

TOPIC: LEGAL CAPACITY:

1.INTRODUCTION

According to the Muhammadan theory every Muslim is clothed inherently with legal capacity, which is criminal law and possession of contractual capacity covered under this topic. For having legal capacity there are number of conditions that must be fulfilled before the law can operate for or against a person.

2.MEANING OF LEGAL CAPACITY:

In Arabic, legal capacity is called dhimma. It may be defined as.

“Dhimma is defined as the quality by which man become fit for what he is entitled to and what he is subject to”.

Definition: The fitness of a person for the application of law to his actions is called Legal capacity.

3.KINDS OF LEGAL CAPACITY:

It is of two kinds.

- (i) Respective legal capacity
- (ii) Active legal capacity

(I) Respective legal capacity

It means capacity for acquisition Both rights and obligations, ©. child yet to be born has also some capacity which enables him to inherit.

(II) Active legal capacity

It means capacity for the exercise of rights and the discharge of obligations’

4. TYPES OF LEGAL CAPACITY:

Muslim jurists divide legal capacity into three types

(I). Complete capacity

Complete respective capacity is found in human being after his birth which makes him eligible for the acquisition of all kinds of rights and obligations. Complete active capacity is established in human being when he or she attains full mental development and acquires the ability to discriminate.

(II) Deficient capacity

It is that where the basis of legal capacity is not fully developed e.g. unborn child, minor.

(III) Imperfect capacity

It is that where the basis of legal capacity are present such as being a human and discretion but same external attribute does not permit the recognition of the legal validity of certain acts. E. g. evidence of woman, Slaves etc.

5. CAUSES OF DEFECTIVE LEGAL CAPACITY :

The causes affecting capacity are found in those factors that prevent capacity for acquisition and capacity for execution, from taking full effect.

(I).Types of causes

The jurists divide the causes of defective capacity or that effects legal capacity into two kinds.

(a) Natural (Samawi}

(b) Acquired (Maksuba)

6. NATURAL CAUSES THAT AFFECTS LEGAL CAPACITY:

These are causes that are beyond the control of man.'

(I) Minority

It is the state or condition of a human being after birth and before puberty.

(A) Acts of minor

The position of a minor for his acts from the legal point of view is the same in Islamic law as in English law. The acts of minor may be discussed under the following heads.

(i). Financial transactions:

A minor can enter into financial transactions, through his guardian if it is for his benefit. He is also liable to any damage caused to another's property, and for the maintenance of near relatives.

(ii) Criminal liability

A minor cannot be punished for his acts which turn into offences.

(iii) Religious liability

The Ibadat are not obligatory on the minor. He is not bound to perform acts of worship.

(II) Insanity

The legal capacity of an insane person except as to acts done in lucid intervals is affected in the same way as that of an infant without discrimination. He has no liability for ibadat or punishments and all his transactions are void.

(III) Idiocy

An idiot is a person who is confused in his speech and peaks sometimes like a sensible man and some- times like a Lunatic. He can be permitted by his guardian to undertake some transactions.

(IV) Sleep

Since man has no control over seep and cannot use his senses during state of sleep, therefore he would not be legally liable,

e. g. If a man falls on a child in sleep and kills him, there is no liability for punishment.

(V) Forgetfulness

This is a state of lack of memory which is brought about by nature and is not attributable to man's acts. A man is not liable in the matters of right of Allah.

e g. eating during fast. but he is certainly liable in the matters of right of men.

e. g. if he causes injury to another person by violating a private right, his legal capacity will be considered to be intact.

(VI) Death illness

This is a condition in which the mind of a sick person is dominated by the fact that he will die because of his illness. It has no effect on the capacity for acquisition or on the capacity for execution. A person suffering from death-illness is prohibited from entering into transactions that are in excess of one-third of his wealth.

7.ACQUIRED CAUSES THAT AFFECT LEGAL CAPACITY:

These are those causes that are created by man or in which human will and choice are the basic factors.

(I) Intoxication

Intoxication temporarily suspends the proper functioning of the mental faculty. It does not affect the capacity for acquisition and a drunken person is held liable for the destruction of life and property and also for all obligations for maintenance etc. as far as his capacity for execution concerned, he is liable for all acts if he voluntarily drinks and legal capacity is negated if forced to drink.

(II) Jest

When a person uses words without intending to convey their primary or secondary meanings, he is said to speak in Jest has no effect on effect on the legal capacity.

(III) Coercion and duress

It is a situation in which one is forced to do something without his willingness. It is of two kinds.

(i) Constraining

It consists of a threat to destroy man's life or limb.

(ii) Non-Constraining

It is exercised by imprisoning confining or beating a man.

In case of non-constraining coercion a man should not choose to break the law. Coercion does not affect capacity far acquisition and a person under coercion may be held liable for committing of Zina or murder under coercion but it does affect capacity for executing and transactions that depend upon consent like sale mortgage etc. are irregular.

(IV) Ignorance of law

Generally ignorance of law is not held to be an excuse, for it is the duty of every Muslim to make himself acquainted with it.

Exception:

When there are doubts regarding a law or there are lent grounds in a particular case for an individual to hold erroneous view with respect to it, such law is not applicable to him. For instance if an infidel belonging to non-Muslim state after embracing Islam happens to come to a Muslim State after embracing Islam happens to come to a Muslim country and there drinks intoxicating liquor not Knowing that it is forbidden by the religion, he will not incur the punishment.

(V) Ignorance of facts

It is regarded as an excuse in law. For instance, a pre-emptor right will not be lost, if he failed to make a demand through ignorance of the fact that his co-owner or neighbor had sold the property subject to pre-emption.

(VI) Insolvency

If a person becomes insolvent, that it's his assets: fall short of his debts and liabilities, when a court of competent jurisdiction so declares, his legal capacity becomes defective in the eye of law.

8. CONCLUSION

To conclude, I can say, that legal capacity of a person in his fitness for the application of law to his actions. There are some circumstances which impair legal capacity in a general way by their effect on man's faculties.

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