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Legal Personality in International Law

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ABSTRACT

In common parlance 'person' means either male or female, but the legal meaning of the term stands entirely different from the meaning of the common parlance. Looking at certain legal definition, as per Salmond "A person is a being when the law regards capable of rights and duties". Thus any human beings which is capable of to execute the rights and duties such "persons would be called as persons in the eyes of laws". Before going into different kinds of persons the conclusion remains that "any person who is able to hold rights and duties such person may either be classified as natural & legal persons. Thus under the subjects of international law the legal term 'legal personality' has a wide interpretation. Let us understand the concept of legal personality followed by what may be included as a legal personality under international law with their rights and duties.

Keywords- *Legal Personality, Natural Person, International Person.*

I. CONCEPT OF LEGAL PERSONALITY

The dynamics of society flow in certain manner that the law has to adopt the pace of societal concerns and this in reflex is balanced on the basis of the well oriented amends that are prevalent over the period of time. The question which further extends to the constitutionality of any act is answered by looking at the balance of it being lawful and considerable which is decided upon "how majorly the positive and negative engrossment of the individuals is looked upon." Thus we can say that to regulate the era of Homo sapiens 'law' is the much required enzyme. As it imposes certain sanctions it tries to avoid all the flaws and irregularities leading towards unlawful orientation. Thus "the concept of legal personality constitutes an important subject matter of various studies, including jurisprudence and international law."

Thus a natural person is a "being to whom the law attributes the personality in accordance with reality and truth". Whereas legal person are "beings to whom attributes personality by way of fiction when there is none in fact."

Generally when we discuss about natural person then usually male and female may come. But looking at the developments from the old time here among the male and female there are some issues, even though they both were covered as person it is not possible in all the times to call

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them as persons since “All humans beings do not possess legal personality” for example under the roman laws slaves are not considered as persons they are treated as chattels distute of any personality. It was also seen that infants and lunatics enjoy a restricted personality as their rights are restricted. Another example of restricted personality is under the Hindu mitakshara joint family womens were not entitled to any right except right to maintenance and residence, this was the possession in India until 2005. Looking at the above mentioned examples it can be easily said that the development and inclusion of positive thoughts and ideas is seen with the concept of personality.

(A) Legal Personality is a fiction of law

The artificial personality conferred on certain non-living entities and inanimate objects and treating them as ‘person’ is creation by fiction of law introduced for the purpose of bestowing the character and properties of individuality on a collectively body of persons. In simpler words, fiction of law is something false which law assumes or accepts as true. For example a company or a corporation or an idol though not a natural person, is treated as a legal person by fiction of law with a view to determine their rights, claims, duties, obligations, liabilities etc.

II. WHAT IS INCLUDED AS A LEGAL PERSONALITY UNDER INTERNATIONAL LAW?

There are various organizations units or body which are subjects of international law and they have the ability to hold, implement non-exhaustive rights and duties under the international law, further adding up to the development of the concept of international law with much clarity. Therefore “Legal personality also includes the capacity to enforce one’s own rights and to compel other subjects to perform their duties under international law. For example this means that a subject of international law, maybe able to bring claims before international and national courts, and tribunal to enforce their rights. They have the ability or power to come into agreements binding under international law for example Treaties. They can even enjoy immunity from the jurisdiction of foreign courts for example diplomatic immunity. And they also owe obligations under international law for example obligations under human rights as they are subjects of international law.”

It is important to note here that an entity which possesses international personality is called an international person of a subject of International Law. And looking at the possession of international personality is therefore “the determining factor in deciding as to which entities are the subjects of International Law. An entity may be deemed to possess international personality if it is capable of possessing international rights and duties and having the capacity

to maintain its rights by bringing international claims.”²

Many philosophers or the views of jurists differ on the question as to what entities are deemed to be subjects on International Law. However as per Oppenheim says that an “international person is one who possess legal personality in international law, meaning one who is subject of international law so as itself to enjoy rights, duties or powers established in International law and generally, the capacity to act on the international plane either directly or indirectly through another state (as in the case of protected state)”.³

As observed in the “*Reparation of Injuries Case*” that “an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claim is a subject of international law.”⁴ The concept of international person is thus derived from international law”.⁵

Looking at *Ponce v. Roman Catholic Church*⁶ the court in the instant where the point of determination was whether the Roman Catholic Church is considered as international personality held that ;-

"Firstly, The Legislative Assembly of Porto Rico had the power to confer jurisdiction on the Supreme Court of the island of this special class of controversies. Such legislation was not contrary to the Constitution, and was in conformity with the power conferred by Congress upon the legislative assembly to regulate the jurisdiction of the courts."

"Secondly, *The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris, and its property rights solemnly safeguarded.* In so doing, the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era." & "Lastly. The fact that the municipality may have furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic Church, to whom such funds were thus irrevocably donated, and by whom these temples were erected and dedicated to religious uses."

² PRINCIPLES OF PUBLIC INTERNATIONAL LAW 57 (6th ed., 2003)

³ OPPENHEIM, INTERNATIONAL LAW 119-120 (9th ed., 1992)

⁴ ICJ REPORT 179 (1949)

⁵ *Supra* Note 4

⁶ 324 U. S. 210 (1908)

Thus considering various theories and concepts under the subjects of international law it is widely motivated by the collectively participation of states and Looking at today's scenarios with a global count of 195 countries the relationship between these countries are guided by the principal norms coming under the ambit of international law.
