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Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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WHETHER COMPANIES HAVE FUNDAMENTAL RIGHTS OR NOT.

AUTHORED BY - C THIRUVIKRAM

ABSTRACT:

A Corporate body is an independent legal entity that is fully separate from its parent company. A corporate body can sue someone or can be sued in its unique name. These companies are manmade and not natural entities. The major challenge is that whether these bodies are safeguarded under the fundamental rights of the Indian constitution. Fundamental rights are also available but they are only specified only for the people of India.

This research is classified into 3 parts and they are:

- 1) Fundamental rights specified only for the citizens of India.
- 2) Judicial precedents as set by Indian Courts interpreting the constitution that will a company be entitled with fundamental rights.
- 3) Last is the comparative study on the status of companies in relation with availability of fundamental rights to them in the countries of Europe and United States.

Therefore, this research overviews the fundamental rights available to the companies in the case study point of view.

INTRODUCTION:

According to section 6 of companies act, 1956, a company is a separate legal entity which is considered as an artificial person. There are few other popular people who defined the term company which are as follows:

- (i) Lord Justice Lindley defined it as, *“a company is an association of many persons who contribute money worth to common stock and employed in some trade or business and who share profits and losses therefrom. The basic investment for a company is called as the Capital. The person who contributes to it pertains are members. The proportion of capital which is known to be as capital. The share invested in the company is always transferable but the right to transfer is more or less restricted.”*

There are few kinds of company which is registered in the ministry of corporate affairs which are as follows:

- According to section 2(71), *a company of voluntary association with several members with a separate legal entity whose liability is limited with their shares is known as a public company.*
- According to section 2(68) *acompany with a minimum paid up share capital of ₹ 1 lakh or more is known as a private company. Therefore, a company restricts a company from transfer of shares and prevent public from taking up the shares.*
- According to section 2(62) *defines one-person company, furthermore, members of the company are nothing more than subscribers to its memorandum of association or its shareholders. This type of company is called as sole-proprietorship.*

FUNDAMENTAL RIGHTS WHICH ARE GUARANTEED TO THE CITIZENS OF INDIA AS PER THE CONSTITUTION OF INDIA:

Part III of Constitution of India deals with fundamental right guaranteed to its citizens which are covered in articles 12 to 35 of Constitution of India. But article 12 and 13 deals with title and extent of the fundamental rights of Indian Constitution.

Therefore, rights are specified only from article 14 of Constitution of India.

RELATED JUDICIAL PRECEDENTS WHICH SHOW THAT THE COMPANIES AND OTHER ARTIFICIAL PERSONS HAVE FUNDAMENTAL RIGHTS: aspect of Article 19(1)(a), and the lack of explicit d

- 1) Dwarakadas Srinivas vs Sholapur spinning and weaving Co. Ltd:

Dwarkadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd., the Sholapur Spinning and Weaving Co. The government was able to seize the Sholapur Spinning and Weaving Company's property thanks to the Act of 1950. The Act's lack of compensation raised the question of whether it was void. Since the government did not purchase the property, it argued that Article 31 Clause (2), which provided for compensation, did not apply because only Clause (1) applied, and that any law that was authorized was adequate to deny someone their property rights. Clause (1) permits any property deprivation that is permitted by law. According to clause (2), the learned Chief Justice would assume that its limiting power is accurate. The Sholapur Spinning and Weaving Company Act of 1950 was said invalid by the Supreme Court.

The esteemed Chief Justice would assert that the restrictive authority in question is validated by clause (2). The Supreme Court determined that the Sholapur Spinning and Weaving Company Act of 1950 was unconstitutional. It is essential to interpret Article 31, clauses distinct category was deemed inconsequential.

(1) and (2) in conjunction. Consequently, in instances of property deprivation, even in the absence of state acquisition, clause (2) is applicable, thereby necessitating the payment of compensation.

- (1) Authorized by law; (Article 31 clause 1)
- (2) It was required for a public purpose; (Article 31 Clause 2)
- (3) Subject to payment of compensation.

1) State Trading corporation vs Commercial Tax Officers:

The judgment of Hon'ble Justices Sinha, S. K. Das, Gajendragadakar, Sarkar, Wanchoo, and Ayyangar was delivered by B.P Sinha. The court for this case had elucidated the applicability of Part III of the Constitution. The court stated that Part III, which deals with Fundamental Rights, of which some are available to "any person" and some rights are available only for "all citizens". The fundamental rights available to any person regardless of whether they are citizens or an artificial person are: Article 14, 20, 21, 26, 27, 28, 29, and 31. The fundamental rights specified to citizens of India are Article 15, 16, 18, 19. The 19th article contains 7 divided laws:

1. *Freedom of speech and expression*
2. *Freedom to assemble peacefully without arms*
3. *Freedom to form associations or unions*
4. *Freedom to move independently throughout India*
5. *Freedom to reside in any part of India*
6. *Freedom to acquire and dispose of property*
7. *Freedom to practice any profession, or to carry any occupation, trade or business.*

The court stated that clauses (a) to (e) are only applicable to citizens whereas clauses (f) and (g) can be enjoyed by natural persons as well as juristic. The constitution makes a clear view that all citizens are persons but all persons are not citizens.

The court stated that the term 'citizenship' has not been defined in the Constitution. Part II of the Constitution addresses the topic citizenship. The court while stating all the necessary provisions of Part II of the Constitution noted that these rights within Part II were inapplicable

to juristic persons. Juristic persons are also outside the purview of the Citizenship Act of 1955 enacted by the Parliament by power of Article 11. In the Act, Section 2 (1) (f) states that the word 'person' does not include 'any company or association or body of individuals whether incorporator or not'. Thus, any subsequent provisions of the Act relating to citizenship will not be applicable to juristic persons.

The court on examining the relevant provisions of the Constitution and the Citizenship Act, 1955 regarding the present case concluded that the corporation cannot be considered a 'citizen'. It was stated that corporations may have nationality in accordance with the country of incorporation but that does not confer upon them the right of citizenship. The court held that Part II of the Constitution and the Citizenship Act, 1955 was exclusive to a natural person only. The court consequently provided a negative response to the initial question of the matter. The court didn't consider it necessary to answer the second question as that would only be likely if the initial question received a positive response. It was decided that the case should go back to the bench with the present opinion of the court.

Justice Hidayatullah articulated a perspective on the case that diverged from the prevailing majority opinion. He disagreed with the contention of Mr. Setalvad, counsel for the petitioner, and stated that the Corporation having the nationality of the country would not make the Corporation a citizen.

He analysed the reference to the word 'citizen' with Article 19 and stated that the clauses (a) to (e) within the Article are applicable solely to natural persons. He analysed the procedure of citizenship of various countries namely Rome, Europe, Greece, and concluded that they were all concerned with natural persons. He stated that there was no room for artificial persons in the Citizenship Act, 1955. It was stated that a corporation being a separate entity from its members, it would be impossible to look through the veil of incorporation to determine the citizenship of the members of the corporation are required to ensure compliance with Article 19 to secure its advantages. He thus also opined that the State Trading Corporation cannot be regarded as a citizen for enforcing rights under Article 19 (f) and (g). Coming to the second question, he stated that Corporations in which the States own all or the majority of the shares, in particular, are protected by the Constitution. There is sufficient guarantee provided that there will be no discrimination, no taxation without authority, etc. He stated that there was no need to be apprehensive that corporations are at the mercy of State Governments. Thus, Justice

Hidayatullah answered both the questions in the negative.

Justice Das Gupta and Justice JJ Shah gave an opinion that disagrees the law. Justice Das Gupta asserted that the response to the initial inquiry should be affirmative. He stated that the Constitution has to be interpreted liberally and not grammatically. He stated that the Constitution makers when using the word 'citizen' under Article 19 had the intention, that a corporation comprising of all Indian citizens would get the benefit of Fundamental Rights. He stated that all citizens including a corporation would have the benefit of Article 19 (f) and (g). In his view, the State Trading Corporation was not a department of the Government. He asserts that the initial segment of the second question should be addressed negatively, whereas the subsequent portion ought to be responded to affirmatively.

Justice J.J Shah stated that interpreting the Constitution in a mechanical approach was impermissible. He stated that a juridical person is also capable of exercising civil rights which are exercised by natural persons. Its incapacity to exercise other rights arises from its personality and constitution and it's not due to any restriction imposed on it. It is impossible to interpret the term 'citizen' in Article 19 in a limited connotation and it cannot be restricted to natural persons. Regarding the second question, he stated that to determine whether a company is an agent of the state or not would depend on the facts of the case. He stated that a company performing commercial function whether controlled wholly or partially by the Government would be presumed to not be an agent of the State. On the other hand, a corporation performing governmental functions and not commercial will be presumed to be an agent of the Government. He stated that if the State Trading Corporation is recognized as 'State' within the meaning of Article 12, the corporation can enforce Fundamental Rights Under Article 19. Consequently, he asserts that the initial question ought to be responded to in the affirmative, while the first segment of the second question should be addressed negatively, and the subsequent segment in the Affirmative.

**Justice Das Gupta and Justice J.J Shah gave an
*opinion that disagrees the law***

Justice Das Gupta approved the answer for the first question. He stated that the Constitution has to be interpreted liberally and not grammatically. He stated that the Constitution makers when using the word 'citizen' under Article 19 had the intention, that a corporation comprising

of all Indian citizens would get the benefit of Fundamental Rights. He stated that all citizens including a corporation would have the benefit of Article 19 (f) and (g). In his view, the State Trading Corporation was not a department of the Government. According to him the second question should be disagreed while the next part should be agreed.

Justice J.J Shah stated that interpreting the Constitution in a mechanical approach was impermissible. He stated that a juridical person is also capable of exercising civil rights which are exercised by natural persons. Its incapacity to exercise other rights arises from its personality and constitution and it's not due to any restriction imposed on it. It is impossible to interpret the term 'citizen' in Article 19 in a limited connotation and it cannot be restricted to natural persons. Regarding the second question, he stated that to determine whether a company is an agent of the state or not would depend on the facts of the case. He stated that a company performing commercial function whether controlled wholly or partially by the Government would be presumed to not be an agent of the State. On the other hand, a corporation performing governmental functions and not commercial will be presumed to be an agent of the Government. He stated that if the State Trading Corporation is recognized as 'State' within the meaning of Article 12, the corporation can enforce Fundamental Rights Under Article 19. Consequently, he asserts that the initial question ought to be responded to in the affirmative, while the first segment of the second question should be addressed negatively, and the subsequent segment in the Affirmative.

Bank nationalisation case:

Two major facts were said by Supreme Court in its verdict. Those principles were –

1. *No shareholder or director can claim his or her fundamental rights on behalf of the company unless and until his or her own rights are being affected by the same.*
2. *The concept of THE EFFECT TEST [6] was taken into account.*

(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 the profitable company of that time. The Convention was signed in Italy on 4 November 1950 and entered into force on 3 September 1953.¹

¹ 38 146 (2008) DLT 455.
39 14902/04.

The case of OAO Neftyanaya Kompaniya Yukos v. Russia serves as a quintessential illustration of the European Court's acknowledgment of the fundamental rights of corporations as enshrined in the European Convention on Human Rights. In this case, Yuko Oil Company filed a complaint in against the Russian state complaining that the Russian authorities had hit it with a series of tax, prevented them from paying. The company alleged that the Russian authorities had violated Article 6 (the right to a fair trial), Article 14 (the general prohibition on 783 *International Journal of Law Management & Humanities discrimination*), Article 18 (protection against a state when it misuses its power) of the European Convention on Human Rights. The European Court stated that the Russian State had violated the company right to a fair trial provided in Article 6 and the right to protection of property, contained in Article 1 of Protocol 1. It can be concluded that fundamental rights are appropriately acknowledged for companies, despite their classification as artificial entities due to their legal status.

(B) American Scenario:

After the Civil War (1861-1865) there was a competitive rush between states to attract business, so there was a transition where state issued a legal document for start of a company to evolute corporate powers who claimed rights with equal to that of individuals. The Equal Protection Clause came during the same year. The first section of the 14th Amendment to the United States Constitution articulates that:

Any individual born within the borders of the United States is considered a citizen of the country. No State is permitted to enact or enforce any legislation that would diminish the privileges and immunities of United States citizens; nor may any State deprive any individual of The phrase emphasizes that no individual shall be deprived of their life, liberty, or property without the appropriate legal procedures being followed, nor shall any person within the jurisdiction be denied equal protection under the law, as established in the case of 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 Correction, the Court in another case extended the Sixth Amendment's birthright to a jury trial in a felonious case to pots, in yet another case the Court extended the free peroration clause of the First emendations to pots. The Supreme Court in recent Citizen's United v. Federal Election Commission 40 refused Bipartisan

Campaign Reform Act's proscriptions against pots and couplings and held the act transgressed the First Amendment birthrights of campaigners who elevate private plutocrat. Then the situation is settled in America as companies are entitled to indigenous birthrights meant indeed for subjects under the Bill of birthrights.

CONCLUSION-

After a detailed exploration of my content, I've learned is Commercial bodies are important for nation's frugality. They aren't only important for artificial evolution but also give employment purposes. Major portion of our diurnal lives are told by some or the other commercial exertion. It is important to realize that if a commercial body when at fault for not performing its duties can be held shamefaced and penalized under colourful ordinances like in tort, Indian Penal Code, the Companies Act, etc it's also important that similar bodies have abecedarian birthrights pivotal for its own proper functioning. Like it had formerly been bandied above how the Hundred- First report of the Law Commission of India reflected the significance of birthright of independence of peroration and expression to a review company. If commercial bodies are anticipated to achieve their duties tallying to the law for the interest of others also at the same time their birthrights and interest should also be protected. As we've discerned that abecedarian birthrights of the commercial bodies are defended in other countries like United States and nations in Europe, therefore the same should be followed in India too. conservation of Abecedarian birthrights of commercial realities is essential for the excrescency of the society. These artificial persons thus should be treated as a citizen so that they can mileage similar introductory birthrights. perfection between artificial and natural person cannot be removed fully but at least similar introductory birthrights which are essential for the process and evolution of these commercial bodies should be granted to them. before there was a huge clash descrying Composition 19 (f) and Composition 31 as they weren't handed to artificial realities, however now they're accessible to them in the shape of indigenous birthright. In the same expressway either the Abecedarian birthrights which are essential for commercial bodies should be made accessible to them, by esteeming these bodies as citizen or similar birthrights should be made accessible to them as indigenous birthrights.