LAW COMMISSION OF INDIA

HUNDRED - FIRST REPORT

ON

FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19 OF THE CONSTITUTION: RECOMMENDATION TO EXTEND IT TO INDIAN CORPORATIONS

May, 1984

JUSTICE K. K. MATHEW

No. F. 2(13)/83-LC

Dated the 28th May, 1984.

My dear Minister,

I am forwarding herewith the One Hundred and First Report of the Law Commission on "Freedom of Speech and Expression under Article 19 of the Constitution : Recommendation to extend it to Indian Corporation".

The subject was taken up by the Law Commission on its own. The need for taking up the subject is explained in Para I of the Report.

The Commission is indebted to Shri P. M. Bakshi, Part-time Member and Shri A. K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,
Sd/—
(K. K. Mathew)

Shri Jagannath Kaushal,
Minister of Law, Justice and
Company Affairs,
New Delhi.

Encl : One Hundred and First Report.

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CHAPTER 1

INTRODUCTORY

The scope.

1.1 The Law Commission of India has taken up for consideration the question whether the fundamental right of freedom of speech and expression as guaranteed by the Constitution should be made available to companies, corporations and other artificial persons, and if so, subject to what conditions. The need for taking up the subject, and some of the dimensions of the inquiry, will be presently indicated.

The background.

1.2 In the Indian Constitution, article 19 (1) guarantees to citizens six freedoms in all. Of these, the first is the right to freedom of speech and expression in article 19(1) (a). This right is subject to the power of the State to make a law imposing reasonable restrictions on the right in the interest of the various considerations set out in article 19(2). We are not, in the present inquiry, concerned with the scope and ambit of the restrictions that can be imposed by law on the freedom of speech and expression. What we propose to deal with is a restriction made explicit in the Constitution itself, namely, that the provisions of the article 19 can be availed of *only by citizens*. As will be apparent from a brief resume of the judicial decisions on the subject that will follow[1] in subsequent paragraphs of this Report, the use of the word "citizen" in article 19 has had the effect of leaving corporate bodies out of the scope of the article. The result is, that one important segment of the nation does not have any constitutional protection in respect of speech and expression. Institutions and organisations, being impersonal in character, cannot qualify for "citizenship". The protection of article 19 is, thus, not available to them, and is confined to natural persons, on a reading of the judicial pronouncements. In any case, the position in this regard is nebulous[2].

Classification of institutions that need the freedom of speech.

1.3 This, in our opinion, creates a serious anomaly. There are numerous organisations and institutions that need the freedom of speech and expression. They fall into several broad categories. There are, in the first place, commercial organisations (for example, companies owning newspapers), whose primary object is to disseminate or publish news with a motive of profit. Secondly, there are entities connected, with the *publication of views* (e.g. companies owning magazines), again with a profit motive. Thirdly, there are organisations (such as, companies producing or distributing films), which are engaged in certain activities wherein, though the dissemination of news or the propagation of views may not be the direct objective of those activities, yet views are propagated in circumstances to which questions of freedom of expression become very crucial. The depiction of life in all its reality and in all its variety, through visual or audio-visual media, is done so intensively in the activities of these organisations, that questions of freedom of expression prossess real significance for them[3]. The three categories of entities enumerated above have been selected from the commercial field. Besides these and as a fourth category one should mention non-commercial Corporations, which are engaged in activities either directly involving the dissemination of news or propagation of views, or occasionally involving such operations. Fifthly, there are corporate bodies (e.g. Universities and institutions having University status), whose activities may occasionally involve questions of freedom of speech and expression, particularly where the universities actively organise lectures and seminars or bring out publications as a part of their activities. In this connection, it may be of interest to mention that Bar Councils are, by statute, now empowered to organise seminars and bring out publications[4].

The anomaly.

1.4 The enumeration of organisations and institutions in the preceding paragraph is only by way of illustration. None can make an exhaustive catalogue. If that were possible, problems of the nature that have now arisen could not arise. The point to make is, that there is a vast veriety of organisations and

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1. Chapter 3, *infra*.
2. Paragraphs 3·1 to 3·5 and also Chapter 4, *infra*.
3. See paragraphs 4·2 to 4·7, *infra*.
4. Section 6, Advocates Act, 1961 (as amended in 1973).

institutions in legal language, "artificial" or "juristic persons" whose activities might lead to their involvement in situations where freedom of speech and expression and its constitutional protection could become of great practical importance. To elaborate the point, the following issues would be of importance :

(i) whether the law should place any restrictions on these organisations in regard to their activities as depicting life in all its vast panoply and,

(ii) If so, the limits to which the law itself should conform, while imposing such restrictions. An answer to question (ii) posed above directly involves a consideration of the scope of article 19 of the Constitution.

Anomaly.

1.5 The anomaly to which the present position, represented by the limited scope[1] of article 19(1) of the Constitution, can give rise, may be illustrated by taking a hypothetical case. Suppose a State passes a law regulating the performance of dramatic plays and imposing prior restrictions on such performnce, say, by requiring the previous permission of the Superintendent of Police before any play can be enacted in public. A literary society (even if it has acquired a corporate status) or a co-operative society (such as an author's co-operative guild) cannot, at present, challenge the constitutionality of the law, because such a society is not a "citizen". Not being a citizen, such a society cannot claim the protection of article 19. In other words, the State can make any kind of law curbing speech and expression vis-a-vis such societies. The anomaly is grave enough to justify an examination of the constitutional position. The anomaly may not have been so far keenly felt in paractice, partly because the members of such organisations and institutions can institute appropriate proceedings. The absence of a constitutional right of the organisation has not therefore been always noticed. But the deficiency is a real one.

In many cases, their own freedom would also come to be violated by the attempted enforcement of legislation of the nature posed in the hypothetical illustration given above. Since the members themselves enjoy the fundamental right, the fact that the organisation as such has no right, often goes unnoticed. But this can hardly be regarded as a satisfactory position. There is no logical reason for denying the right in question to the organisations and institutions. Their status and activities have an importance of their own, as will be elaborated in the next paragraph and also in a later Chapter[2].

Importance of organisations.

1.6 There is a vital difference between individuals and organisations. Individuals may come and go. Their views may vary. Their keenness to defend their freedom and to assert their rights may not be the same as that of the organisation viewed as a whole. Their resources, time and energy, their status and stature, their moral weight and social eminence, may be of a much lower quality than that of the organisation. Hence, enforceability of a right at the instance of members of an organisation is no substitute for enforcement at the instance of the organisation. Apart from all these considerations, a constitutional provision dealing with fundamental freedoms cannot afford to neglect practical realities for long. Such a neglect is likely to lead, in course of time, to distorted interpretations, to the emergence of legal fictions and to similar other developments that are no substitute for a clearly-worded and straight-forward provision.

These are the principal reasons that have weighed with us in undertaking the present inquiry, aimed at considering the question whether article 19(1)(a) of the Constitution should not be extended to non-natural persons, subject to certain conditions.

Press Commission Report.

1.7 Added to the above considerations is the fact that the second Press Commission, in its Report forwarded to the Government, has drawn attention to the need for a suitable amendment of the Constitution on the subject under consideration[3]. After a discussion of the present position, the Press Commission

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[1] Paragraph 1·2, *supra*.

[2] Paragraph 1·4 and Chapter 4, *infra*.

[3] Second Press Commission, Report (1981), Vol. 1, pages 32—34, paragraphs 3—14.

made the following recommendation on the subject :—

> "14. To sum up, a company is not a citizen and therefore, cannot claim the fundamental rights enumerated under Article 19. Since many newspapers are published by companies, and a company is not entitled to the fundamental right under Article 19, being not a citizen, we recommend that all Indian companies, engaged in the business of communication and whose shareholders are citizens should be deemed to be 'citizen' for the purpose of the relevant clauses of article 19."

Not only does the recommendation quoted above deserve careful consideration, but also it may be desirable[1] to carry further the same approach, when formulating in the concrete a constitutional amendment on the subjert. We reserve for a later chapter consideration of the points of detail that arise in this context.

Subject taken up *suo-motu*.

1.8 We should state that in view of the importance of the matter at issue and the unsatisfactory nature of the present position, and especially in the light of the observations made by the Second Press Commission[2], we have considered it appropriate to take up the matter of our own.

Inquiry confined freedom of speech and other expression.

1.9 It should be also made clear that the present discussin is confined to the question whether the right conferred by article 19(1)(a) freedom of speech and expression should be extended to corporate bodies. The question whether the other freedoms guaranteed by article 19 (1) should also be similarly extended, is not being dealt with in the present inquiry. There have been no suggestions made in that regard. Material on the other freedoms guaranteed by article 19 does not, also, bear that concreteness and magnitude as to compel us to take up, of our own, a consideration of those freedoms.

Working Paper circulated by the Commission.

1.10 Before concluding this Chapter, it may be mentioned that the Commission had circulated, for comments, a Working Paper on the subject matter of this Report[3].

The comments received on the Working Paper will be dealt with in a later Chapter[4]. The Commnssion is grateful to all those who have sent in their comments on the Working Paper.

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1. See paragraph 4·11, *infra*.
2. Para 1·7, *supra*.
3. Working Paper on Freedom of Speech and Expression under article 19 of the Constitution : proposal to extend it to corporations and other entities.
4. Chapter 6, *infra*.

CHAPTER 2

HISTORY

Drafting history of article 19.

2.1 For the purposes of this Report, we have tried to examine the question why, at the time of framing of the Indian Constitution, article 19 was decided to be confined to citizens. It appears that the Sub-Committee on Fundamental Rights first considered, on March 25, 1947, the rights to freedom of expression, association, assembly, and other rights as contained in the drafts of Dr. Munshi and Dr. Ambedkar. Dr. Munshi's draft[1] proposed that every citizen should have, within the limits of the Union and in accordance with the law of the Union, several personal rights safeguarded to him. These included the rights of freedom of expression of opinion, of free association and combination, of assembling peacefully and without arms, of secrecy of correspondence, and of free movement and trade. According to this draft, freedom of the press was also to be guaranteed, subject only to such restrictions imposed by the law of the Union as might be necessary in the interests of public order or morality[2].

Dr. Ambedkar's draft proposed that "no law shall be made abridging the freedom of speech, of the press, of association, and of assembly, except for considerations of public order and morality"[3][4].

Report of the Sub-Committee on Fundamental rights.

2.2 The Sub-Committee on Fundamental Rights, in its draft report, formulated five specific rights of the citizens, viz. (i) the right to freedom of speech and expression, (ii) the right to assemble peaceably and without arms, (iii) the right to form associations or unions, (iv) the right to the secrecy of correspondence; and (v) the right to freedom of movement throughout the Union, to reside and settle in any part of the Union, to acquire property, and to follow any occupation, trade, business or profession[6].

The freedom of the press which had been proposed as a separate right by Dr. K. M. Munshi[5], has not ultimately found a place in the Constitution as a separate right. Thus, the provisions in question have come to be confined to citizen only.

Drafting history of article 14.

2.3 The position regarding article 14 of the Constitution (equal protection of the laws), is different in this respect. The principle of guaranteeing to every person equality before the law and the equal protection of the laws was first included in the drafts submitted to the Sub-Committee on Fundamental Rights by Dr. Munshi and Dr. Ambedgar[7].

After considering the drafts for two days (March 24 and 29, 1947), the Sub-Committee adopted Dr. Munshi's draft, modified as follows :—

> "All persons within the Union shall be equal before the law. No person shall be denied the equal protection of the laws within the territories of the Union. There shall be no discrimination against any person, on grounds of religion, race, caste, language or sex[8][9].

The decision of the Sub-Committee was that all persons in India (and not merely citizens), should be equal before the law.

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1. Munshi's draft, article V (1) and (2) ; Select Documents II, 4(*ii*) (*b*), page 75.
2. Shiva Rao, The Framing of the Constitution of India (1968), page 211.
3. Ambedkar's draft article II (1) (12) and (7). Select Documents, II, 4 (11) (*d*), pages 86-87.
4. Shiva Rao, The Framing of the Constitution of India (1968), page 211.
5. Select Documents II, 4 (*iii*) and (*iv*), pages 119-120, 130.
6. Paragraph 2·1, *supra*. Munshi's draft, article III (1) and (10).
7. Ambedkar's draft article II (1) (3). Select Documents II, 4 (*ii*), pp. 74-5, 86.
8. Minutes, March 24, 1947, Select Documents II, 4 (*iii*), pp. 116-8.
9. Shiva Rao, The Framing of India's Constitution (1961), page 179.

CHAPTER 3

THE PRESENT POSITION

Present position under article 19 of the Constitution.

3.1 The present position as to the applications of article 19 of the Constitution to various categories of persons may be stated in the form of propositions, as under :—

(1) Article 19 of the Constitution being confined to citizens, foreigners cannot claim any right thereunder[1].

(2) A corporation cannot claim citizenship[2], and cannot therefore claim any right[3] under article 19, as it stands at present.

(3) This is so, even though the corporation is a company whose shareholders are citizens of India[4]. (In a recent judgment, the position has been described as "nebulous")[5].

(4) But the shareholders of a company can challenge the constitutional validity of a law on the ground of infringement of article 19, if their own rights are infringed[6], and in such a proceeding the company may be joined as a party[7].

Chronological survey of case law—cases upto 1965.

3.2 Chronologically, the first important case to be noticed on the point at issue is of 1957. The Supreme Court had, in that case[8], hinted at the difficulty that might arise, out of the fact that corporations are not "citizens". In 1959, the Supreme Court observed that a non-citizen running a newspaper is not entitled to the fundamental right of freedom of speech and expression and, therefore, cannot claim the benefit of liberty of the press[9].

Thereafter, there are two decisions of the Supreme Court reported in 1964, relevant to the subject. The first was a ruling of a bench of nine judges which (by majority), held that the provisions of the Citizenship Act were conclusive on the question that a corporation or a company could not be a citizen of India[10]. In the second case of 1964, it was unanimously decided by a bench of five judges of the Supreme Court that article 19 guaranteed the rights in question only to citizens as such, and that an association (such as a company) could not lay a claim to the fundamental rights guaranteed by article 19, solely on the basis of the fact that it was an aggregation of citizens[11].

Decision of 1970.

3.3 In 1970, the Supreme Court[12] held that the jurisdiction of the Court to grant relief cannot be denied when the rights of the individual shareholder are impaired by State action, if the state action impairs the rights of the company as well. The test for determining whether the shareholders' rights is impaired is not formal; it is essentially qualitative; if the State action impairs the rights of the shareholders as well as of the company, the court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief.

However, it should be pointed out that Shah, J. in the above decision, definitely said that the Supreme Court rulings of 1964[13] had no relevance to the question

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1. *Anwar* v. *State of J & K*. A.I.R. 1971 S.C. 337, 338.
2. (*a*) *Barium Chemicals* v. *Company Law Board*, A.I.R. 1967 S.C. 295.
   (*b*) *Tata Engineering Co.* v. *State of Bihar* A.I.R. 1965 S.C. 40, 48 : (1964) 6 SCR 85.
   (*c*) *S.T.C.* v. *C.T.O.* (1964) 4 SCR 99 : AIR 1963 SC 1811.
3. *Amritsar Municipality* v. *State of Punjab*, A.I.R. 1965 S.C. 1100, 1106.
4. (*a*) *Barium Chemicals* v. *Company Law Board*, A.I.R. 1967 S.C. 295, 305.
   (*b*) *Tata Engineering Co.* v. *State of Bihar*, A.I.R. 1965 S.C. 40, 48 : (1964) 6 S.C.R. 85.
5. Paragraph 3·6, *infra*.
6. *R.C. Cooper* v. *Union of India*, (1970) 3 S.C.R. 530, A.I.R. 1970 S.C. 564.
7. *Bennet Coleman* v. *Union of India*, AIR 1973 S.C. 106 ; 1973 (2) S.C.R. 757.
8. *R.M.D. Chamarbaugwalla* v. *The Union of India*. (1957) S.C.R. 930.
9. *M.S.M. Sharma*, v. *Shri Krishna Sinha*, (1959) Suppl. 1 S.C.R. 806.
10. *S.T.C.* v. *Commercial Tax Officer*, S.C.R. 806 (1964) 4 S.C.R. 99.
11. *Tata Engineering & Locomotive Co. Ltd.* v. *State of Bihar* (1964) 6 S.C.R. 85: A.I.R. 1965 S.C40, 48.
12. *R.C. Cooper* v. *Union of India*, (1970) 3 S.C.R. 530.
13. Paragraph 3·2, *supra*.

at issue. The petitioner had sought to challenge an infringement *of his own rights,* and not an infringement of rights of the bank (of which he was a shareholder and a director, and with which he had accounts current and in fixed deposit).

Decision of 1973.

3.4 In 1973, the majority of the Supreme Court[1] held that although a company is not a citizen, the citizen-shareholders can enforce their right of free speech, as the company is only a medium for expressing their views.

The material dicta are as under :—

> "The rights of shareholders with regard to Article 19 (1) (a) are protected and manifested by the newspapers owned and controlled by the shareholders through the medium of the corporation. In the present case, the individual rights of freedom of speech and expression of editors, directors and shareholders are all exercised through the newspapers through which they speak. The press reaches the public through the newspapers. The shareholders speak through their editors. The fact that the companies are the petitioners does not prevent this court from giving relief to the shareholders, editors, printers who have asked for protection of their fundamental rights by reason of the effect of the law and of the action upon their rights. *The locus standi of the shareholder petitioners is beyond challenge after ruling of this Court in the Bank Nationalisation case.*"

Criticism of the case of 1973.

3.5 However, with respect to the last part of the passage quoted above from the judgment of the Supreme Court (Bank Nationalisation Case), we should point out that the judgment was concerned with wrongs done to members as *members of companies.* It did not deal with the question how far the fact that the members were acting through newspaper organisation made a difference in the position of the organisation. We are making this comment in order to emphasise the fact that the position on the point at issue has, if anything, become less certain now than before, in view of the various judicial pronouncements, the important amongst which have been summarised *senatim* above.

Supreme Court judgement of 1983.

36. At this stage, it may be appropriate to refer to a recent Supreme Court judgment[2] which relates to the question how far article 19 applies to corporations. A rure regulating deposits accepted by companies was challenged in the above case. The challenge to the above rule was mainly based on alleged violation of article 19 (1) (g) of the Constitution and the writ petition in this case was filed by the company, The Attorney General objected to the maintainability of the petition. His contention was that an incorporated company, not being a "citizen", cannot complain of a breach of article 19 (1) (g), and that the situation was not improved by joining, as a co-petitioner, either a share-holder or a director of the company. The objection of the Attorney General did not succeed. Desai J., after reviewing the case law on the subject of the position of corporations with reference to article 19, and after commenting that the law was in a "nebulous state", made the following observations[3] :—

> "Thus, apart from the law being in a nebulous state, the trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by article 19, the rights of a shareholder and the company which the shareholders have formed are rather co-extensive and the denial to one, of the fundamental freedom, would be denial to the other. It is time to put an end to this controversy, but in the present state of law we are of the opinion that the petitions should not be thrown out *at the threshold.* We reach this conclusion for the additional reasons that apart from the complaint of denial of fundamental right to carry on trade or business, numerous other contentions have been raised which the High Court had to examine in a petition under article 226. And there is a grievance of denial of equality before law as guaranteed by article 14. We accordingly overrule the preliminary objection and proceed to examine the contentions on merits."

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1. *Bennet Coleman* v. *Union of India,* (1973) 2 S.C.R. 757 ; A.I.R. 1973 S.C. 106.
2. See *Delhi Cloth Mills* v. *The Union of India,* A.I.R. 1983 S.C. 973 (October).
3. *Delhi Cloth Mills* v. *The Union of India,* A.I.R. 1983 S.C. 937, 943, paragraph 12 (October).

CHAPTER 4

THE NEED FOR CONSTITUTIONAL AMENDMENT

Need for amendment.

4.1 It does not need much elaboration to show that if right of freedom of speech and expression is to be effectively enjoyed, it should be available to corporations, institutions and other entities which are not natural persons. The present position limiting this freedom to natural persons has the effect of excluding a pretty large number of entities through whom the natural persons operate. These entities are (as we shall show in the next few paragraphs) as much in need of a constitutional protection for the freedom of speech and expression, as natural persons. Not to recognise this is, if we may say so, to diseregard realities.

The individal's life as lived through the organisation.

4.2 In the modern era, the expression of views, the communication of ideas and the transmission and distribution of news take place more often through agencies organised as bodies or associations of individuals, rather than by the individuals directly. If these organisations and entities are to be left out of the needed constitutional protection, the indirect effect would be to leave out of that protection the individuals also, because the activities in regard to which the constitutional protection is needed are themselves often carried on through organisations and entities. In modern times, a part of the individual's life is lived through such organisations and this part of his life as much deserves recognition as the life lived exclusively on an individual level. In this sense also, the indirect effect of the present position is to leave out of protection the individuals themselves.

Reality of organisation.

4.3 Secondly, one should remember that organisations and entities themselves have a real existence of their own. Their personality may, in law, be artificial. But the fact that an activity is conducted in an organised manner through an entity definitely adds a new dimension to the activity in question.

Company as a distinct entity the legal aspect.

4.4 In this context, we would like to stress the distinct importance of a company as an entity. Take the legal aspect. It is well recognised that a company is a separate entity from the shareholders, and that the rights of the company are distinct from those of the shareholders. It is only those rights which a company has, that could be enforced by it[1]. In fact, the whole object of the law of corporations is to bring into existence a legal being and to put life, as it were, into the group itself.

Social character of corporations.

4.5 Then, there is the social reality of a corporation. The Supreme Court of India pointed out long age as under[2]—

> "We should bear in mind that a corporation which is engaged in production of commodities vitally essential to the community, has a social character of its own and it must not be regarded as the concern primarily or only of those who invest their money on it."

The same view was also expressed at the International Seminar on Current Problems of Corporate Law, Management and Practice (held in New Delhi), where it was observed that an enterprise is a citizen and like a citizen it is esteemed and judged by its actions in relation to the community of which it is a member, as well as by its economic performance[3].

Public image of corporations as distinct from members.

4.6 It should also be mentioned that to the public, the corporation has an image distinct from its members.

Threefold capacity.

4.7 As Professor De Wool of Belgium[4] has put it, "the company has threefold reality economic, human and public each with its own internal logic."

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1. *Salmen* v. *Salmen & Co.* (1897) A.C. 22 (H.L.).

2. *Charanjit Lal* v. *Union of India*, A.I.R. 1951 S.C. 51, 59.

3. See *National Textile Workers Union* v. *P.R. Ramakrishnan*, A.I.R. 1983 S.C. 75, 82, para 5 (Jan.—Feb. 1983).

4. Professor De Wool, quoted by Desai J. in *Panchmahal Steel Ltd.* v. *Universal Steel Traders*, (1976) 46 Company Cases, 712, 719 (Guj.).

Present position-anomalous.

4.8 Having taken into consideration all aspects of the matter, we have come to the conclusion that to limit the fundamental right of freedom of speech and expression to natural persons (as is the position at present) leads to serious anomalies. It has the effect of excluding a pretty large number of entities who deserve the protection in question as much as natural persons. As we have tried to show, such bodies and associations have come to acquire a role of their own and to leave them out of protection of article 19(1)(a) amounts to denying the benefit to a fairly sizeable proportion of humanity within the country, whose claim to a constitutionally favourable climate for its self-expression cannot be seriously disputed.

Importance of freedom of expression.

4.9 Apart from all these considerations, there is the fundamental object of freedom of speech and expression. It is for the pursuit of truth that such freedom is given. It is only when there is free expression of ideas that truth reveals itself. Without a relentless pursuit of truth, the great things of heart and intellect might be lost to us. The object of protecting freedom of speech and expression is to ensure that the life of the mind, as lived by members of society, is given full expression. When the matter is viewed in this light, the case for making a distinction between 'natural' and 'artificial' persons becomes very weak and the case for conferring the protection on all entities becomes almost unanswerable. It should also be borne in mind that the life of the mind is not exclusively lived on an individual level. It is as much lived through the entities that carry on social activities.

Need to remedy the present situation.

4.10 It is, thus, obvious that the present situation must be remedied and remedied urgently, if the freedom of speech and expression is to be implemented in its true spirit and if the Constitution is to meet the needs of society, its structure and working, its ethos and aspirations. This object can be achieved only by amending the Constitution. We shall presently indicate, in concrete terms[1], our recommendation in that behalf.

Report of the Second Press Commission.

4.11 Before we make our concrete recommendation on the subject, let us repeat here that the Second Press Commission[2], in its Report forwarded recently to Government, has made a special recommendation to the effect that for the purpose of the freedom of speech and expression, all Indian companies engaged in the business of communication, of which the shareholders are (Indian) citizens, should be deemed to be citizens of India. The Press Commission naturally did not suggest a draft on the subject, or deal with matters of detail. Moreover, it was not directly concerned with corporations not engaged in the business of communication. Its principal object was to draw attention to the lacuna in article 19(1)(a), in so far as that provision confines itself no natural persons. The Press Commission had to point out that on the language of the article, artificial persons, such as companies, were left out of the protection of article (19(1)(a). On an examination of the Supreme Court decisions on the subject, the Commission did not consider the present position satisfactory, since the decisions of the Supreme Court appeared to leave the matter still uncertain. As we have stated above[3], not only should the approach suggested by the Press Commission be adopted, but it should even be carried further, when framing a concrete amendment, by extending the protection to all companies and corporations so long as they have an Indian character. We shall revert to this aspect later[4].

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1. Chapter 7, *infra*.
2. Paragraph 1·6, *supra*.
3. Paragraph 1·6, *supra*.
4. See Paragraph 6·6, to 7·3; *infra*.

CHAPTER 5

POSITION IN ENGLAND, U.S.A., CANADA AND SOME OF COMMONWEALTH COUNTRIES

Introductory.

5.1 It would be of interest to note the position on the subject under consideration in selected other countries. Of course, in embarking upon a comparative survey, two broad propositions must be emphasised at the outset. In the first place, many countries do not have, in their Constitutions (whether written or unwritten), the concept of fundamental rights, so that the topic of freedom of speech and expression, as also the topics of other freedoms, must, in regard to those countries, be approached only as a part of a discussion of the rules of ordinary law.

Secondly, some of the foreign countries do not have a codified law, even in regard to ordinary rights. Hence, a discussion of the precise extent and coverage of a particular freedom, as recognised even in orlinary law, must, in regard to those countries, be derived from the substance of the relevant judicial decisions, if any, on the subject. This aspect is also vital to the present study, because it is elementary that a statement of the legal position as derived from case law cannot be so precise as a statement based on the text of a statute. Since there would be no formal and authoritative formulation of the relevant rules, questions such as the meaning of the expression "citizen" or of the expression "person" (or other analogous statutory expressions) cannot be dealt with where the law is not codified.

Position in England.

5.2 Both these prefatory observations apply to England which, as yet, has no written guarantee of fundamental rights, nor a codified law dealing with the freedom of expression even as an ordinary right.[1] Therefore, the question whether a corporation (or any other entity) can claim the freedom of speech and expression must in the context of English law, be dealt with only by a statement of rules of ordinary law—and that too, primarily on a study of the judicial decisions. English books on constitutional law (or on the law of torts) do not generally devote much space to a discussion of the very narrow point with which we are at the moment concerned, namely, whether a corporation (or other entity) can claim the freedom of speech and expression like a natural person. However, from the fact that occasionally, in England, a corporation has been proceeded against for some crime (such as libel or blasphemy) or for some tort, constituted by the publication of allegedly offending matter and the proceeding has failed by reason of some rule of the ordinary law which recognises some privilege, one can deduce that a corporation in England possesses the same right to freedom of speech and expression as a natural person.

Perhaps, it may be worthwhile elaborating the statement just now made. The chain of reasoning may be thus expressed. In England, a person is entitled to speak or write as he pleases, so long as he does not commit a breach of a specific rule of law punishing particular type of speech or writing or rendering it actionable.

It is a general principle of English constitutional law that a subject is free to do everything which is not specifically rendered illegal by a rule of law[2]. This applies in the sphere of expression, as it applies in other spheres[3].

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1. Generally, see Margaret Demeriux, "Delineation of Right to Freedom of Expression (Winter 1980) Public Law 359.

2. See Halsbury 4th Ed. Vol. 8 (Constitutional Law) pages 548.

3. As to freedom of expression, see De Smith, Constitutional and Administrative Law (2nd Ed.) pages 482—496.

If a particular speech or writing does not fall within such specific prohibitory rule, a prosecution or civil proceeding (against the speaker or the writer) based on the speech or writing, would fall. Now, such prosecutions or proceedings against corporations have actually failed in the past, because the prosecutor or plantiff could not prove that the writing or speech in question fell within the four corners of the prohibitory rule. Since the defendant in these cases was a corporation, this result could have been arrived at, only if the law recognises that a corporation, like a natural person, has the freedom to speak or write any matter that does not violate a specific prohibitory rule of law. By this chain of reasoning, one can conclude that in this sphere a corporation has the same right as a natural person.

Illustrative case.

5.3 In this context, it is particularly relevant to mention a very well known case decided by the House of Lords[1], which is the leading case on the subject of blasphemous libel. We are not concerned here with details of the legal propositions canvassed in that case as to the precise scope of blasphemy. What is of immediate relevance is the fact that the defendant in that case was a company limited by guarantee.

The defendant corporation in this case was a legatee under a will. The plaintiff challenged the validity of the bequest, on the ground that the object for which the defendant was established, were unlawful. The spread of secularism was the dominant object of the defendant company (as stated in its memorandum of association). The specific question that was debated at length, and examined with great learning by the House of Lords, was, whether denial of Christianity was, in itself, blasphemous. The House held that it was not, unless the preaching was accompanied with something vile, indecent or ribaldrous. The actual discussion is fairly elaborate, but only the gist thereof has been mentioned above.

Christianity, it was held, was not a part of English Common law. The proceedings failed because the plaintiff could not prove that the objects of the defendant corporation were, in law, blasphemous. Accordingly, the relief sought was not granted, and legality of objects of the defendant corporation was upheld. This conclusion could have been arrived at only on the assumption that if a particular preaching is not prohibited by a specific rule of law, then a corporation can engage itself in it, by virtue of the general freedom of expression available under the ordinary law. In other words, there was an implicit recognition by the House of Lords of the principle that a corporation can make or publish any statement which does not violate a specific prohibitory rule of law. In effect, this approach equates natural and artificial persons for the purpose of the right in question.

Recent suggestion made in England.

5.4 It may also be stated, as a matter of information, that a recent English book[2], which argues for the enactment of a bill of rights has, in an Appendix, given a draft of a Bill of Rights for England (as suggested by the author) and, of the various clauses of the Bill so suggested, one deals with the freedom of speech and expression. It proposes that the right should be available to all "persons". No distinction has been suggested between natural and artificial persons as such. The relevant clause, as proposed, reads as under :—

> "Every person shall have the right to freedom of speech subject to limitations either strictly necessary in public interest or reasonably desirable in the interests of other persons".

United States.

5.5 We now turn to the United States. The position in the United States regarding the civil rights available to corporations is somewhat complicated, and the threads seem to be a bit entangled. On the specific subject of freedom of expression, one might begin with the following question from Willis[3] :

> "Corporations as persons are protected as much as natural persons by the constitutional gurantee of freedoms of speech and of the press, as is shown by

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1. *Bowman* v. *Secular Society* (1917) A.C. 406 (House of Lords).

2. Jaconelli, Enacting a Bill of Rights (1980), Appendix, page 291, clause 2(*i*).

3. Willis, Constitutional Law of the United States (1936), pages 856-857.

the cases where the courts hold that the constitutional gurantee does not apply because of exceptions to the rule."[1].

5.6 The Supreme Court of the U.S.A.[2] had, in a fairly recent case from Massachussets, occasion to deal with a Massachussets statute which made it a crime for banks and business corporations to spend money to influence a vote on referendum, unless the laws "materially affected" the interests of the corporation concerned. The Supreme Court held the statute to be void, as violating the First Amendment. In this case, two banks and three companies wanted to publicise their view that the Massachussets Constitution should not be amended to permit graduated personal income tax. The Massachussets statute in question would have had the effect of prohibiting corporate spending on such publicity. The banks and companies argued that the statute violated the First Amendment. The contention was upheld by the Supreme Court. The Majority judgement of the Supreme Court was delivered by Powell J. whose exposition of the law will be set out later[3]. **Corporation's rights in U.S.A.—First Amendment.**

Burger C.J., concurring, said, "the First Amendment does not belong to any definable categories of person or entities, it belongs to all who exercise the freedom."[4] The dictum of the Chief Justice unmistakably equates all non-natural persons with natural persons, for the purpose of the First Amendment.

5.7 In this context, it may be also mentioned that some of the leading American cases relevant to the freedom of expression and liability for publication involved corporations[5-10]. **Leading cases.**

5.8 It has been stated that[11] freedom of speech and press are available to all[12]. These two freedoms are also accorded to aliens resident in U.S.[13]. Associations of individuals, such as labour unions and corporations, are entitled to enjoy this constitutional right[14] as well as individuals, since the inherent worth of speech, in terms of its capacity for informing the public, does not depend upon the indentity of the source, whether corporation, association or union or individual[15]. **Freedom of speech available to all entities in U.S.A.**

5.9 In the recent decision of the United States Supreme Court relating to corporations in Massachussets[16], Powell J. (who delivered the majority judgement), made certain important observations, rejecting the argument that the protection of the first Amendment should be confined to corporations that are mainly engaged in the business of communication. The relevant observation are as under :— **Majority view in *First National Bank of Boston V. Bellotti.***

> "In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *Police Dept. of Chicago* v. *Mosley*, 408 U.S. 92, 96, 33 L. Ed. 2d 212 S. Ct 2286 (1972)."

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1. ***Mutual Film Corp.*** v. *Industiral Commission of Ohio* (1914) 215 Fed. 138 ; Same, (1915), 236 U.S. 230 (not press) ; *United States* v. *Toledo Newspaper Co.* (1915) 220 Fed. 458 ; Same, (1916) 237 Fed. 986 (Contempt) ; *Mutual Film Corpn.* v. *City of Chicago* (1915) 224 Fed. 101 (films) ; *Dainer* v. *Star Chronicle Pub Co.* (1910) 230 MO. 613, 132 S.W. 1143 (libel) ; *Kelly* v. *Independent Pub. Co.* (1912) 45 Mont. 127, 122 Pac, 735 (libel) ; *Williams Printing Co.* v. *Saunders* (1912), 113 Va. 156, 73 S.E. 472, of, 48 Harv. L. Rev. 507.

2. ***First National Bank*** v. *Bellotti* (1978) S. Ct. 1407, 55 L. Ed. 707, 435 U.S. 765 ; re-hearing 57 L. Ed. 2d. 1150.

3. Paragraph 5·9, *infra*.

4. For detailed discussion, see Archibald Com, "Freedom of Expression in the Burger Court" (1980) 94Harvard Law Rev. page 1-93 ; and Archibald Cox Freedom of Expression (1981) pages 78-83.

5. *N.Y. Times Co.* v. *U.S.* (1971) 20 L. Ed. 2d 820.

6. *N.Y. Times Col* v. *Sullivan* (1964) 376 U.S. 254.

7. *Richmond Newspapers Inc.* v. *Virginia*, (1980) 62 L. Ed. 2d. 132.

8. See Note, "Corporations and the Constitution" (July 1981) 90 Yale L.J. 1833-1860.

9. *Gertz* v. *Robert Welch Inc.* (1974) 418 U.S. 323.

10. *Old Dominion Branch* v. *Austin*, (1974) 418 U.S. 264.

11. Vol. 16A, Am. Jur. 2d "Constitutional Law", pages 330-331, section 501.

12. *Murdeck* v. *Pennsylvania*, 87 L. Ed. 1292.

13. *Bridges* v. *Wixon*, 89 L. Ed. 2103.

14. *Bowe* v. *Secretary of the Commonwealth*, 320 Mass 230, 69 N.E. 2d 115 (Labour Unions).

15. *First National Bank* v. *Bellotti* (·1978) 55 L. Ed. 2d 707 (rehearing denied 57 L. Ed. 2d 1150).

16. Paragraph 5·6, *supra*.

Rejecting the argument that a legislature may direct business corporations to 'stick to business' when addressing the public, Powell J. further observed : "Such power in government to channel the expression of views is unacceptable under the first Amendment. Especially where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended.

Powell J's view (majority)

5.10 Powell J. in the above mentioned case[1], rejected the argument that the freedom in question is confined to activities "integrally related to corporate business operations". He pointed out that this would mean that corporate activities that are widely viewed as educational and socially constructive could then be prohibited. Certain very crucial sentences from the observations made by him in a footnote are quoted below :—

> "Corporations no longer would be able safely to support—by contributions or public service advertising—educational, charitable, cultural, or even human rights causes. Similarly, informational advertising on such subjects of national interest as inflation and worldwide energy problem could be prohibited. Many of these causes and subjects could be viewed as 'social', 'political' or 'ideological'.

Burger C.J.'s view (concurring judgement)

5.11 It would be of special interest to mention here that Burger C.J. who delivered separate but concurring judgement in the above case[2], expressed his disagreement with the ruling of the lower court (which was reversed by the Supreme Court), in these words :—

> "A disquieting aspect of Massachussets position is that it may carry the risk of impinging on the First Amendment rights of those who employ the corporate form—as most do—to carry on the business of mass communications, particularly the large media conglomerates. This is so because of the difficulty and perhaps impossibility, of distinguishing, either as a matter of fact or constitutional law, media corporations from corporations such as the appellants in this case."

Other views.

5.12 It may also be mentioned that while certain judges (such as Black J. and Douglas J.) have expressed a different view on the subject, even they have admitted that history had gone the other way[3].

A summing up by Pritchett.

5.13 One knowledgeable writer on the American Constitution[4] offers the following comments :—

> "Considering the importance of groups in a liberal democratic society, it would be a dubious and even illiberal policy to gurantee rights to individuals while denying them to organised groups."

In this connection, the defence of group rights in one of the American cases decided in 1951 is also of interest[5].

Comments on the case *First National Bank V. Bellotti.*

5.14 A significant literature already exists in the United States as regards the Supreme Court decision in *First National Bank of Boston* v. *Bellotti* discussed above[6]. Some commentators have defended the decision as an appropriate doctrinal development. The most noteworthy of such comments is the one in the Harvard Law Review[7]. In some of the comments, a concern has been expressed

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1. ***First National Bank of Bosten*** v. *Bellotti* (1978) 55 L. Ed. 2d 707, 727, and footnote.
2. ***First National Bank of Boston*** v. *Bellotti*, (1978) 55 L. Ed. 2d 707, 725.
3. ***Wheeling Steel Corpn.*** v. *Steel Corpn.* v. *Glander*, (1949) 337 US 562,
4. **Pritchett, the American Constitution (T.M.R. Edition 1977). page 524, fn. 30.**
5. ***Joint Anti-Fascists Refugee Committee*** v. *McGranth*, (1951) 341 US 123.
6. **Para 5·6,** *supra.*
7. **"The Supreme Court, 1977 Term" (1979) 92 Harvard Law Rev. 57, 163-164.**

about the impact of this decision on the role of the individual in politics[1]. Some commentators have expressed anxiety about the effect of the decision on the rights of minority shareholders.[2] Some have criticised the decision in respect of the theoretical basis, arguing that the decision denies First Amendment interest in preventing one-sided political dialogue.[3] Finally, some have expressed the view that corporate rights should be recognised when it would be appropriate to extend those rights to unincorporated associations also, the argument being that it is a mistake to conceive corporations as entitled as having rights distinct from those of members.[4] The arguments has also been put forth that such decisions hinder efforts to achieve liberal democracy, characterised both by vigorous participation and by vigorous individual rights.[5]

However, by and large, the decision, in so far as it recognises corporate freedom of speech, has been welcomed.

It may be mentioned that the first amendment protection has been regularly extended by the Supreme Court of U.S.A. in a number of decisions to corporations even prior to the *Bellotti* case. These earlier rulings relate to—

(a) libel laws;[6]

(b) special taxation;[7]

(c) obscenity laws;[8] and

(d) restrictions upon various forms of business advertising[9].

Organisations other than newspapers.

5.15 Cases relating to freedom of expression claimed by organisation other than those connected with newspapers are also available in U.S.A. Thus, the denial by the Chattanooga municipal board of an application made by the promotors of theatrical productions for the use of a municipal theatre in presenting the rock musical "Hair" constitutes a prior restraint on the freedom of expression under a system lacking in the constitutionally required minimum of safeguards[10]. This decision is regarded by some as resting on right to public forum[11]. Similarly, in a case involving a corporation[12], it was held that a particular restriction by way of prior restraint was not valid as presenting as "exceptional" case[13].

Other freedoms in U.S.A.—position regarding corporations.

5.16 The question how for (apart from the freedom of speech and freedom of the press), other freedoms can be claimed by corporations in the U.S. is also a very interesting one. It is not necessary to go into details. But following salient propositions, culled, in part, from the American Jurisprudence and taken, in part, from some other sources, may be of some interest[14].

(a) For the purpose of property rights claimed under the Fifth and Fourteenth Amendment, a corporation is a "person"[15].

(b) For the purpose of the equal protection clause of the Fourteenth Amendment also, a corporation is a "penson"[16].

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1. Hart & Shore, "Coporate spending on State and Local Referendums" (1979) Vol. 29 Case Western Reserve Law Rev. 808.

2. Note "Political contributions....." (1979) Vol. 4 Journal of Corporation Law 460.

3. See "Philosophy of Language and free expression" (1980) Vol. 55 New York University Law Review 157, 189, 190.

4. O'Kelley, "The Constitutional Rights of Corporations Revisited" (1979) Vol. 67, Georgia Law Journal 1347.

5. For an exhaustive analysis see Archibald Cox, "Freedom of expression in the Burger Court" (1980) 94 Harvard Law Rev. p. 1-98.

6. *New York Times co.* v. *Sullivan*, (1964) 376 U.S. 254.

7. *Grosjean* v. *American Publishing Co.* (1936) 297 U.S. 283.

8. *Bantam Book Inc.* v. *Sullivan*, (1963) 372 U.S. 48, 92 Ed. 2d. 584.

9. *Linmark flassociates* v. *Township of Willingboro*, (1977) 431 U.S. 85.

10. *South-eastern Promoters Ltd.* v. *Conard*, (1975) 43 L. Ed. 2d 448 ; 420 U.S. 546.

11. Lawrence Tribe, American Constitutional Law (1978), paragraphs 12-21, as referred to by Archibald Cox, Freedom of Expression (1981), page 58, fn. 205.

12. *Bantam Book Inc.* v. *Sullivan*, (1963) 372 U.S. 48 ; 9 L. Ed. 2d. 584.

13. Of Willis cited in paragraph 5·5, *supra*.

14. Vol. 18 Am. Jur. 2d (Corporations), pages 570-571, Section 21.

15. Vol. 18 Am. Jur. 2d, Section 21.

16. Vol. 18 Am. Jur. 2d. Section 21.

(c) For the purpose of the Fifth Amendment privilege against self-incrimination, a corporation is not a "person"[1].

(d) How far, for the purpose of the other liberties guaranteed by the Fourteenth Amendment, a corporation is or is not a "person"[2], depends on the nature of the right asserted.

(e) For the purpose of that part of the Fourteenth Amendment which provides that the privileges and immunities of "citizens" shall not be restricted, a corporation is not to be regarded as a citizen[3].

Position generally in other Constitutions.

5.17 Municipal law[4], it is stated, occasionally contains express constitutional provisions regarding the political activity of aliens. For example, Article 25 of the Nicaraguan Constitution states[5] that aliens are prohibited from intervening, directly or indirectly, in the country's affairs. Violation of this prohibition renders the alien concerned liable to prosecution and expulsion. Such express constitutonal provisions are, however, rare. It is more common for constitutions, by implication, to allow for the restriction of political activity by aliens. While freedom of opinion and speech are usually guaranteed to all persons, only citizens are guaranteed quality before the law[6]. Thus, the way is left open for discrimination between citizens and aliens as regards the exercise of these freedoms. As for collective freedoms, such as freedom of association and assembly, these are usually guaranteed only to citizens. Thus, Constitutions are careful not to preclude the restriction of the exercise of such freedom of aliens[7].

Canadian Bill of Rights of 1966.

5.18 It may be of interest to note that the provisions in the Canadian Bill of Rights[8] of 1966 were so worded as to allow the applicability[9] of the rights envisaged by that Bill to citizens as well as to non-citizens. At least, that could be the prima facie construction, since the relevant provisions avoided the use of limiting words like "citizens". Part I, section 1 and 2 of the Bill (so far as is material), were the following terms :—

"PART I

BILL OF RIGHTS.

1. It is hereby recognised and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely :—

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the equal protection of the law;

(c) freedom of religion;

(d) freedom of speech;

(e) freedom of assembly and association; and

(f) freedom of the press.

2. Every law of Canada shall, unless it is expressly declared by an act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill

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1. Vol. 18 Am. Jur. 2d, Section 21.

2. Based on case law.

3. Vol. 18 Am. Jur. 2d, Section 21.

4. A.C. Evans, "The Political Status of Aliens in International Law, Municipal Law and European Community Law" (Jan. 1981) Vol. 30, Part I, the International and Comparative Law Quarterly, pages 20, 24-25.

5. A.J. Peaslee, Constitutions of Nations, (1968) Vol. 4, page 959.

6. A.C. Evans, "The Political Status of Aliens in International Law" etc. (Jan. 1981), Vol. 30, Part I, I.C.L.O. page 20, 24-25.

7. A.C. Evans, "The Political Status of Aliens in International Law etc.")Jan 1981) Vol. 30k Part I. I.C.L.O. p. 20. 24-25.

8. Preamble, and Part I, section 1 and 2, Canadian Bill of Rights, 1960 (8-9 Eliz 2 Ch. 44).

9. For the text, see Tarnopolsky, Canadian Bill of Rights (1966), page 229 (Appendix 1).

of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorise the abrogation, abridgment or infringement of any of the rights of freedoms herein recognised or declared."

New Constitution of Canada.

5.19 The new Constitution of Canada contains the following provisions on the subject.[1]

"Constitution Act, 1981

Part I, Canadian Charter of Rights and Freedom.
Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law :

Guarantee of Rights and Freedoms :

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms :

2. Everyone has the following fundamental freedoms :

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association."[2]

A commonwealth precedent: the Constitution of Antigua

5.20 We were also interested to find that in one of the countries of the "New Commonwealth", namely Antigua, the Constitution guarantees the freedom of expression in terms which avoid the use of expressions necessarily confined to *natural* persons. Section 10 of the Antigua Constitution[3] reads as follows[4] :—

"(1) Except with his own consent, *no person* shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) that is reasonably required—

(i) in the interest of defence, public safety, public order, public morality or public health;

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority

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[1] Constitution Act 1981, Part I, Canadian Charter of Rights and Freedoms, sections 1-2.

[2]. See McWhinney, Cananda and the Constitution 1979—1982 (1983), Appendix E., page 173.

[3]. Antigua Constitution Order 1967.
[S.I. 1967 No. 225]

[4]. See Margaret Dz Merieux, "Delineation of the Rights to Freedom of Expression" (1980) Public Law 359, 360.

and independence of the courts or regulating telepony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) that imposes restrictions upon public officers."

Apart from the above section of the Constitution of Antigua, another section—section 15—of its Constitution came up for construction before the Privy Council.[1] Section 15, dealing with compulsory acquisition of property, uses the expression "person" and the specific point at issue was whether this expression would include a body corporate. The Privy Council held that it was so included. It may be mentioned that the interpretation section of the Constitution of Antigua (like the Indian Constitution) expressly made the Interpretation Act applicable for the interpretation of the Constitution. Similar constitutional precedents are found in other countries of the new Commonwealth.[2]

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1. *Attorney General* v. *Antigua Times Ltd.* (1975) 3 All E.R. 81 (P.C.).

2. For other precedents, see Halsbury, 4th Ed., Vol. 6, pages 476—483, paragraphs 1023--1026

CHAPTER 6
COMMENTS RECEIVED ON THE WORKING PAPERS

Comments required on the working Paper.

6.1 As stated earlier,[1] the Law Commission had invited, from interested persons and bodies, comments on the Working Paper prepared by the Commission on the subject. A request was made to forward the comments to the Commission by the 31st December, 1983. The Commission has taken into consideration all comments received upto the date of signing this Report.

Analysis of comments.

6.2 Leaving aside one reply of a confidential character, the Commission has received ten replies in all, on the Working Paper. Of these, five replies broadly agree[2] with the idea that the constitution should be amended on the lines indicated in this Report. Two replies do not agree with it.[3] Two replies have no comments to offer. One reply sought time for forwarding comments, but no comments were received from that source even after the expiry of two months after the last date fixed by the Commission.

Replies expressing agreement with the need for amendment of article 19.

6.3 The five replies that have expressed agreement that there is need to extend the benefit of article 19(1)(a) to Corporation are from—

(i) one High Court,[4]
(ii) two State Governments,[5]
(iii) the Law Commission of one State,[6] and
(iv) one High Court Judge.[7]

The reply sent on behalf of the State Law Commission, it should be added, is subject to confirmation by meeting of the State Law Commission and is further subject to the comment that the share-holding in a corporation should be cent per cent or wholly Indian.

Comments taking the view that article 19(1)(a) of the Constitution should not be extended to Corporations have been received from:—

(i) one State Government;[8] and
(ii) one High Court Judge.[9]

Some points made in the comments as to need for amendment.

6.5. In some of the comments received on our Working Paper, the view has been expressed[10], that since individuals can take appropriate proceedings for enforcing their own freedom of speech and expression, there is no need to amend the Constitution for the purpose. In this context, we would like to point out—as had already been done in our Working Paper—that even granting that individual editors and similar functionaries concerned with media can pursue the appropriate remedy, there is still need for specifically recognising the rights of Corporation as such. This point has already been made at length in an earlier Chapter[11] of this Report, and need not be discussed again at this stage. This is in addition to the fact that there is need to settle the law as to the position of Corporations[12].

Scope of the amendment.

6.6. It also appears to be convenient to make it clear, at this stage, that the recommendation that we are going to make is not confined to corporations engaged primarily in the field of mass media. The recommendation covers (subject to certain criteria concerned with share-holding or membership), all corporations, irrespective of their principal field of activity. The position will be clear from our concrete recommendation[13]. In fact, that was also the proposal put forth in the Working Paper. The point has been referred to in an earlier Chapter of this Report also[14]. So long as the character of the company or corporation is Indian, it should enjoy the protection[15].

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1. Paragraph 1·9, *supra*.
2. Paragraph 6·3, *infra*.
3. Paragraph 6·4, *infra*.
4. Law Commission File No. F. 2(13)/83-LC. S. No. 3.
5. Law Commissio(13)/83-LC. S.N. No. 7
6. Law Commission File No. F. 2(13)/83-LC. S. No. 9 (State Law Commission of M.P.).
7. Law Commission File No. F. 2(13)/83-LC. S. No. 10.
8. Law Commission File No. F. 2(13)/83-L.C. S. No. 1
9. Law Commission File No. F. 2(13)/83L.C. S. No. 10.
10. E.G. Law Commission File No. F. 2(13)/83-.C. S. No. 10 (A High Court Judge).
11. Chapter 4, *supra*.
12. See paragraph 3·6, *supra*.
13. Paragraph 7·5, *infra*.
14. Paragraph 4·11, *supra*
15. See paragraphs 7·1(*b*), 7·2 and 7·5, *infra*.

CHAPTER 7

RECOMMENDATION FOR CONSTITUTIONAL AMENDMENT

Two important considerations on the points at issue.

7.1 On giving some thought to the lines on which the Constitution should be amended on the points at issue, we have come to the conclusion that any amendment has to be formulated, keeping in mind two broad considerations:—

(a) The protection under article 19(1)(a) of the Constitution should be made available also to entities that are not "natural persons" but have a corporate status. In drawing up the list of such entities, notice could be legitimately taken of the varieties of organisations which we have described.[1]

(b) At the same time, it should be ensured that the corporations have an "Indian" character, just as natural persons (who are, at present entitled to the protection of article (19), are required to be citizens of India for claiming the protection. Extension of the right to non-citizens is not the subject of the present inquiry.

It is needless to state that the consideration at (b) above qualifies the consideration at (a) above, and sets certain limits on it. One can call it, in brief, the character of "Indianness". The manner in which these limits can be incorporated while extending the right to non-natural persons, is a point which requires some discussion; we deal with that point in the next few paragraphs.

Companies.

7.2. First, we take the case of companies proper. The requirement of "Indianness" can (in the generality of cases) be brought out by prescribing that all share-holders of the Company should be Indian citizens. However, it can happen that the share-holders themselves are not natural persons, but are artificial persons (or even the Government). Such cases have also to be covered. Accordingly, the amendment, while ensuring (as far as practicable) the Indianness of the entity that holds the share in the company in suitable language, specifically covers this refinement[2].

We may mention that in the Working Paper, circulated by us, we had put forth the test of 80 per cent Indian share-holding, but we are now of the view that it should be 100 per cent

Corporate bodies other than Companies.

7.3 Besides companies, it may be proper to extend the constitutional protection in question to corporate bodies which are not companies. As examples of such bodies, one may cite local authorities and universities, and also statutory bodies established by, or under specific Central or State Acts. The protection in question would also be needed by them. In all these cases, again, care has been taken, in framing the proposed amendment, to ensure their "Indianness", by inserting suitable conditions in that regard. The amendment which we are recommending keeps this in mind[3].

Unin corporated bodies.

7.4 As regards entities such as registered societies, for whom corporate status does not exist in law[4], the amendment recommended by us will not apply. We had, in our Working Paper, included unincorporated bodies and associations (with members who are Indian citizens) as entities to whom the right should be extended. However, we have now come to the conclusion that since they do not, strictly speaking, have a legal personality, they need not be covered by the article under consideration[5].

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1. Paragraph 1·3, *supra*.
2. Paragraph 7·4, *infra*. Proposed article 19, Explanation (*a*).
3. Paragraph 7·4, *infra*. Proposed article 19, Exlanation (*b*).
4. See (*a*) *Board of Trustees Ayurvedi and Tibbia College* v. *State of Delhi*! A.I.R. 1968 S.C. 458
   (*b*) *Kalra Education Society* v. *Amalgamated Society of Rly. Servants*, A.I.R. 1966 S.C. 1301.
   (c) *S.P. Mittal* v. *The Union of India*, A.I.R. 1983 S.C. 1, para 67.
5. **Paragraph 7·5, *infra*.**

7.5. We therefore recommend that article 19 of the Constitution be amended by adding the following Explanation:— Recommendation.

Explanation to be added to article 19 of the Constitution

"Explanation. For the purpose of this articles in so far as it relates to the freedom of speech and expression, the following shall be deemed to be citizens of India:—

(a) all companies incorporated in India in which the entire share capital is held:—

(i) by citizens of India; or

(ii) by the Government; or

(iii) by any such corporation as is specified in clause (b) of this Explanation; or

(iv) by a company incorporated in India in which the entire share capital is held by citizens of India or by the Government or by any such corporation as is specified in clause (b) of this Explanation, or by some or all of them taken together, or

(v) by some or all of them taken together;[1]

(b) all corporations, other than companies, being corporations established by or under any law of the time being in force in India[2].

K. K. MATHEW
Chairman

J. P. CHATURVEDI
Member

DR. M. B. RAO
Member

P. M. BAKSHI
Part-Time Member

VEPA P. SARATHI
Part-Time Member

A. K. SRINIVASAMURTHY
Member-Secretary

Dated 28-5-1984

1. Paragraph 7.2, *supra*.

2. Paragraph 7.3(*a*), *supra*.

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