fiction

INTRODUCTION:

The term juristic people, also used as persona ficta or personne morale are the terms most generally employed to designate the organization through which corporate action is effected. Those which exist for the purpose of administering governmental powers are known as public corporations. Those which are conducted for the purpose of enriching private

individuals are known as private corporations. For the purposes of the present inquiry the distinction is not important, our problem being to determine the nature of the person, being, or group, through which the will of the collection of members of the corporation finds expression. Personality is considered therefore, an attribute not only of men, but of groups of men, acting as a unit for the attainment of a common end. This person, which is not a human being, is called technically, a juristic person to distinguish it from the physical personality of mankind.¹

The collective will of a group of men so acting and holding property, when recognized as a subject of law, or as having legal subjectivity, or more plainly, when recognized as capable of holding definite legal rights, is no more a fiction than is the personality of any human being. This juristic person, or collective will of the group is endowed with definite legal capacity. It is capable of exercising rights, capable of committing wrongs; the former, it may vindicate; the latter it must pay for.²

This most important feature of the juristic or corporate personality is known in legal terms as the 'body corporate', and in the Indian Companies Act, 1956 we see that this term has been defined in Section 2(7) where it has been specified what can be included under the term 'body corporate'..³

OBJECTIVES:

- To study the chief features of a corporate or juristic personality and how do they stand out in contrast to those of a natural person.
- To study how the features has been interpreted and modified by the landmark decisions of the judiciary both in India and abroad.
- To study how can the juristic person be made liable in tort or crime and how is it different from liability incurred by a natural person.\
- To study the various judicial judgements given with regard to the same
- To analyse the liabilities of a juristic personality in a tort and a crime

¹ <https://www.lawteacher.net/free-law-essays/company-law/concept-of-juristic-personality.php>

² <https://www.legalbites.in/theories-juristic-personality/>

³ http://shodhganga.inflibnet.ac.in/bitstream/10603/71969/4/04_chapter%202.pdf

HYPOTHESIS

HO: A Juristic personality does not have the same rights as a normal individual

HA: A Juristic personality has equal rights as a normal individual

METHODOLOGY:

The researcher has used descriptive and analytic methodology further the research is doctrinal in nature and the data is collected through mainly secondary sources such as books, articles, books, e- sources. and case laws .

CHAPTER 1

BODY CORPORATE- AIMING TOWARDS A DEFINITION

As mentioned earlier, the core of the corporate or juristic personality is the body corporate. But what exactly is it? It is very difficult to find an exact definition for body corporate as there is controversy entangled with the very term, with differences of opinion existing on whether it has a real personality or is its juristic personality a mere legal fiction. Broadly speaking, in the Indian context the term while not including any of the bodies expressly excluded by Sec. 2(7) of the Companies Act, 1956, may include any aggregate of persons which has been or is incorporated under some statute of this or any foreign country and which exists as a legal entity distinct from the members constituting it, and having perpetual succession and common seal. We will delve deeper into the concept of perpetual succession but let us pursue the definition for now.⁴

In Halsbury's Laws of England we find it defined as, 'a collection of individuals into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several aspects as an individual, particularly of taking and granting property, of 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 constitution or the powers conferred upon it, either at the time of its creation or any subsequent period of its existence'. Thus all these properties of a body corporate mentioned in this definition are the

⁴ <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4154&context=ndlr>

chief features which a body with a juristic personality possesses, and these properties define such a body.⁵

The members of a corporate body need not necessarily or only be individuals. Other bodies corporate may be members. The essential characteristic of a corporation is that it has a distinct legal personality and existence, which we call for the purpose of this paper the juristic personality, as distinguished from its members, whoever they may be. All these features of corporate personality in the above definition are recognized by Sec. 34(2) of the Companies Act. In this context, it can be mentioned that the Supreme Court of India in *State Trading Corporation of India v. CTO* has elaborately discussed the nature of a corporation and held that it cannot have the status of a citizen under the Constitution of India.⁶

Salomon v. Salomon and Company-the judiciary interprets the company as having a separate legal personality and is a very important case in the context of understanding what can constitute a corporation or corporate personality. Salomon was a boot and shoe manufacturer in England who took over his own business by establishing a company namely *Salomon & Salomon*. There were seven subscribers to the memorandum of the company, including himself and his family members. Two of his sons and himself were on the Board of Directors. The business was transferred to this company with Salomon taking majority of the shares and debentures.

A charge was created on the company assets for the debentures held by Salomon. Within a year the company went into liquidation with some assets, debentures and unsecured creditors. The liquidation of the company's assets could not provide the amount that was required to meet the different debts. Since there was a charge on the company's assets to the debentures held by Salomon the amount realized on assets was paid to Salomon. Nothing was left to the unsecured creditors to be paid who being aggrieved by this brought up litigation before the court of law. They contended that the company was created by the family members of Salomon with a sole purpose to take over the existing business and to defraud the creditors. It was contended that since Salomon had the vast control on the affairs of the company being the managing director, and with other directors being his sons the company was never in existence. Rather it was solely his business and the company was a defrauding organization.

⁵ <http://www.businessdictionary.com/definition/juridical-person.html>

⁶ http://self.gutenberg.org/articles/eng/juristic_person

The Court after much deliberation opined that a company is at law a different person altogether from the subscribers of the memorandum and its members, thus laying the seeds for the firm conception of juristic personality. When a memorandum is signed and duly registered the subscribers are a body corporate irrespective of their personal status and influence on the company, which again we have seen clearly mentioned in the definitions referred to earlier in this paper. Salomon and Company was not a myth or fiction; rather it was a real company fulfilling all the legal requirements according to the Court.

There was no provision in the existing law which precluded the members from being related to each other. While the Court accepted the contention that the other six members were mere puppets in the hands of Salomon, it also observed that such a practice, while it might result in certain undesirable outcomes, was in no manner whatsoever violating any existing statutory provision. The contention that the company was defrauded into the purchase of Salomon's business, was also rejected on the ground that the decision was taken in a meeting of the Directors of the company and the fact that such Directors, being the nominees of Salomon, must have been influenced by him, did in no way detract the legality and propriety of the transaction.

The company is at law a different person altogether from the subscribers to the Memorandum and, although it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor can subscribers as members be made liable.

The Salomon decision to this day remains a landmark one for defining the personality of a company and has influenced many subsequent decisions made on the subject. Now we focus on a couple of important Indian decisions on corporate personality.

SEPARATE LEGAL PERSONALITY OF THE COMPANY AS INTERPRETED BY THE JUDICIARY IN INDIA

The courts in India while determining the characteristic of corporate personality have been influenced by the Salomon decision and we see it reflected in a couple of very important decisions, the first one being *Kandoli Tea Company Limited, Re*. In this case a tea estate was taken over by the persons running the estate by establishment of a company. The affected

persons initiated court proceedings by contending that it is the owners of the estate who themselves are party to the company and the subsequent take over, therefore it is a transfer of property among themselves under another name and thus it is a case of fraud. The Calcutta High Court opined that a company once formed is a separate entity from the its members and the status of the members before and after its formation does not matter. The transfer is valid as if the members of the company had been different persons altogether. According to S. 34(2) of the Companies Act, 1956 the incorporation transforms a company into a body corporate capable of functioning as an institutionalised entity. Thus the independent corporate personality of a company makes it the owner of its assets and the bearer of its liabilities. This is the very essence of juristic personality of a company⁷.

The Supreme Court further added in this case that even if the affairs of the company are controlled by one person that company is a legal entity and it is irrelevant if the directors or members belong to same family. Unlike a partnership, the members in a company have a liability restricted to the nominal value of the shares owned by them or the sum guaranteed by them. There is nothing in the Companies Act which prohibits such one man companies and great majority of them are bona fide. The law recognizes the existence of the companies irrespective of the motives, intentions, schemes or conduct of the individual shareholders and members. In *Pattinson v. Bindhya Debi*, it was further stressed that two companies which are incorporated with the same set of shareholders are nevertheless distinct and separate entities.⁸

CHAPTER 2

A FEW OTHER IMPORTANT FEATURES OF JURISTIC PERSONALITY

PERPETUAL SUCCESSION

Section 34 lays stress upon the fact that the body corporate which emerges from registration shall have perpetual succession. The element of perpetual succession prevents the dislocation of a company the death or bankruptcy of any of its members. If a partner of a partnership firm dies or becomes bankrupt, the firm is dissolved, and if the surviving or continuing partners go on with the business, they in law constitute a new firm. But in case of a company, death or bankruptcy of a member does not have any such effect, for the company

⁷ <https://www.scribd.com/document/264515379/meaning-and-nature-of-legal-personality>

⁸ <https://www.jstor.org/stable/1325453>

is a separate juristic person and it continues to exist as one until it is not only wound up but dissolved in the manner specified in the Companies Act.⁹

This point was well illustrated in the Australian case of *Re Noel Tedman Holdings Pty. Ltd.* In this case a man and wife were sole shareholders and directors of two companies. They both died in a road accident. Their deaths however were held not to cause the termination of the companies' legal existence. The companies continued as owners of property and parties to uncompleted contracts. The personal representatives of the deceased shareholders were allowed by the court to appoint new directors of the companies so as to realise their property for the benefits of the deceaseds' estates.¹⁰

The advantage of incorporation is that the company never dies. It has perpetual succession and remains in existence however often its members change, until it has dissolved by liquidation. In *Goplapur Tea Co. Ltd. v. Peshok Tea Co. Ltd.*, it was held that the company has an identity and existence independent of the estate and undertakings owned by it, and so even if the estate is taken over by the Government, that does not constitute a taking over of the management of the company.¹¹

DEALING CAPACITY OF THE COMPANY AS DISTINCT FROM ITS SHAREHOLDERS

By virtue of its separate existence it is legally empowered to execute dealings in its own capacity. Company can deal, acquire or dispose property in its name and under common seal. Assets and properties of the company are not of the shareholders but of the company itself. On the similar lines it can execute legal proceedings in its legal capacity being recognized as a separate legal person, albeit a juristic one. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from its shareholders. According to the Court the true position of a shareholder is that on buying shares he becomes entitled to participate in the profits of the company in which he holds shares, if and when the company declares, subject to Article of Association, that the profits or any portion thereof

⁹ <https://indiankanoon.org/search/?formInput=mosque%20is%20a%20juristic%20person>

¹⁰ *ibid*

¹¹ https://repository.up.ac.za/bitstream/handle/2263/45972/Becker_Disregarding_2015.pdf;sequence=1

should be distributed by way of dividends among shareholders. Otherwise he cannot participate in the profits of a company.¹²

Further, no shareholder can lay any claim to the rights vested in the company or be bound by any obligations, duties or liabilities unless it can be shown that he was using the company as his agent. This was laid down in *J.H. Rayner (Mincing Lane) Ltd. V. Dept. of Trade and Industry. In Daimler Co. Ltd. v. Continental Tyre & Rubber Co. (Great Britain) Ltd.*, it was emphasised by Lord Parker that the fact the members exert some manner of influence over the affairs of the company or they are the ultimate beneficiaries' of the companies' activity is not sufficient in itself to constitute the company as an agent of its members.¹³

LIABILITY IN TORT AND CRIME

‘A company can be guilty of acting with intent to deceive and making a statement which it knows to be false or be indicted for conspiracy to defraud. It can also be guilty of and be fixed for contempt of Court. Notwithstanding its impersonal nature it may sue for an injury done to its reputation in the way of its business by a libel, or a slander or by an imputation of insolvency, and may be sued for malicious prosecution, maintenance, infringement of copyright, molesting a person in the exercise of his calling or negligence, and may be guilty of malicious libel’.¹⁴

A company cannot personally commit any tort or crime. It cannot even authorise any tort or crime because its authority always remains circumscribed by the objects clause of its memorandum and that clause cannot contain anything unlawful. Questions have, therefore often arisen as to the extent to which a company can be held liable for any tort or crime committed by those working for it.¹⁵

In criminal law though there has been a necessary pre-occupation with a fundamental dividing line which recognises that certain acts, which only a natural person can perform, lie beyond a company's vicarious liability. In a landmark judgement., a statutory order stated that ‘no person shall drive or cause or permit to be driven’ a prescribed vehicle, the Divisional

¹² <https://lawexplores.com/the-company-as-a-distinct-and-legal-person/>

¹³ <http://library.siam-legal.com/thai-law/civil-and-commercial-code-juristic-persons-sections-65-77/>

¹⁴ http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6781&context=penn_law_review

¹⁵ http://rci.rutgers.edu/~tripmcc/phil/dewey-historic_background_of_corporate_legal_personality.pdf

Court Quashed a company's conviction on the basis that the act of driving the goods vehicle in question is a physical act which can be performed only by natural persons and not a company. The statutory offence of 'permitting' cannot be committed vicariously by a company although direct liability may well accrue on the basis that the act and the mens rea of a directing mind and will of the company can be identified as that of the company, as laid down in *Manga Plant Ltd. v. Mitchell*. Accordingly, caution is required in choosing an appropriate offence with which a company may be charged where vicarious liability appears to be the foundation of the case.¹⁶

However, the constitutionality of the application of the principle of faultless liability in the corporate context must be decided on a case-by-case basis, taking into consideration the reasonableness of applying this doctrine in the light of the objectives sought to be achieved by the statute. Even if the objectives are found to be of sufficient importance, a less restrictive means of limitation would, in the author's view, be required where the offence carries a stigma and a severe penalty is prescribed

CONCLUSION

The concept of corporate personality has been subjected to acute and searching analysis by jurists during the last century. The debate on whether a group or association of human beings has a 'fictitious' or 'real' personality has attracted protagonists on both sides, each pressing its view with vigour. The crucial question which this discussion has thrown up is that: to what extent has the law actually given recognition to such groups? Pursuing this discussion we find that the law has ascribed a personality to these groups, one that is exclusive to the group and totally distinct from each of the members of this group. This personality is called juristic personality or corporate personality and it can be traced to the common law principles or even is S. 34 (2) of the Companies Act, 1956 when viewed in the Indian context. The originally pragmatic device of legal technique to refer to the corporation or to the juristic person by way of calling it a fictitious person or *persona ficta* had become obsolete and began to create confusion in certain fields of law, especially in American constitutional law and in international law, rather than to promote sound legal development. Correctly understood, 'persona ficta' or 'juristic person' can nowadays hardly be anything else

¹⁶ <https://indiancaselaws.wordpress.com/2015/02/27/is-partnership-a-juristic-person-having-its-own-independent-status/>

than a synonym for 'corporate person', and keeping that in mind has the author dealt with the concept of juristic personality in this paper.

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