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# Fundamental Rights and Citizenship of a Company in India: An Overview

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## ABSTRACT

*This article has been categorized into three broad components. Firstly, the constitutional law perspective of fundamental rights conferred to corporations in India primarily based on the concept of citizenship in India. Secondly, the judicial precedents set by the Indian Courts in deciphering the constitution and figuring out which fundamental rights are available to a business enterprise included in India is discussed chronologically. Thirdly, a dive into the status of corporations in relation to availability of fundamental rights to them in the United States. This paper as a result seeks to evaluate the fundamental rights available to businesses from a case study point of view.*

*Corporate bodies are separate legal personality able to owning assets, getting into contracts, and to sue and be sued. But those corporate bodies being artificial and not natural entities, important questions frequently arise whether companies are entitled to identical fundamental rights assured by means of the Constitution or other conventions as provided to natural persons. This is a reflection paper that seeks to explain whether companies possess fundamental rights and citizenship just like the rest of us.*

**Keywords:** *Citizenship, fundamental rights, companies.*

## I. INTRODUCTION

With the boom of company form of commercial enterprise, the businesses began yielding a lot of political and financial power in the 19th century and early twentieth century that legal theorists had to reconsider company concept in context of the volume to which nation might exercise authority over such bodies. It is on this context many theories had been developed.

The “grant theory” or “concession concept” provides that corporation is an artificial entity included under a charter and for this reason its power is constrained to the charter.<sup>2</sup> Any organisation legally owes its existence to the State that finally approves the charter for its incorporation. This idea has relevance in restriction of companies like East India Company which was incorporated under a charter issued by the Queen in Europe. It was also quite

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<sup>2</sup> Virginia Harper Ho, Theories of Corporate group: Corporate Identity Reconceived, Seton Hall Law Review, Volume 42 (2012) Issue 3

prevalent in United States till 19th century and observed in the judicial decision makings back then.

Around 1850s, the States issued charters for incorporation to many companies and thus the privilege of incorporation of a company ceased to exist.

Thus companies, in view of the “free incorporation” movement, were seen as real entity and important questions have been debated with the aid of the theorist that if incorporation ceases to be a privilege whether or not state simply then has right to regulate corporations .The proponents of the real entity concept said that as companies would be formed at will and they might conduct business as they desire and dissolve at their own will too, companies ceased to be the special creatures of the Government and they claimed identical privileges as all other individuals and corporations is the legacy of “real entity concept” that can be traced in present day corporate codes, judgements and common law.

## **II. THE CONSTITUTIONAL ASPECT**

Fundamental rights are enshrined in part 3 of the constitution of India. the rights between citizens and a person are different. Some rights are only available to the citizens Whereas others are available to all. the articles such as Article 14 talk about equality before the law, article 20 about the protection in respect of conviction of offences, Articles 21 and 22 discusses about protection of life and personal liberty and protection against arrest and detention in certain cases, article 25,27 and 28 with respect to the right to freedom of religion, payment of taxes for promotion of religion and freedom to attendance at religious instruction at the educational institution. These are the rights that are even available to non-citizens.

On the other hand, some articles like article 15 that focuses on prohibition of discrimination on grounds of religion, race, caste, sex and place of birth, article 16 that is equality of opportunity in terms of employment article 19, 29 and 30 with respect to right to freedom the protection of minority interest and the right of minority to establish and administer institutions respectively. Thus, it has been made explicitly clear Indian Constitution about which articles are applicable to citizens or other persons. This is an important point to be noted in order to determine which fundamental rights are applicable to companies in general.

Citizenship is enshrined in part two of the Indian Constitution. The citizenship Act of 1955 has provided five ways in which citizenship is acquired namely- citizenship by birth<sup>3</sup>, by descent<sup>4</sup>,

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<sup>3</sup> Section 3 of The Citizenship Act, 1955

<sup>4</sup> Section 4 of The Citizenship Act, 1955

by registration<sup>5</sup>, naturalization<sup>6</sup> and by incorporation of territory<sup>7</sup>. This Act has excluded any person except natural persons from the ambit of citizenship. Therefore, companies are not considered to be citizens of India. The Judiciary has interpreted the question whether companies are entitled to fundamental rights that are held by shareholders of the company.

### III. JUDICIAL INTERPRETATION

One of the first cases with respect to the fundamental rights of companies in independent India was **First Sholapur spinning and weaving company case**<sup>8</sup>. The shareholders of this company challenged the Solapur spinning and weaving company (emergency provisions) Act 1950 and opined that the said Act was not within the legislative competency of the Parliament and thus infringed fundamental rights under article 14, 19(1)(f) and 31. The court established the principle of separate legal personality and distinguished individual shareholders from the company. Therefore, such an infringement can only be claimed if fundamental rights of the shareholders are harmed too.

The court acknowledged the distinction between natural and juristic persons and held that the company can come forward to enforce the fundamental rights except where the nature of the right itself conveys that it is only applicable to natural persons.

The same decision was reiterated in the case of **Jupiter general Insurance Company vs Rajagopalan and others**.<sup>9</sup>

In the **second Sholapur spinning and weaving company** case, the representatives petition was allowed by the court which was filed by preference shareholders. The court found that the impugned ordinance does violate the fundamental right of the company under article 31(2). The difference between persons as referred in article 31 and citizens as referred to in Article 19 was emphasised by the court. It was held that the scope of both the articles cover different fields. Shareholder can enforce his rights under article 19 and company can enforce its rights under article 31.

The Bombay High Court gave a different view and stated that it depends on the nature of the right. When it is such that it cannot be confined only to natural persons, then it can be concluded that a company has an equivalent right as a natural person. This court allowed a petition for violation of fundamental rights under article 19(1)(g) by the company named RMD

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<sup>5</sup> Section 5 of The Citizenship Act, 1955

<sup>6</sup> Section 6 of The Citizenship Act, 1955

<sup>7</sup> Section 7 of The Citizenship Act, 1955

<sup>8</sup> 1951 AIR 41 1950 SCR 869

<sup>9</sup> AIR 1952 P H 9

Chamarbaugwalla and held that such a company is a citizen of India and has every right to continue trade and commerce in India.

**Case- Everett Orient Line Incorporated vs Jasjit Singh and others<sup>10</sup>:**

The Calcutta High Court followed the precedent set by the Supreme court in the second Sholapur case. The petition dismissed the petition and set aside the arguments by the company on confiscation of smuggled goods that was not known to the petitioner and fine under article 19. The court held that the company is incorporated outside India and therefore cannot avail the rights under article 19 guaranteed only to citizens.

**Case- State Trading Corporation of India Ltd & others vs Commercial tax officer, Vishakhapatnam and others<sup>11</sup>:**

This writ was filed in the Supreme court under article 32. The contention was with respect to whether the State Trading Corporation incorporated under the Companies Act, 1956 is a citizen of India within the meaning of article 19 and possessed fundamental rights that are guaranteed to citizens under this article. The Supreme court clearly stated that corporate institutions are juristic persons and cannot be regarded as citizens. It may possess Indian nationality due to its incorporation within India. Such corporate institutions are entitled to civil rights provided under international law and no other rights guaranteed only to citizens of India.

- **Freedom of speech and expression to companies:**

**Case- Bennett Coleman and company<sup>12</sup>:**

The Supreme Court opined that “the fundamental rights of the shareholders are not lost when they come together and associate themselves to form a company.”

**Law Commission 101<sup>st</sup> report:**

Corporations are artificial entities and do not qualify as citizens of the country. However, there are four categories of entities that can avail the protection under article 19(1)(a)- Newspaper, magazine companies, production and distribution of movies and institutions acting as universities involved in publications.

## **IV. UNITED STATES OF AMERICA**

**Case- Santa Clara County vs Southern Pacific Railroad<sup>13</sup>:**

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<sup>10</sup> AIR 1932 Cal 303

<sup>11</sup> 1963 AIR 1811, 1964 SCR (4) 89

<sup>12</sup> 1973 AIR 106, 1973 SCR (2) 757

<sup>13</sup> 118 U.S 394 6 S.Ct 1132

As soon as the 14<sup>th</sup> amendment came into existence, the judiciary in the States became proactive and several corporate constitutional rights began to be recognized.

The court recognized that the 14<sup>th</sup> amendment grants equal protection to companies as well as to natural persons under the equal protection clause.

Following this judgement, a number of verdicts were given that entitled companies to the due process guaranteed under the 14<sup>th</sup> amendment. The court also extended the right to jury trials in criminal matters to companies under the 6<sup>th</sup> amendment as well as right to free speech to companies under the 1<sup>st</sup> amendment.

#### **Case- United vs Federal Election Commission<sup>14</sup>**

The Supreme court rejected the Bipartisan Campaign reform Acts's prohibitions that was against unions and corporations as the Act violated the rights guaranteed by the 1<sup>st</sup> amendment of those who raised private money.

## **V. CONCLUSION**

Corporate bodies are vital for the state's economy. They are not only vital for commercial development but additionally offer employment opportunities. Major parts of our daily lives is encouraged by a few or other corporate interests. So, it is essential to comprehend that if a corporate body whilst at fault for not performing its responsibilities may be held responsible and punished under numerous laws like Indian Penal Code, the Companies Act, etc. It is also essential that such our bodies have fundamental rights essential for its very own functioning.

Earlier there was a big clash concerning Article 19(f) and Article 31 as they were not furnished to artificial entities, even though now they are available to them in the form of constitutional rights. In an identical way, either the Fundamental rights that are crucial for companies must be made available to them, by providing them the status of a citizen or otherwise as a constitutional right.

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<sup>14</sup> 558 U.S A310 130 S. Ct. 876