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Fundamental Rights: Companies' Command in the Indian Constitution

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ABSTRACT

This paper will be divided into four parts. First, the historical background of a corporate body is compared with the pre-existing corporate theories. Second, a study on the Fundamental rights enshrined in the Constitution of India along with the citizenship act is discussed. Third, a plethora of judgements laid out by the judiciary attempting to interpret and recognise the rights available to a company is discussed. Lastly, a conclusion is drawn to check whether a corporate body can be recognized under the Part III of the constitution or not in the upcoming future.

I. INTRODUCTION

According to Section 2 (20) of the Companies Act, 2013 “Company” means a company incorporated under the Act or any previous company law. The very basic meaning of the “Company” according to the oxford dictionary is “a commercial business”². It has a separate legal personality³ capable enough to own assets in the form of property, enter into contracts with others, sue anyone, and can be sued by anyone. However, corporate bodies are not a citizen of India but an artificial entity. It is therefore important to discuss that whether they should be entitled to the fundamental rights guaranteed by the Constitution of India or not. After 1991, with the introduction of LPG in India, a sudden increase of MNCs and corporate bodies in the country has shown a need to widen the concept of having Fundamental rights only limited for natural persons. As Fundamental rights of the employees can be violated by these corporate bodies some form of protection in the nature of Fundamental rights should at least be provided by the Indian Constitution. The author in the paper focuses on the reasons due to which the corporate bodies in India are not able to exercise their fundamental rights and highlights the stance of the judiciary on it.

Article 5 of the Constitution poses the requirements of who can be a citizen of India and

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² Lexico Dictionaries | English. 2021. COMPANY | Definition of COMPANY by Oxford Dictionary on Lexico.com. [online] Available at: <<https://www.lexico.com/definition/company>> [Accessed 15 July 2021].

³ Section 9 of the Companies Act, 2013.

Article 15, Article 16, Article 19 are some examples of the Fundamental rights which can only be enjoyed by the citizens of India and not by any artificial entity. However, there are some other Articles where the word “citizen” is specifically excluded by the drafters of the constitution. Article 14 is one of the prime examples as it can be exercised by both a natural person as well as an artificial entity. Even though an artificial entity may not be able to exercise it to the full extent as compared to a natural person but the former still have some sort of rights guaranteed by the Constitution. The evolving universal application and the liberal interpretation of the Fundamental Rights by the Indian judges ensure that in the future if deemed necessary, even artificial entities can be covered as a beneficiary under the Fundamental rights.

II. HISTORY OF THE CORPORATE BODIES WITH SOME THEORIES

In the late 19th century, a sudden increase in the number of corporate bodies became visible. During this time forming a new company had both political and economic importance attached to it. Many legal theorists gave different theories related to which body exercises control or have authority over the corporate bodies. These theories later evolved and gave a different perspective on whether a company is a natural entity or an artificial entity.

According to the proponents of Artificial entity theory, a company can only be an artificial entity controlled by the state as its incorporation can only be done according to the state legislature. Thus, a company legally can't exist without approval from the state for its charter. The first company encountered by the Indians was the East India Company which was directly controlled by the queen of England. Artificial entity theory can also be applied in the case of EIC as the charter on which the company was incorporated was issued by the queen only. In the United States, the same approach was used by the judicial system until the 19th century. Chief Justice Marshall in the *Trustees of Dartmouth College vs. Woodward*⁴ stated that “The corporations are an artificial being, invisible, intangible”⁵. Other emerging theories also stated that a corporation incorporated after the approval from the state is taking a grant/concession from the state for its creation who will later recognize it.

During the same time, a new theory known as real entity theory got formulated. As a greater number of companies started getting incorporated, the nature of incorporation became more like a privilege that pre-existed within the companies. This challenged the already existing theories as now it seemed like they had a real entity which has a privilege to get incorporated.

⁴ 17 U.S. (4 Wheat.) 518, 636-37 (1819).

⁵ Ibid.

Many questions also started getting raised that if a company is a real entity, then whether the state has any right to control these corporate bodies at all or not. Proponents of the real entity theory argued that companies are more of a private initiative rather than an entity controlled by the state. Given, a company can decide its functions as per its own free will it seemed more like a special entity created by the state who enjoys the same privileges as all the other persons. The real entity theory has influenced many corporate laws, judgments, and doctrines. Martin Petrin in his article has mentioned that “legal entities were not fictions rather; they were real and capable of possessing their own mind and will”⁶. He goes on to state that the legal person was something that pre-existed and was only recognized by the law⁷. Mark M. Hager in his article has argued that “the real entity theory might more easily account for the notion that corporations possessed ‘natural rights, especially property rights’”⁸. The majority of the rights enjoyed by the companies have mostly been under this theory only.

The other important theory on the corporate body entity is the Aggregate theory. According to this, a company is a representation of the rights and obligations of natural persons like shareholders. The state should always play a limited role in private activities and all the companies should be left to the market forces. In *Santa Clara County vs. Southern Pacific R. Co.*,⁹ the court held that “whenever a provision of the constitution, guarantees to persons the enjoyment of property the benefits of the provision extend to corporations, and the courts will always look beyond the name of the artificial being to the individuals whom it represents”¹⁰. This theory intends towards lifting the corporate veil to determine a natural person behind the functioning of the company. Under this, it also argued that Fundamental rights of both the company and his/her members exist coextensively.

III. FUNDAMENTAL RIGHTS, CITIZENSHIP ACT, AND THE CORPORATE BODY

In the Indian constitution, Part III is dedicated to Fundamental rights. All the rights present either grants protection to the citizens or all the people. Therefore, a question on the specific usage of words by the drafters and their sole intention behind it always arises. In India, a company to seek protection under Fundamental rights either must come under the definition of a citizen or a person. Part II of the Indian Constitution talks about Citizenship. According to Article 5 of the Constitution of India, Citizenship can be provided to any person who is

⁶ Martin Petrin, *Reconceptualizing the Theory of the Firm—From Nature to Function*, 118 Penn St. L. Rev. 1 (2013).

⁷ Ibid.

⁸ Mark M. Hager, *Bodies Politics: The Progressive History of Organizational ‘Real Entity’ Theory*, 50 U. Pitt. L. Rev. 575.

⁹ 118 U.S. 394 (1886).

¹⁰ Ibid at 744.

either born in India or whose parents are born in India or any person who has stayed for more than 5 years before the commencement of the Constitution. The Citizenship Act 1955 recognizes 5 types of citizenship which include Citizenship by birth¹¹, Citizenship by descent¹², Citizenship by registration¹³, Citizenship by naturalization¹⁴, and Citizenship by incorporation of territory¹⁵. Through this, it is clear that a company doesn't come under the legal definition of the citizens even if incorporated in India. Now the other scenario yet to explore includes whether any Fundamental right extended to the person can include companies within it or not. Even though, the Citizenship act stipulates that the meaning of the word "person"¹⁶ does not include any corporate body. Section 3(42) of the General Clause Act, 1897 states that the meaning of the word "Person" includes a company. The contrast definition present in both the statutes creates adequate vagueness for the judges in the future to decide the status of corporate bodies with a liberal approach. Currently, various constitutional provisions such as Article 14 and Article 21 are enjoyed by a company. Even though a company cannot be included within the understanding of citizens of India, one can still argue for the Fundamental Rights granted to the shareholders who are both a part of the company and a legal citizen of the country.

IV. EVOLUTION OF STATUS OF CORPORATE ENTITIES FROM THE LENS OF JUDICIARY

After India got its independence and the Constitution was formed, debates pertaining to the nature of corporate bodies started happening. In the year 1950, the Indian Judiciary for the first time answered the question of whether the Fundamental rights are enjoyed by the company or not. It was in *Chiranjit Lal Chowdhuri vs. The Union of India & Others*¹⁷ where the decision on the question was rendered by the court. The Petitioner i.e., shareholders, in this case, challenged the enforcement of a Central Act, the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950 on the ground that it violated protection granted under Article 14, Article 19(1)(f) and Article 31 of the Constitution. The Petitioner alleged that the impugned act brought disabilities to a single company and its shareholders vis-à-vis other companies. However, the court held that a shareholder and a company are two different and separate legal entities. A claim of violation of Fundamental rights is invalid if it's made

¹¹ Section 3 of the Citizenship Act, 1955.

¹² Section 4 of the Citizenship Act, 1955.

¹³ Section 5 of the Citizenship Act, 1955.

¹⁴ Section 6 of the Citizenship Act, 1955.

¹⁵ Section 7 of the Citizenship Act, 1955.

¹⁶ Section 2(f) of the Citizenship Act, 1955.

¹⁷ AIR 1951 SC 41.

by a shareholder on behalf of the corporate entity and vice versa. This means that a shareholder cannot challenge the impugned act if it only violated the fundamental rights of the company. They can only do so if the same act has violated their Fundamental rights too. The principle of a separate legal entity established in *Kondoli Tea Co. Ltd.*¹⁸ was reiterated by the court while giving its decision. The court further held that a corporate body cannot seek violation of Fundamental rights when the statute in question is specifically applied to natural persons only. In *Jupiter General Insurance Co. Ltd. vs. Rajagopalan & Anr.*¹⁹ a question was raised on whether a corporation would come under the definition of the word “citizen” for the infringement of Article 19 of the Constitution or not. The Court held that the Corporations would not come under the definition of “citizen” within Article 19 of the Constitution. So, no issue can be brought in before the court related to legislation taking away rights given by Article 19(1)(f) and (g) of the Constitution. The petition of Jupiter General Insurance Company, Ltd. along with the Empire of India Life Assurance Company, Ltd. and the Tropical Insurance Company, Ltd. was dismissed. However, in *Dwarkadas Shrinivas of Bombay vs. The Sholapur Spinning & Weaving Co., Ltd.*²⁰ where the petitioner was the preference shareholders, the court took a different stand and held that the impugned act violated the Fundamental Rights of the Company provided under Article 31(2) of the Constitution. The obvious contrast in the understanding of the term “person” used in Article 31 and the term “citizen” used in Article 19 was recognized by the court and it was held that a shareholder can desire implementation of his/her fundamental rights under Article 19 whereas a Company can claim infringement of Article 31 before the court to challenge the validity of the impugned Act. Accordingly, the extent of both the Articles covers distinctive fields. Despite all these decisions rendered by the Supreme court in *The State of Bombay vs. R.M.D. Chamarbaugwala*²¹ a different stand was taken up by the Bombay High Court. Even though the decision was later reversed by the Supreme court in the Appeal and the reasoning used by the High Court was seen as flawed. However, a lot of confusion was created by it because for the very first time a corporation was granted the same legal protection as provided to citizens under Article 19 of the constitution. In the Bombay High Court decision, all companies were given a Fundamental right to carry trade and business in India under Article 19(1)(g) likewise earlier given to the natural person²². This judgment was seen as a progressive judgment by the proponents of the Real entity theory as now Corporations were

¹⁸ (1886) ILR 13 Cal 43.

¹⁹ AIR 1952 P&H 9.

²⁰ AIR 1954 SC 119.

²¹ AIR 1957 SC 699.

²² *State of Bombay vs. R.M.D. Chamarbaugwalia*, AIR 1956 Bom 1.

given a title of Citizen of India along with rights attached with it. However, progressive it may be, the decision also diluted the initial stance of the Indian Courts on the issue of whether the corporations can be granted protection under Fundamental rights as a Person or as a Citizen.

In *Everett Orient Line Incorporated vs. Jasjit Singh & Ors.*²³, the Calcutta High Court held that a company is not a citizen of India. Therefore, a violation of any right protected under Article 19 cannot be made by them. The reasoning used in the judgment is similar to the judgments given by the Supreme court in the earlier cases. However, in this case, the company was not duly incorporated in India and, the status of the companies which are duly incorporated in India remained unanswered. Therefore, the companies incorporated in India were left in ambiguity as this judgment didn't set up any precedent for them. However, with these varying positions taken by the court, it was clear that only companies incorporated in India might be allowed to reap the benefits extended from the title of citizen of India. In 1961, the Kerala High Court in *Reserve Bank of India vs. Palai Central Bank Ltd.*²⁴ again demonstrated the multiple positions taken up the court on the same issue. In this decision, Justice Nair highlighted the intentions of the constitution's framers who would never intend to exclude corporations from the protection of fundamental rights. This can be made evident from the protection enjoyed by the companies under Article 19(1) (f) and (g). The Petition of Palai Central Bank was allowed in this case and the validity of Section 38(3)(b)(iii) of the Banking Companies Act, 1949 was challenged against Article 14 and Article 19(1) (f) and (g). The reasoning used by the Court is in line with the principles of Aggregate Theory as a parallel was drawn between the Fundamental Rights of the companies with the rights of its shareholders.

The Supreme Court finally to clear up the misunderstanding raised by the High Courts and to provide clarity on the issue beforehand gave a judgment in *The State Trading Corporation of India Ltd. & Ors. vs. The Commercial Tax Officer, Visakhapatnam & Ors.*²⁵ where it was held that a corporation cannot have the same status as a citizen of India under the Constitution. It was stated that a company can claim protection from only those Fundamental rights which are available to all persons such as the Right to Equality. The Court termed all the corporations as Juristic persons and held that a corporation cannot be granted the status of a citizen of India irrespective of their place of incorporation. The corporate bodies are subjected to international law and are used as nationals of a particular country, but this

²³ AIR 1959 Cal 237.

²⁴ AIR 1961 Ker 268.

²⁵ AIR 1963 SC 1811.

doesn't make them eligible to become Citizens of any particular country. Citizenship Act, 1955 clearly stipulates the conditions fulfilling which only a natural person can enjoy the status of citizen of India. The judgment strengthened the judiciary's position and removed the ambiguity among the people. A legal foundation was set up in this case following which several decisions were laid out by the court such as in *Heavy Engineering Mazdoor Union vs. The State Of Bihar & Ors*²⁶ the Court held that a company is a non-human legal entity that is not a citizen either under Constitution of India or the citizenship Act, 1955. Another set of cases includes *Jaipur Udhog Ltd. vs. Union of India & Ors.*²⁷ where under Article 226, a petition was filed before the court to challenge the constitutionality validity of the Cement Control Order, 1967 and *State of Kerala & Ors. vs. Very Rev. Mother Provincial & Ors.*²⁸ where some provisions of Kerala University Act, 1969 were challenged to be in contravention of protection guaranteed under Article 19(1) (f), Article 30 (1) and Article 31 (2). The respective courts in both the cases stated that registration of a corporate entity under the Companies Act 1956 does not automatically provides a status of citizen and, hence, a corporate entity cannot assert same protection bestowed upon citizens under Article 19.

Even though, a corporation is not guaranteed citizenship status, but it is equally important to protect the rights of shareholders, directors who help in the functioning of these companies. Therefore, the court in *Rustom Cavasjee Cooper vs. Union of India*²⁹ allowed the petition on the grounds that the Act and the Ordinance allegedly impaired the rights guaranteed to the petitioner under Article 14, Article 19, and Article 31. The petition was maintainable based on alleged infringement of shareholders' rights without any concern for the company. Through this, the right of shareholders as citizens to challenge the constitutional validity of law based on violation of their Fundamental rights remains intact. The status and limited protection of corporate entities should not act as a hurdle in the protection of a shareholder who is a valid citizen. Hence, the court specifically mentioned that when a right of a shareholder is infringed along with the company, the court cannot deny action merely on the technical operation of the action³⁰. A similar pro shareholder approach³⁰ was also taken by the court in *Bennett Coleman & Co. & Ors. vs. Union of India & Ors.*³¹ where the point of contention was if a company can have freedom of speech and expression under Article 19(1) (a) or not. The court held that the fundamental rights of the citizens do not disappear if they

²⁶ AIR 1970 SC 82.

²⁷ AIR 1969 Raj 281.

²⁸ AIR 1970 SC 2079.

²⁹ AIR 1970 SC 564.

³⁰ Ibid.

³¹ AIR 1973 SC 106.

associate to incorporate a company. It is necessary to protect shareholder's rights if they are affected due to states action. In *Delhi Cloth & General Mills Co. Ltd. & Ors. vs. Union of India & Ors.*³² the court held that due to the ambiguity in the law, a question was raised on the co-extensive fundamental freedom of a shareholder, and the company guaranteed under Article 19 is answered in affirmative³³. It is so because depriving the freedom of one means depriving the other too. At present, a company cannot be granted the status of citizenship and, hence, cannot guarantee any rights under the Constitution of India. Despite that, a stakeholder of a corporate entity can challenge the legitimacy of a law on the grounds of encroachment of any Fundamental rights. However, it can only happen in a case where a violation is with respect to their own particular right and not of the corporate entity.

V. CONCLUSION

From the above judgments, it is clear that the stance of the Indian judiciary on the issue of extending Fundamental rights to a company that is a juristic person and not a citizen of India has both evolved and progressed. A company being a separate legal entity enjoys a different set of rights and privileges than a stakeholder. Few judges have opined that a company being an artificial person cannot enjoy the same level of protection of fundamental rights as provided to citizens. It will directly go against the spirit of the constitution if it happens so. However, in the majority of recent cases, a mixture of Aggregate theory and Real entity theory has been used to conclude that denial of Fundamental rights to a company would mean denial of them to its directors, shareholders, and other stakeholders who are actually behind it. They are a natural person and holds the status of citizenship, therefore, it is important to protect their rights. It has been widely accepted that a company cannot become a citizen. However, Article 19 of the Constitution which, in particular, is extended towards the citizens has also been enjoyed by the corporate bodies to some extent. According to the author, given, corporate bodies are increasing day-by-day in number, they need these fundamental rights to protect them from the fraudulent activities of the employees. A similar argument can also be used for employees working under these entities as corporate bodies can infringe the fundamental rights of the employees. The progressive decisions taken by the Supreme court through the time memorial in each case show the inclination of them in favor of providing fundamental rights to the corporate bodies. It can also be assumed that the rigid definition of who can be a "Citizen of India" under the Constitution might be extended soon to include artificial persons like companies under it. From the recent judgments, it seems that India will

³² AIR 1983 SC 937.

³³ Ibid.

soon move a step forward and the corporate entities will get more recognition in the Constitution.
