

## Personal Identity and Law

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### Abstract

*The Constitution of India recognises the importance and protects the dignity of personal identity of its citizens most emphatically under Article 21 which is a Fundamental Right. Even the non-citizens, that is, legal persons like companies and corporations can enjoy and claim the fundamental right to equality under Article 14, and such other FRs which are not confined to the citizens only. In general, all fundamental rights address some particular aspect of one's personality and thus contribute to the personal identity of individuals. Most of the Directive Principles of State Policy oblige the State to take several measures which aim at development of an individual's personality and one of which, that is, the right to get basic education has been made a fundamental right under Article 21-A. The Constitution imposes among other things a Fundamental Duty on all of us to have and show compassion towards all living beings which term includes even the lower animals that do not have a personal identity by a fiction of law.*

*The Judiciary which had once interpreted the terms 'person' and 'personality' narrowly (in A K Gopalan v State of Madras) has subsequently explained the term 'personality' in the broadest possible way (in Maneka Gandhi v Union of India) holding that personality has infinitely many components and disturbing even one of them will adversely affect one's personality and thereby violate personal liberty. In so far as one's personal identity may be regarded as an index of one's personality in law, these judgements will go a long way in moulding the discourse on personal identity in law.*

*This paper on 'personal identity and law' aims to look at the meanings of the key words viz. the 'person', the 'personality', and the 'personal identity' as they appear to a lawman. It also attempts to see how law interacts with personal identity in various fields of human action.*

## 1. Person

In the world of grammar, one finds three persons, namely, the first, second and third. In the world of law, we meet two types of person: the natural and the legal. The natural person is born out of nature lives with nature and finally becomes one with nature. The natural person, one can say, is the creation of nature; and the birth and death of natural person depends on the will of the nature i.e. the will of the Almighty. Contrary to it, a legal person owes its origin to law and is an off spring of law. The birth and death of a legal person depends on the will of the law i.e. the will of the sovereign.

The fundamental goal of law is to promote the human welfare by protecting human interests. The word 'person' is also defined with the same goal in sight. For the furtherance of human interests sometimes what is regarded as a person in the ordinary sense may not be person in the eyes of law, and vice versa.

Sometimes, it may be nothing but puzzling to find that a thing is a person whereas a human being is not. When a human being is called a person in law he or she is better referred to as a natural person; probably to mark a distinction from what is termed as a legal person.

A person in the world of law is any being who is capable of having rights and duties. Any being which is so capable is a person even though he may not be a human being, says Salmond, adding further that no being who is not so capable is a person even though he may be a human being.

"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. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical

significance, and this is the exclusive point of view from which personality receives legal recognition."<sup>1</sup>

A legal person, thus, is anything other than a natural person which gets personality by a rule of law. For this reason a legal person is described variously as an artificial person<sup>2</sup>, or a fictitious person; or a juristic person; or a juridical person; or a legal person; or a moral person. Sometimes, it is also termed as *persona ficta* or the 'false mask'.

"But units other than individual men can be thought of as capable of acts, or of rights and liabilities: such are Corporations..... Accordingly the way is clear to apply the name of person to these also. The mediaeval lawyers did so, but as they regarded Corporations as endowed with personality by a sort of creative act of the State... they called these things *Personae Fictae*, an expression not used by the Romans."<sup>3</sup>

Therefore a person in the eyes of law is but a blend of rights and duties, and nothing else. Rights and duties are the attributes of his personality. As mentioned above, a person in law may be either a natural person or else a legal person. This latter term is used for anything which is not a person naturally but by a fiction of law only.

Thus a legal person is something that is treated as if it were a person. In other words, a legal person is a result of personification of a thing termed *corpus*. Depending on whether the corpus, that is, the thing to be personified is a group of natural persons with a distinct name, or the name of an institution as such, or some estate or fund, we get the three classes of legal person viz. the first class, the second class and the third class.

### ***Classes and Kinds of Legal Person***

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<sup>1</sup> John Salmond, *Jurisprudence* 318 (Glanville L Williams ed., 10th ed. 1947).

<sup>2</sup> See, Black's Law Dictionary, Ninth Edition: (17c) An entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being.

<sup>3</sup> WW. Buckland, *Elementary Principles of the Roman Private Law* 16 (1912), as referred in the Black's Law Dictionary, op.cit.

A legal person is the result of personification. Sometimes a group of human beings is personified which is distinct from all these human beings. Here the corpus or the body which is personified is obviously an aggregate of natural persons who are called the members. Corporations and registered companies fall in this category. They form **the first class of legal persons**.

Sometimes, the law may personify an institution as such e.g. a Church, a University, a Hospital, etc. They form **the second class of legal persons**. One of the most familiar forms of the legal persons of the second class was called as *universitatis* under the Roman law. This is probably the root word of the English word University which was considered as the most familiar form of a legal person. A University is a Corporation even today in the sense that it is a legal person.

The **third class of legal persons** come in to existence as a result of personification of some estate or fund. They are more commonly known as trusts. A trust is always created for the benefit of someone who is called beneficiary whereas those who are duty bound to administer the trust for the benefit of the beneficiary are called the trustees.

In order to protect jural relations, sometimes, the official capacity of a human being is personified in perpetuity. This means that the fictitious person remains even after the person of flesh and blood is no more. As Salmond has famously said, “the living official comes and goes, but this offspring of law remains the same forever”.<sup>4</sup> This personification of a series of individual results into that kind of legal persons we call corporation sole. The British Crown is the most spectacular example of this type.

Contrary to it, when an aggregate of individuals is personified, one gets the second kind of legal person namely the corporation aggregate. All the corporations and registered companies fall in this category.

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<sup>4</sup> See, *Salmond on Jurisprudence*, p.311.

Not to be confused, it must be noted that these are various ways in which one may look at a legal person. A legal person, of whatever class or kind, is always a creation of law by personification.

### *Theories of Legal Personality*

Idem meaning the same is the root word of identity; and *idem sonans* are the words with the same sound. The words considered here are personalty and personality. The word personalty means personal property in contradistinction to real property.<sup>5</sup>The other word personality symbolizes one's legal status as a person.<sup>6</sup>

"Legal personality ... refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities."<sup>7</sup>

A legal person has always been the subject of much debate among lawmen and thus explains the presence of a variety of arguments justifying its existence. As such we have fiction theory, purpose theory, concession theory, realist theory, organic theory, symbolist or bracket theory and enterprise theory; besides the theories by Kelsen and Hohfeld,

Long back in 1243, Pope John IV had used the term *persona ficta*, which is said to have been for the first time when personality other than the natural one was talked about. Salmond has termed a legal person as an offspring of law. The **fiction theory** is supported by Salmond and Savigny.

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<sup>5</sup> See, Black's Law Dictionary, op. cit. **personalty** (pars-;m-dl-tee). (I6c) Personal property as distinguished from real property. See *personal property* (1) under PROPERTY. [Cases: Property C::>4.]*quasi-personalty*. Things that are considered movable by the law, though fixed to real property either actually (as with a fixture) or fictitiously (as with a lease for years).

<sup>6</sup> See, *ibid.* **personality**. (1870) 1. The legal status of one regarded by the law as a person; or, the legal conception by which the law regards a human being or an artificial entity as a person. Also termed *legal personality*. Also see, **personality theory**. *Intellectual property*. A rationalization of intellectual-property laws, esp. copyright, drawing on the philosophy of G.W.F. Hegel, holding that personal expression is a form of self-actualization that gives the creator inalienable moral rights in the creations. • As a way of analyzing intellectual-property rights, personality theory takes the point of view of the individual inventor, author, or artist rather than that of society as a whole.

<sup>7</sup> See, George White Cross Paton, *A Textbook of Jurisprudence* 393 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

The **purpose theory** is due to Brinz and Barker who feel that a legal person is a 'subject-less property' which for certain purposes is treated as though it were a person. **Concession theory** supporters say that like rights and duties, the personality also is conceded by law. According to **Bracket/Symbolist theory**, which is supported by Jhering, legal personality is a symbol or bracket put around a group of persons so that it may be treated as one unit.

**Enterprise theory** argues that an enterprise is at the core of a legal personality. The corporate entity is based on the reality of the underlying enterprise. Advocates of the **Realist theory** argue that behind the cloak of legal personality it is the real persons who are at work; therefore, legal persons have a real existence. Likewise, the proponents of the organic theory convince us that a legal person has an organic nature and it takes birth, grows and decays like the real persons.

**Kelsen's theory** says that totality of claims and duties is what we call person in law. Man's conduct is judged by a set of rules; but when he becomes a part of a legal personality his acts as a member of this personality are judged by another set of rules. Likewise **Hohfeld** states that a legal person is a creature of arbitrary rules of procedure. It is a mechanism to deal with a mass of jural relations while leaving the minor details for a later time.

## 2. Personal Identity and Law

The term identity has its root in the Late Latin term *identitatem* or *identitās*, which is equivalent to Latin *ident* ( *idem* ) meaning the 'same' suffixed by *itās* -ity; and thus identity is in a layman's language the 'sameness'. The phrases like *idem et idem* (again and again), or *idem per idem* (same for the same) suggest that identity has much to do with being or remaining the same with a change in space and time. *Idem per idem* as a phrase is often used for an illustration that adds nothing to a matter under consideration.

Before coming to personal identity let me have the liberty to add one more phrase of this class, namely, *idem sonans* (I-dem soh-nanz) which is used to describe, words or names

sounding the same, regardless of spelling e.g. the names *Gene* and *Jean* are *idem sonans*. Literally, *idem sonans* means ‘the same sound’.

This idea of ‘sameness’ lies at the core of the meanings the word “identity” may acquire e.g. whether it is Mathematics<sup>8</sup> or Philosophy<sup>9</sup> or Medical Science<sup>10</sup> or the Law to name just a few, this sense of sameness is always present. This is why we frequently use the phrases like **numerical identity** (the property of being one and the same individual)<sup>11</sup> or **qualitative identity** (the state of being the same in nature, quality, etc)<sup>12</sup> to convey the idea of sameness according to the context.<sup>13</sup>

In the world of law, the term ‘identity’ is used to denote an association (criminal law), a specification (contract law), similar nature (the intellectual property rights) and uniqueness (the cyber law e.g. email identity is unique for one person), authenticity of a person or thing (law of

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<sup>8</sup>An equation that is valid for all values of its variables, as in  $(x - y)(x + y) = x^2 - y^2$ . Often denoted by the symbol  $\equiv$ ;

set that when operating on another member,  $x$ , produces that member  $x$ : the identity for multiplication of numbers is 1 since  $x \cdot 1 = 1 \cdot x = x$ .

**identity element** a member of a

<sup>9</sup>In logic, it stands for a relation that holds only between any entity and itself. It also stands for an assertion that that relation holds, as *Cicero is Tully*.

<sup>10</sup> See, the American Heritage® Stedman's Medical Dictionary Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published by Houghton Mifflin Company. In medical science, the word ‘identity’ means ‘the set of behavioral or personal characteristics by which an individual is recognizable as a member of a group’; or ‘the distinct personality of an individual regarded as a persisting entity’; or, ‘individuality’.

<sup>11</sup> See, Collins English Dictionary - Complete & Unabridged 10th Edition 2009 © William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins Publishers 1998, 2000, 2003, 2005, 2006, 2007, and 2009.

**Numerical identity** means the property of being one and the same individual: *his loss of memory did not affect his identity*.

<sup>12</sup> See *ibid*, **Qualitative identity** is the state of being the same in nature, quality, etc: *they were linked by the identity of their tastes*; or the state of being the same as a person or thing described or claimed: *the identity of the stolen goods has not yet been established* ; identification of oneself as : *moving to London destroyed his Welsh identity*.

<sup>13</sup> See, <http://www.dictionary.reference.com>. Identity has the following meanings:

1. The state or fact of remaining the same one or ones, as undervarying aspects or conditions: *The identity of the fingerprints on the gun with those on file provided evidence that he was the killer*.
2. the condition of being oneself or itself, and not another: *He doubted his own identity*.
3. condition or character as to who a person or what a thing is: *a case of mistaken identity*.
4. the state or fact of being the same one as described.
5. the sense of self, providing sameness and continuity in personality over time and sometimes disturbed in mental illnesses, as schizophrenia.

evidence) and a close relation between parties (in the civil procedure code, parties have an identity of interest if they are so close that suing one amounts to suing the other).<sup>14</sup>

Moving further, the verb 'to identify' in criminal law means to establish the identity. Most familiar is the example when the police use a collection of pictures to create a composite image of a suspect, which is based on the eye witness accounts. This manufactured or structured identity, which is the resultant image of the accused, is referred to as a photo-fit.<sup>15</sup>

The definition of personal identity either as 'the distinct personality of an individual regarded as a persisting entity'<sup>16</sup>; or, as the 'persistent and continuous unity of the individual person normally attested by continuity of memory with present consciousness'<sup>17</sup> is not very useful to a lawman as the appreciation of these definitions warrants a sound knowledge of disciplines other than law, e.g. philosophy, psychology, etc.

For the purpose of a lawyer, personal identity roughly may be taken to mean a collection of attributes with the help of which a person is recognized as such by law. The sum total of rights and duties that one enjoys as a person, in various walks of life, is what constitutes one's personality in law. **Personal Identity, therefore, is one's unique personality under the law.** Thus it would appear that one's status as a person and one's personality are not possible unless

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<sup>14</sup> **Identity.** (16c) 1. The identical nature of two or more things; esp., in patent law, the sameness in two devices of the function performed, the way it is performed, and the result achieved. • Under the doctrine of equivalents, infringement may be found even if the accused device is not identical to the claimed invention.

2. *Evidence.* The authenticity of a person or thing. [Cases: Criminal Law 339.5; Evidence C=102.]

**Identity of interests.** (18c) *Civil procedure.* A relationship between two parties who are so close that suing one serves as notice to the other, so that the other may be joined in the suit. Fed. R. Civ. P. 15(c)(1)(c). [Cases: Limitation of Actions C=> 127.]

**Identity of parties.** (1803) *Civil procedure.* A relationship between two parties who are so close that a judgment against one prevents later action against the other because of res judicata.

1. **identity:** the distinct personality of an individual regarded as a persisting entity; "you can lose your identity when you join the army": [http://wordnetweb.princeton.edu/perl/webwn?s=personal identity](http://wordnetweb.princeton.edu/perl/webwn?s=personal%20identity)

<sup>15</sup> **identify, vb.** (18c) L To prove the identity of (a person or thing) <the witness identified the weapon>. 2. To look upon as being associated (with) <the plaintiff was identified with the environmental movement>. 3. To specify (certain goods) as the object of a contract.

A collection of pictures of facial features, used by police to create a composite image of a suspect from witnesses' descriptions. • In Great Britain, the resulting image is called a *photo-fit*.

<sup>16</sup>See, <http://www.free-dictionary.com>.

<sup>17</sup>See, <http://www.dictionary.reference.com>.

with the blessings of law; and so is one's personal identity. This fact is best described by Ronald Dworkin, a great scholar of the preceding century, when he says: "we live in, and by, the law."<sup>18</sup>

A person's civil and criminal liabilities are determined in the light of the legal rights and duties of the person as fixed by law. When the person is a natural one, his or her identity is first examined in order to prove that he or she has committed the breach of law. In case of legal persons or corporations, sometimes the liability is fixed according to the provisions of law while at other times the corporate veil is pierced to identify the natural person who is to be held liable for the omission or the commission in question.

### ***Impersonation and other offences under IPC***

Offences are committed by persons, either natural or legal; and up to that extent every offence defined under the Indian penal code ultimately relates to the identity of a person. However, there are some offences which may be said to deal with personal identity of natural persons or human beings in various ways. Out of the long list of such offences, a few must be referred to.

While police tries hard and has to grope in the dark most of the times to establish the personal identity of the criminals, at the other end that is the victim, there is a prohibition on disclosure of the identity; and barring the situations excepted therein, such a disclosure of victim's name is an offence punishable with up to two years with or without fine.<sup>19</sup>

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<sup>18</sup> See, preface to Dworkin's book, *The Law's Empire*.

<sup>19</sup> **228A. Disclosure of identity of the victim of certain offences, etc.--**(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or (b) by, or with the

Such use of someone else's personality in one's own interest to the detriment of others is called personation or impersonation in law.<sup>20</sup> Personation is punishable offence. IPC provides punishment for one who personates himself as a juror or assessor<sup>21</sup> or one who cheats someone through personation.<sup>22</sup> A person commits the offence of impersonation and commits several other offences thereby, namely, cheating, fraud, misappropriation, etc. To escape punishment, the accused often tries to ensure that the evidences produced by the prosecution should lead to establish the identity of some person other than the accused or, at least, not to establish his or her identity even as the prosecution endeavours to prove its point.

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authorisation in writing of, the victim; or (c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim:

Provided that no such authorisation shall be given by the next- of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

....  
<sup>20</sup> See, Black's Law Dictionary, Ninth Edition: **impersonation**. (18c) The act of impersonating someone. Also termed *personation*, *false impersonation*. (1878) The crime of falsely representing oneself as another person, usually a law-enforcement officer, for the purpose of deceiving someone.

<sup>21</sup> **229. Personation of a juror or assessor.**--Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>22</sup> **416. Cheating by personation.**--A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is. *Explanation.*--The offence is committed whether the individual personated is a real or imaginary person. *Illustrations:* (a) A cheats, by pretending to be a certain rich banker of the same name. A cheats by personation. (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation. **419. Punishment for cheating by personation.** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. **415. Cheating.**--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

*Explanation.*--A dishonest concealment of facts is a deception within the meaning of this section. Illustrations:

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

Other related sections are s. 417 (punishment for cheating up to one year, with or without fine); s. 418(cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect); and s. 420 (cheating and dishonestly inducing delivery of property punishable by up to seven years imprisonment, with or without fine.)

At other times, a human being in utter disregard of his or her personal identity is treated as a thing to be bought, exchanged or sold like material things. This disregard of personal identity may present itself in various ways; but in particular two such ways are referred to in IPC as punishable offences. Thus import, export, sale, purchase, etc of human beings as slaves; or habitual dealing in slaves are punishable offences.<sup>23</sup>

It was observed by the apex court in Maneka Gandhi case, there is an infinity of factors which go into making of one's personality and even when one of such factors is disturbed it affects one's personality adversely and thus violates the right to personal liberty. The defamation of a person, which means harming the reputation, is something that has a tendency to adversely affect one's personal identity e.g. having been defamed, an erstwhile saint may no longer be identified as a saintly figure, etc. Such an act which leads to defamation is a wrong-civilly and criminally both; and so far as the latter type is concerned the same has been dealt with under sections 499-502, IPC.<sup>24</sup>

### ***Character Merchandising and IPR***

In the area of intellectual property rights, anything that is novel, has an inventive step in it and is capable of industrial application is protectable for the owner of the thing against the rest of the world. Certain features integral to the identity of a person (either real or fictional),

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<sup>23</sup> **370. Buying or disposing of any person as a slave.**--Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**371. Habitual dealing in slaves.**--Whoever habitually imports, exports, removes, buys, sells traffics or deals in slaves, shall be punished with [imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

<sup>24</sup> **499. Defamation.**--Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. It is followed by ten exceptions. Other sections are s.500 (punishment for defamation – up to 2 years with or without fine); s.501 (printing or engraving matter known to be defamatory- up to 2 years with or without fine); and s. 502 (sale of printed or engraved substance containing defamatory matter- up to 2 years with or without fine)..

sometimes, are found to have immense commercial potential. This more than often lures others to exploit those traits of the natural person or fictional character and, may jeopardise the chances of exploitation of the same by the real owners of the natural person or the fictional person concerned. Such commercial exploitation of the integral components of one's personality is termed as **character merchandising**.

### *Identity Theft in Cyber Space*

In the cyber space a person is identified with the help of data or a set of information. Accordingly, the Identity theft may be defined as the unlawful taking and use of another person's identifying information for fraudulent purposes.

Cyber World, a virtual world which has immensely affected human acts in the real world, is not untouched with the offences related to identity. The wrongful acquisition and use of fake identities in the cyber world by the vested interests result into grave cyber crimes viz. cyber squatting, identity theft, cyber stalking, etc.

First, it gives a person whether natural or legal an identity through allotments of domain names. When someone else's domain name is used by others so as to create a make believe situation or to deceive the persons at the other end, it is an unfair competition under the meaning of Paris Convention and now TRIPS. There is uniform domain name dispute resolution system. On the other hand, when someone quite illegally tries to get a domain name registered in his name associated exclusively with the identity of another person like a trade mark, etc with the sole aim to strike a deal with the other person, it gives rise to a cyber offence called **cyber squatting**.

Secondly it also allows natural as well as legal persons to get an identity known as email identity or simply email. On the Internet anyone can get such an identity in more than one ways. Not only this, one can easily get an identity in the name of others in an unauthorised manner and

use it to the detriment of the person concerned; or can create a fake identity and use it to commit several offences in the cyber world, the most familiar among these being **cyber stalking**.

It is now a common knowledge that several online business deals are struck where one party succeeds in defrauding the other since it had identified itself with a domain name which was fake. Also not very uncommon are the instances where the extremists or anti social elements create an email identity to circulate something mischievous or porn in the cyber world, and the message spreads like proverbial wild fire; but before the security and intelligence agencies are put on alert, the mischief mongers very cleverly close that account so that it becomes difficult to trace them. Most of the terrorist outfits send emails to the news papers and news channels to claim that they had perpetrated the crimes; but are not nabbed since their email identities are found to be fake and often have become nonexistent by then.

### ***Fake Personal Identities and Democracy***

Most interesting feature of personal identities in the cyber world are now a days playing great roles in moulding the opinion of the masses. However, people are creating fake identities and operating the same to take part in various opinion polls. Such identities are being created either in the name of living persons (like that of A B Bajpayi) or persons dead and gone long since (like Subhash Chandra Bose) or by any other name in which case it is only a fake personal identity and any similarity with the name of some living person is only a coincidence which cannot be taken to represent that other person's opinion even if it is akin to the opinion of that other person.

Be that as it may, the fact can hardly be denied that with the help of a few computer savvy individuals, the political parties or media houses, thanks to such fake personal identities, succeed in giving desired signals to the masses. Before the true picture is known, if it is known at all, much damage has been done.

### ***The Latest on the Personal Identity***

In this age of information technology, newer ways of commission of crimes are being invented and tested by the anti-social elements, the extremists, the political opponents or the business rivals, to name just a few, multiplying the job of agencies responsible for maintaining law and order. The problem is global in nature, thanks to the dissemination of IT which has transformed the world into a global village.

The United Kingdom Parliament had passed Identity Cards Act 2006 under which there was to be maintained a National Identity Register of the citizens of UK, those from any member of European Union, and others. This register was to maintain bio-data of the individuals. The measure was being criticised on the ground that it violated right to privacy. Amidst rising protests, the government on May 27, 2010 decided to destroy the Register and the personal data of individuals within 100 days. On 21 December 2010, the Parliament passed the Identity Documents Act, 2010 which has repealed the earlier Act.

The Indian Government has also introduced the idea of assigning unique identification numbers to each individual who is a citizen of India, otherwise known as Aadhaar Card. Aadhaar is a 12 digit individual identification number issued by the Unique Identification Authority of India on behalf of the Government of India. This number will serve as a proof of identity and address, anywhere in India.

That this is a measure in the direction of recognition by the state, and a proof, of one's personal identity is amply clear by the concept of Aadhaar which is thus described on the home site of the Authority:

“The UIDAI's mandate is to issue every resident a unique identification number linked to the resident's demographic and biometric information, which they can use to identify themselves anywhere in India, and to access a host of benefits and services.”

### **3. The Reasonable Man: The Cherished Identity of a Person**

The progressive societies, Sir H S Maine tells us, develop their laws by equity, fiction and legislation. The most familiar fiction of law is the legal personality itself. The other fiction which pervades the law is the common man or the man of average prudence or a man of average intelligence or, the reasonable man. R F V Heuston has this to say:

"The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man a term which implies an amalgamation of counter-balancing extremes."<sup>25</sup>

By the fiction of law, this common man or the reasonable man knows all laws and never disobeys any. Reasonable person is also used in an identical sense.<sup>26</sup> In other words whatever the reasonable man does or abstains from doing is regarded as good in law. In any given set of situations it is the conduct of the reasonable man which provides the standards to judge the legality of one's conduct and hence to determine his culpability. Thus all human actions identifiable with the actions of the reasonable man are lawful and hence innocent; and all the actions which are found to be contrary to the actions of the reasonable man are punishable. Looked in the mirror of rights and duties it is this identity of the reasonable man which provides an ideal for a person's identity. This is so because a person's identity is a symbol of his personality; and the personality in law is nothing but a beautiful blend of rights and duties.

The common man's identity is an ideal one for a person; but stepping into the shoes of the common man is next to impossible. The common man is a hypothetical being which resides in the minds of jurists and lawyers and thus it is most uncommon for a person to become a common man at least in the legal parlance. What one can do is to try to go nearest to the fiction

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<sup>25</sup> R. F.V. Heuston, *Salmond on the Law of Torts* 56 (17th ed. 1977).

<sup>26</sup> **Reasonable person:** A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests .• The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions. See Restatement (Second) of Torts § 283(b).

of the common man. Thus a person can never ever be identified as a reasonable man or common man. That is, although it would be good if a person's identity were the identity of the common man in all details, it would never happen exactly. Howsoever diligently one's personal identity may follow the common man's; the former cannot become the latter.

This common man's counterpart in the Intellectual Property Law, particularly in case of patent law, is 'the person skilled in the art'.<sup>27</sup> Such a person by fiction of law is supposed to know the fundamentals of all science and technology. Mc Cardy enlightens us:

"The term 'person skilled in the art .. .' has been interpreted to mean a person having ordinary or fair information in that particular line, not necessarily a person of high scientific attainments. The skill or knowledge to be imputed to such a person will vary with the complexity of the art to which the invention relates."<sup>28</sup>

#### 4. Conclusion/Suggestions

It is true that in the law, what we mean by personality is the state of being recognised as a person; and a person is just another name for one's capability to have rights and duties prescribed by law. It is equally true that law may confer the personality with equal ease to any subject matter other than a human being (except the lower animals who do not have a personality again through a fiction of law); and also that it may disallow the privilege of personality to a human being.

However, a few words of caution are needed by way of suggestion:

1. Although lower animals do not have a personality and as such they do not have rights and duties, it does not mean that one can do what one likes with these animals. Since the welfare of man is in one way or the other intricately related to the well being of these

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<sup>27</sup> See, Black's Law Dictionary, op. cit. **Person with ordinary skill in the art (the law of patents)**. A fictional construct of the patent laws, denoting someone who has reasonably developed abilities in the field of the invention at issue .• The patent application must be clear and complete enough to teach a person skilled in the art how to make and use the invention without undue experimentation.

<sup>28</sup> Archie R. Mc Crady, *Patent Office Practice* 61 (2d ed. 1946).

animals, law has put all the human beings under a duty to have compassion with them and cruelty to animals is a punishable offence under various acts e.g. Wild Life Protection Act, 1972; IPC, 1860; Biological Diversity Act, 2002, etc. Not only this, it is perfectly lawful to create a trust, a legal person, for welfare of a particular class of animals, rather than animals in general, namely, those animals which are on the verge of extinction.

2. The fact that some human beings such as insane persons are not considered by law as being capable of rights and duties and, therefore, do not have a personality in the legal sense of the term; it only means that if they harm someone they shall have no liability (as they do not know the nature of their acts), and not the vice versa. This means that the absence of personality in such human beings does not entitle any sane person to harm them or kill them because the latter, again by a fiction of law, knows the nature of what he is doing. To those of us who may think otherwise, there is this enlightening remark by a great author on criminal law:

In criminal law, a lunatic is a *persona* for all purposes of protection, even when not so treated for the assessment of liability."<sup>29</sup>

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<sup>29</sup> J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 102 (16th ed. 1952).