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Critical Analysis on the Fundamental Rights Availled by the Corporation/Companies

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ABSTRACT

Corporate bodies are separate legal entities capable of owning properties, entering into contracts, and suing or being sued . These corporate bodies being artificial and not natural entities, pertaining questions often arise whether the corporations are entitled to the same fundamental rights guaranteed by the Constitution or to other Convention as available to natural entities. Frequent question also arises regarding to the nature of corporate personality and the theories relating to the same. In general terms, it may be seen that certain rights are available to citizens only in case of Article 15, article 16, Article 19 etc.of the Constitution of India. Therefore, the concept of citizenship and nationality are also important aspect for understanding that why certain rights are not available to companies under the constitution of India.

This research has been divided into three parts. Firstly, the internal division among fundamental rights as guaranteed by the Constitution of India is noted as based on the concept of citizenship in India. Secondly, the judicial precedents as set by the Indian Courts in interpreting the constitution and determining that which fundamental rights are available to a company incorporated in India. Thirdly, a comparative study on status of the company in relation to the availability of fundamental rights to them is done in respect of United States and Europe. The paper therefore seeks to critically study the fundamental rights available to the companies from a case study viewpoint.

I. INTRODUCTION

In our country, the citizens are fortunate to avail the fundamental rights. The LAW OF THE LAND of our country “The Constitution of India” under article has provided several fundamental rights to all the citizens of the country. Here the term citizen is defined under article 5-11 (part II) of the constitution of India. Any person can be a citizen of India through:

- i. Citizenship at the commencement of the Constitution of India.
- ii. Citizenship by birth.
- iii. Citizenship by descent.

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- iv. Citizenship by registration.
- v. Citizenship by naturalization.

The Constitution of India vests the fundamental right to freedom of speech and expression only to the citizens, excluding the corporations or companies out of the scope of Article 19. The nine-judge bench decision in *State Trading Corporation of India Ltd. v. Commissioner*² held that a company is not a citizen and cannot enforce the rights inculcated in Article 19.

All the fundamental rights are vested upon the citizen of the country only. But the question arises is that under article 19(6) (ii)³, a company has no fundamental rights but article 19 itself talks about fundamental rights. Does this violate the meaning of fundamental rights given in the apex law of the country?

Under Article 19(1) (g)⁴ in The Constitution of India 1949, it is given that to practice any profession or to carry on any occupation, trade or business.

But the violation of these fundamental rights are itself given in Article 19(6) which states that:

Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(I) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) The carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

According to these sections and sub clause, there is a hindrance in practicing any profession, or in carrying any occupation trade or business.

II. RIGHT TO OCCUPATION UNDER ARTICLE 19 (1) (G) WITH REASONABLE RESTRICTION UNDER ARTICLE 19(6)

Article 19(1)(g) of the Constitution of India provides Right to practice any profession or to

² ILR 1974 Delhi 58, 1974 94 ITR 496 Delhi.

³ Art 19(6)(ii)- the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

⁴ Art 19(1)(g)- to practice any profession, or to carry on any occupation, trade or business

carry on any occupation, trade or business to all citizens subject to Art.19(6)⁵ which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens. Sub clause (g) of Article 19(1)⁶ confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal in eyes of the law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Art 19(1) (g) does not mean that conditions be created by the state or any statutory body to make any trade lucrative or to procure customers to the business/businessman. Moreover, a citizen whose occupation of a place is unlawful cannot claim the fundamental right to carry on business in such a place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory functions. Keeping in view of controlled and planned economy the Supreme Court in a series of cases upheld the socially controlled legislation in the light of the directive principles and the activities of the private enterprises have been restricted to a great extent. However, under Article 19(6), the state is not prevented from making a law imposing reasonable restrictions on the exercise of the fundamental rights in the interest of the general public or,

(I) A law relating to professional or technical qualifications is necessary for practicing a profession. A law laying down professional qualification will be protected under Article 19(6). No person can claim as of right to possess a certificate for the profession of acting as a guide, and the certificate once granted can be canceled without hearing the person concerned.

(ii) A law relating to the carrying on by the state, or by any corporation owned or controlled by it, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Under article 19(6) (ii) nothing contained in Sub-clause (g) of Clause (1) of Article 19 shall affect carrying on by the State any trade, business, industry or service,

⁵ Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

⁶ All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

whether to the exclusion, complete or partial of citizens or otherwise if it is not in the Corporate bodies are separate legal persons competent of owning properties, involving into contracts, and suing or being sued⁷. But these bodies being artificial and not a natural system, relevant questions often arise, whether corporations are authorized to same fundamental rights guaranteed by the Constitution or other Convention as available to natural entities. The question also arises regarding the nature of corporate personality and the theories relating to the same.

III. BUSINESS VS PROFESSION

(I) 'Business' includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation, calling an immediate task or objective; a commercial or industrial enterprise; and means practically anything which is an occupation as distinguished from pleasure. The profits of which are chargeable according to the provisions of Section 10 of Indian Income- Tax, 1922. Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or 'Business' includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if though profits of the profession consist wholly or mainly on his or her personal qualifications, unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or giving other persons the advice of a commercial nature in connection with the making of contracts, provided that where the functions of a company or of a society incorporated by or under any enactment consists wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society; provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this

(ii) The term 'profession' involves the idea of an occupation requiring either purely intellectual skill or manual skill controlled, as in painting and sculpture ,or surgery, by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale of arrangements for the production or sales of commodities. The term originally contemplated only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.

⁷ The Board Of Trustees, Ayurvedic vs The State Of Delhi And Another on 23 October, 1961

The words 'trade', 'business', 'profession' in Article 19(1)(g) has been interpreted varyingly. The word 'trade' as used in Article 19(1)(g), has been held in *The Management Of Safdarjung vs Kuldip Singh Sethi on 1 January, 1970*⁸ is of the widest scope. It includes the occupation of men in buying and selling, barter or commerce, work, especially skilled e.g. the trade of goldsmiths. It even includes persons in a line of business in which persons are employed as workmen.

The word 'business' it is said, is ordinarily more comprehensive than the word 'trade' but one is used as synonymous with others. In *Safdarjung Hospital case*⁹ again the Court said that the word 'business' to is a word of wide importance. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions, these terms have a definite economic content of a particular type and have been uniformly accepted as excluding professions and are only concerned with the production, distribution, and consumption of wealth and the production and availability of material services. In *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax*¹⁰ the Supreme Court observed that the word business connotes some real, substantial and systematic or organized center of activity or conduct with a set purpose but no general principle could be laid down which would be applicable to all cases and that each case must be decided on its own circumstances according to ordinary common sense principles as to what business is. A profession, on the other hand, has been held ordinarily as an occupation requiring intellectual skill, often coupled with manual skill.

In the case of *T.M.A. Pai Foundation vs State Of Karnataka*¹¹, it is held that Article 19(1)(g) employs four expressions viz. profession, occupation, trade, and business. Their fields may overlap, but each of them does have a content of its own. They cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19 (6). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression 'occupation'. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se,

⁸ AIR 1970 SC 1407

⁹ AIR 1970 SC 1407

¹⁰ AIR 1955 SC 176

¹¹ : (2002) 8 SCALE 1: AIR2003SC355.

will not fall under any of the four expressions in Article 19(1)(g).

‘Occupation’ would be an activity of a person undertaken as a means of livelihood or Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one’s choice. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in any particular post under a contract of employment.

In *Fertilizer Corporation v. Union of India*¹² the workmen challenged the validity of the sale of certain plants and equipment on the ground that they will be deprived of their employment and their constitutional right under Article 19(1)(g) will be violated. The court held that Article 19(1)(g) does not protect the right to work in a particular post under a contract employment as such Article 19(1)(g) can not be invoked against the loss of a job or removal from service. But this does not confer the right to do anything considered illegal in the eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Article 19(1)(g) does not mean that conditions are created by the State or any statutory body to make any trade lucrative or to procure customers to the business/businessman. Moreover Eviction of a person in unauthorized occupation or premises belonging to Municipality or Panchayat is not illegal as a citizen whose occupation at a place is unlawful cannot claim a fundamental right to carry on business in such a place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawful discharging its statutory functions.

IV. ARTICLE 19 (1) (G) IS AVAILABLE AGAINST THE STATE AND NOT AGAINST THE PRIVATE INDIVIDUALS

For a considerable period, the approach of the Judiciary had been that the rights which are given to the citizens by way of fundamental rights as included in Part III¹³ of the Constitution is the guarantee to the citizens against State. But actions, as distinguished from violation of such rights from private parties, is the private action and is sufficiently protected by the ordinary law. Article 19(1)(g) does not abrogate the law under torts relating to private business between individuals and individuals, and in case of individual disputes between individuals, inter se involving trade or business, the subject matter of disputes can be made liable to an injunction from the Civil Court.

¹²1981 AIR 344

¹³ Fundamental Rights Provided Under The Constitution

A dispute between individuals concerning their civil rights has nothing to do with infringement of the fundamental right. The principle which follows is that in case of infringement of any fundamental right on the part of the State, the aggrieved party has three remedies; one at the ordinary law Courts; the second at the High Court under Article 226, and the third at the Supreme Court under Article 32. It has been accepted in *Maneka Gandhi vs Union Of India on 25 January, 1978*¹⁴ that the rights, which though not named in Article 19, are yet such as would form an integral part of any of the rights specifically named in Article 19, will be protected from infringement in the same ways as a fundamental right

V. IS COMPANY A CITIZEN ACCORDING TO COMPANIES ACT ??

The company through a legal person is not a citizen under the Companies Act, a Company or Corporation cannot be regarded as Citizen of India. As the Company or Corporation is an Artificial Person which is created by operation of Law it can't hold citizenship of any Country.

As per the Citizenship Act, 1955¹⁵ of India only a 'Natural Person' can be a Citizen and not any 'Juristic' person like Company or any other Body corporate. Hence, the company being an Artificial Person or we can say a Juristic person cannot get the status of the Citizenship of the country, although Juristic person can get the Residential Status in India.

VI. STATUS OF COMPANIES FROM CONSTITUTIONAL VIEWPOINT.

(A) Conflict of laws

Part III of the Constitution talks about fundamental rights. There is a very thin line between the rights provided in Part III. While some of these rights are available only to citizens, others are available to persons. The company is a person, therefore, cannot claim the fundamental rights under these articles. There are articles which are concerned about "persons" and there are articles which are concerned about "citizens".

Rights concerning persons:

- Article 14
- Article 20
- Article 21
- Article 22
- Article 25

¹⁴ 1978 AIR 597

¹⁵ Accessed from indiancitizenshiponline.nic.in/citizenshipact1.htm

- Article 27
- Article 28

Rights concerning citizens:

- Article 15
- Article 16
- Article 19
- Article 29
- Article 30

It is in this context that the dissimilarity between person and citizen becomes necessary to determine which fundamental rights are available to companies in India. Doubts were raised as to whether a corporation doing business can claim the protection of

Article 19(1)(g) of the Constitution. Corporations and companies, not being citizens, can make a petition under Article 32. It was held though company has no fundamental right under Article 19, a shareholder and the managing director have the right under the Article 19(1)(g).

The debate relating to nature of corporate bodies and the right they are entitled to arose in India no sooner India got its independence in 1947. It was as early as 1950 that we found Indian Courts delivering decision on the issue whether companies are entitled to fundamental rights. In the first *Dwarkanadas Shrinivas Of Bombay vs The Sholapur Spinning & Weaving on 18 December, 1953*¹⁶, a shareholder of the Sholapur Spinning and Weaving Company challenged the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950 on the ground that the Act was not within the Legislative competence of the Parliament and infringed his fundamental rights guaranteed by Article 19(1)(f), Article 31 and Article 14 of the Constitution and was consequently void. The court while giving the decision reiterated the long established principle of separate legal entity and said individual shareholders and company are separate entities. Therefore, a shareholder cannot claim infringement of fundamental rights on behalf of the company unless it infringes his own rights too. Justice Mukherjea and Das observed: "Except in the matter writs in the nature of habeas corpus no one but those whose rights are directly affected by a law can raise the question of the constitutionality of a law and claim relief under Article 39"¹⁷. Acknowledging the difference between natural persons and juristic persons, the court held that companies can come to court for enforcement of their fundamental rights except where the language of the provision or the

¹⁶ 1954 AIR 119

¹⁷ Supra note 19

nature of the right, compels the inference that they are applicable only to natural persons.

The Court restated the same opinion that only certain fundamental rights are available to companies in the *Jupiter General Insurance Company v. Rajagopalan and Anothers*¹⁸ case. The court dismissed the petition of Jupiter General Insurance Company, Ltd. along with other insurance companies like the Empire of India Life Assurance Company, Ltd. and the Tropical Insurance Company, Ltd and said a corporation is not a citizen and therefore it is not entitled to raise questions that the impugned legislation has taken away or abridged the rights conferred by Article 19(1)(f) and (g), Constitution of India.

When the *Chiranjit Lal Chowdhuri vs The Union Of India And Others* on 4 December, 1950¹⁹ came, the court allowed the representative petition filed by a preference shareholder on behalf of him and other such preference shareholders. The court reasoned that the impugned Ordinance in question does violate the fundamental right of the Company under Article 31(2) of the constitution but the petition is not allowed on that ground. The fact that deprivation of the property of the Company within the meaning of Article 31 without compensation actually lead to a situation where preference shareholders who were called upon to pay the moneys unpaid on their shares involves right on part on the shareholders to challenge the constitutionality of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950. The evident difference in concept of person was referred in Article 31 and citizen as referred under Article 19 was highlighted by the court and court said a shareholder can come for enforcement of his rights under Article 19 while the company itself can come to court under Article 31 to challenge the impugned Act. Thus the scope of the two Articles covers different fields.

However, the Bombay High court took a different stand and said “when the nature of right is such that it cannot be merely confined it merely to natural persons, then court must come to the conclusion that a corporation is as much entitle to that right as an individual citizen²⁰.” Thus the court allowed the petition of infringement of fundamental rights under Article 19(1)(g) by the company R.M.D. Chamarbaugwalla holding such company to be a citizen of India who is entitled to carry trade and business in India. This decision of the Bombay High Court was a clear depart from the stand taken earlier by Indian Courts where company was held only to be a person and was entitled only to such fundamental rights as available to persons.

¹⁸ AIR 1952 P H 9.

¹⁹ 1951 AIR 41

²⁰ (2002) 8 SCALE 1: AIR2003SC355.

The position kept varying as the Calcutta High Court in 1958 decided the case *Everett Orient Line Incorporated v. Jasjit Singh and Others*²¹ following the rationale in precedent laid down by Supreme Court in second Sholapur Spinning and Weaving Company case. The court dismissed the arguments by the company Everret Orient Line on confiscation of smuggled goods from its vessel which was not in knowledge of petitioner and fine as against Article 19. The court clearly stated Article 19 protection is only for citizens and the company being incorporated outside India is not an Indian citizen. Therefore, it cannot seek protection of the same. However, whether the Calcutta High Court would have allowed the plea of protection under Article 19 if it was an Indian Company was not discussed in the case.

*In Reserve Bank of India v. Palai Central Bank Limited*²² a completely different set of arguments cropped up where the Kerala High Court said that the intention of the framers of constitution was not to exclude corporate bodies from exercising all fundamental rights. The fact that “Article 19(1)(c) they gave all citizens the right to form associations and unions, and it could not have been their intention that the corporate bodies so formed by citizens, should be denied the rights guaranteed to the individual citizens, in particular that the agencies through which a substantial portion of their business is conducted by the citizens of this country and a considerable portion of their property held, should not have the protection of Clauses (f) and (g).” Thus the court admitted the petition of Palai Central Bank which challenged the notice of winding up by Reserve Bank of India and questioned the constitutional validity of Section 38(3)(b)(iii)²³ of the Banking Companies Act on grounds of offending Article 14 and Article 19(1)(f) and (g). The case is important from the point that court adopted an entirely peculiar reasoning that denial of fundamental rights to companies which are available to citizen will “virtually amounts to a denial of those fundamental rights to the citizens who (though, of course, different persons) really constitute those bodies.”²⁴

After these series of decisions given by different High Courts based on different reasoning, the issue was again discussed by Supreme Court of India in the *State Trading Corporation of India Ltd & others v. The commercial tax officer, Visakhapatnam and others*²⁵. While deciding the writ was filed under Article 32 of the constitution by State trading Corporation, the court had to decide whether State Trading corporation which is incorporated under Companies Act, 1956 is a citizen within the meaning of Article 19 of the constitution and can ask for the enforcement of fundamental rights granted to the citizen under the said article.

²¹ AIR 1959 Cal 237, 1959 CriLJ 439, 63 CWN 986.

²² 1950 SCR 869: (AIR 1.951 SC 41).

²³ The continuance of the banking company is prejudicial to the interests of its depositors.

²⁴ 1963 AIR 1811, 1964 SCR (4) 89.

²⁵ 1963 AIR 1811, 1964 SCR (4) 89.

The Supreme Court explained clearly that corporate bodies are juristic persons and so they cannot be termed as citizens though they may be of Indian nationality due to incorporation in India. Thus the court distinguished that corporate body being Indian national is entitled to civil rights accruing from international law but such corporate body is not a citizen. Hence it is not entitled to any particular right available only for citizen like that under Article 19.

After the State Trading Corporation case, the courts have set a trend of denying corporate bodies the title of citizenship as well as denying the fundamental rights available to citizens even when claimed through shareholders or directors of such companies. For example: negating the judgement given in Reserve Bank case that companies should be entitled to fundamental rights available to citizens as ultimately it is the citizens who form such corporate bodies, the court in *Tata Engineering And Locomotive Co. v. State Of Bihar and Others*²⁶ held that:

“Associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who got the company or corporation formed or incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the right attributable to the business of individual citizens.”

The court discussed in this case how accepting the argument that corporations are nothing more than an aggregation of shareholders would actually allow companies to achieve by lifting the veil that which the constitution did not provide them with i.e, the rights exclusively to citizens. Subsequent cases like *Jaipur Udhyog Ltd. v. Union Of India and others*²⁷ where writ petition had been filed under Article 226 of the Constitution of India challenging the constitutionality of the Cement Control Order 1967 and *V. Rev. Mother Provincial v. State of Kerala and others*²⁸ where some provisions of Kerala University Act, 1969 were challenged to be violative Article 19(1)(f)²⁹, Article 31(2) and Article 30(1) of the Indian constitution, courts decided in line of the *Tata Engineering And Locomotive vs State Of Bihar And Others* on 25 February, 1964³⁰ that a company registered under the Companies Act 1956 not being a citizen is not entitled to claim enforcement of fundamental rights under Article 19.

²⁶ 1965 AIR 40, 1964 SCR (6) 885.

²⁷ AIR 1969 Raj 281.

²⁸ AIR 1970 Ker 196.

²⁹ Guaranteed to the Indian citizens a right to acquire, hold and dispose of property.

³⁰ 1965 AIR 40

In 1969 when the Bank nationalization ordinance was passed by the then president V. V. Giri and later this ordinance was repealed by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, Rustom Cavasjee Cooper, a shareholder and director of one of the fourteen commercial banks which were nationalized, challenged the validity of the Ordinance and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. One of the grounds for challenge was that:

“Provisions of the Act which transferred the Undertaking of, the named Banks and prohibited those Banks from carrying on business of Banking and practically prohibited them from carrying on non-banking business, impaired the freedoms guaranteed by Articles 19(1) (f) and (g)”.³¹

The court allowed the petition on the ground that petitioner claimed the Act and the Ordinance impaired the rights guaranteed to him (that is to the shareholder) under Articles 14, 19 and 31 of the Constitution. Thus maintainable of the petition was based on infringement of R. C. Rustam’s rights and not that of the company under Article 19. However, the court specifically mentioned that where the shareholders right has been infringed along with the companies, the court cannot deny itself action merely on the technical operation of the action.

*Bennett Coleman & Co. & Ors vs Union Of India & Ors on 30 October, 1972*³² is another important case in relation to determining whether a company can have freedom of speech and expression. In this case the Sub-clauses (3) and (3A) of Clause 3 of the Newsprint Control Order, 1962³³, passed by the Government of India under Section 3 of the Essential Commodities Act, 1955, and the provisions of the Newsprint Import Control Policy for 1972-73 were challenged on the ground that they are violative of their fundamental right under Article 14 and 19(1)(a) of the Constitution by the newspaper company.

The Supreme Court held in this case “the fundamental rights of shareholders as citizens are not lost when they associate to form a company”. It can be said that the court to certain extent went few steps back and the court stated that because the individual rights of freedom of speech and expression of editors, Directors and Shareholders are all expressed through their newspapers, barring relief to a newspaper company who is not a citizen will actually lead to

³¹ 1970 AIR 564

³² 1973 AIR 106

³³ Clause 3 of the Newsprint control order placed restrictions on acquisition, sale and consumption of Newsprint. Clause 3 (3) declared that no consumer of newsprint shall in any licensing period, consume or use newsprint in excess of the quantity authorised by the controller from time to time. Clause 3 (3A) further stated that no consumer of the newsprint, other than a publisher of text books of national interest should use any kind of paper other than newsprint except under a written permission granted by the Controller.

denial of relief to the shareholders of the company.

In fact the Law Commission of India in its Hundred-First Report³⁴ had actually taken up for consideration the idea whether the fundamental right of freedom of speech and expression should be made available to the companies and other artificial entities. The Law Commission Report took cognizance of the fact that incorporations being artificial characters cannot qualify for citizenship and hence the protection of Article 19 is not available to them. But the Law Commission also took recognition of the fact that there existed atleast four category of corporations which required freedom of speech and expression like companies owning newspaper, companies owning magazines, companies producing or distributing films and corporate like universities or institutions with status of university which conduct seminars and bring out publications.

In 1983, the Supreme Court of India reiterated the reasoning for the judgement given Bank Nationalization case and held in *Union Of India vs Delhi Cloth & General Mills on 12 October, 1962*³⁵, where a rule regulating the deposits accepted by company was challenged, that though the law was in “nebulous state” but the rights of the shareholder and company are coextensive and therefore denial to one fundamental rights would amount to denial to other. Therefore, fundamental right was not denied to petitioner who was a shareholder even though the company was a co-petitioner.

It is not only the rights relating to freedom of speech under Article 19 that were denied to companies by Indian courts for not being citizens. Other rights like protection of interests of minorities and their right to conserve their distinct language, script or culture as provided under Article 29 of the Indian Constitution is also denied to corporate bodies as the right is specific to citizens residing in India only. In recent case *Dr. Naresh Agarwal v. Union of India and Others*³⁶ where Aligarh Muslim University claimed the 50% reservation in favour of Muslim candidates only as it claimed to be a minority University entitled to the benefit of Article 30 of the Constitution of India, the court looked into Section 3 of the Aligarh Muslim University Act, 1920³⁷ which specifically declared “the constitution of a body corporate by the name of Aligarh Muslim University having perpetual seal and a right to sue and to be sued by that name”. The court said the university thus has become a distinct corporate body

³⁴ <http://lawcommissionofindia.nic.in/101-169/Report101>.

³⁵ 1963 AIR 791

³⁶ 2005 (4) AWC 3745

³⁷ Incorporation. The Chancellor, the Pro- Chancellor and the Vice- Chancellor and the members of the Court, the Executive Council and the Academic Council, for the time being, shall be a body corporate by the name of the Aligarh Muslim University and shall have perpetual succession and a common seal and shall sue and be sued by that name.

with separate legal entity from its members who contributed to its incorporation. Therefore, Aligarh Muslim University was not entitled to the rights which citizens can claim under Article 30.

Other recent cases like *Star India Private Ltd. v. The Telecom Regulatory Authority of India*³⁸ and Others are also decided on similar rationale that companies are not citizen thus they cannot claim fundamental right that are specifically provided for citizens. So the present scenario is that a corporation cannot claim citizenship and cannot therefore claim any rights under Articles which are specifically dealing with citizens. Though the shareholders of a company can challenge the constitutional validity of a law on the ground of infringement of any article like Article 19, Article 16, Article 30 etc which protects citizens, if their own rights are infringed and in such cases the fact that company's right is also violated will not act as a hindrance or reason for dismissal of petition.

VII. COMPARATIVE SCENARIO IN EUROPE AND AMERICA

(A) European Scenario:

The beginning of the 17th Century saw the emergence of chartered companies as modern corporation in Europe. The East Indian Company was perhaps the most developed and profit making company of that time. These companies were incorporated by Charters issued by the state. As there is no written constitution in Europe, the fundamental rights are enshrined in The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights. This Convention was signed in Rome (Italy) on 4 November 1950 by 12 member states of the Council of Europe and entered into force on 3 September 1953. Any individual, group of individuals, company or non-governmental organization can apply to the supranational court established under the Convention i.e. Strasbourg Court, provided that they have exhausted all domestic remedies for infringement of their rights.

The *OAO Neftyanaya Kompaniya Yukos v Russia*³⁹ is a classic example of a case where the European Court recognizes the fundamental rights of company under the European Convention on Human Rights. In this case, Yuko Oil Company filed complaint in European Court against the Russian state complaining that the Russian authorities had hit it with a series of hefty and unexpected tax claims from 2000-2003, prevented it from paying them and then purposefully dismantled it. The company alleged that the Russian authorities had violated Article 6 (the right to a fair trial), Article 14 (the general prohibition on

³⁸ 146 (2008) DLT 455.

³⁹ 14902/04.

discrimination), Article 18 (protection against a states when it misuses its power) of the European Convention on Human Rights and Article 1 of Protocol 1(the right to protection of property) of the European Convention on Human Rights. The European Court ruled that indeed the Russian State had violated the company's convention right to a fair trial provided in Article 6, and the right to protection of property, contained in Article 1 of Protocol 1. So we can conclude that due recognition is given to fundamental rights of companies though they are artificial entities because of their legal status.

(B) American Scenario:

After the Civil War (1861-1865), the state control of corporations disintegrated and a competitive rush between states to attract businesses was seen. So there was a huge transformation in nature from protected democracy where state issued charter for incorporation of a company to evolution of corporate powers who claimed rights similar to that of individuals. It is at this time that the Equal Protection Clause came into effect in 1968. Section 1 of 14th Amendment to the Constitution of United States of America stated:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

With the Fourteenth Amendment in force, the judiciary in United States became proactive and several corporate constitutional rights were soon recognized and confirmed by the court. The cases *Santra Clara County v. Southern Pacific Railroad* were brought before United States Supreme Court where the court reported that Fourteenth Amendment equal protection clause granted constitutional protections to corporations as well as to natural persons.

In a series of judgments of the United Supreme held companies are entitled to the due process guarantees of the 14th Amendment, the Court in another case extended the Sixth Amendment's right to a jury trial in a criminal case to corporations, in yet another case the Court extended the free speech clause of the First Amendments to corporations. The Supreme Court in recent *Citizen's United v. Federal Election Commission*⁴⁰ rejected Bipartisan Campaign Reform Act's prohibitions against corporations and unions and held the act violated the First Amendment rights of candidates who raise private money. Thus the position

⁴⁰ 558 U.S. 310 (more)130 S. Ct. 876

is settled in America as companies are entitled to constitutional rights meant even for citizens under the Bill of Rights.

VIII. CONCLUSION

Corporate bodies are important for nation's economy. They are not only important for industrial development but also provide employment purposes. Major part of our daily lives are influenced by some or the other corporate activity. So it is important to realize that if a corporate body when at fault for not performing its duties can be held guilty and punished under various laws like in tort, Indian Penal Code, the Companies Act, etc... it is also important that such bodies has fundamental rights crucial for its own proper functioning. Like it had already been discussed above how the Hundred-First report of the Law Commission of India noted the importance of right of freedom of speech and expression to a newspaper company. If corporate bodies are expected to perform their duties according to the law for the interest of others then at the same time their rights and interest should also be protected. As we have seen that fundamental rights of the corporate bodies are protected in other nations like United States and countries in Europe, thus the same should be followed in India too. Preservation of Fundamental rights of corporate entities is essential for the growth of the society. These artificial persons therefore should be treated as a citizen so that they can avail such basic rights. Distinction between artificial and natural person cannot be removed completely but at least such basic rights which are essential for the progress and development of these corporate bodies should be granted to them. Earlier there was a huge clash regarding Article 19(f) and Article 31 as they were not provided to artificial entities, though now they are available to them in the form of constitutional right. In the same way either the Fundamental rights which are essential for corporate bodies should be made available to them, by considering these bodies as citizen or such rights should be made available to them as constitutional rights.
