

B.A. LL.B X SEMETER

**PUBLIC INTERNATIONAL LAW AND HUMAN
RIGHTS**

**TOPIC:-WHAT ARE THE SUBJECTS OF
INTERNATIONAL LAW**

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DATE:31-03-2020

Q. 5: - What are the subjects of international law? Discuss.

Ans: - By subjects of international law it is meant that those entities which possess international personality. In other words subjects of international law are those entities that have rights duties and obligations under international law and which have capacity to possess such right, duties and obligations by bringing international claims. In past the matter was not much debatable because according to the contemporary circumstances and scope of international law only the states were qualified for international personality, but in near past along with the increasing scope of international law many other entities have been given international personality. Now, the question arises; whether they may be treated as subjects of international law or not? And also if they were given the international personality then what shall be the criteria for ascertaining the qualification of their being the subjects of international law.

So, there are different theories as regard to the above debate. The most prominent theories may be discussed as under:

1. **Realist Theory:** - According to the followers of this theory the only subject of the international law are the Nation States. They rely that Nation States are the only entities for whose conduct the international law came into existence. The Nation States, irrespective to the individuals composing them, are distinct and separate entity capable to have rights, duties and obligations and can possess the capacity to maintain their right under international law. So, the Nation States are the ultimate subjects of International law.

2. **Fictional Theory:** - According to the supporters of this theory the only subjects of international law are the individuals. For the reason, that both the legal orders are for the conduct of human being and for their good well. And the Nation States are nothing except the aggregate of the individuals. Though the rules of international law relate expressly to the Nation States but actually the States are the fiction for the individuals composing them. Due to this reason individuals are the ultimate subjects of International law.

3. **Functional Theory:** - Both the Realist and Fictional theories adopted the extreme course of opinions. But Functional theory tends to meet both the extremist theories at a road of new approach. According this theory neither states nor individuals are the only subjects. They both are the subjects of modern international law. Because for states being primary and active subject of international law have recognized rights, duties and obligations under international law and are capable to maintain the same by bringing international claim. At the other hand in the modern international law individuals have also granted certain rights, duties and obligation under international law and maintain the same by bringing direct international claims. Even, not only states and individuals are the subjects of international law but several other entities have been granted international personality and became the subjects of the international law. This is because of the increasing scope of international law.

Conclusion: - If all the above theories are to be analyzed philosophically then it may be concluded that Functional Theory seems to be more accurate because due to modern scope of the international law and world trend. It is obvious that there are many actors in international law, which have been granted rights, duties and obligations, and also to secure their rights and have been provided with capacity to bring international claims. So along with states and individuals neither, certain other entities which have been given international personality shall be treated as subjects of international law but also all those new entities which with due course of time are going to be given international personality.