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COMPANY AS AN ARTIFICIAL PERSON- A STUDY OF OPPORTUNITIES AND OBSTACLES FACED

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ABSTRACT

The concept of a company being recognized as an artificial person has gained significant attention in legal and business spheres. This article aims to explore the opportunities and obstacles faced by companies operating as artificial persons. The study investigates the advantages of considering a company as an artificial person, focusing on its ability to enter into contracts, sue and be sued, own property, and enjoy legal protections. By analysing relevant legal frameworks and case studies, this article demonstrates how granting artificial personhood to companies expands their capacity to operate and interact in a complex business environment.

However, the article also highlights the challenges and obstacles associated with this recognition. It examines the ethical concerns arising from granting artificial personhood to corporations, including questions related to accountability, responsibility, and the potential for exploitation. Additionally, the study explores the potential for legal complexities in determining the boundaries of artificial personhood and its implications for corporate governance. Through a comprehensive analysis of the opportunities and obstacles faced by companies as artificial persons, this article contributes to the ongoing discourse surrounding corporate personhood and its implications for legal and business practices.

Keywords: Company, Artificial Person, Opportunities, Obstacles, Corporate Etc.

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INTRODUCTION

The notion of a company can be comprehended as a deliberate, consensual, and legally enforceable arrangement among individuals who have united to accomplish a shared goal of generating commercial gain, among other aims. The primary objective of establishing a company is to engage in commercial activities with the intention of generating profits.

According to Lord Justice Lindley's definition, "a company is a collective of multiple individuals who contribute monetary or non-monetary assets towards a shared stock, which is then utilised in a commercial or industrial enterprise." The profits and losses that result from this venture are distributed among the members of the company. The capital of the company is represented in monetary terms through the contribution of common stock. Individuals who make contributions to it or are associated with it are considered members. The allocation of capital among members, denoting their respective entitlements, is referred to as their share. The transferability of shares is a constant, albeit subject to varying degrees of restriction. As per the assertions of Justice Marshall. According to legal theory, a corporation is a non-physical entity that is created and recognised solely by legal means, lacking a tangible presence and only existing conceptually. As a legal construct, it possesses solely those attributes that are explicitly or implicitly conferred upon it by the charter of its establishment, without exception.[1]

As per the Companies Act of 2013, Section 2(20), the term "Company" pertains to a corporation that has been established under the provisions of this Act or any preceding company legislation, as defined by Indian Law.[2] The aforementioned statement implies that upon registration under the Companies Act, a business entity shall be conferred with the status of a company and shall be entitled to all the corresponding privileges and prerogatives. The act of establishing a corporation and subsequently registering it confers upon the entity an artificial status that is recognised by the legal system as a distinct legal person, possessing independent rights and liabilities. This implies that a corporation is regarded as a distinct legal entity, separate from its shareholders.[3] The enterprise is under the ownership of a minimum of one shareholder and is governed by a minimum of one director. The distinct legal personality of a company results in its perpetual succession. The viability of a company remains unaffected by the demise, incapacity, bankruptcy, or discordance of a shareholder. The termination of its existence occurs upon its winding up in accordance with the provisions of the Companies Acts. The presence or absence of shareholders has minimal

[1] Trustees of Dartmouth College v. Woodward 4 Wheat. 518 [1819].
[2] The Companies Act, 2013, § 2(20).
[3] Lee v. Lee A.C 12. 1961.

impact on the longevity of a company, which functions as a legal entity. The principle of limited liability dictates that shareholders are only responsible for the value of their shares in the event of a company's inability to fulfil its financial obligations. This implies that the personal assets of shareholders cannot be liquidated to settle outstanding business debts.

ARTIFICIAL PERSON

Salomon v. A Salomon & Co. Ltd. is widely regarded as the most significant ruling ever rendered by the English courts with respect to company law.[4] This case established the legal concept that a company is a distinct entity separate from its individual members. An essential concept to grasp when embarking on a business venture is that the enterprise possesses a distinct legal identity, particularly when structured as a Limited Liability Company. Incorporating a business as a Limited Liability Company establishes it as a distinct legal entity with independent legal personality, thereby dissociating it from its proprietors, associates, or stockholders. The company is distinct from its directors, employees, and shareholders as an independent entity. The legal maxim that a company, upon its incorporation, is typically regarded as a distinct legal entity apart from its shareholders was upheld by the House of Lords in the Salomon case. The court's action pertained to a singular entity enterprise, namely Mr. Salomon's one-person company. The prevailing concept in Salomon's case is that of the legal doctrine of corporate personality, which posits that a company is a distinct legal entity separate and independent from its shareholders and any other associated entities.[5]

When a corporation is acknowledged as an artificial entity, it acquires various subsidiary attributes such as limited liability of its shareholders, perpetual succession, distinct property, the capacity to initiate and defend legal proceedings, the ability to enter into contracts in its own name, and the possession of a common seal, among other features. The subsequent items are expounded upon comprehensively.

The concept of limited liability refers to the legal protection afforded to shareholders or owners of a company, whereby their personal assets are shielded from the company's debts or legal liabilities Within a corporate entity, the extent of shareholder liability is limited to the outstanding balance of their respective shareholdings. The aforementioned characteristic of the corporation serves to restrict the accountability of the shareholder, thereby preventing the confiscation of the shareholder's individual assets in the event of liquidation or loan reimbursement. This provision

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[4] *Salomon v. A Salomon & Co. Ltd.* (1897)
[5] Union Bank of India v. Khader International Construction & Ors 2001 42 CL 296 SC.

ensures the protection of shareholder property by granting them legal immunity against any potential takeover attempts.

The concept of perpetual succession is applicable to companies, which, being artificial entities, continue to exist after their incorporation and can only be dissolved through the process of liquidation. The continuity of a firm is not contingent upon the presence or absence of its board members, shareholders, or debenture holders, as these individuals may change over time. Rather, the firm itself will persist regardless of changes in its ownership or leadership.

The concept of separate property entails that the company, as an autonomous entity, possesses the legal authority to acquire, retain, and dispose of its assets. The proprietary rights of the company extend to its assets. It is not permissible for a member to assert ownership over the assets of the company while the company is still in operation. The corporate entity has the ability to procure commodities and amenities under its own appellation and conduct business under its own appellation.

The legal implications of conducting business under the company's name may involve the capacity to sue and be sued. The company, as an independent legal entity, possesses the capacity to initiate legal proceedings against the party it seeks to litigate under its own name. Simultaneously, the corporation bears no responsibility for any acts of contempt perpetrated by its executives. According to legal perspective, the individuals comprising the organisation and the organisation itself are regarded as distinct entities. Any legal actions against the company must be pursued under its own name.

The capacity to enter into contracts autonomously and conduct business operations in its own name is a fundamental attribute of a company. It is not within the purview of a shareholder to enforce a contract that has been entered into by their company. Additionally, a shareholder cannot be considered a party to the contract and consequently cannot derive any advantages from it. A corporate entity engages in a contractual agreement under its own identity for the purpose of conducting its internal operations.

The common seal of a company serves as its official signature. As an autonomous organisation, the company necessitates its distinct signature to validate all of its transactions. The affixation of a common seal on company documents serves a dual purpose of signifying the significance of the document to the company and establishing the corporate identity as the party involved in the transaction, rather than any individual member.

Despite the fact that a corporation is a legal entity, it does not possess citizenship status in the nation where it has been incorporated. Nonetheless, a corporation possesses a distinct nationality and is domiciled and resides in a particular jurisdiction. The registered location of a company, commonly referred to as its domicile, remains constant throughout its lifespan. As per the Constitution of India, a company is entitled to certain fundamental rights, including the right to protection of the person. Specifically, Article 14 grants a company the Right to Equality.[6]

MODERN OPPORTUNITIES OF BEING AN ARTIFICIAL PERSON

A corporation is a legal entity created by law and is considered a juridical person. As an entity created by law, a corporation is endowed with numerous legal entitlements and privileges, as well as corresponding obligations and regulatory compliance requirements. The legal concept of an artificial person pertains to the recognition of an organisation as a distinct entity with its own set of rights, obligations, and operations. As per legal doctrine, a corporation is a legal construct and therefore classified as a fictitious legal entity. As a product of legal establishment, the company is endowed solely with the authorities granted to it through its Memorandum of Association, which serves as the company's governing document. The entity in question possesses the ability to perform any action that an individual would be capable of undertaking, subject to the constraints outlined in its charter.

The primary characteristic of a corporation, which serves as the basis for all other characteristics, is its distinct legal personality that is independent of its members. Consequently, the entity possesses the capacity to partake in entitlements and obligations that differ from those currently being enjoyed or borne by its constituents. As an artificial entity, the company is fundamentally distinct from the individuals comprising it. The case of Rajendra Nath Dutta v. Shibendra Nath Mukherjee established that in the event that a company asserts that an injustice has been perpetrated against it, legal action to address the matter must be initiated by the company under its own name. The present scenario involves the execution of a lease deed by the Directors of a company, albeit without affixing the company's seal. Subsequently, a legal action was initiated by the plaintiffs on the basis that the defendants had deceitfully included specific provisions in the lease agreement. The court ruled that the Directors lack the competence to initiate legal proceedings unless they are acting on behalf of the company.

[6] State Trading Corporation of India Ltd v. C.T.O AIR 1963 S.C. 1811.

The transferability of shares in a public limited company is unrestricted. According to established regulations, the shares, debentures, and other forms of interest held by a member in a company are deemed to be freely transferable, as they are considered movable property that can be transferred in accordance with the procedures outlined in the articles. The sole prerequisites for such transfers are those specified in the articles themselves. In the event that no limitations are imposed, a shareholder possesses the legal entitlement, as per the statute, to transfer their shares to any party without seeking consent from any other party. For a transaction to be considered legitimate, it must be a bona fide transaction, and the shareholder must not retain any interest in the transferred shares thereafter. This observation suggests that the statutes are not designed to govern the constitution of a company's membership, as such an approach would impede the members' entitlement to unrestricted transferability of their interests. The aforementioned entitlement is not exclusive to shareholders, but rather extends to debenture holders and any other individuals or entities holding a stake in the company. The principle of free transferability allows members to transfer their interest in a company at their discretion, subject to certain limitations, thereby enabling them to realise economic benefits in the form of profits from the sale of their interest. Undoubtedly, this serves as a significant motivator for individuals to join corporations and exchange their ownership for profits. The limitations pertaining to the transfer of shares are as follows:

The Board of Directors retains the authority to decline a transfer in order to safeguard the company's interests. However, such refusal must stem from a genuine intention to advance the company's welfare and not from any malicious intent.

As an entity created through artificial means, corporations tend to accumulate significant assets under their name. Given that loan providers typically conduct a thorough valuation assessment prior to granting loans, corporations are often able to secure substantial amounts of funding to facilitate their business operations. The potential for an individual to flee and subsequently create various issues for a lending institution notwithstanding, a corporate entity's transparency is facilitated by the obligatory participation of auditors, thereby rendering the valuation of the company and its assets a straightforward process. The legal status of a corporation as an artificial entity affords it the advantage of readily accessing substantial amounts of capital through loans.

The management of a company is often entrusted to a group of shareholders, whose size may be deemed impractical for effective decision-making and oversight of the company's operations. The objectives of a company are established by its shareholders, who then appoint directors as their representatives or agents to oversee the company's operations and work towards achieving these objectives.

The board of directors appoints proficient executives to manage the routine activities of the organisation while being monitored and directed by them. The notable characteristic of the division between ownership and management has prompted numerous concerns, leading to the development of corporate governance as the central aspect of contemporary corporations. In a specific instance, a corporation had been established in accordance with the Companies Act and was engaged in conducting business within one of the industries listed in the First Schedule of the Industries (Development and Regulation) Act. The company had secured loans from a public financial institution, which subsequently appointed a Director to the company's board of management. The court ruled that the aforementioned circumstance did not lead to the company being classified as a government instrumentality or agency as defined by Article 12.[7]

Entities that execute commercial operations on behalf of the government do not transform into government departments. In the event that there are no legal regulations indicating otherwise, it can be assumed that a commercial corporation operating autonomously, regardless of whether it is partially or fully controlled by a government department, is not considered to be a representative of the state. This guarantees independence in the operation of management. This facilitates the ability of companies to attract top-tier managerial talent, as management executives are guaranteed autonomy in devising and executing their managerial strategies, provided that said strategies do not contradict the established standards of the organisation.

As per the provisions of the Companies Act, the term "person" encompasses not only individuals but also other legal entities. A corporation is a legal entity that may be represented by a duly authorised individual in a court of law or any other venue. The authority to initiate legal proceedings for a company is conferred upon the Board of Directors, while an individual Director may only do so if granted explicit authorization. Nonetheless, it is not within the purview of a corporate entity to administer an oath or provide an affirmation. Therefore, it is not possible for a company to serve as a witness.

A corporate entity may act as a trustee provided that it possesses a permit as stipulated in the objects clause of the Memorandum of Association of said entity. It may also function as a fiduciary.

[7] INDIAN CONSTITUTION, Art. 12.

The corporate entity is the sole type of business organisation that has the ability to generate capital from the general populace through the issuance of shares, debentures, and other securities. Banks and financial institutions exhibit a greater propensity to extend their resources to companies, owing to the availability of the floating charge, which is a unique feature of companies. The ready accessibility of capital guarantees that the commercial activities of the enterprise are not hindered due to a lack of funds. Unincorporated associations encounter a drawback in that they are unable to procure funds from the wider public. A corporation possesses the capacity to independently determine the manner, timing, and location in which it allocates its financial resources.

OBSTACLES FACED

The Doctrine of Lifting the Corporate Veil poses a significant challenge as it empowers the court to disregard the legal entity of a company and hold its actual members accountable for any wrongdoing.

The legal principle of piercing the corporate veil entails disregarding the corporate identity of a group of individuals who have been legally incorporated as a company. A corporation is considered a legal entity, however, in actuality, it comprises a collective of individuals who hold beneficial ownership of the company's assets. As an entity created through legal means, the company in question lacks the capacity for autonomous action and is reliant upon natural persons to act on its behalf. The legal concept of piercing the corporate veil can be comprehended as the recognition of the corporate entity as being inseparable from its individual shareholders.

According to legal doctrine, the corporate entity holds the same legal status as an individual person. The act of incorporation confers upon a company the legal capacity to engage in juridical activities under its own name, including the ability to initiate legal proceedings and to be subject to legal action. Both members and directors are afforded protection from personal liability. Despite its significant impact on Company Law worldwide, including India, this fundamental principle cannot be deemed absolute and may necessitate certain exceptions wherein the court may choose to disregard the legal personality of the company. The exceptions that exist can be viewed as arbitrary rejections made by the legislative or judicial branches when it is deemed that the application of logic would blatantly contradict principles of fairness, practicality, or revenue generation. The concept of veil of incorporation does not entail absolute concealment of a company's internal affairs.

The concept of lifting the corporate veil involves the act of disregarding the legal entity of a corporation and instead examining the actual individual who holds ultimate control over the company. Put differently, in cases where the legal entity is utilised in a deceitful and unethical manner, the individuals involved will not be permitted to seek refuge behind the veil of corporate personhood. In this context, the court will pierce the corporate veil.

CONCLUSION

The Law mandates that any group of individuals seeking to be recognised as a company must undergo the registration process as prescribed. Incorporated organisations possess a multitude of advantages that are not available to partnership firms or other types of business organisations. Thus, engaging in commercial activities with an incorporated entity is the most secure approach. One notable characteristic of a company is its status as a legal entity, which confers numerous benefits and prospects for both the organisation and its constituents. Acknowledged as an entity of artificial nature, a corporation possesses the ability to engage in numerous transactions akin to those of a human being, yet is not regarded as a citizen of the nation in which it has been incorporated. A corporation's legal residence is determined by the country in which it is incorporated. The corporate structure affords various advantages to organisations, including but not limited to perpetual succession, limited liability, separate legal entity, capacity to initiate legal proceedings and be subject to them, financial autonomy, and separation of ownership and management.

The most significant challenge encountered by a corporation pertains to the lifting of the corporate veil, which exposes the members to potential targeting and harassment. The aforementioned doctrine requires meticulous and persistent adherence, as it is highly sensitive to specific circumstances.