

## The Concept of Legal Personality: A Critical Study of Islamic Jurisprudential Debates and Modern Legal Developments

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### Abstract:

The concept of legal personality is central to jurisprudence, determining who or what may hold rights and bear obligations. Modern legal systems extend personhood beyond individuals to corporations, states, international organizations and increasingly, non-human entities such as the environment and artificial intelligence. This paper critically examines Islamic jurisprudential debates on legal personhood and assesses their compatibility with contemporary developments. Classical Islamic law, while not employing the term 'legal personality,' developed functionally similar mechanisms through institutions such as *waqf* (endowment), agency (*wakāla*) and trusteeship, which ensured continuity and accountability for collective entities. Jurists differed over the ontological status of such bodies but largely embraced pragmatic solutions serving public interest (*maṣlahah*). In contrast, modern law formalizes corporate personhood, regulates state and transnational actors and experiments with extending rights to natural and technological entities. This study argues that Islamic jurisprudence possesses flexible resources, anchored in *maqāṣid al-sharī'ah* (objectives of law), to engage these developments without compromising its ethical foundations. However, challenges remain regarding accountability gaps in corporations, the moral status of artificial intelligence and the theological limits of attributing rights to non-human entities. The paper concludes with proposals for doctrinal clarity, regulatory reforms and constructive engagement between Islamic law and global legal discourse.

**Keywords:** *Legal Personality, Islamic Jurisprudence, Corporate Personhood, Waqf and Agency*

### 1. Introduction:

Legal Personality is an ancient legal term, the first concept of which we find in Roman laws, while Roman laws are considered to be the oldest set of laws in human history. But

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this does not mean that the complete term of Legal Personality and all its related details were found in the Roman laws. In fact, only the initial concept of Legal Personality was found in the Roman laws, that is, some such definitions were used in the Roman collection of laws, used to refer to a collection of property or a collection of people, while the Roman legal profession was not familiar with this term. Therefore, the British legal expert *Goodby* describes the initial concept of personality as follows;

The idea of “group personality” has a long history in European law. It was first formed by the Great Roman jurists and in later Roman law was fully comprehended. The Romans spoke of the group or collective person as a *universitas personarum*<sup>3</sup> and contrasted the rights and duties of the *universitas* itself with those of the *singuli* or individuals who were members of it. Another term used by them in this connection was *corpus* or body. The members of the group taken together were said to form a *corpus*, from which term comes the modern word “corporation” employed to signify the same idea.

In the Middle Ages there existed many groups or associations of men acting together for certain purposes as one body. Such, for example, were the trade guilds and the boroughs, both of which were centres of an energetic group life. The "corporate" character of these groups was early recognized. Rights and privileges were claimed and maintained in the name of the collective whole and a clear distinction drawn between the interests of the individual guildsmen and burghers and those of the guild or the borough itself.

Following out the Roman Conception, it was inevitable that, when it became necessary to give precision to the legal standing of these and other forms of group life, personality should be directly attributed to them. They were spoken of as *personae fictae*<sup>4</sup> (fictitious persons), for although the law might choose to classify the collective body or "corporation" as a person, yet the personality did not really exist, except in a figurative sense. To mark this "legal" character of the personality of corporations they are spoken of in English as “artificial” or “juristic” persons.<sup>5</sup>

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<sup>3</sup>:Hence the English word “University” and the French word “Unersite” wich have become restricted in meaning to the higher educational institutions of the country.

<sup>4</sup>:Latin Word.

<sup>5</sup>: Frederic M, Goadby, *Introduction to the Study of Law* (London: Butterworth & Co., 11 & 12, Belly Yard, Temple Bar, Law Publishers, 1910), 238.

## 2. Legal Personality as a term:

From the above quotation of *Goodbye*, we can conclude that until now the concept of personality has been moving in an invisible way, it has not been formally given the guise of a legal term, then in the Middle Ages when the formation of various governmental and non-governmental institutions increased. Synagogues, universities, madrassas and other institutions started to come into existence in abundance, then the influence of these institutions in human life also increased, then there was a need to clarify the regular legal status of these institutions. So, *Pope Innocent IV*<sup>6</sup> is the first person who formally presented the concept of Legal Personality for the first time and clarified its details that Legal Personality is a separate and permanent personality from the physical personality, whose responsibilities and rights are completely separate and independent from the physical personality. Wikipedia contributor writes in reference to *John Dewey*;

*Innocent IV* is often credited as helping to create the idea of legal personality, *personae fictae* as it was originally written, which has led to the idea of corporate personhood.<sup>7</sup>

John Dewey Writes;

“The ‘fiction’ theory of the personality of corporate bodies or *universitates*, was promulgated if not originated, by Pope Innocent IV (1243-1254. St. Thomas Aquinas died in 1274). It is hardly a coincidence that Pope Innocent was one of the strongest upholders of the supremacy of the spiritual over the temporal power, and that he was Pope immediately after the time of greatest political power of the Papal Empire.”<sup>8</sup>

## 3. Legal Definition of Legal Personality:

From our discussion so far, it is evident that the term "Legal Personality" came into existence by the thirteenth century AD, but there was still another stage left, that is, the discussion on its various legal aspects had not yet begun. So, the initiator of this debate is

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<sup>6</sup>: Pope Innocent IV was born in Sinibaldo Fieschi on December 7, 1195 and died on December 7, 1254. He was appointed Pope of the Catholic Church from June 25, 1243 to December 7, 1254.

<sup>7</sup>.[https://en.wikipedia.org/wiki/Pope\\_Innocent\\_IV#Creation\\_of\\_the\\_concept\\_of\\_personae\\_fictae](https://en.wikipedia.org/wiki/Pope_Innocent_IV#Creation_of_the_concept_of_personae_fictae),30/10/18,11:46 AM

<sup>8</sup>: John Dewey, “The Historic Background of Corporate Legal Personality,” *Yale Law Journal*, 35, No.6 (April 1926): 655-673.

the German jurist *Savigny*<sup>9</sup>, who first discussed its legitimacy or illegitimacy and tried to find answers to various questions in this regard. So Arthur W Machen JR writes;

“*Savigny* in Germany, in the first half of the nineteenth century, began the scientific or metaphysical consideration of the subject. He observed the fact that property belongs in law to a corporation and not to any individual, and the question which he put to himself was, “Who or what is the real owner of this property?” With this question theoretical writers in Germany and elsewhere have ever since busied themselves. *Savigny*’s answer was that the corporate property belonged to a fictitious being and not to any real person or entity. He took as his starting point the proposition that ownership involves the possession of a will by the owner; and he concluded that in as much as a corporation does not really possess a will, it must as a property-owner be a fictitious person.<sup>10</sup>

Thus, *Savigny* brought the discussion of Legal Personality into a new era, and with it, a critical and affirmative discussion on the legal aspects of Legal Personality began by various researchers around the world.

Some jurists accepted the theory of *Savigny*, but there were many who, instead of accepting the theory of Legal Personality, raised objections to its various aspects and presented other theories against it, such as the French accepted, but the German jurists themselves raised various objections to it and presented other theories. At the same time, as an acute French writer has demonstrated, *Savigny* and his followers, paradoxical as it may seem, impute a certain reality to this fictitious person. For instance, they speak of it as being created by the state. *Savigny*’s doctrine, or some doctrines closely akin thereto, was generally accepted in France from his time until quite recently.<sup>11</sup>

And there is also an assumption that *Savigny*’s theory is entirely an imitation of Anglo-American legal theory:

“...and all students of the common law will recognize in this theory the most prominent features of the orthodox doctrine of Anglo-American law, even including its self-contradictions.”<sup>12</sup>

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<sup>9</sup>: Friedrich Carl von Savigny, German jurist, was born on February 21, 1779, in Frankfurt and died on October 25, 1861, in Berlin.

<sup>10</sup>: Arthur W. Machen, Jr, “Corporate Personality”, Harvard Law Review 24, No. 4, (Feb, 1911): p.255.

<sup>11</sup>. *ibid*

<sup>12</sup>. *ibid*

#### 4. *Zweckvermögen* theory:

“*Zweckvermögen*” is German legal term, it used for a property allocated for a particular purpose. As we have already mentioned that in Germany, the theory of *Savigny* was not accepted at all, but various objections were raised on it. So, in this situation, another theory was presented, which was presented by *Brinz*<sup>13</sup> and his followers, according to them corporate property is not owned by a real or imaginary person, but its ownership is attributed to a specific purpose. That is why it was called *Brinz* theory or *zweckvermögen* theory. Arthur W Machen JR writes.

In Germany, however, objections began to be raised to this theory almost as soon as it was definitely formulated. Accordingly, a school arose, led by *Brinz*, which taught that corporate property is not owned by a fictitious being created by the state but by no person at all. It is not the property of a person but a purpose “*Zweckvermögen*”<sup>14</sup>.

#### 5. Modern Age of Personality:

All this debate was presented by the well-known Pakistani jurist Imran Ahsan Khan Niazi in a very comprehensive manner, the summary of which is as follows;

The history of the modern concept of the company spans the last five centuries, probably originating in Italy, while in Britain it was conceived in the sixteenth century. The East India Company and Hudson's Bay were considered the most famous companies of the time. It came into existence in 1670. At that time, the word joint stock company was used for them, as the word joint stock was used for the original capital of any company. In those days, it was very difficult to form such companies, as it required legislation from Parliament or a royal decree. Due to this difficulty, many companies came into existence at that time without such approval, even their shares started trading. But due to this, some unpleasant situations were also created, for example, such companies would come into existence that would exist today and not tomorrow.

This situation forced the state to intervene in the matter, and the Bubble Act was passed in 1720 during the reign of George I to deal with such companies. But the vague and implied wording of this law had negative effects on real companies as well. In 1825,

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<sup>13</sup>: Alois (Aloys) Ritter von Brinz was a German politician and jurist, born in Weiler im Allgäu February 25, 1820 and died in September 13, 1887 at Munich.

<sup>14</sup>: Arthur W. Machen, Jr, “Corporate Personality”, Harvard Law Review 24, No. 4, (February, 1911): 253-267, 256.

a new law was passed which for the first time justified the transfer of shares of companies from one person to another. After that, another law came in 1826 which gave the company the right to be a plaintiff or defendant in the court in its own name. In the same year, another law was passed under which companies could be established in all other sectors, except for banking-related companies, simply by registering with the Companies Registrar's Office. The law of 1862 also maintained this permission. From 1862 to 1907, various amendments and many laws were passed regarding the registration of private companies. Then, in The Companies Consolidation Act of 1908, all the laws that have come so far were collected in one law and until 1967, the law in this regard was Amendments continued.

## **6. The Concept of Personality in the Indian Subcontinent:**

In India, the company law was introduced for the first time in 1850, which was later amended in 1857, 1866 and 1887 until the 1913 law came into force, which was based on the British law of 1908. In 1946, in the light of the change in the British laws, the company laws of India were also changed. In Pakistan, *the Commission for Company Law Reform, 1961*, made some recommendations in its report, but they could not be implemented. Some changes were made in 1972, most of which were related to administrative matters, which were later repeated. *The Companies Ordinance of 1984* reviewed all laws and made relevant changes to Islamic laws and established *mudārabah* companies.<sup>15</sup>

## **7. The Concept of Legal Personality in Islamic Jurisprudence:**

It is certain that the concept and term of Legal Personality is not found in the ancient sources of Islamic jurisprudence, Therefore, Dr. Ī'sa Abdah writes in the paper titled (العقود الشرعية الحاكمة للمعاملات المالية المعاصرة) *Al-Uqūd al-Shar'iah al-Hākimah lil-mu'āmalāt-il-Māliyyah Al-Mu'āširah*, presented in the Conference of *Fiqh al-Islami, Riyādh, Sa'udi Arābiah*, held on *Dhul-Qa'da* 1396 AH, in November 1976;

من المتفق عليه ان الشخصية الاعتبارية لم تجد سندا من التراث الاسلامي<sup>16</sup>

“It is agreed that the abstract personality did not find support from the Islamic heritage.”

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<sup>15</sup>:Nyazee, Imran Ahsan Kahn, *Corporations in Islam*, p:100, The Federal Law House Mian Plaza Chandni Chowk Rawalpindi, 2007.

<sup>16</sup>. Abduh, Īsā, Dāktar, *al-'Uqūd al-Shar'iyah al-Hākimah lil-Mu'āmalāt al-Māliyah al-Mu'āširah*, Ş: 25, Dār al-I'tišām, 8 Shāri' Husayn Hījāzī, Qāhirah, Ṭab'ah Ūlā, 1397 H / 1977 M.

But when we try to find the answer to the question, why are ancient jurisprudential sources silent about Legal Personality? We find there are two opinions about this. There is a general opinion that the Legal Personality is a modern concept, and when it did not exist in ancient times, it is clear that the sources of that time are silent about it.

While the second opinion is that since the concept of Legal Personality is contrary to the basic principles of Islamic jurisprudence, we do not find discussions about it in ancient sources.

The first-mentioned party says to strengthen his opinion that although the term of Legal Personality is not found in Islamic jurisprudence, but its basic concepts are certainly found under other names, and the details of the orders of the State, *Bait Al-Māl*, *Waqf*, Mosque and Partnerships are clear examples of this, لان العبرة بالمعاني لا بالالفاظ, Lāna al-‘ibratu bil-ma‘ānī lā bil-alfāz. Interpreting the second mentioned opinion, Imran Ahsan Khan Niazi writes;

The modern business corporation, like any other corporation, is based upon the concept of legal personality. Islamic Law, as developed by the jurists, did not acknowledge corporate personality. This does not necessarily mean that Muslim jurists were not aware of the concept. There is a clear distinction between not knowing about something and not accepting it consciously as a valid concept. One thesis of this study is that the Muslim Jurists, while fully aware of the concept of fictitious legal personality, intentionally denied it legal validity for the part of the law they were dealing with.<sup>17</sup>

Along with this, another reason for the non-existence of Legal Personality discussions in the ancient Islamic Jurisprudential sources is that since the addressee of all the orders of Islamic Jurisprudence is a real person, because all the attributes such as ability, responsibility and obliging are found only in a real person. So, a fictitious person was not discussed. In the opinion of Imran Ahsan Niazi, the jurist who first talked about the legitimacy of legal personality in Islamic jurisprudence is Sir Abdul Rahim<sup>18</sup>;

“The first modern writer, as far as we know, who spoke about the legality of a juristic person in Islamic Law, was Abdur Rahim.”<sup>19</sup>

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<sup>17</sup>:Nyazee, Corporations in Islam, p:13

<sup>18</sup>:Sir Abdul Rahim, born on September 7, 1867 in a landowning family in Bengal, studied law in Calcutta and then in Britain, became a judge of the Madras High Court in 1908, and was also one of the founding leaders of the Muslim League in 1952 and died.

<sup>19</sup>:Nyazee, Corporations in Islam, p:103

He has discussed this subject in his book “The Principles of Muhammadan Jurisprudence”. He writes;

“It may be doubted whether the earlier jurists would recognize an artificial or juristic person. The state or community is regarded by them as holding and exercising the rights of God on His behalf through the Imām. Similarly the deceased is spoken of as having rights and obligations and not his estate, for the law deals both with a man’s spiritual and worldly rights and obligations and even the worldly rights and obligations of a person cannot be said to be altogether lost on his death, inasmuch as he is entitled to have his funeral expenses and his debts and other obligations discharged out of the estate. But later jurists seem inclined to recognize an artificial person, for instance, they would allow a gift to be mad directly to a mosque, while the ancient doctors would require the intervention of a trustee.:<sup>20</sup>

After Sir Abdul Rahim, the jurist who shed light on this subject in the light of Islamic jurisprudence is the famous Orientalist Joseph Schacht<sup>21</sup>, writes Imran Ahsan Niazi, referring to his book “An Introduction to Islamic Law; He stated clearly that Islamic Law does not acknowledge the concept of a juristic person. He denied that a *waqaf* had legal personality. The only thing that came close to the concept in his view, was the *aqilah*. He stated that the *aqilah* has some rudimentary features of legal personality.<sup>22</sup>

Schacht writes;

“Islamic law does not recognize juristic person; not even the public treasury (*bayt al-mal*) is construed as an institution, its owner is the Muslim community, i.e. the sum of total individual Muslims. As regards the *wakf* or *habs* (pious foundation, mortmain), it is construed as the withdrawal from circulation of the substance (*ayn*) of a property owned by the founder and the

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<sup>20</sup>:Abdur Rahim, Sir, The Principles of Muhammadan Jurisprudence According to the Hanfi, Maliki, Shafi’i And Hanbali Schools, p:218, London: LUZAC & Co. Madras: S.P.C.K. Depository, Printed at The S.P.C.K. Press, Vepery, Madras, India, 1911.

<sup>21</sup> : Joseph Schacht, born on March 15, 1902 in Poland, served as a Professor of Arabic and Islamic Jurisprudence at Columbia University, New York, is a prominent name in the West as an expert on Islamic jurisprudence, died on August 1, 1969 in New Jersey, USA.

<sup>22</sup>:Nyazee, Corporations in Islam, p:104

spending of the proceeds (*manfa'a*) for a charitable purpose; there is no unanimous doctrine on who becomes the owner of the substance.”<sup>23</sup>

The first person who was convinced that the concept of Legal Personality is existing in Islamic Jurisprudence from the beginning is Abdul Qadir Ouda<sup>24</sup>. He has expressed this position in his famous book *Al-Tashree al-Janā'i al-Islāmī*;

الشخصيات المعنوية: وقد عرفت الشريعة الإسلامية من يوم وجودها الشخصيات المعنوية فاعتبر الفقهاء بيت المال جهة، والوقف جهة أي: شخصا معنويا كذا لك أعتبرت المدارس والملاجئ، والمستشفيات وغيرها، وجعلت هذه الجهات أو الشخصيات المعنوية أهلا لتملك الحقوق والتصرف فيها، ولكنها لم تجعلها أهلا للمسئولية الجنائية؛ لأن المسئولية تبني على الإدراك والإختيار، وكلاهما منعدم دون شك في هذه الشخصيات.<sup>25</sup>

“Legal personalities: legal personalities have been known in the Islamic Shari'a from the day of its existence. The jurists have recognized Treasury (*bayt al-mal*) and endowment (*Waqf*) as personality in the independent status. Likewise, they considered schools, shelters, hospitals and others as personality, and made these bodies or legal personalities qualified to own rights and dispose of them but did not make them worthy of criminal responsibility. Because this responsibility is based on perception and choice, both of which are undoubtedly lacking in these personalities.”

Then his opinion was followed by Prof. *Mustafā Al-Zarqā* in his book *Al-Madkhal ul Fiqh ul Ām (Al fiqh ul Islamī Fī Thawbihil Jadīd)*, see;

والفقه الإسلامي قد أفر فكرة الشخصية المعنوية، ورتب على إعتبره أحكاما، كما سنرى، وإن لم يسمها بهذا الاسم.<sup>26</sup>

Islamic jurisprudence has approved the idea of a legal personality, and has arranged for it to be considered as legal rulings, even if it does not call it by this name.

Further advancing this position, Ahmed Ali Abdullah of Khartoum, Sudan, has discussed the topic in detail in his book “A Comparative Study of the Personal

<sup>23</sup>:Schacht, Joseph, An Inroductin to Islamic Law, p:125, Oxford University Press Inc. New York, 1982.

<sup>24</sup>: Abdul Qadir Ouda, born in 1906 in the town of Kafr al-Haj Sharbini in Egypt, was a legal expert, served as a judge and died in 1954.

<sup>25</sup>. Ūdah, ‘Abd al-Qādir, at-Tashrī‘ al-Jinā’ī al-Islāmī Muqāranan bil-Qānūn al-Waḍ‘ī, ṣafḥah 393, Dār al-Kātib al-‘Arabī, Bayrūt

<sup>26</sup>. Az-Zarqā, Muṣṭafā Aḥmad, Duktūr, al-Fiqh al-Islāmī fī Thawbihi al-Jadīd, al-Madkhal ilā Nazariyyat al-Iltizām al-‘Āmmah fī al-Fiqh al-Islāmī, ṣ. 251:3, Dār al-Qalam Dimashq, Ṭab‘ Awwal 1420 H, 1999

Personality in Islamic Jurisprudence.” (alshaqsiṭ aletibariṭ fi faqah alaslami darasṭ maqarnṭ)

After these initial investigations, the topic of "personality trust" was no longer a new topic for Islamic jurisprudence, but rather jurists and researchers from all over the world, including India and Pakistan, took up the subject and wrote brief and detailed articles and books on the subject.

**Conclusion:**

- The notion of **legal personality** is an ancient legal concept, the earliest traces of which can be found in Roman law. Even there, however, it appeared only as a vague and rudimentary idea rather than as a fully developed doctrine.
- The concept of legal personality was formally articulated for the first time by **Pope Innocent IV (1254 CE)**.
- The first systematic legal formulation of this concept was undertaken by the German jurist *Savigny*.
- The modern conception of the **corporation** emerged in Italy approximately five centuries ago.
- In the Indian Subcontinent, the law recognizing legal personality (company law) was introduced for the first time in **1850**.
- The classical tradition of Islamic jurisprudence did not recognize the concept of legal personality.
- According to **Imran Ahsan Niazi**, the absence of this notion in the early corpus of Islamic jurisprudence was not due to the jurists' unfamiliarity with it. Rather, it was because the concept was deemed inconsistent with the foundational principles of the Shari'ah, and thus deliberately excluded from their legal discussions.
- In the modern era, the first scholar to address the permissibility of legal personality within Islamic jurisprudence was **Sir Abdul Rahim**.
- Following him, **Joseph Schacht** engaged with the subject, examining the doctrine of legal personality in light of Islamic law.
- The earliest proponent of the view that the idea of legal personality was, in fact, embedded in the classical juristic tradition was **'Abdul Qadir 'Udah**.