

exercise of rights over the same. Such a right, as generally accepted, by jurists includes the following:

- (1) Right to use a thing
- (2) Right to exclude others from using the thing
- (3) Disposing of the thing
- (4) Right to destroy it.

One may have reservation regarding the last of the above, with respect to right to destroy a property. This right has to be regulated by law. If one sets fire to one's house, the person may be declared a lunatic and he will have to answer for his act to those who depend on him. Similarly, an owner who may set fire to his factory or deliberately runs it under loss to close it down, has to answer his workers and others who depend on its functioning as a going concern. In one case, where a textile factory was running continuously into loss, the Justice D.A. Desai, then judge, Gujarat High Court, directed that the workers take over its functioning, which ultimately led to profit and joy among all who depended on it. This was narrated to me by Justice D.A. Desai himself when this author called on him to discuss issues in Labour Law, when he was a judge of the Supreme Court of India. Hence, the right to destroy the ownership, one has over property, has to be circumscribed given today's needs and demands. This cannot be considered as a complete right to be exercised according to one's will. Ownership:

### **5.7-5 Incidents of Ownership**

It is also generally accepted that ownership implies the following:

- (1) Right to manage
- (2) Right to possess
- (3) Right to usufruct and profits
- (4) Right to use it for one's economic benefit *i.e.* to lease, mortgage, pledge, etc.

## **5.8 Different forms of Ownership**

### **5.8-1 Legal and Equitable Ownership**

Where a person deposits the titles deeds of his house in a bank and takes a loan, he is the legal owner of the property and the Bank the equitable owner, which will hold the title deeds until the loan is cleared.

**Example:**

A is in urgent need of money. He takes the title deeds of his house and goes to bank B where he is having his account. A deposits the title deeds with the bank and takes a loan of Rupees 50,000. Here A is the legal owner of the property while bank B is the equitable owner of the property. If A fails to return the money B can sell the house and recover the loan on the basis of equitable rights.

**5.8-2 Trust and Beneficial Ownership**

Here the property under a trust will belong to the trust but the beneficiary under the trust will have a right to draw the benefits under the trust. These two are different types of Ownerships which can be exercised by different persons. Trustee only manages but beneficiary enjoys the property.

**Example:**

A creates a trust for educating girl students in his village B. Here A is the owner of the trust while the girl students are the beneficiaries of the Trust. The ownership of the trust property is vested both in the owner of the trust which is called trust ownership and in the girl students who are the beneficiaries and is called beneficial ownership.

**5.8-3 Corporeal and Incorporeal Ownership**

Corporeal Ownership deals with material aspects *i.e.* owning a book one has purchased. But Incorporeal Ownership deals with mere rights *i.e.* copyright of the book which involves the right to publish and multiply copies of the same.

**5.8-4 Co-ownership and Joint Ownership**

In Joint Ownership as in a partnership, each one knows what share one has in the property. All enjoy the property but all the time being aware of one's rights and share. In the case of Co-ownership, the property belongs to all with equal rights. This has been well explained by the Privy Council by stating that the Joint Hindu Family under the Hindu Law can be described as one having "Community of interest and unity of possession". All the members of the family enjoy the property together without hindrance. Only when there is a partition in metes and bounds that each comes to realise the share, otherwise it belongs to all. The

undivided Hindu family is a classic example of property held in common as co-owners.

### 5.8-5 Vested and Contingent Ownership

In the case of Vested Ownership, the title of the owner is perfected. When title is not perfected and depends on fulfilment of a condition etc., then it is called Contingent Ownership. The titles become perfect only when the conditions are fulfilled.

#### Example:

A promises his daughter B his car on completion of her graduation. The right of A in the car is a vested right while the right of daughter B in the car is a contingent right. The daughter will get the car subject to fulfilment of condition of graduating in a degree.

### 5.8-6 Sole Ownership and Co-Ownership

When one person owns property over anything then it is called Sole Ownership. When many own a thing it is called Co-Ownership. One can enjoy or own individually or with others. If it is only one owning, it is Sole Ownership. If there are others having interest as Co-owners then they also have the right to possess, enjoy and dispose of the right they have in the property as co-owners.

#### Example:

A is a member of a joint family. As the member of the joint family A is a co-owner along with others. A, on the basis of his salary and personal earnings purchases car B. Here with respect to the car he is the sole owner. While with respect to joint family property he is the co-owner.

## 5.9 Persons

### 5.9-1 Meaning of Legal Personality

It is to the credit of the legal system that it has been able to create legal entities to achieve economic results. It is commonly known that human beings are the real legal persons. But law has credited this human personality to groups and certain entities to treat them as one for purpose of economics or for other benefits. Even though human quality is attributed, Law deals more with the *jural* relations that an individual is credited with. This has been applied to companies, corporations etc.

This application has been explained by Dias<sup>25</sup> as follows: "Had the law stopped at human beings in its use of the word 'person' a good deal of needless perplexity would have been avoided. As a unit of *jural* relation, however, the term has lent itself to applications other than to human beings and hence serves different functions." It is interesting to go into these different functions and analyse whether as a legal concept 'Persons' has been able to contribute enough to 'Legal Theory'.

### 5.9-2 Corporate Sole

In Law a human being is treated as one unit, that is a person having rights, duties, liberties, immunities etc., and all these together confirm the personality of a human being. In course of time, non-human beings, but capable of being considered as human beings have come to be given and recognised the same qualities humans have. But in such cases, there is no death or end. These entities enjoy legal existence in perpetuity. According to Salmond<sup>26</sup>, "The living official comes and goes, but this offspring of the law remains the same forever". The institutions like Charitable Trusts, Corporations, etc., are entities which go on forever even though persons who run them come and go. They are declared as Corporate Sole and the best example is the King or Queen of England. There is a famous phrase which explains this: "The King is dead. Long live the King!" This means even if the person of the King or Queen is no more the Kingship remains forever. Someone will carry the responsibility forward. This has been accepted as a Corporate Sole. The Royalty will remain as the head of the Country or Sovereign for all time to time. Only human beings who occupy that position will come and go.

### 5.9-3 Corporate Aggregate

This is a collection of individuals who have a common agenda to achieve. It could be economic gain or social activity to perform. Persons come together, pool their resources and prepare a programme of action. Such an entity cannot be for a day or two. It can live forever provided those who form it carry on with broad vision and commitment. There is a common adage which states: 'Unity is Strength'. Uniting together with common objectives can go a long way in creating an impact on the

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25. Dias, *Jurisprudence*, 5th Edn., 250.

26. *Jurisprudence*, 12th Edn., 305-320.

society. Corporate aggregate is a concept where the law recognises this collection of persons as one entity or unit so that it can achieve the goals set more efficiently to meet the demands of the modern economic world.

The reason for the popularity of corporate aggregate as a commercial entity was the decision of the House of Lords in *Salomon v. Salomon Co.*<sup>27</sup> In this case one Mr. Salomon formed a company consisting of himself, his wife and five children. He then sold his business to this company at a very high price and secured his loans by means of debentures. When the company went bankrupt, its debts were to the extent of pounds 17,000 of which pounds 10,000 were owed to Salomon. The assets of the company were only pounds 6,000. The question was whether the amount owed to Salomon should be cleared first or that of other creditors. The Trial Court and the Court of Appeal held that the creditors had the prior claim. But the House of Lords reversed this decision and held that the company was in a law a 'person' quite distinct from Mr. Salomon and family, hence he was entitled to recover his debt on a priority basis as against the other creditors of the company. This method of distinguishing the person from the company and treating the company as a distinct person, gave fillip to the concept of company as a person helping it to venture into the commercial world and to freely carry on trade and business on behalf of the shareholders. Even the creditors now could look to the company as a unit and deal with it irrespective of the composition of the shareholders. This separation of power of ownership from the corporate property and that of the shareholders, became a magic wand for plunging the company into great business ventures the world over.

Given this much of power and ability to operate in this competitive world, it is possible that this 'personality' of a company may be misused to the detriment of the shareholders and the society. To overcome this, the courts have evolved the doctrine of 'lifting the veil'. This is to go behind the facade of the legal personality and understand the reality of persons actually operating and know their intentions for starting the company. An interesting example in this regard is *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.*<sup>28</sup>. This company was incorporated in England. During the First World War, i.e. 1914-18, the question arose as to whether this company could be treated as 'enemy company'. The House of Lords held that it was an enemy company as all its directors

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27. (1897) A.C. 22.

28. (1916) A.C 307.