PETITIONER:
THE STATE TRADING CORPORATION OF INDIA LTD. & OTHERS

Vs.

RESPONDENT:
THE COMMERCIAL TAX OFFICER, VISAKHAPATNAM AND OTHERS

DATE OF JUDGMENT:
26/07/1963

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
BENCH:
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
WANCHOO, K.N.
HIDAYATULLAH, M.
GUPTA, K.C. DAS
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 1811 1964 SCR (4) 89
CITATOR INFO :

R	1964 SC1451	(10)
R	1965 SC 40	(4,6,23)
F	1966 SC1436	(5)
R	1967 SC 295	(17)
OPN	1967 SC1318	(4)
RF	1970 SC 82	(5)
RF	1970 SC 564	(7)
R	1971 SC 870	(7,13)
RF	1973 SC 106	(11)
MV	1975 SC1331	(127,177)
R	1975 SC1737	(2)
R	1981 SC1368	(7)
RF	1983 SC 937	(12)
F	1988 SC1708	(13)
D	1989 SC1713	(10)

ACT:
Fundamental Right, Enforcement of-Corporation, if a citizen entitled to claim fundamental rights-Constitution of India, Arts. 19(1)(f) and (g), 32.

HEADNOTE:
The State Trading Corporation of India is a private limited company registered under the Indian Companies Act, 1956, with its head Office at Delhi and its entire capital is contributed by the Government of India. The Sales-tax Authorities of the States of Andhra Pradesh and Bihar sought to assess the Corporation to sales tax under their respective Sales Tax Acts and issued notices of demand. The Corporation claiming to be an Indian citizen filed petitions under Art. 32 of the Constitution for quashing the said proceedings on the ground that they infringed its fundamental rights under Art. 19(1) (f) and (g) of the Constitution. Preliminary objections having been taken by the respondents to the maintainability of the said

petitions, the Constitution Bench hearing the matters referred the two following questions for decision by the special bench.

> "(1) Whether the State Trading Corporation, a company registered under the Indian Companies Act, 1956, is a citizen within the meaning of Art. 19 of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said article; and (2) whether the State Trading Corporation is, notwithstanding the formality of incorporation under the Indian Companies Act, 1956, in substance, a department -,-id organ of the Government of India with the entirety of its capital contributed by Government; and can it claim to enforce fundamental rights under Part III of the Constitution against the State as defined in Art. 12 thereof.

Held, (DAS GUPTA and SHAH JJ., dissenting) that the answer to the first question must be in the negative.

Per SINHA, C. J., S. K. DAS, GAJENDRAGADKAR, SARKAR, WANCHoo and Ayyangar JJ. There can be no citizens of India not mentioned in Part 11 of the Constitution or by the Citizenship Act, 1955. These provisions are wholly exhaustive and contemplate only natural persons.

Part III of the Constitution makes a clear distinction between fundamental rights available to "any person" and those guaranteed

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to "all citizens", indicating thereby that under the Constitution all citizens are persons but all persons are not citizens

Part II of the Constitution relating to 'citizenship' is clearly inapplicable to juristic persons and the provisions of the Citizenship Act, 1955, enacted by Parliament under Art. 11 of the Constitution, show that such persons are outside the purview of the Act.

It cannot therefore, be said that either Part II of the Constitution or the Citizenship Act, 1955, confers the right of citizenship or recognises as citizen any person other than a natural person. They do not contemplate a corporation as a citizen.

In none of the relevant decisions this Court gave its considered judgment on the present issues and the question now raised are open questions.

Chiranjit Lal Chowdhuri v. Union of India [1950] S.C.R. 869, Dwarkadas Srinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. [1954] S.C.R. 674 and Bengal Immunity Co. Ltd. v. State of Bihar, [1955] 2 S.C.R. 603, considered.

'Nationality' and 'citizenship' are not synonymous. A corporation can claim nationality which is ordinarily determined by the place of its incorporation. But while nationality determines the civil rights of a natural or artificial person, particularly with reference to international law, citizenship is intimately connected with civic rights under municipal law. All citizens are, therefore, nationals of a particular State and enjoy full political rights but all nationals are not citizens and do not have full political rights.

It was not correct to say that the word 'citizen' in Art. 5 was not as wide as in Art. 19 of the Constitution or that Part II of the Constitution supplemented by the provisions of the Citizenship Act, which deals with citizens, deliberately left out of account citizenship in relation to juristic persons. When the Constitution confers any

particular right to be enjoyed by a citizen it uses the words "any citizen" or "all citizens" in clear contradistinction to those rights which are to be enjoyed by all, whether citizens or aliens, natural or juristic persons.

There is no reason to think that the word 'citizen' in Art. 19 is used in a different sense from that in which it is used in Part II of the Constitution.

Per HIDYATULLAH J.-Both the questions must be answered in favour of the respondents.

Before independence there was no law of citizenship in India. Under the British Nationality Act, 1948, Indians became Commonwealth citizens or British subjects without citizenship and were regarded as potential citizens of India. The Indian Constitution made provision for citizenship under which certain natural persons alone could be citizens of India and the Citizenship Act, 1955, excluded persons other than natural persons from citizenship.

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It is not correct to say that corporations were citizens before the Constitution. They enjoyed only such privileges under the municipal law which that law expressly conferred on them.

The nature and personality of an incorporated company have their origin in a fiction of law. This personality arises from the moment of incorporation and from that date the persons subscribing to the memorandum of association or joining as members become a body corporate. But they cannot be said to Pool their status and even if all of them are citizens of India, the Company does not become a citizens of India.

G. E. Rly. v. Turner, (1872) L. R. 8 Ch. App. 152, Salomon V. Salomon & Co. (1897) A. C. 22 and Janson v. Driefontein Consolidated Mines Ltd., (1902) A. C. 484, referred to.

The seven freedoms guaranteed by Art. 19(1) arc for the citizens of India. The Constitution in using the word "person", a word of larger import, in some other places makes its intention to exclude corporations clear.

Chiranjit Lal Chowdhuri v. Union of India, [1950] S.C.R. 869, explained.

The precedents of the Supreme Court of the United States which hold that corporations are citizens of the State of incorporation for purposes of federal jurisdiction cannot be followed in India. The diversity of citizenship which has led to such rulings does not exist in India. As a corporation is a separate entity from its members, it is not possible to pierce the veil of incorporation to determine the citizenship of its members in order to give the corporation the benefit of Art. 19.

The State Trading Corporation is not, therefore, a citizen either by itself or as the aggregate of Indian citizens. Its Indian nationality is not to be confused with citizenship of natural persons and the word 'citizen' in Art' 19(1) (f) and (g) can refer to no other than natural persons. The State Trading Corporation is really a department of Government behind the corporate veil.

Per DAS GUPTA J.-The first question must be answered in the affirmative.

It has been repeatedly laid down by this Court that in interpreting the Constitution a broad and a liberal and not merely the grammatical view should be taken. A syllogistic or mechanical approach has always to be avoided, more so when interpreting the Constitution. The attempt should be to reach the intention of the Constitution makers by

examining the substance and give effect to that intention, if possible.
So judged, it is clear that the Constitution makers when they used the word 'citizen' in Art. 19 had the intention that at least a corporation constituted wholly by citizens of India would get
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the benefit of the fundamental rights enshrined in that There is -nothing in the Constitution that stands in the giving all citizens of India, whether forming a corporation the benefit of Arts. 19(1) (f) and (g).
State of Bombay v. R. M. D. Chamarbaughwala, I.L.R. Bom. 680, Chiranjit Lal Chowdhuri v. Union of India, S.C.R. 869, Express Newspapers (P) Ltd. v. Union of India, S.C.R. 12, Bengal Immunity Co. v. State of Bihar, [1955] 2 S.C.R. 603 and Bombay Dyeing Manufacturing Co. Ltd. v. State of Bombay, [1958] S.C.R. 112 2, referred to.
The first part of the second question should be answered in the negative and the second part in the affirmative.
Per SHAH J.-In ascertaining the meaning of expressions used in a vital document like the Constitution of a nation,mechanical approach is impermissible. The Constitution is the declaration of the will of the people and should be interpreted liberally and not in a narrow or doctrinaire spirit. Such interpretation should be in accordance with the true purpose and intent as disclosed by the phraseology understood in its natural signification in the light of its setting and its dynamic character which is intended to fulfill the aspirations of the people.
Citizenship means the members of a jural society investing the holder with all the rights and privileges enjoyed by its nationals and subjecting him to corresponding duties. Nationality links a person to a State and ensures his rights in international affairs. While a citizen is a national, every national is not always a citizen.
Virginia L. Minor v. Reese Happersett, 21Wall. 162: 88 U.S. 627, referred to.
Under the English Common Law which formed the foundation of the Indian jurisprudence, a company or a corporation aggregate is a national of the State in which it is incorporated and is clothed with a personality given by the law of the land, capable of exercising rights arid entitled to protection a broad.
Janson v. Driefontein Consolidated Mines Ltd. L. R. (1902) A.C. 492, Attorney-General v. Jewish Colononization Association, (1901) 1 K.B. 133, Generali v. Salim Cotran, L.R. (1932) A.C. 288, Gasque v. Commissioner of Inland Revenue, L.R. (1940) 2 K.B. 36 and Kuenigl v. Donnersmark, L.R. (1955) 1 Q.B. 515, referred to.
So also in India a juridical person is capable of exercising to the fullest extent a large majority of civil rights which natural persons may exercise as citizens, its incapacity to exercise other rights arises from the nature of its personality and constitution and not from any special restriction imposed upon it. The Constitution, as is apparent from various other Articles, afforded the widest protection to corporation as it did to natural persons. Unless
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therefore, the language or the scheme of the Constitution is compulsive, it is impossible to put a limited connotation on the expression 'citizen' occurring in Art. 19(1).
To say that Arts. 5, 6 and 8 and the law made under Art. 11 are exhaustive and there can be no citizen except those expressly covered thereby is to assume that there were no

citizens in India before the Constitution, an assumption which is not warranted either by the language of the Constitution or the' history of our national evolution. The legislative history shows that British subjects of Indian origin held the status of citizens in British India and there was no statute before the Constitution which indicated even indirectly that a corporation aggregate could not be a citizen.

Although this Court did not make any definite expression of opinion, it has consistently assumed that corporations aggregate are entitled to claim protection under Art. 19(1) as citizens.

Chiranjit Lal Chowdhuri v. Union of India. [1950] S.C.R. 869, Bengal Immunity Company Ltd. v. State of Bihar [1955] 2 S.C.R. 603, State of Bombay v. R. M. D. Chamarbaughwala, [1957] S.C.R. 874 and State of West Bengal v. Union of India, [1964] 1 S.C.R. 371, referred to.

In numerous cases in this Court it was assumed, without contest, that a company is a citizen of India and competent to enforce fundamental rights under Art. 19(1)(f) and (g) of the Constitution.

Case law referred to.

In view of the fact that a company is invested with important fundamental rights under various other Articles of the Constitution and it is recognised as a person capable of holding and disposing of property and carrying on business, commerce and intercourse, it could not be held that the expression 'citizen' in Art. 19 was intended to be restricted to a natural person.

A corporation is, however, distinct from its share-holders and even if all the shareholders are Indian Citizens, its claim to citizenship cannot be founded on that ground for that would lead to anomalous results.

Salomon v. Salomon and Co. Ltd. L.R. (1897) A.C. 22, relied on.

State of Bombay, v. R.M.D. Chamarbaugwala, I.L.R. [1955] Bom. 680, disapproved.

The question whether a corporation is an agent or servant of the State must be decided on the facts of each case. In the absence of any statutory provision, a commercial corporation acting on its behalf, even if it is controlled wholly or partially by a Government department, will be presumed not to be a servant or an agent of the State. where, however, the corporation is performing in substance Governmental, and not commercial, functions, an inference will readily be made that it is an agent of the Government.

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Tamlin v. Hannaford, L.R. (1950) 1 K. B. 18, referred to.

Bank Voor Handel En Scheepvaart N. V. v. Administrator. of Hungarian Property, L.R. (1954) A.C. 584, held inapplicable.

There is no warrant for the proposition that a department or an organ of the Union or the State, if it is a citizen, cannot enforce fundamental rights against the State as defined by Art. 12 of the Constitution.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 202-204 of 1961.

Writ Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

M. C. Setalvad, G. S. Pathak, B. Parthasarthy, B. Dutta, B. Dadachanji O. C. Mathur and Ravinder Narain, for the Petitioners (in all the petitions).

D. Narasarj Advocate-General for the State of Andhra

Pradesh and T. V. R. Tatachari, for the respondents (in Petitions Nos. 202 and 203 of 1961).
V. K. Krishna Menon, Anil Kumar Gupta, R. K. Garg, D. P. Singh, M. K. Ramamurthi and S. C. Agarwala, for the respondents (in Petition No. 204 of 1961).
A. Ranganadham Chetty and A. V. Rangam, for Intervener No. 1. S. M. Sikri', Advocate-General for the State of Punjab and Gopal Singh, for Intervener No. 2.
B. Sen, M. K. Banner" and P. K. Bose, for Intervener No. 3.
J. M. Thakore, Advocate-General for the State of Gujarat and K. L. Hathi, for Intervener No. 4.
G. C. Kasliwal, Advocate-General for the State of Rajasthan, S. K. Kapur and K. K. lain, for Intervener No. 5.
July 26, 1963.-The judgment of Sinha C. J., S. K. Das, Gajendragadakar, Sarkar, Wanchoo and Ayyangar JJ. was delivered by Sinha, C. J. Hidayatullah J., delivered a separate opinion. Das Gupta and Shah JJ. delivered separate dissenting opinions.
SINHA C.J.-The following questions have been referred to the Special Bench by the Constitution Bench before which these cases came up for hearing :

(1) whether the State Trading Corporation, a company registered under the Indian Companies Act,
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1956, is a citizen within the meaning of Art. 19 of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said article, and
(2) whether the State Trading Corporation is, notwithstanding the formality of incorporation under the Indian Companies Act, 1956, in substance a department and organ of the Government of India with the entirety of its capital contributed by Government; and can it claim to enforce fundamental rights under Part III of the Constitution against the State as defined in Art. 12 thereof.

The questions were raised by way of preliminary objections to the maintainability of the Writ Petitions under Art. 32 of the Constitution.
As the whole case is not before us, it is necessary to state only the following facts in order to appreciate how the controversy arises. The State Trading Corporation of India Ltd., and K. B. Lal, the then Additional Secretary, Ministry of Commerce and Industries' Government of India, moved this Court under Art. 32 of the Constitution for quashing by a writ of certiorari or any other appropriate writ, direction or order, certain proceedings instituted by or under the authority of the respondents,-(1) The Commercial Tax Officer, Visakhapatnam ; (2) the State of Andhra Pradesh; and (3) the Deputy Commissioner of Commercial Taxes, Kakinada. Those proceedings related to assessments of sales tax under the provisions of the Andhra Pradesh Sales Tax Act. Writ Petitions 202 and 203 of 1961 are between the parties aforesaid. In Writ Petition 204 of 1961, the parties are the petitioners aforesaid against (1) the Assistant Superintendent of Commercial Taxes, I/c Chaibasa Sub-Circle, Bihar State; (2) the Deputy Commissioner of Sales Tax, Bihar, Ranchi; and (3) the State of Bihar. Thus, the petitioners are the same in all the three cases, but the respondents are the State of Andhra Pradesh and its two officers in the first two cases and the State of Bihar and its two officers in the third case.

The first petitioner is a private limited company registered under the Indian Companies Act, 1956, with its head office at New Delhi, in May, 1956. The second petitioner is a shareholder in the first petitioner company. The

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two petitioners claim to be Indian citizens as all its shareholders are Indian citizens. Proceedings were taken for assessment of sales tax, and in due course of those proceedings demand notices were issued. It is not necessary for the purposes of deciding the two points referred to us to set out the details of the assessments or the grounds of attack raised by the petitioners. It is enough to say that the petitioners claim to be Indian citizens and contend that their fundamental rights under Art. 19 of the Constitution had been infringed as a result of the proceedings taken and the demands for sales tax made by the appropriate authorities. When the case was opened on behalf of the petitioners in this Court, before the Constitution Bench, counsel for the respondents raised the preliminary objections which have taken the form now indicated in the two questions, already set out. The Bench rightly pointed out that those two questions were of great constitutional importance and should, therefore, be placed before a larger Bench for determination. Accordingly they referred the matter to the Chief Justice and this larger Bench has been constituted to determine those questions.

At the very outset of the arguments, we indicated that we shall give our decision only on the preliminary questions and that the decision of the controversies on their merits will be left to the Constitution Bench.

Before dealing with the arguments at the Bar, it is convenient to set out the relevant provisions of the Constitution. Part III of the Constitution deals with Fundamental Rights. Some fundamental rights are available to "any person", whereas other fundamental rights can be available only to "all citizens". "Equality before the law" or "equal protection of the laws" within the territory of India is available to any person (Art. 14). The protection against the enforcement of ex-post-facto laws or against double-jeopardy or against compulsion of -self-incrimination is available to all persons (Art. 20); so is the protection of life and personal liberty under Art. 21 and protection against arrest and detention in certain cases, under Art. 22. Similarly, freedom of conscience and free profession, practice and propagation of religion is guaranteed to all persons. Under Art. 27, no person shall be compelled to pay ;any taxes for the promotion and maintenance of any

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particular religious denomination. All persons have been guaranteed the freedom to attend or not to attend religious instructions or religious worship in certain educational institutions (Art. 28). And, finally, no person shall be deprived of his property save by authority of law and no property shall be compulsorily acquired or requisitioned except in accordance with law, as contemplated by Art. 31. These, in general terms, without going into the details of the limitations and restrictions provided for by the Constitution, are the fundamental rights which are available to any person irrespective of whether he is a citizen of India or an alien or whether a natural or an artificial person. On the other hand, certain other fundamental rights have been guaranteed by the Constitution only to citizens and certain disabilities imposed upon the State with respect to citizens only. Article 15 prohibits the State from

discriminating against any citizen on grounds only of religion, race, caste, etc., or from imposing any disability in respect of certain matters referred to in the Article. By Art. 16, equality of opportunity in matters of public employment has been guaranteed to all citizens, subject to reservations in favour of backward classes. There is an absolute prohibition against all citizens of India from accepting any tide from any foreign State, under Art. 18(2), and no person who is not a citizen of India shall accept any such tide without the consent of the President, while he holds any office of profit or trust under the State [Art. 18(3)]. And then we come to Art. 19 with which we are directly concerned in the present controversy. Under this Article, all citizens have been guaranteed the right :-

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;
(f) to acquire, hold and dispose of property; and
(g) to practice any profession, or to carry on any occupation, trade or business.

Each one of these guaranteed rights under cls. (a) to (g) is subject to the limitations or restrictions indicated in cls 108
(2) to 6) of the Article. of the rights guaranteed to all citizens, those under cls. (a) to (e) aforesaid are particularly apposite to natural persons whereas the freedoms under cls. (f) and (g) aforesaid may be equally enjoyed by natural persons or by juristic persons. Art. 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or State said on grounds only of religion, race, caste, language or any of them. This short resume of the fundamental rights dealt with by Part III of the Constitution and guaranteed either to 'any person' or to 'all citizens' leaves out of account other rights or prohibitions which concern groups, classes or associations of persons, with which we are not immediately concerned. But irrespective of whether a person is a citizen or a non-citizen or whether he is a natural person or a juristic person, the right to move the Supreme Court by appropriate proceedings for the enforcement of their respective rights has been guaranteed by Art. 32.

It is clear on a consideration of the provisions of Part III of the Constitution that the makers of the Constitution deliberately and advisedly made a dear distinction between fundamental rights available to 'any person' and those guaranteed to 'all citizens'. In other words, all citizens are persons but all persons are not citizens, under the Constitution.

The question next arises: What is the legal significance of the term "citizen"? It has not been defined by the Constitution. Part II of the Constitution deals with 'Citizenship', at the commencement of the Constitution. Part 11, in general terms, lays down that citizenship shall be by birth, by descent, by migration and by registration. Every person who has domicile in the territory of India shall be a citizen of India, if he was born in the territory of India or either of whose parents was so born or who has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution (Art 5). Secondly, any person who has migrated to the territory of India from the territory included in Pakistan shall be deemed to be a citizen of

India, if he satisfied the conditions laid down in Art. 6(a) and 6(b) (i). Any
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person who. does; not come within the purview of Art. 6(a), and 6(b))(i), but who has. migrated to India and has been registered, as, laid down in Art. 6(b)(ii), shall also, be deemed to be a citizen of India. Similarly, a person of Indian origin,. residing outside India, shall be deemed to. be a citizen of India if he has been registered as such by an accredited diplomatic or consular, representative of India in the country where he has been residing (Art. 8). Persons coming within the purview of Arts. 5, 6 & 8, as aforesaid, may still not be citizens of India if they have migrated from India to Pakistan, as laid down in Art. 7, or if they have voluntarily acquired the citizenship of any foreign State (Art. 9). Those, in short, are the provisions of the Constitution in Part II relating to 'Citizenship?, and they are clearly inapplicable to juristic persons. By Art. 11, the Constitution has vested Parliament with the power to regulate, by legislation, the rights to citizenship. It was in exercise of the said: power that Parliament has enacted the Citizenship Act (LVII of 1955). It is absolutely clear on a reference to the provisions of this statute that a juristic person is outside the purview of the Act. This is an act providing for acqusition and termination of Indian citizenship. The Constitution in Part 11, as already indicated, has determined who are Indian citizens at the commencement of the Constitution. As the Constitution does not lay down any provisions with respect to acquisition of citizenship or its termination or other matters relating to citizenship, after the commencement of the Constitution, this law had to be enacted by way of legislation supplementary to the provisions of the Consti-tution as summarised above. The definition of the word "person" in s. 2(1)(f) of this Act says that the word "person" in the Act "does not include any company or association or body of individuals, whether incorporatedor not". Hence, all the subsequent provisions of the Act relating to citizenship by birth (s. 3), citizenship by des-cent (s. 4), citizenship by registration (s. 5), citizenship by naturalisation (s. 6) and citizenship by incorporation: of territory (s. 7) have nothing to do with a juristic person. It is thus absolutely clear that neither the provisions of the Constitution, Part II, nor of the Citizenship Act aforesaid, either confer the right of citizenship on, or
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recognise as citizen, any person other than a natural person. That appears to be the legal position, on an examination of the relevant provisions of the Constitution and the Citizenship Act. But it was contended that this Court had expressed itself to the contrary in certain decisions, and some of the High Courts have also taken a contrary view' which we may now proceed to consider. In, what is now known as the first Sholapur case, Chiranjit Lal Chowdhuri' v. The Union of India(1), Mukherjea, J., speaking for the majority of the Court, made the following observations at page 898, which seem to countenance the contention raised on behalf of the petitioners that funda-mental rights are available to juristic persons also, as to citizens :

> "The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the

> provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to this Court for enforcement of its fundamental rights....."

Though the observations quoted above would seem to lend countenance -to the contention raised on behalf of the petitioners, they really do not determine the controversy one way or the other. In that case, a shareholder of the Sholapur Spinning and Weaving Company made an application under Art. 32 of the Constitution for a declaration that the Act impugned in that case was void, as also for the enforcement of his fundamental rights by a writ of mandamus against the Government,and the directors of the company, restraining them from exercising any power under the Act. It is not necessary to refer to the details of the controversy in that case because it is plain that it was not the company which was seeking the enforcement of its fundamental rights, if any, but only a shareholder. As a matter of fact, the company opposed the petition under Art. 32 of the Constitution. It is manifest that the observations quoted above were purely obiter and did not directly arise for decision of the Court.

Then we come to the second Sholapur case, reported

(1) [1950] S.C.R. 869.

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as Dwarkadas Shriniwas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd.(1). In the first-Sholapur case, this Court had been moved under Art. 32 of the Constitution by an individual shareholder, as aforesaid, for enforcement of his alleged fundamental rights. That petition, by majority judgment, stood dismissed. The second case arose out of a suit instituted by a preference shareholder, in a representative capacity on behalf of himself -and other preferential shareholders, for a declaration that the law which had been impugned in the previous case was ultra Vires. This Court held that the law impugned had autho-rised, in effect, the deprivation of the property of the company within the meaning of Art. 31 of the Constitution, without compensation, and had thus violated the fundamental rights of the company under Art. 31(2) of the Constitution. It will thus -appear that the decision of this Court proceeded on an examination of the provisions of Art. 31, which is not confined to citizens only and has reference also to the property of "any person". But there are observations made in the course of the judgment which would support the view propounded on behalf of the respondents. At page 694, Mahajan J., while discussing the scope and effect of the provisions of the Constitution in Part 111, with particular reference to Arts. 19 and 31, made the following observations :-

> "In considering Article 31 it, is significant to note that it deals with private property of persons residing in the Union of India, while Article 19 only deals with citizens defined in Article 5 of the Constitution. It is thus obvious that the scope of these two articles cannot be the same as they cover different fields. It cannot be seriously argued that so far as citizens are concerned, freedoms regarding enjoyment of property have been granted in two articles of the Constitution, while the protection to property qua all other persons has been dealt with in Article 31 alone. If both articles covered the same

> ground, it was unnecessary to have two articles on the same subject."

These observations would appear to support, the view that Art. 31 has reference to property of "persons" and

(1) [1954] S.C.R. 674.

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Art. 19 deals with fundamental rights of "citizens" as described in Part II of the Constitution.

Bose J, in the course of his judgment, at page 732 observed as follows:

> "Article 19(1) (f) confers a certain fundamental freedom on all citizens of India, namely, the freedom to acquire, hold and dispose of property. Article 31(1) is a sort of corollary, namely, that after the property has been acquired it cannot be taken away save by authority of law. Article 31 is wider than Article 19 because it applies to everyone and is not restricted to citizens. But what Article 19(1)(f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in this country no such restriction can be placed on citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens, save by authority of law."

But it has got to be said that those observations, though they may appear to support the contention raised on behalf of the respondents, were not made directly with reference to the question now before us, namely, whether a corporation could claim the status of a citizen. That question did not arise in that case also because the company, as such, was not seeking any relief. Even if the company were interested in seeking relief under Art. 31 of the Constitution, it could do so without having the status of a citizen.

In the case of The Bengal Immunity Company Limited, v. The State of Bihar,(1) the appellant company had moved the High Court under Art. 226 of the Constitution for certain reliefs against the provisions of the Bihar Sales Tax Act, but this Court (per S.R. Das, Acting C.J. at page 618 and per Venkatarama Ayyar J. at pages 765-766) left the question open and granted relief to the company without deciding that question. This case only serves the purpose of showing that the question now before us was still an open one and that this Court had, not given its

(1) [1955] 2 S.C.R. 603.

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considered judgment on the issue now before us.

It is, therefore, not necessary to refer to certain decisions' of the Madras, Bombay and Calcutta High 'Courts as they cannot be decisive one way or the other in the absence of a clear decision of this Court. We have, therefore, to examine the legal position afresh on the footing that it is still an open question.

On an examination of the relevant provisions of the Constitution and the Citizenship Act aforesaid, we have as already indicated, reached the conclusion that they do not contemplate a corporation as a citizen. But Mr. Setalvad, appearing on behalf of the petitioners, contended that Part II of the Constitution relating to citizenship is not relevant for our purposes because it does not define "a citizen" nor does it deal with the totality of "citizenship". It was further submitted that the same is the

position with reference to the provisions of the Citizenship Act. It is common ground, therefore, that the constitutional and the statutory provisions discussed above have no reference to juristic persons. But even so, it was contended, we have to review the legal position in the light of the preexisting law, i.e., the Common Law, which it was claimed, was preserved by Art. 372 of the Constitution. In this connection, reference was made to Halsbury's Laws of England, Vol. 6, 3rd Edition, pages 113-114, para 235, which lays down that, on incorporation, a company is a legal entity the nationality or domicile of which is determined by its place of registration. Reference was also made to Vol. 9 of Halsbury's Laws of England, page 19, paragraphs 29-30, which say that the concept of nationality is applicable to corporations and it depends upon the country of its incorporation. A corporation incorporated in England has a British nationality, irrespective of the nationality of its members. So far as domicile is concerned, the place of incorporation fixes its domicile, which clings to it throughout its existence. In this connection, reference was made to the case of Janson v. Driefontain Consolidated Mines(1) for the proposition that a company may be regarded as a national of the country where it was incorporated, notwithstanding

(1) [1902] A.C.1,484, 497, 501, 505.

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the nationality of its shareholders. It is -not necessary to refer to other decisions, because the position is absolutely clear that a corporation may claim a nationality which ordinarily is determined by the place of its incorporation. But the question still remains whether " nationality" and "citizenship" are interchangeable terms. "Nationality" has. reference to the rural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship " under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence, all citizens are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens, are those persons who have full political rights as distinguished, from nationals, who may not enjoy full political rights and are still domiciled in that country (vide P. Weis-Nationality and Statelessness in International Law pp. 4-6; and Oppenheim's International Law, Vol. 1, pp. 642, 644).

In our opinion, it is not correct to say, as was contended on. behalf of the petitioners, that the expression "citizen" in Art. 5 is not as -wide as the same expression used in Art. 19 of the Constitution. One could understand the argument that both the Constitution and the Citizenship Act have not dealt with juristic persons at all, but it is more difficult to accept the argument that the expression "citizen" in Part 11 of the Constitution is not conterminous with the same expression in Part III of the Constitution. Part II of the Constitution, supplemented by the provisions of the Citizenship Act (LVII of 1955) deals with "citizens" and it is not correct to say that citizenship in relation to juristic persons was deliberately left out of account so far as the Constitution and the Citizenship Act were concerned. On the other hand, the more reasonable view to take of the provisions of the Constitution is to say that whenever any particular right was to be enjoyed by a citizen of India,

the Constitution takes care to use the expression "any citizen" or "all citizens", in clear contradistinction to those rights
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which were to be enjoyed by all, irrespective of whether they were citizens or aliens, or whether they were natural persons or juristic persons On the analogy of the Constitution of the United States of America, the equality clause in Art. 14 was made available to "any person". On the other hand, the protection against discrimination on denominational grounds (Art. 15) and the equality of opportunity in matters of public employment (Art. 16) were deliberately made available only to citizens. In this connection, reference may be made to the Constitution of the United States of America(1)

> "Corporations
> Citizens of the United States within the meaning of this article must be natural and not artificial persons ; a corporate body is not a citizen of the United States." (p. 965)
> "Persons" defined
> "Notwithstanding the historical controversy that has been waged as to whether the framers of the Fourteenth Amendment intended the word, "persons" to mean only natural persons, or whether the word, "persons" was substituted for the word "citizen" with a view to protecting corporations from oppressive State legislation, the Supreme Court, as early as the Granger cases, decided in 1877, upheld on the merits various State laws without raising any question as to the status of railway corporation-plaintiffs to advance, due process contentions. There is no doubt that a corporation may not be deprived of its property without due process of law ; and although prior decisions have held that the "liberty" guaranteed by the Fourteenth Amendment is the liberty 'of natural, not artificial, persons, nevertheless a newspaper corporation was sustained, in 1936, in its objection that a State law deprived it of liberty of press. As to the natural persons protected by the due process clause, these include all human beings regardless, of race, colour or citizenship." (p. 981)

We have already referred, in general terms, to those
Senate Document No. 170, 82d. Congress, Ed. Edward S. Corwin,
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provisions of the Constitution, Part III, which guarantee certain rights to "all persons" and the other provisions of the same part of the Constitution relating to fundamental rights available to 'citizens' only, and, therefore, it is not necessary to recount all those provisions. It is enough to say that the makers of the -Constitution were fully alive to the distinction between the expressions "any person" and "any citizen", and when the Constitution laid down the freedoms contained in Art. 19(1)(a)-(g), as available to "all citizens", it deliberately kept out all noncitizens. In that context, non-citizens would include aliens and artificial persons. In this connection, the following statement in Private International Law by Martin Wolff is quite apposite :-

> "It is usual to speak of the nationality of

> legal per,sons, and thus to import something that we predicate ,of natural persons into an area in which it can be applied by analogy only. Most of the effects of being an 'alien' or a 'citizen' of the State are inapplicable in the field of corporations ; duties of allegiance or military service, the franchise and other political rights do not exist." (p. 308)

This apart, it is necessary to refer to another aspect ,of the controversy. It was argued on behalf of the petitioners that the distinction made by the Constitution between "persons" and "citizens" is not the same thing as a distinction between natural and juristic persons, and that as "persons" would include all citizens and non-citizens, natural and artificial persons, the makers of the Constitution deliberately left artificial persons out of consideration because it may be that the pre-existing law -was left untouched. It is very difficult to accept the contention that when the makers of the Constitution -were at pains to lay down in exact terms the fundamental rights to be enjoyed by "citizens" and those available to all "persons", they did not think it necessary or advisable clearly to indicate the classes of persons who would be included within the expression " citizens". On the other hand, there is clear indication in the provisions of Part III of the Constitution itself that they were fully cognizant of the provisions ,of the Constitution. of the United States of America,

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where the Fourteenth Amendment (s. 1) clearly brings out the antithesis between the privileges or immunities of citizens of the United States and life, liberty or property of any person, besides laying down who are the citizens of the United States. Section I aforesaid is in these terms and brings out the distinction very clearly :-

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

The question may be looked at from another point of view. Art. 19 lays down that "all citizens" shall have the right to freedoms enumerated in cls. (a) to (g). Those freedoms, each and all of them, are available to "all citizens". The Article does not say that those freedoms, or only such of them as may be appropriate to particular classes of citizens, shall be available to them. If the Court were to hold that a corporation is a citizen within the meaning of Art. 19, then all the rights contained in cls. (a) to (g) should be available to a corporation.. But clearly some of them, particularly those contained in cls. (b), (d) and (e) cannot possibly have any application to a corporation. It is thus clear that the Tights of citizenship envisaged in Art. 19 are not wholly appropriate to a corporate body. In other words,, the rights of citizenship and the rights flowing from the nationality or domicile of a corporation are not conterminous. It would thus appear that the makers of the Constitution had altogether left out of consideration

juristic persons when they enacted Part II of the Constitution relating to "citizenship", and made a clear distinction between "persons" and "citizens" in Part III of the Constitution. Part III, which proclaims fundamental rights, was very accurately drafted, delimiting those rights like freedoms of speech and expression, the right to.
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assemble peaceably, the right to practise any profession, etc., as belonging to "citizens" only and those more general rights like the right to equality before the law, as belonging to "all persons".
In view of what has been said above, it is not necessary to refer to the controversy as to whether there were any citizens of India before the advent of the Constitution. It seems to us, in view of what we have said already as to the distinction between citizenship and nationality, that corporations may have nationality in accordance with the country of their incorporation; but that does not necessarily confer citizenship on them. There is also no doubt in our mind that Part 11 of the Constitution when it deals with citizenship refers to natural persons only. This is further made absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons. We cannot accept the argument that there can be citizens of this country who are neither to be found within the four corners of Part II of the Constitution or within the four corners of the Citizenship Act. We are of opinion that these two provisions must be exhaustive of the citizens of this country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. Nor do we think that the word "citizen" used in Art. 19 of the Constitution was used in a different sense from that in which it was used in Part II of the Constitution. The first question, therefore, must be answered in the negative.
In view of this answer, we do not consider it necessary to answer the second question as that would have arisen only if the first question had been answered in the affirmative.
Let the cases go back to the Bench for hearing on merits with this opinion. Costs of the hearing before the special Bench will be dealt with by the Bench which ulti-
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mately hears and determines the controversy.
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HIDAYATULLAH J.-Two questions have been referred to this Bench for opinion. They are :
(1) Whether the State Trading Corporation, a Company registered under the Indian Companies Act, 1956, is a citizen within the meaning of Article 19 of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said Article ; and
(2) Whether the State Trading Corporation is notwithstanding the formality of incorporation under the Indian Companies Act 1956, in substance a department and organ of the Government of India with the entirety of its capital contributed by Government ; and can it claim to enforce fundamental rights under Part III of the Constitution against the State as defined in Article 12 thereof ?

The State Trading Corporation has been assessed to sales tax by the Commercial Tax Officer, Vishakhapatnam and a demand has been made upon it. By this petition under Article 32 of the Constitution it challenges the demand on the ground inter alia that the impugned order and the demand for the tax infringe its fundamental rights which are guaranteed to citizens by Art. 19 sub-clauses (f) and (g) and these sub-clauses read :

Art. 19(1). All citizens shall have the right

(f) to acquire, hold and dispose of property;

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

The State Trading Corporation claims to be a citizen for the application of these sub-clauses, which fact being disputed on the other side, has given rise to the two question,s above set out. As the questions amply indicate, the share capital of the State Trading Corporation is entirely contributed :by the Central Government. The shares are held by the President of India and two Secretaries to Government. The State of Andhra Pradesh, therefore, denies that the State Trading Corporation being an artificial person is a citizen and consequently contends that Art. 19 is inapplicable because the word 'citizen' in the article refers

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to natural persons. Additionally, it contends that being a department of Government, the State Trading Corporation cannot claim protection of Art. 19 against an action of the State.

Mr. Setalvad in formulating the grounds on which he rests the claim of the State Trading Corporation to citizenship, points out that the Constitution does not define the word 'citizen', that Part 11 of the Constitution which deals with citizenship is not material inasmuch as it is concerned with natural persons only and is not exhaustive and that the Citizenship Act (LVII of 1955) which provides for certain matters relating to citizenship but defines the word 'person' so as to exclude artificial persons like corporations aggregate, cannot also be regarded as exhaustive. He thus contends that corporations aggregate which, according to him, were citizens before the Constitution and the Citizenship Act, continue to enjoy the privileges of citizens, one of which is the guarantee in Article 19. In support of his submission that corporations were and continue to be citizens, he relies upon the fact that corporations possess a nationality and claims that in this connection 'nationality' and 'citizenship' bear the same meaning. He relies upon the observations of Mukherjea, J. (as he then was), in Chiranjit Lal Chowdhuri v. The Union of India(1) where the learned Judge observed obiter :

> "The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated, company, therefore, can come this Court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own ; but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the extent that it constitutes an infraction of his own rights as

well."
Mr. Setalvad also refers to other cases in which, though the point was not decided, several corporations claimed the
(1) [1950] S.C.R. 869, 898.
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protection of Article 19 and no objection was raised. Lastly, he contends that the word 'citizen' should be liberally construed to include a corporation aggregate which consists of Indian citizens only. On the second question he contends that a company has an existence which is independent of its members and the State Trading Corporation cannot be equated with the shareholders or the Government since the corporate veil cannot be allowed to be pierced. He points out that there are several States in our Republic and there is a great danger of one. Government stifling the trading activities of another Government either by law or executive action against which Article 19 is the only effective safeguard. He submits that it could not have been intended that while every individual citizen should be protected, a group of citizens, should by mere incorporation, lose the benefits of the guarantee in Article 19.
We are dealing here with an incorporated company. The nature of the personality of an incorporated company which arises from a fiction of law, must be clearly under stood before we proceed to. determine whether the word 'citizen' used in the Constitution generally or in Article 19 specially, covers an incorporated company. Unlike an unincorporated company, which has no separate existence and which the law does not distinguish from its members an incorporated company has a separate existence and the law recognises it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the memorandum of association and other persons Joining as members are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity. But the members who form the incorporated company do not pool their status or their personality. If all of them are citizens of India the company does not become a citizen of India any more than if all are married the company would be a married person. The personality of the members has little to do with the persona of the incorporated company. The persona that comes into being is not the aggregate of the personae either in law or in metaphor. The corporation really has no physical existence ; it is a mere 'abstraction of law' as Lord Selborne described it in G. E. Rly. v.
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Turner(1), or as Lord Macnaghten said in the well-known case of Salomon v. Salomon & Co. (2) it is "at law a different person altogether from the subscribers to the memorandum of association." This distinction is brought home if one remembers that a company cannot commit crimes like periury, bigamy or capital murder'. This persona dicta being a creature of a fiction, is protected by natural limitations as pointed out by Palmer in his Company Law (20th edn.) p. 130 and which were tersely summed up by counsel in R. v. City of London(3) when he asked "Can you hang its common seal?". It is true that sometimes the law permits the corporate veil to be lifted, but of that later.
There is a rule of English Law that a company or an incorporated corporation has a nationality and this nationality is determined by the law of the country in which it is incorporated. Mr. Setalvad thus begins his contention by

citing certain obiter statements from Janson v. Driefontein Consolidated Mines Ltd.(4) such as :

> "I assume that the corporation..... was to all intents and purposes in the position of a natural born subject of the late South African Republic." (Lord Macnaghten-p. 497)
>
> "I think it must be taken that the respondent company was technically an alien and became, on the breaking out, of hostilities between this country and South African Republic an alien enemy". (Lord Davey-p. 498)
>
> "The company must clearly be treated as a subject of the Republic notwithstanding the nationality of its shareholders." (Lord Brampton-p. 501)

He contends that there is no difference between 'nationality' and "citizenship" and the two words are synonymous and relies upon the following passage from Weis on Nationality and Statelessness in International Law (1956) pp. 4-5-

> "One of the terms frequently used synonymously with nationality is citizenship. Historically, this is correct for States with the Roman conception of nationa-
>
> (1) [1872] L.R. 8 Ch. App. 152. (2) [1897] A.C. 22, 51.
>
> (3) [1632] 8 St. Tr. 1087, 1138. (4) L.R. r 1902 1 A.C. 492.
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> lity, but not for States with the feudal conception of nationality, where citizenship is used to denote not political status but membership of a local community. It has, however, become usual to employ the term citizen instead of subject in republican States- including common law countries such as the United States ; he who before was a 'subject of the King' is now a 'citizen of the State' - and in that sense and in those States the terms 'nationality' and 'citizenship' must be regarded as synonymous."

It is, therefore, contended somewhat syllogistically that all incorporated corporations have the nationality of the State under the laws of which they are incorporated, that nationality is synonymous with citizenship and therefore incorporated companies are citizens. From this it is but a mere step, which is also taken, that incorporated companies in India were and still are citizens and that the Constitution and the Citizenship Act have nowhere deprived than of this citizenship or of the right to protect themselves by invoking Article 19(1) (f) and (g). Alternatively it is contended that if all the members of the Corporation are Indian citizens then the Corporation as a whole must be a citizen, for the whole cannot be different from its parts. Both the arguments involve fallacies. The first assumes that 'nationality' of corporations and citizenship of natural persons are the same concepts and caps it with the fallacy of ignorantio elenchi which in English is called the fallacy of irrelevant conclusion because instead of proving that corporations are citizens, it is sought to be shown that they ought to be citizens for the remedy is so good and effective. The second involves the fallacy of petition principle because it tends to beg the question and founds a conclusion. on a basis that as much needs to be proved as the conclusion itself. In my opinion, the State Trading

Corporation cannot be said to be a citizen either by itself or by taking it as the aggregate of citizens, that nationality of a corporation is a different concept not to be confused with citizenship of natural persons,that the word "citizen" in Art. 19(1) sub-clauses (f) and (g) refers to a natural person, that State Trading Corporation is really a Department of Government behind the corporate veil and that for all these

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reasons the two questions must be answered in favour of the objectors. I shall now make good these conclusions with reasons.

Article 19 uses the word 'citizen' while the word 'person' is used in some other articles in Part III notably Art. 14 (creating equality before the law), Art. 21 (protection of life and personal liberty). By Art. 367, (unless the context otherwise requires) the General Clauses Act, 1897 applies to the interpretation of the Constitution. The word 'citizen' is not defined in the Constitution or the General Clauses Act but the word 'person' is defined in the latter to include 'any company or association or body of individuals whether incorporated or not.' The word"person" therefore, conceivably bears this extended meaning at least in some places in Part III of the Constitution. But it is not necessary to determine where in the Constitution the word 'person' includes a company etc. because that word has not been used in Article 19. The claim of corporations aggregate, like the petitioner, to the benefits which Art. 19 gives, must depend on whether the word 'citizen' which is actually used can bear a similar enlarged meaning. Mr. Setalvad is right in contending that use of the word 'person' with an enlarged meaning in some places and of the word 'citizen' in other places does not by itself prove that artificial persons are outside the meaning of the word 'citizen'. The contrast may not be between natural and artificial persons so much as between citizens and non-citizens, and it is possible that where the benefit is intended to go to noncitizens, a word of wide meaning is used and where the benefit is meant for citizens only the word 'citizen' is used. It is true that the word 'citizen' cannot include an enemy or an alien while the more general word 'person' may but that does not answer the question whether the word citizen' can include a company or association or body of individuals, to borrow the words of the definition. The answer to that question must depend, as already pointed out, on the connotation of the word 'citizen' which must be found out.

In attempting to determine whether the word 'citizen' in Art. 19 denotes only a natural person or includes a company etc., we must turn first to the Constitution to see if the use of the word 'citizen' or citizenship in any other

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place bears the extended meaning or throws any light on this problem. The word 'citizen' is used in 29 places and the word 'citizenship' in 6 places. These words are also used in headings to Chapters and marginal notes but these may be ignored. It is worth inquiring if there is any place at all other than Art. 19 where not only a natural person but also an artificial person is meant. The word first occurs in the preamble thus

> "We the people of India having solemnly resolved to secure to all its citizens justice, social, economic and political
> Liberty of throught, expression, belief, faith and worship ;

Equality of status and of opportunity; and to promote among them all
Fraternity assuring the dignity of the individual and the Nation," etc.

'Liberty of thought, expression, belief, faith and worship, equality of status' and 'dignity of the individual are expressions appropriate to natural persons and not companies, associations and other corporations aggregate and the word 'citizen' in the preamble refers to individuals for whom the Constitution was being made. In this connection, it must be remembered that a Constitution is a bond between the citizens and the administration and regulates their respective actions. It is as Ahrens defined it :

"L.' ensemble des institutions et des lois fondamentales, destine eargler l'action de l'administration et de tous les cityens.

(Ahren : Course de Droit Naturel & C. iii p. 380) (The body of institutions and fundamental law designed to regulate the action of the Administration and all the citizens).

The preamble in solemn words sums up what is later provided in the Constitution. 'Citizens' in the preamble mean those individuals who under the Constitution are guaranteed civic rights in the body politic that is India and who can hold public offices and elect their representatives to Parliament and Assemblies of the people. They are persons who were declared citizens on the inauguration of the Constitution and those on whom the rights of citizens were conferred and on whom they may

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be conferred by law. of course the Constitution also confers some rights on aliens and assists and protects them but the guarantee in the preamble is to the citizens alone that is individuals who enjoy full civic rights in the body politic.

Then follows a special chapter entitled "Citizenship". That part contains seven Articles. Art. 5 spoke at the commencement of this Constitution. That article uses the word 'person' but the context shows that only natural persons were meant. Citizenship was conferred on every person who had his domicile in the territory of India and

(a) who was born in the territory of India ; or

(b) either of whose parents was born in the territory of India or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

The reference to the birth of the person or of Ms parents clearly shows that only natural persons were meant because corporations though born in a metaphorical sense do not have parents. By the same token Art. 6 also refers to natural persons. Articles 7, 8, 9 and 10 so clearly speak of a natural person as to need no elaboration. That leaves Art. 11 which gives Parliament the power to make laws for the acquisition and termination of citizenship, and all other matters relating to citizenship. That article reaffirms the power which is given to Parliament by Entry 17 of List I of Schedule VII of the Constitution. As we shall see presently, the Citizenship Act of 1955 expressly excludes companies, etc. from its provisions. The power conferred by Art. 11 or Entry No. 17 may give rise hereafter to the question whether Parliament can invest corporations institutions, trusts, funds, ships or aeroplanes with citizenship but till Parliament does so there is nothing in Part 11 to indicate that the words 'citizen' and 'citizenship' were used to include any of them.

In the fourth part which is entitled 'Directive Principles' the word 'citizen' is used twice. In Art. 39 it is qualified by the words 'men and women' which addition tells its own story. In Article 44 the State is asked to endeavour to secure a uniform Civil Code for all citizens and the word plainly means men and women because it is impos-
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sible to think that the Constitution is thinking of a uniform Civil Code for corporations. In the other parts of the Constitution 'citizenship' is a condition precedent for some office, post or privilege. The President, the Vice-President, the Governors, the Members of Parliament and the Legislative Assemblies, the judges of the Supreme Court and High Courts must be citizens. Members of Parliament and Legislatures cease to be members if they cease to be citizens of India or acquire the citizenship of other countries. The words 'citizen' and 'citizenship' thus refer to natural persons because these offices cannot be held by corporations aggregate. Art. 326 says that every citizen 21 years in age has a vote. This means only a natural person.
There remains only Part III entitled 'Fundamental Rights'. In Articles 15 and 16, the word clearly means a natural person. The words religion, race, caste, sex, descent, Place of birth and residence mark out a human being. In Art. 18, which mentions titles, a natural person is again meant because titles are ordinarily conferred on individuals. In Art. 29(1), where citizens residing in the territory of India having distinct language, script or culture of their own have been given a right to preserve the same, the word definitely refers to natural persons. In Art. 29(2) entrance to educational institutions is guaranteed to citizens and the entrant can only be a natural person and not a corporation.
The above analysis shows that in 34 places, the words citizen' and 'citizenship' refer to natural and not artificial persons. The question is whether in the thirty-fifth place the word is meant to include corporations aggregate. For this purpose we must ascertain if there is anything special which points to a different use of the word. Sub-clauses (a) to (e) of Art. 19 contemplate natural persons. The claim is that the word 'citizen' must bear a different meaning in respect of clauses (f) and (g) because corporations acquire, hold and dispose of property and carry on trade or business. It is argued that if several citizens carry on business together as an incorporated company they cannot lose the guarantee which is given to citizens, and we are invited to give a meaning to the word which is wide enough to include companies. It has been shown above that the way in which the words 'citizen' and 'citizenship'
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have been used in the Constitution goes to show that such was not the intention at least in 34 other places. It may however be conceded that this is not decisive and if corporations can possess citizenship there is no reason for not interpreting the Constitution liberally to give them the benefits of clauses (f) and (g) of Art. 19(1). For this purpose it is necessary to find out what is meant by 'citizen and citizenship' generally and to trace historically the concept of citizenship to see if that concept included at any time artificial persons like corporations so that the word can be said to be intended to bear such a meaning.
The word 'citizen' which is used in Art. 19 of the Constitution has not been defined. Its meaning in the context of Art.. 19 must be found out. If it bore the same

meaning as in the other parts of the Constitution, it would mean a member, born or naturalised, of the State, on which the Constitution or a law of Parliament confers citizenship. Is there in law a citizenship of a group of persons who may be all citizens or some of whom may be non-citizens? The answer is that the word in its normal meaning does not admit "bulk citizenship" which is the only way to describe it. Salmond in an article on "Citizenship and Allegiance" 1901-1902 Law Quarterly Review Part I pp. 270-82, says that the word is derived from the Latin 'civitas' and 'civis'. More directly, of course, the root is in the French words 'citoyen' or 'citeyen'. From the earliest times, the concept of citizenship concerned natural persons and not groups of persons. In ancient Greece, according to Aristotle, the population of Attica was divided into groups which were brotherhoods (phratriai) and of clans (gene). Groups of brotherhoods formed tribes (phylai). The entire citizen body was thus included in the tribes and brotherhoods but the wealthy formed the clans. When monarchy was abolished through the efforts of the clans, the citizenship of the members of the brotherhoods was in name only because they had no civic rights. Draconian reforms created four classes according to wealth and Solon gave to the four classes the right to act in a political capacity. (ecclesia) and also in a judicial capacity (heliaia) and thus earned the title 'the first champion of the people'. But even under him, the concept of citizenship was immature. The first recognition of citizenship came with Cleisthenes
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under whose reforms there was a distribution of the population on a geographical basis and an enfranchisement of persons of pure or partial Athenian descent. Resident foreigners had inter-married and though there was a partial recognition of foreigners permanently settled domiciled in Athens even from the days of Peisistratus there was no recognition of the offsprings of mixed marriages as citizens. These were added to the list of citizens because citizenship no longer depended on membership of the phratries. This state of affairs continued till -Pericles abrogated the enlightened measure. He limited citizenship to those of Athenian descent on both sides. Had he come earlier some famous men of Athens like Themistocles would have been barred from not only office but other civic rights. It is not necessary to follow the history of Athens further. It is reasonable to believe that all other States in Greece except Sparta followed this kind of citizenship. The Spartans had their own system of rule with two kings and an elected council (gerusia) elected by the citizens which was both advisory and judicial. There was also an assembly of all citizens over twenty called the appella which elected the magistrates and met monthly. The right of vote in the election of the gerusia and membership of the appella was open to those who were selected at the birth by the spartiate. All children were inspected at birth by the heads of the tribe and those who were sickly were exposed in a ravine of Mt. Taygetus and of the others those that lived all boys were taken away at the age of seven and trained as citizens. All the Hellenic States followed Athens but Crete perhaps was influenced by Sparta.

This is the earliest recognition of citizenship that we need consider in Europe. The next to consider is the conception of citizenship in Rome. The words 'civitas' and 'civis' were used in Roman Law to describe persons who had the freedom of the city and who enjoyed all political and civic privileges of Government. In this way were distinguished a

slave (servus), an enemy (hostis) who had none of these rights on the one hand and a foreigner (peregrinus) particularly from a country with which Rome was on terms of peaceful intercourse on the other, from citizens. Though by Justinian's time everyon
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became a citizen, unless he was an unmanumitted slave, in the time of Gaius citizenship was the privilege of Romans and carried with it the right to vote (jus suffragii) and the right to hold public office (jus honorum) the right to a Roman marriage (jus connubium) and the right to legal relations ('us commericum). The son of a Roman citizen was also a Roman citizen irrespective of where he was born. The peregrinus had no civic rights unless he belonged to a Latin country. There were different laws for a long time for the citizens and the latini and the peregrini. The first to be given the status of citizens were the latini. Later all free subjects were to be cives. The only peregrines who were left were foreigners and barbarians and they had no civic rights just as members of certain treacherous communities (dediticii) and persons deprived of citizenship (deportati) had none.

Thus both in Greece and Rome the idea of citizenship was bound up with natural persons in whom certain civic rights were considered to inhere and which marked them out from others. Sometimes descent, sometimes the wealth, sometimes the status, military or other, determined the privilege but at no time was there a concept of citizenship of any but a natural person. In Roman Law citizenship was transmitted by birth to an offspring of a Roman citizen.

So far we have dealt with citizenship namely membership of body politic with full civic rights. In the middle ages this membership of the State began to carry a dual status : one status was political and the other civil. The double status came in Central Europe in the wake of Roman Law and was partly due to the growth of feudal vassalage by which what might have grown into nations composed of 'clans' became divided into feudal Chieftanships. The feudal lord did not concern himself with descent as such so long as his follower held land or rendered service according to his laws. Such laws did not apply to foreigners but if the foreigners held lands or chattels or rendered service he was equally bound. But the main reason was the impact of international relations. An individual began to be viewed in two capacities. Firstly, he was regarded as the subject of a certain State
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(a political status) and secondly as one entitled to certain rights and privileges in his own State (a civil status). Both arose from the bond to a particular State or territory but it would be wrong to say that the word 'nationality' describes the civil status. The word 'nationality' whether denoting an ethnic group or political membership of a State is a word of much later origin. M. Cogordan (La Nationalite p. 2) has given the origin of the word and in the Dictionnaire de 1, Academie frans ais it appeared for the first time in 1835. Even the Code Napoleon dealt with rules concerning the status of Frenchmen abroad but did not provide for the status of foreigners in France. The recognition of nationality as a test of the law applicable to an individual -followed the famous lecture by Mancini at the University of Turin in 1851. The impact of international relations added to the civic rights possessed by a citizen by investing him with a policial status which he could claim abroad. The word 'nationality' itself has

now come to acquire two distinct meanings political one by which is indicated the membership of a State and the other an ethnic one denoting membership of a nation. All this time citizenship has also meant membership of a State but in a municipal aspect. In this sense, the words 'national' and 'citizen' are not inter-' changeable as has been sometimes supposed. In the United States Public Law 414 (82nd Congress, 2nd session) section 308 is entitled "Nationals but not citizens of the United States at birth". According to Weis Nationality and Citizens-hip p. 5:

"That the term American National has a wider meaning than the United States citizen was recognised in Administrative Decision No. V of the Mixed Claims Commission between the United States and Germany ,'Decisions and Opinions Vol. I pp. 18-19; Hackworth Digest of International Law, Vol. III p. 5 Annual Digest, 1923-24, Case No. 100)."

Weis has given other examples of the disparate use of the two words in the Constitution of the Netherlands, Honduras, Nicaragua and Roumania. Even in the United States Immigration and Nationality Act, 1952, the distinction is preserved. This dual status which has caused all the trouble in this case was summed up by Lord Westbury

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in Udny v. Udny(1) by saying that the political status :

> "May depend upon different laws in different countries, wheras civil status is governed universally by one single principle, namely that of domicile, which is the criterion established by law for purposes of determining civil status. For it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend."

Thus, in the Middle ages, it was begun to be realised that the legal personality of persons was composed of a political status and a civil status. It was possible for a person to have political status but not civil status, that is to say, he could be a national but not a citizen but it was difficult to imagine a citizen without political status. This political status was determined according to two different theories. One was the theory of descent ('us sanguinis) and the other a theory of domicile (us soli). The European countries applied the former and the Common Law countries the latter to determine the status. We have already seen that according to Roman Law the son of a Roman citizen was also a Roman citizen and it did not matter where he was born and this was the theory which was recognised in Central Europe. In the Common Law countries (and 1 include the United States of America) birth in the territory of the King (us soli) determined political as well as civil status. Descent from a citizen or subject outside the territory was recognised statutorily. Statutes from the time of Edward III recognised descent as one of the modes of acquisition of political as well as civil status in England. In the United States the principle of descent also was recognised statutorily except in the case of children whose parents though citizens had never resided in the States, but the governing theory was birth in the territory of the States.

I have, I think, sufficiently explained that citizenship and nationality are not entirely similar concepts though the words are sometimes used interchangeably owing to the fact that most citizens are also nationals and vice versa. But strictly speaking citizenship:

(1) L.R. I H.L. S.C. 441.

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> "is a term of municipal law, and denotes the possession within the particular State of full civil and political rights, subject to special disqualification such as minority or sex. The conditions on which citizenship is acquired are regulated by municipal law."
> J. B. Moore (Digest of International Law Vol. III (1906) p. 273.)

The disqualifications of citizenship in the past and even today are many and different from country to country. Some of them which operate even today in several countries are: minority, heresy, colour, lack of settled abode, insolvency, infamy, treason, sex etc.

I have wondered what would have been the argument in this case to support the claim of citizenship if our Constitution had thought with Bluntschli (Die Lehre Vom modernen State, i, p. 246) "die Politik ist Sache des Mannes."

It will thus be seen that the concepts of citizenship and nationality have been influenced either by descent or by birth in a particular place. Some countries like the Republics of South America do not recognise descent because, it is reasoned, to do so enables succeeding generations of former citizens to claim the privileges of citizenship irrespective of where they are born, while being outside the territory they do not contribute to the country of which they are citizens. Some countries recognise both the principles but there are many differences in the approach to the problem of descent. In some countries, citizenship is confined to children born from a citizen-father resident abroad and in others such descent is considered applicable upto grandchildren. Thus certain statutes before the Act of 1914 conferred British citizenship and nationality upon grand-children born abroad of natural born subjects, while the French Naturalization Law (1889) gave recognition only to children born in France of a father also born in France and to children born abroad of a French father. The former German law adhered only to the principle of descent but later recognised marriage, naturalization etc. In Italy long residence of the father and his domicile in Italy is considered sufficient. Today nationality has assum-

*Politics is men's concern.

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ed enormous importance and the principles of dual nationality and statelessness cut across some of the former theories and Cogordon's statement "quc tout homme doitposseder une nationalite*" is no longer true because of many stateless persons.

It is not my intention to speak exhaustively about citizenship and nationality. I have, I hope, sufficiently established my point that citizenship and nationality from the earliest times to date have been viewed as the attributes of natural persons. We are not concerned however, with other peoples or nations or States. We arc concerned only with our laws 'on the subject. When the French Naturalization Law of 1889 differed from the English law, Sir James Ferguson stated on the advice of the law officers in Parliament that if the English and the French laws differed there was no help and each country was entitled to its own laws. We have thus to see how our own citizenship has evolved and who are the persons who are citizens and what further arrangement exists for investing others with citizenship.

As India was, for centuries, ruled by Britain we have necessarily to examine the laws on the subject of citizen-

ship and nationality before independence. There was no law of citizenship in India. The Indian Naturalization Act was merely supplemental to the Imperial Act and hardly needed. I have already pointed out that the English Common Law recognised the principle of jus soli but English Statute Law (the Naturalization Act of 1870 in particular) recognising descent conferred British nationality on persons,

(a) born in Great Britain or the Dominions (]'us soli)

(b) upto and including the second generation of descent from natural born British subjects born abroad; and

(c) by naturalization, denization and resumption.

The statutes on the subject are collected by Clive Parry in his Nationality and Citizenship Laws and need not be referred to in detail here as we are really not concerned with them except as the background of our laws. In 1914, the British Nationality and Status of Aliens Act,

*Every person must posses a nationality.

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1914 was passed which was later amended in 1943. The definition of a natural-born British subject in that Act shows the classes of persons who were regarded as British subjects by birth. The word 'subject' need not be considered in a sinister sense. It only meant a citizen though the feudal concept of subjection seemed to persist in the word. The Act of 1914 as amended in 1943 made one significant departure and it was the limitation of British nationality on birth to the first foreign-born generation. The Act of 1914 as amended in 1943 ruled the field till the British Nationality Act, 1948 was passed. By that time the problem of British-born subjects underwent a cataclysmic change along with the changes in the British Empire. A new conception namely that of Commonwealth citizenship came to be recognised but it was obvious that members of the Commonwealth countries were about to enact their own citizenship and nationality laws. The Act of 1948 did two things with which we are concerned. It laid down rules by which the status of British subjects was conferred on persons who were citizens of certain countries named in the Act. India was one of such countries. - This new citizenship was Commonwealth citizenship. It also contained transitional provisions and s. 12(4) provided:

> S. 12(4) :-A person who was a British subject immediately before the (late of the commencement of this Act and does not become a citizen of the United Kingdom and colonies by virtue of any of the foregoing provisions of this section shall on that date become such a citizen unless-
>
> (a) he is then a citizen of any country mentioned in subsection (3) of section 1 of this Act under a citizenship law having effect in that country or a citizen of Eire ; or
>
> (b) he is then potentially a citizen of any country ,mentioned in sub-section (3) of section I of this Act.

One of the Commonwealth countries (Canada) had already such laws but others followed immediately afterwards. India lagged behind and the citizenship laws came in the Constitution and in the Act of 1955. During the period between 1948 and 1950 Indian citizens were only

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potentially so. They however enjoyed Commonwealth citizenship which term was synonymous with British subject in effect but 'was more appropriate to certain countries in view of the attainment by them of full nationhood.' Thus

every Indian in British India by virtue of s. I of the English Act of 1948 and every Indian in the Indian States as a protected person enjoyed Commonwealth citizenship. of course this citizenship was to continue till India enacted its own citizenship laws and thereafter if there was a common clause preserving this citizenship and was to cease if there was an express abrogation of Commonwealth citizenship. Under the English Act of 1948, Indians became Commonwealth citizens or British subjects without citizenship and were regarded as potential citizens of India. The Indian Constitution made provisions for citizenship on. the inauguration of the Constitution but it was not a law for the purpose of the British Nationality Act, 1948. It only provided that certain natural persons were to be regarded as citizens of India from January 26, 1950.

In so far as we are concerned this created a hiatus because the scheme of Indian citizenship was not completely worked out on 26th January, 1950. The Constitution no doubt declared who were Indian citizens on that date but the status of a British subject without citizenship which was mellifluously called Commonwealth Citizenship "could not be liquidated" unless there was a citizenship law as contemplated by the English Act of 1948. As a result, in the words of Clive Parry,

"Pending the completion of the scheme of Indian citizenship, persons who were potentially citizens of India but are not citizens thereof remained British subjects without citizenship in the eyes of the United Kingdom."

No doubt in 1955, the Citizenship Act was enacted by the Indian Parliament. Some writers think that even that is not the citizenship law contemplated by the English Act of 1948. Whether or not it fulfills the test, it is not necessary to decide here because it does not affect the status of corporations. Its provisions are applicable to 'persons' and the definition of the word 'person' in the Act expressly excludes "any company or association or body of individuals, whether incorporated or not."

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I have attempted to establish that citizenship as viewed from country to country and from one period of time to another was concerned with natural persons. The manner of acquisition of citizenship and/or nationality described by me are admirably summed up by Mervyn Jones in his book "British Nationality Law" at p. 9 in the form of a pedigree which may be seen. It is enough to read the various headings in the pedigree to realize that there is no room for artificial persons there. From the point of view of Mr. Setalvad's argument this raises an intriguing situation. If corporations possessed citizenship immediately before our Constitution they would be citizens under the English Act of 1948, that is to say, British subjects without citizenship or Commonwealth citizens and only potential citizens of India. The Indian Constitution dealt with natural persons and not artificial persons in its provisions dealing with citizenship and the status of corporations was not disturbed by those provisions. When the Citizenship Act was enacted in 1955, it began to speak from January 26, 1950, 'and it might have affected corporations but for the fact that it excluded them. Thus if there was any citizenship which the corporations enjoyed, it remained where it was. The corporations, if at all, would thus be Commonwealth citizens, not Indian citizens because no law has made them Indian citizens. But I do not accept the basic argument that corporations enjoyed citizenship even before, because in the sense in which I have explained citizenship, there is

no room for artificial persons.
The argument here repelled is sought to be supported by referring to the rule of law under which corporations are said to possess nationality. Nationality in this context is not to be confused with the status of a citizen. What is meant by that nationality may next be seen. Ordinarily corporations are given recognition by law as persons who can sue or be sued. Corporations also own property, carry on business or trade. But it is not to be thought that corporations have an access to courts as a matter of course. The courts are open as a matter of course to natural persons and not to 'intangible concepts' like corporations. Unless the law gives this right to corporations they cannot sue or be sued. What the law does is to invest corpo
10-2 S. C. India/64
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rations with a distinct personality and with a right to sue and with a disability to be sued. Ordinarily such rights and disabilities attach to 'persons' but that word is given an extended meaning to include corporations. In this way the law invests an intangible body with a unity and individuality and creates a legal person capable of suing or being sued. Foreign corporations enjoy the same privilege by a comity of nations and also sue and are sued. These privileges which corporations share with natural persons do not make them 'citizens' entitled to every other privilege which the municipal law gives, to citizens. In other words corporations enjoy only such privileges under the municipal law which that law expressly confers on them.
It is, of course, undeniable that corporations have an existence in the eye of law. The law further regards that corporations have a domicile and a residence. The law also recognises that corporations have a nationality. What does the law mean by that? The concept of the nationality of a corporation is comparatively new and it was really developed during the First World War. Nationality of corporations becomes important when it is necessary to apply the 'nationality of claims' principle before an international tribunal or to give effect to law-making treaties applying to 'nationals'. See Starke (An Introduction to International Law 4th edn. p. 256). Starke has pointed ,out that there is no unanimity of opinion regarding the tests to be applied to ascertain the nationality of corporations. Clive Parry does not recognise this nationality and calls it quasi-nationality. I shall now explain in what sense the word 'nationality' is used in this connection.
There have been many theories about the nationality of corporations which were again reconsidered during the First World War. According to Hilton Young 22 Harvard Law Review p. 2, there were four main theories at first. The first theory viewed a corporation as the national of the State in which its members or the majority of them or owning the greater part of the capital, were nationals. This theory considered the word 'corporation' as 'a collective name for the corporators', the corporate veil being considered to be of such gossamer texture as to hide almost nothing. This theory of which the chief proponents were sommieres and Morawetz was criticised on all hands
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and particularly by Maitland and was abandoned as it made nationality a matter of accident and liable to change day in and day out. The second theory regarded nationality as determined by the nationality of the State under which it was created. The United States of America has adhered to it but England may be said to have adopted this theory modified

by considerations of domicile. The Germans call this theory Grundungstheorie that is the theory of the place of birth. The theory has great names behind it-Calvo, Fiore, Pineau, Weiss etc. This theory is inadequate to cover corporations which are not authorised by the State and has been modified in the United States by evolving a theory of 'Implied consent to extraterrestrial service'. The third theory considers that a corporation acquires the nationality of the place where its acts or any of its acts are performed. This theory is rejected universally by lawyers but it was adopted by businessmen in the Congress of Joint Stock Companies held at Paris in 1889. Under this theory nationality can be changed at will. Obviously enough difficulty is likely to be felt in the event of simultaneous actions in different countries. The fourth theory considers that corporations are domiciled where they have a permanent home. This Theory was influenced by Von Bar who considered that though juristic persons could not be nationals either lure sanguinis or jure soli, they could be nationals by domicile. Chief Justice Taney summed up the thought by saying that "a corporation must dwell in the place of its creation and cannot migrate to another sovereignty". The Bank of Augusta v. Erle (1). Domicile of a corporation has more foundations than one. It may be fixed by the territory of the sovereign which created it or by the charter or other constitutive documents or by the place where the corporation discharges its functions or by the bona fide centre of its administrative business. These different concepts have led to diverse theories.

English Law regarded nationality as dependent on domicile and was at first content to regard a corporation as the national of a State where it was incorporated. But a glance at the history of the law of corporations shows

(1) [1839] 13 Pet. 519, 588-10 L. Ed. 274.

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that there is a variation in this theme in later years. The conception of domicile was adopted in the English Common Law merely for purposes of jurisdiction and law. A corporation's domicile, it was held, depended upon where it came into being and this domicile was not changeable though Lord St. Leonards was of a contrary opinion in Carron Iron Co. v. McLaren(1). Similarly it was held that a corporation had a residence though it could change its residence and even have more than one residence under certain laws. On what then did nationality depend? According to English Common Law a corporation incorporated under the English Law had British nationality and it did not matter if its members held a different nationality. A corporation which was not of British nationality was an alien corporation. According to the laws of many European countries particularly France, nationality depended upon the siege social by which is meant the seat or centre of control. Both these theories suffered during the First World War. As regards the English Common Law the leading case was Janson v. Driefontein (2). from which I have already quoted certain extracts. In that case it was decided that a company possessed the nationality of the country under the laws of which it was incorporated and that the nationality of the share-holders was not determinative of the question. Once this nationality was determined then the corporation received the treatment as a national, as an alien, or as an enemy as the case was in peace or in war. This view was revised in the First World War. In Daimler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain Ltd. (3), all the shares of the respondent company (except one) were held by a German

company and all directors were Germans though the company was incorporated in Great Britain. If the principle that nationality follows incorporation applied, the respondent company would have had a British nationality and it could not change it. But the House of Lords applied the principle of effective control to determine its nationality. In the Court of Appeal the case was heard by the full Court and

(1) [1952] 5 H.L.C. 416.
(2) [1902] A.C. 484.
(3) [1916] 2 A.C. 307.

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the above principle was held applicable (Buckley L. J. dissenting). The majority view was confirmed by the full judicial strength of the House of Lords by majority. Lords Shaw and Parmoor considered that enemy character depended on whether it was incorporated in an enemy country. The majority (Lords Hatlsbury, Mersey, Kinnear, Atkinson, Parker and Sumner) however, considered that it depended upon where the effective control lay. Lord Parker summarized the law in six propositions as under :

> (1) A company incorporated in the United Kingdom is a legal entity, a creation of law with the status and capacity which the law confers. It is not a natural person with mind or conscience. To use the language of Buckley L. J., "It can be neither loyal nor disloyal. It can be neither friend nor enemy."
>
> (2) Such a company can only act through agents properly authorized, and so long as it is carrying on business in this country through agents so authorized and residing in this or a friendly country, it is prima facie to, be regarded as a friend, and all His Majesty's lieges may deal with it as such.
>
> (3) Such a company may, however, assume an enemy character. This will be the case if its agents or the persons in de facto control of its affairs, whether authorized or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under the control of enemies. A person knowingly dealing with the company in such a case is trading with the enemy.
>
> (4) The character of individual shareholders cannot of itself affect the character of the company. This is admittedly so in times of peace, during which every shareholder is at liberty to exercise and enjoy such rights as are by law incident to his status as shareholder.
>
> (5) In a similar way a company registered in the, United Kingdom, but carrying on business in a neutral country through agents properly authori-

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> zed and resident here or in the neutral country, is prima facie to be regarded as a friend, but may, through its agents or persons in de facto control of its affairs, assume an enemy character.
>
> (6) A company registered in the United Kingdom but carrying on business in an enemy country is to be regarded as an enemy.

The House of Lords case is regarded as an instance of

judicial legislation on the subject of 'enemy character' and it undoubtedly was so. It is not as if this theory has been universally accepted. It was criticised by Sir Arnold Mcnair in 1923/24 British Year Book of International Law p. 44 and by Mr. Ralph A. Norem: American Journal of International Law Vol. 24 p. 310.

We have seen that in the United States a corporation is a domestic corporation of the State which incorporates it or under the laws of which it is incorporated. Some of the States have even laws to this effect. While other countries were revising their attitude in Europe, the United States adhered to this theory and the Supreme Court observed that the Congress had definitely adopted the policy of disregarding stock ownership as a test of enemy character. In other words, in the United States there was no attempt to look behind the corporate veil. We have also seen that England drifted from the theory of domicile to the continental theory of siege social. But France, Germany, Italy and Belgium went a step further than before. The Cour de Cassation departed from the principle of siege social in Societe Conserve Lenzburg in which it was held that the court was entitled "to go to the bottom of things and ascertain whether a corporation was really French or not." The French Minister of justice issued a circular in 1916 which stated the French approach to the question thus :

Les formes juridique dont la societe est revetue, le lieu de son principal establissement, tous les indices auxquels s'attache le droit prive pour determiner la nationalite d'une societe, sont inoperants, alors qu'il s'agit defixer au point de vue du droit public le caractre reel de cette societe. Elle doit etre assimilee aux sujets de nationalite ennemie des qne notoirement sa direction ou ses capitaux sont en totalite ou en majeure partic

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entre les mains de sujets ennemis, car, en pareil cas, derriere la fiction du droit privi se dissimule vivante et agissante la personnaliti ennemie elle-meme."

> (The juridical forms in which the society is dressed, the place of its principal office and all the indicia on which Private Law fastens to determine the nationality of a society, are inoperative when one tries to fix from the point of view of Public Law the real character of this society. The society 'must be counted among enemy nationals if manifestly its direction or its capital wholly or in major part is in enemy hands for in such a case behind the fiction of the Private Law lurks the active personality of an enemy.)

The Cour de Cassation justified the change by holding that the corporation was a personne interposee under the cover of which an enemy did business. The German attitude also changed to Geschaftssitz from der Mittelpunkt des Geschaftes i.e., to the "seat" of real control from the "centre of its enterprise". The corporation was said to have its seat where the "brain" was and not where it had its centre of exploitation. The Italians also adopted the same test. The Belgians framed a law which sums up the new theory in crisp legal language (Act 172-Mai 23, 1913) :

"Toute societe dont le principal etablissement est en Belgique est soumise a la loi belge bien que I'acte constitutif ait ete passe en pays etranger. "

(Every society of which the principal establishment is in Belgium is under the laws of Belgium, notwithstanding that the incorporation took place in a foreign country.)

In the Mixed Arbitral Tribunals which followed the First World War there were some cases which were decided on the theory of control but many others were decided on the theory of domicile depending upon the composition of the Tribunal. There are indeed many other tests which I have not mentioned such as the test of beneficial interest, or of substantial ownership or of responsibility which it is not necessary to describe here.

It would not be wrong to say that the control theory is also losing ground and there is a great support for the theory that the juridical life of the corporation must ulti-

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mately fix its nationality. It is also to be noticed that Herr Marburg and M. Mazeaud two noted thinkers have pointed out that all this law is not so much to fix the nationality of a corporation but its enemy character. Many writers (including Dicey, Cheshire, Foote and Farnsworth) have also pointed out that the conception of the nationality of a corporation is important only in war and it has significance not so much in Municipal Law as in Public International Law. During times of peace the domicile of a corporation which, as Lord Westbury pointed out, is an idea of law creating a relationship between an individual and a particular country is allowed to operate a fiction. A corporation resembles a natural person in the matter of domicile except that an individual can choose his domicile but a corporation's domicile is tied to its place of birth. The law of the country of its birth gives it such rights as it considers practicable and foreign corporations share in those rights subject to any special provisions. In times of war these rules and the rule of corporate entity give way and public policy dictated by the consideration whether the resources of the corporation are likely to be used for enemy purposes determines the issue. Thus in the Daimler case the fons et origo of the control theory"-

"The acts of a company's organs, its directors, managers, secretary and so forth, functioning within the scope of their authority are regarded as the company's acts. . . . " (1)

The operatives are regarded as the 'brain' of the corporation and where the brain functions the corporation is held to function. During times of peace a corporation may own property, do business because the Municipal law expressly permits that all this can be done and foreign corporations also obtain the benefit of such laws either because of provisions of the Municipal law or by a comity of nations. In times of war all this changes. The law of nationality is thus a law to determine the enemy character and not a law recognising nationality either in a political or municipal sense. There may be some analogy between an individual and a corporation but as Mr. Vaughan Williams said (49 L.Q.R. 334) in an article which has been of great assistance to me, it is not necessary 'to ride

(1) [1916] 2 A.C. 307, 340.

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the analogy to death.' The English Law was summed up by Mervyn Jones (British Nationality Law, Revised Edn.

> "A corporation is a juridical person, but could not be a subject at Common Law, because allegiance, being essentially a personal bond, was a conception limited in its application to individuals. Nor have corporations been recognised as statutory British subjects or as citizens of the United Kingdom and colonies."

Oppenheim also points out (International Law,,

Lauterpacht Edition) p. 642 n. 3-

"The nationality of corporations is mainly a matter of Private International Law, and considerations of Public policy have a decisive influence upon the attitude of every State with regard to it."

Citizenship depends upon Municipal Law and the same learned author says (ibid p. 643) :

"It is not for International Law but for Municipal Law to determine, who is, and who is not, to be considered a subject."

Hyde in his International Law Vol. 2 (2nd Edn.) 1066 also says:

"Citizenship as distinct from nationality, is a creature solely of domestic law. It refers to rights which a State sees fit to confer upon certain individuals who are also its nationals."

But perhaps the most practical argument against the recognition of corporations as citizens comes from M. Niboyet (who, as Mr. Vaughan Williams points out) observed in his Manual of Private International Law that in computing the total number of citizens of a country we do not add to the number of physical persons the number ,of corporations of that nationality. Indeed Lord Atkinson (and all who formed the majority except Lord Halsbury) was of opinion in the Daimler case that-

"The question of the residence of the company apart, I do not think that the legal entity, the company, can be so completely identified with its share-holders, or the majority of them, as to make their nationality its nationality."(1)

We have only two laws on the subject of citizenship -:and none on the subject of the nationality of corporations. (1)

(1) [1916] 2 A.C. 327.

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The fundamental law provides only for natural persons. where it enacts rules for determining citizenship and the Citizenship Act excludes corporations. The chapter on fundamental rights does not altogether ignore corporations as did the American Constitution. In places the word 'person' is used which attracts the definition in the General Clauses Act and in others the word 'citizen'. The word 'citizen' could have been defined specially for Article 19(1) (f) and (g) but it is not. There is nothing which can justify us in giving a special meaning to the word "citizen" for purposes of clauses (f) and (g). The fact that corporations are regarded in some circumstances as possessing nationality does not make them citizens. As Mr. Menon rightly pointed out ships and aircraft also possess nationality in International Law but it cannot be claimed that they possess citizenship in Municipal Law.

Which corporations should be regarded as possessing Indian Nationality is a question to be answered when it arises. Whether the provisions of the Companies Act dealing with foreign companies furnish any assistance in this behalf must also be left unanswered. It is sufficient to say that even if it be established that a corporation, possesses Indian Nationality this has not the result which is contended for namely that all or any of the citizens rights arise. It may be admitted that the State Trading Corporation which is

incorporated in India is not a foreign company under the Companies Act. If we were to lift the veil of incorporation it will be found that the entire capital is subscribed by the Government of India, that the share-holders are the President of India and two Secretaries to Government, in their official capacities and that its management is a governmental function for the benefit of the nation. It may be conceded that it possesses Indian Nationality in an ideal sense and that there is also no possibility of its acquiring an enemy character. But even so it is not a 'national' that is to say an individual who is a part of our nation. When we count Indian nationals, for purposes of census we do not count the corporations as nationals. The argument is not one what advanced by dropping the word 'citizen' and using the word 'national'. No doubt the existence of corporations as entities is recognised but the entity obtains only such rights as the law
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confers on it. This entity cannot claim other rights as a matter of course or by standing side by side with citizens. This entity cannot aspire to hold a. public office or to membership of Parliament or the Legislatures or to franchise or to entry into educational institutions. This is because it is not a citizen in the true sense of the term and because its 'nationality' though of consequence in Public or Private International Law, in treaties, in conventions and in protocols, is of no consequence in Municipal Law except to the extent that the Municipal Law says so.
This is not to say that corporations have not been given any protection under our Constitution. Unlike the Constitution of the United States of America our Constitution does not overlook corporations. The General Clauses Act is applicable to interpret the Constitution and that Act, as has been pointed out already, defines 'person' as including corporations. The following articles of the Constitution employ the word 'person' which applies equally to individuals and to corporations etc.
Art. 14 Equality before the law.
Art. 20 Protection in respect of convictions for offences.
Art. 27 Freedom as to payment of taxes for promotion of any particular religion.
Art. 31 Compulsory acquisition of property.
The seven freedoms guaranteed by Art. 19(1) are for 'citizens'. It was easy to say that the word 'citizen' included corporations etc. of Indian Nationality for purposes of any of the clauses of Art. 19(1) but it has not been so said. It is to be noticed that in the third part the Constitution defines 'the State', 'the law', 'laws in force', 'estate' and rights'. The expression 'law in force' is defined twice and differently. Can it be said that the word 'citizen' was purposely left vague so that a broad and liberal spirit could enter the interpretation? What a chance to take. It must have been well-known that an attempt by the Supreme Court of the United States to give an artificial meaning to the word 'citizen' has been regarded on all hands as Constitution making. It is easy to see that our Constitution was circumspect enough to use a word of larger import (person) in some places but not in others. The intention may well have been that the seven freedoms
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shall guarantee the rights of individuals whom the body politic recognised as 'citizens' and not the rights of abstractions like corporations. The observations of Chief Justice Mukherjea quoted earlier mean that a corporation is

protected only where the language admits the inclusion of corporations otherwise only individuals are meant.

It is however argued that in the United States the Supreme Court has held that the word 'citizen' includes corporations. Reference was also made to the Constitutions of some minor countries where corporations are expressly mentioned. It is not necessary to refer to these Constitutions because no inspiration can be drawn from them to rewrite our Constitution. As Willis. said (and he is not alone in this) of the position in the United States that the rights and liabilities of corporations "have been worked out under and through the judge-made United States Constitution". Perhaps this was forced upon the Supreme Court by the diversity of citizenship existing in the United States but it may be noted that the word 'citizen' has not been held to include corporations in other articles. Since this precedent was strongly relied upon I shall briefly refer to it.

The Constitution of the United States of America overlooked corporations and this has made the language intractable in places. The Supreme Court has supplied this want by 'judicial legislation'. How this was done may be explained. I have already referred to the dictum of Chief justice Taney and to the attitude of the Congress and the Supreme Court on the subject of nationality of corporations. There is a fixed view that nationality follows incorporation and is unalterable. This geographical theory coupled with dual citizenship of the State and United States has led to some difficulties. Corporations were always regarded as the citizens of the State of incorporation but not of the United States. The citizenship of the State has been accepted for purpose of exercise of the Judicial power of the United States.

The following provisions of the Constitution of the United States may be read at this stage :

> Art. I Sec. 8. "Congress shall have power..... to establish an uniform Rule of Naturalization."
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> Art. III Sec. 1. "The judicial Power of the United States,
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> shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish
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> Art. III Sec. 2. "The judicial Power shall extend to controversies between a State and Citizens of another State ; between Citizens of different States ; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."
>
> Art. IV Sec. 2 The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."
>
> Amendment XIV Sec. I "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United, States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty or property, without due process of law ; nor deny to any person within its

jurisdiction the equal protection of the laws."

The Supreme Court has held that a corporation is the citizen of the State of incorporation for purposes of federal Jurisdiction on the ground of diversity of citizenship. Though Art. I sec. 8 and Amendment XIV refer to natural persons the word 'citizen' was given a larger meaning for purposes of controversies between citizens of different States over which federal courts alone have jurisdiction. The jurisdiction of the national courts could not be invoked if the defendant was a corporation but the Supreme Court has by slow stages created a fictional jurisdiction. The development of the law has had an interesting course. Rather than describe it in my own words 1 quote a small passage from Willis, Constitutional Law of the United States (p. 850) :-

"At first a corporation was not regarded as a citizen for any purpose and it could not get into or be taken into the federal courts on the ground of diversity of citizenship. Then a case arose where all of the stockholders of the corporation were citizens of the

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same State where the corporation was incorporated and the plaintiff was a citizen of another State, and it was held that the Court would look behind the corporate veil to the stockholders and give the federal courts Jurisdiction because of the diversity of citizenship thus found. In a later case some of the stockholders were not citizens of the State where the corporation was incorporated but of the state in which the opposing litigant was a citizen. To avoid robbing the federal courts of their jurisdiction, the Court held that for purposes of diversity of citizenship all of the stockholders of a corporation would be conclusively presumed to be citizens of the chartering state. This rule, however, had to be modified later so as to make an exception in the case of a stockholder plaintiff. Now it is believed that the courts have come to the position that the corporation is itself a citizen of the state of its incorporation for the purposes of diversity of citizenship."

The following extract from St. Louis & San Francisco Ramawy Co. v. James(1) sums up the position so far as the Supreme Court is concerned

"There is an indisputable legal presumption that a State corporation, when sued or suing in a circuit court of the United States, is composed of citizens of the State which created it..... That doctrine began, as we have seen, in the assumption that State corporations were composed of citizens of the State which created them ; but such assumption was one of fact, and was the subject of allegation and traverse, and thus the jurisdiction of the Federal courts might be defeated. Then after a long contest in this court, it was settled that the presumption of citizenship is one of law, not to be defeated by allegation or evidence to the contrary.

There we are content to leave it."

States have, however, begun to destroy the presumption which is thus erected by requiring a corporation as a condition to doing business there to incorporate in the State. This can be done because the Supreme Court

(1) [1896] 161 U.S. 545, 562, 563.

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has rejected the claim of corporations to citizenship for purposes of the privileges and immunities clauses quoted above. As Corwin pointed out in The Constitution and what it means today 11th edn. p. 166 :

> "Nor does the term 'citizens' include corporations. Thus a corporation chartered elsewhere may enter a State to engage in local business only on such terms as the State chooses to lay down, provided these do not deprive the corporation of its rights under the Constitution-of its right, for instance, to engage in interstate commerce, or to appeal to the national courts or, once it has been admitted into a State, to receive equal treatment with corporations chartered by the latter."

It remains to point out that corporations have been held to be 'persons' within the Fourteenth Amendment and are entitled to equal protection of the laws. But a foreign corporation as Corwin points out (at p. 268) is entitled to equal treatment with the corporations chartered by a State if there is submission to the Jurisdiction of the State.

The Nationality Act of 1940 declared that for the purpose of that Act a 'national' meant a person owing personal allegiance to a State in the United States. Corporations were thus not included because in the words of Buckley L.J. a corporation cannot be loyal or disloyal. For international purposes a corporation is treated as a national if subjected to illegal treatment in an international aspect by a foreign power. The position of corporations is protected in treaties as for example the treaties between Great Britain and the United States of 1783 and 1794 and the treaty of Guadalupe Hidalgo between the United States and Mexico. Other examples are found in Hyde and international documents. Similarly treaties of commerce are construed to include corporations within expressions denoting natural persons. But even in international sphere corporations are not on a par with natural persons or nationals. As Hyde points out:

> "..... at least in a technical sense, a corporation is not, for many purposes to be deemed a national of the State to which its life is due, and lacks many privileges
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> that enure to a natural person.....
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> The question is whether the precedent of the United States Supreme Court should be followed. Apart from the fact that this involves a conscious effort at judicial legislation, I am of opinion that such a spirit of libre recherche scientifique is hardly justified in India in view of the following considerations --
>
> (a) We have a single citizenship and there is no citizenship of the States to create diversity ;
>
> (b) We have only one set of courts and not two with separate jurisdiction ;

(c) Our Constitution has not completely overlooked corporations and some of the fundamental rights are prima facie guaranteed to corporations as well ;

(d) Members of a corporation who are citizens can enforce the rights under Art. 19(1) (f) and (g). Even if corporations may not be able to do so directly, the members who are citizens by enforcing their personal rights can effectively benefit the corporation. The only persons who are not able to do so are non-citizens whether as individuals or as members of a corporation ;

(e) There has never been a recognition of a corporation as a citizen ; and

(f) Unless a presumption juris et de jure is raised that corporations whether composed of citizens only or of non-citizens only or of citizens and noncitizens are citizens of India, every time an inquiry will have to be made into their composition and there is no discernible principle on which the citizenship can be based when there is diversity of citizenship in the composition of the corporation.

I am, therefore, of opinion that the State Trading Corporation cannot be regarded as citizen for the purpose of enforcing rights under Art. 19(1)(f) and (g).

The next question is whether the State Trading Corporation is a department or organ of Government notwithstanding the formality of incorporation. On behalf of the Corporation it is contended that if the corporate veil is pierced one sees that the right to invoke Art.

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19(1)(f) and (g) is being claimed by three persons who are admittedly citizens of India namely the President of India and the two secretaries. The contention on the other side is that the corporate veil cannot be pierced at all and that if it is, then behind that veil there is the Government of India.

It is quite clear that none of the shareholders holds his share or shares for his personal beneficial enjoyment. None of them has paid for the shares held in his name. The administration of the affairs of the corporation though technically a company, is a concern of the Government of India. The legal and beneficial ownership of the corporation vests in the Government of India. Now there are not two veils so to speak, so that by lifting the first one sees the shareholders and by lifting the other the Government of India. There is but one veil and if it is at all to be lifted, it must be lifted right off. What one would see on lifting the veil may be described in the words of Martin Wolff (Private International Law, 1945 p. 56) as follows :-

"It occurs frequently that a state creates e.g., for a commercial purpose, a separate legal entity, in law distinct from the state, but in fact, if the veil of personality is pierced, identical with it. Examples are..... notably many companies under state control, the state possessing all or practically all the Shares in that company."

If the corporation is to be regarded as a separate entity from its members and not merely as an association of individuals, it is not permissible to tear the veil aside. Corporations in which the State owns the stock do not, in the United States, benefit from the immunity of the State.

It is because of these difficulties that the Supreme Court of the United States settled the question of federal jurisdiction in the face of diversity of citizenship by making an irrebuttable presumption of law that the stockholders of a corporation incorporated in a State are citizens of that State and the corporation is thus also a citizen of that State. There is a fiction upon a fiction. I do not think that it is permissible under our laws to raise such an irrebuttable presump

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tion of Indian citizenship in respect of every member of a corporation in India and it is obvious that if no such presumption can be raised the citizenship of corporations raises an issue of fact. Can we say that if all the corporators arc found to be Indian citizens then we must hold that the corporation is an Indian citizen? Such a view was held in an early case by the Supreme Court of the United States-see Bank of the United States v. Deveaux(1). In that case Chief Justice Marshal, while recognising that a corporation aggregate was certainly not a citizen because it was an 'invisible', 'intangible' and ' artificial' being, held that since the Constitution dealt with matters generally and not in detail, and the general purpose and object of the law of incorporation showed that such an artificial person was to have corporeal qualities, a corporation had the character of a citizen if those that composed it had that character. In the Daimler case (op-cit. sup.) Lord Parker seemed to be of the opinion that this was the established law in the United States but Farnsworth (The Residence and Domicile of Corporations p. 311) supports Dr. Schuster (The Nationality of Trading Corporations 2 Grotius Society (1916) at p. 195) in the view that Lord Parker's statement was inaccurate. Farnsworth has also quoted from Garner's International Law in the World War Vol. I p. 227 where the opinion of the Federal Judge in Fritz-Schultz Jr. Co. v. Raines & Co. (2) is quoted with approval :-

> "In upholding the right to bring the action the Court expressed the opinion that the authority in the case of United States v. Deveaux has been much limited, if not overruled, by subsequent cases and that 'at the present time the courts of this country are entirely wedded to the doctrine that the corporators of a corporation are conclusively presumed to be citizens of the same State as the corporation'. The statements of Lord Reading and Lord Parker in the Daimler case, that the Supreme Court had laid down the principle that a court may look behind the corporate name to ascertain the character of the indivi-
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> (1) (1809) 5 Cranch 61 : 3 L. Ed. 38. (2) (1917) 166 N.Y. S. 567.
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> duals comprising it, was, said Justice Lehman, obviously not accurate."

I have earlier quoted from St. Louis & San Francisco Railway Co., v. James (cit. sup.) which also supports Dr. Schuster's view.

In my judgment it is not possible to pierce the veil of incorporation in our country to determine the citizenship of the members and then to give the corporation the benefit of Art. 19. If we did pierce the 1 and saw that the

corporation was identical with Government there would be difficulty in giving, relief unless we held that the State can be its own citizen. Nor is it possible to raise an irrebuttable presumption about the citizenship of the members. I have given detailed reasons already in answer to the first question posed for our decision. If we go by the corporate entity then we must hold that Art. 19 applies to natural persons. On that subject I have said a great deal but what I have said sums up to the following passage from Ducat v. Chicago (1) quoted by Farnsworth (op. cit.) at p. 310 and approved by the United States Supreme Court :-

> "The term citizen can be correctly understood in no other sense than that in which it was understood in common acceptation when the Constitution was adopted, and as it is universally explained by writers on government, without exception. A citizen is of the genus homo, inhabiting, and having certain rights in some State or district..... these privileges attach to him in every State into which he may enter, as to a human being-as a person with faculties to appreciate them, and enjoy them, and not to an intangibility, a mere legal entity, an invisible artificial being, but to a man, made in God's image."

It is not necessary to refer to the earlier cases of this court. The point was not raised in this form before and ,even the observations of Mukherjea J. (as he then was) were obiter. In most cases an individual member also joined the corporation in the petition for the enforcement of fundamental rights (as is the case here also) and this Court was content to leave the matter there. Joseph Kur-

(1) (1868) 48 111. 172.

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villa Vellukunnel v. Reserve Bank of India(1) was heard by this Court in which the Palai Bank Ltd. was a party along with others. No objection was raised about the competency of the Palai Bank to claim the benefit of Art. 19. The main case (there were two heard together) was an appeal from a decision of Raman Nayar J. in proceedings for the winding up of the Palai Bank [I.L.R. (1961) Kerala 166]. It was an action properly brought against the Palai Bank under the Banking Companies Act. The main question in this Court was whether a section of the Banking Companies Act which enabled the Reserve Bank to decide whether a banking company deserved to be wound up was ultra vires in as much as it took away the right of the court to decide this matter. It was held by majority that there was no flaw in the law and that it was for Parliament to say at what stage in a particular case, the judicial process should begin and not for the courts who come into the picture from the stage the judicial process commences under the law. This point could be decided in an appeal in which beside the corporation there were other interested parties.

Lastly, I have no cause for anxiety about Corporations in general and companies in which the States own all or the majority of the shares in particular. They are amply protected under our Constitution. There can be no discrimination, no taxation without authority of law, no curbs involving freedom of trade, commerce or intercourse and no compulsory acquisition of property. There is sufficient guarantee there and if more is needed then any member (if citizen) is free to invoke Art. 19(1) (f) and (g) and there is no doubt that the corporation in most cases

will share the benefit. We need not be apprehensive that corporations are at the mercy of State Governments.
For these reasons my answers to the question posed are against the State Trading Corporation.
DAS GUPTA J.-I think the State Trading Corporation of India is entitled to fundamental rights under Art.
(1) [1962] Supp. 3 S.C.R. 632.
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19(1)(f) and (g) of the Constitution as citizen of India. The petitioner bases its claim to these fundamental rights on the fact that all its members are citizens. That this is so is not disputed by the respondent. But the respondent resists the claim on the legal basis that the Corporation is not a natural person but only an artificial person forming a distinct entity from the natural persons who are its members. According to the respondent no artificial person is a citizen of India either under the Constitution or under the Citizenship Act which was passed in 1955 in accordance with the Constitution. The respondent also contends that it would be a mistake to confuse nationality with citizenship and while it is correct that the present petitioner having been incorporated in India under the Indian Companies Act is a national of India it would be wholly erroneous to think that it also became on such incorporation a citizen of India. The fact that it is a national of India puts it in no better position that any other person, natural or artificial, which is not a citizen of India in the matter of fundamental rights.
While creating fundamental rights "the people of India" created some which they conferred on all persons (Arts. 14, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30); but some were created that were conferred only on citizens and were denied to others. Among those conferred on citizens only are the fundamental rights created by Arts. 15, 16, 19 and 29. The word "citizen" was not, however defined in the Constitution and so we have not got a key that is provided by a clear definition, to the minds of those who framed the Constitution, on the question whether they intended to exclude corporations as such from the fundamental rights conferred on citizens. The respondent points out that immediately before dealing with the question of fundamental rights, the Constitution deals with question of citizenship in seven Articles, viz., Arts. 5 to 11. There is force in the respondent's contention that these articles do not appear to contemplate any artificial person, like a corporation, being in its capacity of corporation, a citizen of India. Article 5, the first and the main article dealing with the question makes persons, (1) born in the territory of India, or (2) born of parents one or both of whom were born in the territory of India, or (3) persons who have been ordinarily residents in the territory of
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for not less than 5 years preceding the commencement of the Constitution, citizens of India. Article 6 and 7 deal with the cases of certain persons who have migrated to India from Pakistan, while Art. 8 deals with the question of rights of citizenship of persons of Indian origin residing outside India. Article 9 lays down that inspite of Arts. 5, 6 or 8 a person who has voluntarily acquired the citizenship of any foreign State shall not be a citizen of India. Article 10 embodies the provisions of continuity of citizenship "subject to the provisions of any law that may be made by Parliament"; Article 11 makes an express provision that Parliament would be competent to make any provision with respect to acquisition and termination of citizenship and

all other matters relating to citizenship.

I agree with the contention raised on behalf of the respondent that it is not reasonably possible to read into these articles of the Constitution any intention that an artificial person might also be a citizen. We also find that the Citizenship Act, 1955, which was enacted by Parliament in exercise of the powers preserved to it by Art. 11 of the Constitution, expressly excludes from its benefit "any company or association or body of individuals, whether incorporated or not." A Corporation is not a citizen under the Citizenship Act, 1955, nor is a corporation as such a Citizen under the constitutional provisions on question of citizenship. From this it seems an easy step to say : Arts. 5 to 11 do not make the corporation a citizen; the Citizenship Act does not make the corporation a citizen there is no other Indian law that makes the corporation a citizens; and so the problem is solved : corporation is not citizen for the purpose of fundamental rights.

That" according to the respondent, should end the search for light. I am unable Lo agree. After all it is a constitution that we are interpreting and it has again and again been laid down that those on whom falls this task have to take a broad and liberal view of what has been provided and should not rest content with the mere grammarians' role. If, as is undoubtedly true, a syllogistic or mechanical approach of construction and interpretation of statutes should always be avoided, it is even more important when we construe a Constitution that we should not proceed mechanically but try to reach the intention of the

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Constitution-makers by examining the substance of the thing and to give effect to that intention, if possible-.

There was some discussion at the Bar as to whether there were citizens of India, even before the Constitution. It will serve no useful purpose, in my opinion, to enter into that controversy. For, I am inclined to think that the Constitution in dealing with the matter of citizenship bad no intention to keep any former citizenship alive. If that had been intended a suitable provision would have been made to make that clear. In the absence of any provision to that effect it is difficult to hold that citizenship as might have existed in pre-Constitution India continued even after the Constitution.

Nor do I find it possible to agree that because a company incorporated in India would be a national of India it would necessarily be a citizen of India. Nationality and citizenship are not identical; and it has been rightly said that while every citizen will be a national, every national is not necessarily a citizen.

We are still left with the question whether the framers of the Constitution when conferring some fundamental rights on citizens only intended-that citizens forming themselves into a corporation would cease to enjoy these rights. The peculiar position that results from the strict 'legalistic approach to the problem can be best shown by means of an illustration.

A, a citizen of India, whether under the Constitution or under the Citizenship Act is entitled to the fundamental right to acquire, hold and dispose of property under Art. 19 of the Constitution. When A engages with another such citizen, B, in business the two can still come to the courts to claim the benefit of the same fundamental right. The position remains the same if A and B join more persons without incorporating themselves into a company : even if the number is seven or more they can still join in the same

application and come to the court jointly for enforcement of their fundamental right under Art. 19 when they are jointly engaged in the same business. For, in all these cases the claim of each to the fundamental right cannot be in law defeated by the fact that several other citizens have joined him in making a similar claim for themselves. As soon as, however, two or more persons who are in their
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own right citizens of India form themselves into a private company, or seven or more persons, each of whom is a citizen in his own right, form a public incorporated company, they are faced with the proposition that the company not being a citizen, it is excluded from the right which they could have claimed.

It is well known that many years before 1950 when the Constitution came into force much of the trade and industry of this country was being carried on by corporations. Most of these corporations were and are composed of persons who are clearly citizens of India under the provisions of the Constitution. The obvious effect of the strictly legalistic approach that a corporation being an artificial person cannot be a citizen for the purpose of any of the fundamental rights even when all its members are citizens of India would thus be to deny a considerable part-if not the major part of Indian industry and commerce (using the word "Indian" to mean 'carried on by Indian citizens') the valuable protection of the fundamental rights under Art. 19(1)(f) and (g). No doubt the mere fact that the effect is inconvenient or even regrettable can be no justification for a forced construction of a constitutional provision. But it is permissible, nay proper, often to consider the effect of proposed construction to find an answer to the question was that the intention of the Constitution makers?

What do we find here? In Art. 19(1)(f) and (g) the Constitution-makers are creating a right intended to be of great benefit to industry and trade. They decide to restrict this benefit to only citizens of India. They are aware that much if not most-of the trade and industry carried on by Indian citizens are carried on by them, after forming themselves into corporations. They know equally well that corporations are in law distinct entities from their members and so the 'State' naturally anxious to extend the domain where the restriction of fundamental right on its powers does not operate, may well argue that corporations even though composed entirely of citizens are not entitled to fundamental rights. The concern of the Constitution makers to improve the economic condition of the country is writ large over the Constitution's many provisions. The question has reasonably been asked : why then did not the Constitution-makers distinctly provide that corpora-
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tions composed of Indian citizens will be deemed to be citizens for at least the fundamental rights under Art. 19(1) (f) and (g) ? The mystery disappears, however, if we credit the Constitution-makers with the further knowledge that in the United States of America when somewhat similar questions had arisen regarding the character of corporations composed of citizens of a particular State the courts had not hesitated to apply the process of what has been called "tearing the veil" and granted to a corporation composed of citizens of a State some of the rights of a citizen of that State, inspite of the fact that the corporation as such is an artificial person distinct from its members. Is it not reasonable to think that the makers of our Constitution trusted that courts in India would also not hesitate to

apply a similar process of going under the surface and looking at the composition of the corporation, in deciding whether the corporation is entitled to fundamental rights? In my judgment the answer to the question must be in the affirmative. Indeed I would go further and say that to take another view is an insult to the intelligence and understanding of those who drafted the Constitution.

I am thus clearly of opinion that the Constitution makers when they used the word "citizen" in Art. 19 intended that at least a corporation of which all the members were citizens of India would get the benefit of the fundamental rights enshrined in that Article. The legal position that the corporation is a distinct entity from its members does not appear to me to create any real difficulty in the way of giving effect to this intention. The proposition, viz., that the corporation is a distinct legal entity from its members is too well established to require discusion. I see no reason however why the charm of this legal learning should so hold us captives as to blind us to the great rule of interpretation of giving effect to the intention of those who made the law unless the words make that impossible. I can find nothing in the words of the Constitution that stand in the way of giving effect to the intention of the Constitution-makers of giving all. citizens of India, whether forming into a corporation or not, the benefit of the fundamental rights under Art. 19(1) (f) and (g). Whether the Constitution-makers also

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intended that a corporation of which the major portion of the interest was held by citizens of India would also get the benefits of the rights, it is unnecessary for the purpose of this case to investigate.

This view of the law was taken, and in my opinion rightly, by the Bombay High Court in The State of Bombay v. R.M.D. Chamarbaughuala(1). It is of interest also to mention that in this view of the law it is possible to appreciate what was said by way of dicta by Mr. justice Mukherjea (as he then was) in Chiranjit Lal Choudhuri'

v. The Union of India & ors.(2) :

"The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to this Court for enforcement of its fundamental rights....."

In that case the Court had to consider an allegation of infringement of the fundamental rights not only under Arts. 31 and 14 but also under Art. 19(1) (f). While the observations of Mr. Justice Mukherjea may not perhaps be regarded as a considered decision on the question now before us, it is not unreasonable to think that his Lordship felt no difficulty about extending the fundamental rights under Art. 19(1)(f) to the Sholapur Spinning and Weaving Company, the share-holders of which were Indian citizens.

It is proper to mention this connection that in the 13 years that have rolled by since the Constitution came into force there have been many cases in which this Court as also the High Courts have given companies of which the members were Indian citizens the benefit of fundamental rights, special to citizens. In some of these cases the question was sometimes raised whether or not a corporation was a citizen for the purpose of the fundamental rights but that was left unanswered. Among the cases in which relief claimed on fundamental rights, specially conferred on

citizens has been granted to corporations may be mentioned: The Express Newspapers (Private) Ltd., v. Union of
(1) I.L.R. [1955] Bom. 680.
(2) [1950] S.C.R. 869.
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India(1); The Bengal Immunity Co., v. State of Bihar(2); The Bombay Dyeing & Manufacturing Co., Ltd., v. State of Bombay(3).
In my judgment, therefore, the first question referred to this Special Bench should be answered in the affirmative.
On the other question that has been referred, I agree with the conclusion of my learned brother Shah J. that the State Trading Corporation is not in substance a department and organ of the Government of India. As I entirely agree with the reasoning on which he has based this conclusion, I do not propose to discuss the matter further.
For the reasons mentioned above I would answer the two questions referred to this Special Bench thus:-
(1) The State Trading Corporation, so long as it consists wholly of citizens of India, can ask for enforcement of the fundamental rights granted to citizens under Art. 19(1) (f) and (g) of the Constitution;
(2) The State Trading Corporation is not a department or organ orthe Government of India and can claim to enforce the fundamental rights under Part III of the Constitution against the State as defined in Art. 12 thereof.
SHAH J.-Or. May 18, 1956, the State Trading Corporation of India Ltd.-hereinafter called 'the Company' was incorporated as a Private Limited Company under the Indian Companies Act, 1956, with an authorised capital of Rs. 5 crores divided into five hundred thousand shares of Rs. 1.00 each. Ninety eight per cent of the subscribed capital which. was contributed out of the funds of the Government of India stood registered in the name of the President of India and the remaining two per cent in the names of two joint Secretaries in the Ministry of commerce & Industries. On February 12 1961, the Commercial Tax Officer, Vishakhapatnam assessed the Company in the sum of Rs. 5,79,198.17 nP. to sales tax in respect of certain transactions and issued a notice demanding payment of the amount. The Company and Mr. K. B. Lall, Joint Secretary, Ministry of Commerce & Industries then petitioned this Court for a writ quashing the order of the Commercial Tax Officer and the notice
(1) [1959] S.C.R. 12.
(2) [1955] (2) S.C.R. 603.
(3) [1958] S.C.R. 1122.
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of demand on the plea that the assessment order and the notice of demand infringed the fundamental rights of the petitioners, amongst others, under Art. 19(1)(f) and (g). At the hearing of the petition; counsel for the Commercial Tax Officer and the State of Andhra Pradesh submitted that the petition was not maintainable because the Company was not a 'citizen' within the meaning of Art. 19 of the Constitution, and in any event the Company being "an organ, department or instrumentality" of the Government of India was incompetent to enforce any fundamental right against the State of Andhra Pradesh. The Court thereupon referred the following questions to a larger Bench

> "(1) Whether the State Trading Corporation a Company registered under the Indian Companies Act 1956 is a citizen within the meaning of Art. 19 of the Constitution and can ask for the enforcement of fundamental rights granted to citizens under the said article; and (2)

Whether the State Trading Corporation is notwithstanding the formality of incorporation under the Indian Companies Act 1956 in substance a department and organ of the Government of India with the entirety of its capital contributed by Government and can it claim to enforce fundamental rights under Part III of the Constitution against the State as defined in Art. 12 thereof ?"

We are not at this stage concerned to deal with any right which the second petitioner K. B. Lall may have, to maintain the petition, for the questions deal only with the right of the Company to set up the protection of Art. 19(1)(f) & (g) of the Constitution.

Article 19 guarantees certain basic freedoms in favour of Citizens : it provides that -

"(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India-,

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

(f) to acquire, hold and dispose of property; and

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

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The fundamental freedoms (exercise whereof is by cls. (2) to (6) subject to certain restrictions) being expressly guaranteed to citizens, the question which presents itself at the threshold is whether the Company can claim to be a citizen and on that basis claim protection of the freedoms to acquire, hold and dispose of property, and to carry on any trade, occupation or business. The plea that a Company incorporated under the Indian Companies Act is not a 'citizen' within the meaning of Art. 19 of the Constitution is advanced principally on two grounds:

(1) That prior to January 26, 1950, there was no law relating to citizenship in force in India and by Arts. 5 to 10 of the Constitution only natural persons were for the first time declared citizens. Under the provisions of the Citizenship Act, 1955, only natural persons may claim rights of citizenship since the commencement of the Constitution. The Company which came into existence after the promulgation of the Constitution not being a citizen under the Citizenship Act, 1955, is therefore incompetent to enforce the rights claimed by it, for Arts. 5 to 11 constitute an exhaustive code relating to citizenship in India, and an artificial person not being of the classes enumerated in Arts. 5, 6 & 8, nor under the Citizenship Act, 1955 (enacted in exercise of powers under Art. 11), the claim of the Company to citizenship must stand rejected; and (2) Citizenship postulates allegiance to the State of which a person claims to be a citizen and involves a duty to serve when called upon in the Civil Administration, and in the defence forces in the maintenance of peace or defence of the State in an emergency, and an artificial person being incapable of owing allegiance and of rendering these services cannot be regarded

as citizen. This argument is based on what is called the traditional concept of citizenship. Counsel for the Company submits that citizenship is the status which a person endowed with full civil and political rights in a State possesses under its municipal law, and such rights inhere the status of natural and artificial persons alike.

In determining the content of the expression 'citizen' used in Art. 19, which is defined neither in the Constitution

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nor in the General Clauses Act, it may, in the first instance, be useful to consider the scheme under which the diverse fundamental rights are declared and guaranteed by Part III of the Constitution and the extent of protection afforded against infringement of those fundamental rights. The Constitution in declaring the fundamental rights uses different expressions to denote the beneficiaries of different rights. By Arts. 14, 20(1), (2) & (3), 21, 22(1), (2) & (4), 25(1), 27, 28(3) and 31 certain fundamental rights are declared in favour of persons By Arts. 16(1) & (2), 26(1) & (2), 19(1) and 29(2) citizens are the recipients of fundamental rights guaranteed thereby. Certain fundamental rights are declared in favour of groups such as denominations, sections, minorities or institutions e.g. Arts. 26, 29(1), 30(1) and 30(2): these would in the very nature of things be groups of individuals. By certain other Articles prohibitions are declared e.g. 17, 23(1), and 24 and 28(1) for removal of evils, such as untouchability, traffic in human beings, forced labour, employment of children in hazardous employment, and against imparting of religious instructions in educational institutions. The expression 'citizen' used in Ch. III has undoubtedly narrower connotation than 'person'. By Art. 367 of the Constitution read with s. 3(42) of the General Clauses Act a "person" includes any company or association or body of individuals whether incorporated or not. By declaring rights in favour of persons, it may at first sight appear that it was intended to confer those rights upon persons artificial as well as natural. But this presumption is not in fact uniformly true. In Arts. 25(1), 28(3) and probably Art. 20(3) by the use of the expression "person" having regard to the character of the right conferred natural persons only could be the beneficiaries of the rights declared thereby. By Art. 15(1) & (2) prohibitions are Imposed against the State in making discrimination between citizens on the ground of religion, race, caste, sex or place of birth- cls. (1) & (2) of Art. 16 declare equality of opportunity to citizens in matters of public employment, and Art. 18(2) imposes restrictions on citizens against acceptance of titles from any foreign State. In these Articles, the expression citizen may refer only to a natural person. But that cannot be decisive of the meaning of the expression 'citizen" in Art. 19. In ascertaining the meaning of expres-

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sions used in a vital document like the Constitution of a nation, a mechanical approach would be impermissible. The Constitution is but the declaration of the will of the people, and must be interpreted liberally, and not in any narrow or doctrinaire spirit. It must be interpreted according to its true purpose and intent as disclosed by the phraseology in its natural signification in the light of its setting and its dynamic character which is intended to fulfill the aspirations of the people. There can be little doubt that an artificial person like a Corporation is

capable of exercising rights conferred by cls. (a), (c), (f) and (g) of Art. 19(1) and the right to hold property and the right to carry on trade or business are two rights of vital importance vested in artificial persons and a substantial segment of trade and business in India and abroad is carried on through corporate activity. On the view that only a natural person having certain attributes under the municipal law may be a citizen, the rights conferred by Art. 14 (equality before the law and equal protection of the laws), Art. 27 (freedom from payment of taxes for promotion of any particular religion or religious denomination), Art. 20(1) & (2) (bar against retrospective operation of penal statutes, and rule against double jeopardy) and Art. 31 (bar against deprivation of property otherwise than by authority of law) are guaranteed even in the case of artificial persons, but some of the most cherished rights i.e. right to acquire, hold and dispose of property, and to carry on trade or business of artificial persons may not be Protected against executive or legislative action. Was it intended by the Constituent Assembly when declaring the freedoms under Art. 19 to make a deliberate departure, and in respect ,of rights declared under Art. 19 to restrict the enforcement thereof against action of the law makers or the executive ,only in favour of natural persons and not in favour of artificial persons;)

It is in this background we may turn to the question whether, the declaration of citizenship under Arts. 5, 6 & 8 of the Constitution, and the Citizenship Act, 1955, was to be exhaustive; or merely to deal with the rights of natural persons. It may be necessary first to have a true concept of -citizenship and to ascertain whether the common law of England which formed the foundation of the Indian juris-prudence, attributed to artificial persons prior to the Cons-

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titution the status of citizens or 'subjects' as it was usual to call them in a monarchical form of Government.

Waite C.J. in Virginia L. Miner v. Reese Happersett(1) observed :

> "There cannot be a nation without a people. The very idea of a political community, such as a nation is,, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance, and protection are, in this connection, reciprocal obligations. The one is a compensation for the other allegiance for protection and pro-tection for allegiance.
>
> For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject", "inhabitant" and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of the government. Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the

Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood as conveying the idea of membership of a, nation, and nothing more."

In the Digest of International Law (J. B. Moore) Vol. III,, 1906 Edn. at p. 273, it is stated:

"Citizenship, strictly speaking' is a term of municipal' law, and denotes the possession within the particular state of full civil and political rights, subject to special disqualification, such as minority or sex. The condition's on which citizenship is acquired are regulated by, municipal law."

In Oppenheim's International Law (Lauterpacht) Vol. 1'. p. 644 it is stated:

(1) 21 Wall. 162 :88 U.S. 627.

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"In the United States of America, while the expressions 'citizenship' and 'nationality' are often used interchangeably, the term 'citizen' is, as a rule, employed to designate persons endowed with full political and personal rights within the United States, while some persons-such as those belonging to territories and possessions which are not among the States forming the Union-are described as 'nationals'. They owe allegiance to the United States and are United States nationals in the contemplation of International Law; they do not possess full rights of citizenship in the United States In the British Commonwealth of Nations it is the citizenship of the individual States of the Commonwealth which is primarily of importance for International Law, while the quality of a 'British subject' or 'Commonwealth citizen' is probably relevant only as a matter of the Municipal Law of the countries concerned."

Citizenship and nationality emphasize different facets of a single concept of association with or membership of a political community. The form and content of the association have varied in their historical evolution with the complexion of the governmental machinery, but in essence they denote the relation which a person bears to the sovereign authority. Citizenship is the relation that a person bears to the State in its national or municipal aspect; nationality appertains to the domain of International Law, and represents the political status of a person, by virtue of which he owes allegiance to a particular sovereign authority. 'Citizen' and 'national' are frequently used as interchangeable terms, but the two terms are not synonymous. Citizenship in most societies is the highest political status in the State, it is employed to denote persons endowed with full political and civil rights. There are in some States nationals who though owing allegiance, lack citizenship such as those belong to colonial possessions which are not included within the metropolitan territory, and (lo not participate in the Government. Even in States where association of nationals in the governmental machinery does not exist or is too tenuous to be effective, the national endowed with capacity to exercise personal and political.

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rights may be called a citizen. Again there may be citizens even in States having a form of government, which permits an effective association of its citizens with the administration, who do not participate in the government, or who by reason of sex, minority or personal disqualification are incompetent or are unable to participate. Citizenship is therefore membership of a jural society investing the holder with all the rights and privileges which are normally enjoyed by its nationals, and subjecting him to corresponding duties; nationality is the link between a person and a State, ensuring that effect be given to his rights in international affairs. Every citizen is a national, but every national is not always a citizen. The tie which binds the national and the citizen is the tie of allegiance to the State; it arises by birth, naturalisation or otherwise in a political society which is called a State, Kingdom or Empire.

Under the English common law, a company or a corporation aggregate is regarded as possessing attributes which would make it a national of the State in which it was incorporated and the incapacity of a corporation aggregate to discharge obligations such as performance of military or civil service, or to exercise franchise, has not been held to be a bar to the recognition of its status as a national of the State of its incorporation. This is reflected in the judicial decisions that public corporations aggregate are nationals of the country of incorporation, irrespective of the nationality of the share-holders. The English Statute Law did not regulate the nationality of Corporations, but the decisions of the highest tribunals regarded them for certain purposes as capable of possessing all the attributes of nationality. In Janson v. Driefontain Consolidated Mines Ltd.(1) the House of Lords regarded a company registered under the laws of the South African Republic as a national of that State. The observations of Lord Macnaghten at p. 497, of Lord Davey at p. 498, of Lord Barmpton p. 501 and of Lord Lindley at p. 505 proceed on the view that the Company concerned in that case was a national of the Republic of South Africa and the question as to the validity of the contract of insurance by British underwriters against cap-

(1) L.R. (1902) A.C. 494.

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ture during transit to the United Kingdom by the foreign State before declaration of war was valid. Similarly Attorney General v. Jewish Colonization Association(1) was decided on the footing that a public Corporation is ,capable of nationality, and in General v. Selim Cotrap(2) it was accepted that a public Corporation has the attributes of nationality. In Gasque v. Commissioners of Inland Revenue(3) Macnaughten J., observed :

> "But by analogy with a natural person the attributes of residence, domicile and nationality can be given, and are, I think, given by the law of England to a body corporate. It is not disputed that a company formed under the compaines Acts, has British nationality, though, unlike a natural person, it cannot change its nationality."
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> In Kuenigi v. Donnersmarck(4) it was held that a company incorporated under the laws of England and registered in England and so having an English domicile, and by analogy, British nationality, did not cease by English law to be an English company subject to

> English law merely because it was under enemy control. Mc. Nair J. observed at p. 535:
> 'I think that it is also clear that, in so far as nationality can by analogy be supplied to a juristic person, its nationality is determined in an inalienable manner by the laws of the country from which it derives its personality."

The personality of a Corporation aggregate therefore springs from the laws of the country in which it is incorporated, and upon that personality is impressed the nationality of that country, for the Corporation is by virtue of the law incorporating it capable of exercising rights, is subject to obligations and by common acceptance is entitled to claim protection in international affairs of the State of its incorporation.

If a Corporation aggregate is a national, can it be regarded as a citizen? According to our law a juridical person may normally exercise all civil rights except those which from the nature of its constitution or of the rights, cannot be exercised or enforced by the Corporation. A

(1) [1901] 1 K.B. 123.
(2) L.R. (1932) A.C. 288.
(3) L.R. [1940] 2 K.B. 80.
(4) L.R. [1955] 1 Q.B. 515.

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juridical person may acquire, hold and dispose of property, carry on trade or business, take up residence within the territory and form associations. It is also liable to discharge obligations which the nature of its incorporation permits. There are no special restrictions placed upon its activity and upon exercise of its rights in its corporate character. It is capable of exercising to the fullest extent a large majority of civil rights which natural persons may exercise as citizens, its incapacity to exercise others arises from the nature of its personality and constitution and not from any special restriction imposed upon it. Undoubtedly franchise cannot be exercised by the Corporations but the capacity to exercise franchise is not a sine qua non of citizenship. The State normally affords to Corporations protection as to its nationals abroad and recognises its corporate character with capacity to exercise rights within the realm. In the matter of protection, the law makes no distinction between natural persons and artificial persons like corporations. Was it then intended by the Constitution which afforded protection of the widest amplitude in favour of Corporations as well as natural persons against discrimination under Art. 14, against deprivation of property under Art. 31(1), against compulsory acquisition or, requisition of property for purposes not public and without payment of compensation under Art. 31(2), against imposition of taxes the proceeds of which are specifically appropriated for payment of expenses for maintenance of a particular religion or religious denomination under Art. 27, against being subjected to taxation without authority of law under Art. 265, and to the freedom of trade, commerce and intercourse, subject only to the provisions of Part XIII, still did not guarantee the right to carry on business of trade, to acquire, hold, and dispose of property and the right to form associations. or the right to take up residence of its choice within the territory ? Unless the language or the scheme of the Constitution is so compulsive, it would be difficult to reach that conclusion, on any predilection as to a limited connotation of the expression citizen occurring in Art. 19(1). It may he

remembered that Constitutional practice is not inconsistent with the recognition of artificial persons as citizens. The Constitution of the United States of Maxico 1917, of El Salvador 1950, and of the Spanish People
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do recognise the status of Corporations as citizens. It was also not disputed at the Bar and could not reasonably be disputed that it was open to the Constitution-makers, and the Parliament of India to make express provisions declaring artificial persons as citizens of India.

But it is urged that the intention of the Constitution-makers was not to recognise the corporate character of a Company as a citizen. It is said that the provisions of Arts. 5, 6 and 8 and the law made under Art. 11 in matters post-constitutional, are exhaustive of the conferral of the right of citizenship and there can be no citizen who does not satisfy the prescribed requirements. A necessary corollary of that thesis is that there were no citizens in India before the Constitution-natural or artificial-and it was by the Constitution and the Citizenship Act, 1955, that only natural persons are made citizens and no one else.

To examine the validity of this assumption, it is necessary to examine carefully the relevant provisions of the Constitution and the material provisions which preceded the Constitution. It must be conceded that persons mentioned in Arts. 5(1), 5(b), 6 and 8 are natural persons and the expression 'person' in the context of those provisions does not include artificial persons. Clause (c) of Art. 5 refers to persons resident within the territory of India for not less than five years, and it may be presumed that this clause was also intended to apply to natural persons. Similarly by the definition contained in s. 2(f) of the Citizenship Act, 1955, the Act is made applicable only to natural persons. But the assumption that there were in India prior to January 26, 1950, no citizens, and citizenship rights were conferred for the first time by the Constitution is not warranted either by the language used in the Constitution, or the history of our national evolution. The status of British Indians prior to 1947 was governed by the British Nationality and Status of Aliens Act, 1914. They were regarded as British subjects, and entitled in British India to such rights and privileges as were accorded to British nationals in India. Their status as British subjects was analogous to the status of citizens of a republic. They exercised civil rights, and such political rights as the form of Government permitted. If a citizen is a national who under the law of the state is entitled to enforce full civil and political rights,
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British Indian subjects prior to the Constitution had within the territory of British India that quality of rights which would go to make them citizens. Similarly the subjects of the Indian States had the rights of citizenship within their own States, and those rights were not affected by the stand-still and merger agreements of their rulers with the Dominion of India. The thesis being merely to establish the existence of rights which were analogous to rights of citizenship prior to the enactment of the Constitution, it is unnecessary to enter upon a detailed examination of the constitutional developments which took place between August 1947, and the 26th of November, 1949, which culminated in the setting up of the Republic of India by the erstwhile British Indian subjects and the subjects of the Indian States. It may be sufficient to observe that before the Indian Independence Act, 1947, the Legislature was invested

with the power to confer upon foreigners rights as British Indians by naturalization, and had also sought to invest the Government of the day with power to deny entry into India to foreigners or even of nationals of British possessions. Part II of the British Nationality & Status of Aliens Act, 1914, relating to the naturalization of aliens was not extended to British India, though Parts I & III were intended to apply to all territories which formed part of the British empire subject to the provisions of s. 26 of the Act which preserved the power of Colonial or Dominion Governments and Legislatures to legislate on the subject of nationality and to safeguard the validity of laws passed by them relative to the treatment of different classes of British subjects. Under the Act of 1914 the place of birth within the British empire was determinative of British nationality, but power was reserved to the Dominions and the Colonies by legislation to make provision for naturalization restricted to their territory. 'the British Indian legislature in 1926 enacted the Indian Naturalization Act, 1926, which enabled the local Governments to grant certificates of naturalization to persons applying in that behalf and satisfying the local Government on matters specified therein. Power was also reserved to revoke the certificates of naturalization. The Legislature also enacted the Immigration into India Act, III of 1924, which authorised the Central Government to make rules for the purpose of securing that persons not being of Indian ori-
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gin, domiciled in any British Possession, shall have no greater rights and privileges, as regards entry into and residence in British India than are accorded by the law and administration of such possession to persons of Indian domicile. The effect of these statutory provisions was-subject to certain exceptions to recognize the right of British subjects in India and to approximate them to the rights of citizenship, to grant such rights by naturalization and to restrict immigration into India. The British Nationality Act, 1948, was enacted after the Indian Independence Act, 1947, and was not incorporated in the stream of the statute law in India. The effect of that Act was to create a new statutory concept of citizenship of the various constituent units of the British Commonwealth and to provide for a dual citizenship of the country in which the local community resided within the units and of the Commonwealth. The concept of allegiance which was the foundation of the status of a subject, was excluded from the rules governing local citizen-Acts by various Dominions and till the enactment of such Acts accorded to the citizens potential or actual of any Dominion (which expression included India) the status of Commonwealth citizen. In relation to this citizenship, allegiance to the British Crown was not a condition.

This brief review of the legislative history is sufficient to destroy the assumption that the status of citizenship was not recognized under the common law operative in India prior to January 26, 1950, for, in my judgment, British subjects of Indian origin held for all purposes the status in British India of citizens. That status arose by birth and could also be conferred by naturalization.

If a natural person could be a citizen prior to November 26, 1949 (the day on which by Art. 394, Arts. 5 to 9 came into force), there is no reason to suppose that artificial persons who were nationals of the British Empire and who could claim the protection abroad could not claim rights of citizenship within the territory of India, when they were in

fact exercising all the rights and privileges which natural persons who were citizens exercised, except those which by their incorporation they could not exercise. There was before the Constitution no statute which indicated even in-directly that a Corporation aggregate could not be a citizen.

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At the time when the Constitution of the United States of America was proclaimed, no citizenship laws were enacted, but rights of citizenship were recognized under diverse provisions of the Constitution of the United States. The American Constitution recognised even without any express statute law, citizenship of States, and also of the Union. Under the Constitution of the United States of America, the expression "citizen" has been given different meanings under diverse Articles. In some clauses the expression "citizen" meant only natural persons, in others it included artificial persons like Corporations. Though Constitution as originally proclaimed was silent upon the subject, corporations were regarded as citizens of the State of their incorporation for the purpose of federal Jurisdiction. Initially no corporation was regarded according to the decisions of the Court in the United States as a citizen within the meaning of Art. 3 s. 2 : The Bank of the United States v. Deveaux et(1). But this view was modified in a later case : The Louisville, Cincinnati & Charleston Railroad Company v. Thomas W. Letson (2). This case arose on the interpretation of-' the "diversity clause" in Art. 3 s. 2. In neither of these cases was the capacity of corporations to be citizens of the State in which they were incorporated, denied. For the purpose of the 14th Amendment which prohibits a State from making or enforcing any law which abridged privileges or immunities of citizens of the United States, an individual alone was regarded as a citizen : Orient Insurance Company v. Robert E. Daggs(3) and Bankers Trust Company v. Texas & Pacific Railway(4). In cases arising under Art. 4 s. 2 it was also held that a corporation could not be regarded as a citizen of a State other than the State of its incorporation. In Paul v. Firginia(5) Field J. delivering the opinion of the Court observed at p. 359.

> "But in no case which has come under our observation, either in the State or Federal Courts, has a corporation been considered a citizen within the meaning of that provision of the Constitution which declares that the citizens of each State shall be entitled to all the
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> (1) 3 L.Ed. 38. (2) 11 L.Ed. 353.
> (3) 172 U.S. 552. (4) 241 U.S. 295.
> (5) 75 U.S. 357.
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>
> privileges and immunities of citizens of the several States."
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> The learned judge however made it clear that he was restricting the observations only to the claim of citizenship made by a Corporation in a State other than the State which incorporated it.On p. 360 he observed :
>
> ".....a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The

> corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose."

It may be noticed that corporations have been regarded as persons within the meaning of the 14th Amendment and therefore they cannot be deprived of their property or rights without due process of law : Smyth v. Ames(1) and Kentucky Finance Corporation v. Paramount Auto Exchange Corporation(2). Our Constitution has not accepted the doctrine of due process as a test for protection of fundamental freedoms, but has sought to effectuate protection of those freedoms by the 19tb Article.

In this Court there has been no definite expression of opinion about the rights of corporations aggregate to enforce the fundamental freedoms under Art. 19 of the Constitution, though it seems to have been consistently assumed that corporations aggregate are entitled to claim protection of the Courts against violation of fundamental freedoms enumerated in Art. 19(1). In Chiranjit Lal Chowdhuri' v. The Union of India(1), Mukherjea J., observed

> "The fundamenal rights guaranteed by the Cons-

(1) 169 U.S. 466. (2) 262 U.S. 544.

(3) [1950] S.C.R. 869, 893.

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> titution are available not merely to individual citizens but to corporate bodies as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. An incorporated company, therefore, can come up to this court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own, but it would not be open to an individual shareholder to complain of an Act which affects the fundamental rights of the company except to the extent that it constitutes an infraction of his own rights as well."

In that case an individual shareholder petitioned this Court for the issue of a writ declaring that the Sholapur Spinning and Weaving Company (Emergency Provisions.) Act (XXVIII of 1950) which enacted that the managing agents of the Company stood dismissed and the Directors automatically vacated their office, and which authorised the Government to appoint new Directors and restricted the rights of shareholders in the matter of voting and appointment of Directors, passing resolutions and applying for winding up and which further authorised the Government to modify the Indian Companies Act was ultma vires the legislative authority of Parliament, in that it infringed the fundamental rights of the shareholders and the action taken thereunder infringed the shareholders' fundamental rights under Arts. 19(1)(f), 31 and 14 of the Constitution. The Court in that case dismissed the petition holding that the fundamental rights of the petitioner under Art. 31(1) & (2), 19(1)(f) and 14 were not infringed. The observations of Mukherjea J., cannot be regarded as an

expression of a considered opinion of the Court holding that all fundamental rights are enforceable by individual citizens as well as corporate bodies. The question was mooted in two later cases: The Bengal Immunity Company Ltd v. The State of Bihar(1) and The State of Bombay v. R.M.D. Chamarbauguvala(2). It may be pointed out that the High Court of Bombay in The State of Bombay v. R.M.D. Chamarbaugwala(3) held that an application at the instance of a corporation alleging infringement of a fundamental right

(1) [1955] 2 S.C.R. 603. (2) [1957] S.C.R. 874.
(3) I.L.R. [1955] Bom. 680.

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to carry on business was maintainable. Again in The State of West Bengal v. The Union of India(1) Sinha C.J., in delivering the judgment of the majority observed :

"The fundamental rights are primarily for the protection of rights of individuals and Corporations enforceable against executive and legislative action of a governmental agency. It may be pointed out that there have been scores of cases in this Court in which it has been assumed without contest that a company is a citizen, and competent to enforce fundamental rights under Art. 19(1) (f) & (g) of the Constitution, I propose only to set out a short illustrative list of cases picked up at random :

(1) [1955] I. S. C. R. 752 Bijay Cotton Mills Ltd. v. State of Ajmer.
(2) [1959] S. C. R. 1 Messrs Kasturi and Sons (Private) Ltd. v. Shri N. Salivateeswaran.
(3) [1959] S. C. R. 12 Express Newspapers (Private) Ltd. v. Union of India.
(4) [1960] 2 S. C. R. 408 Messrs Fedco (P) Ltd. & Another v. S. M. Bilgram".
(5) [1960] 3 S. C. R. 328 ... M/S Hathisingh Manufacturing Co. Ltd. v. Union of India.
(6) [1961] 1 S. C. R. 379 Tata Iron & Steel Co. Ltd. v. S. R. Sarkar.
(7) A. I. R. 1963 S.C. 548 State Trading Corporation of India Ltd. v. The State of Mysore.

There have arisen a number of cases in the High Courts in which conflicting views have been expressed. In the Narasaraopeta Electric Corporation Ltd. v. The State of Madras(2) the Madras High Court held that Art. 19(1) (f) applies only to citizens and a company incorporated under the Indian Companies Act does not satisfy the requirements of the definition of citizen in Art. 5. This case reached the Supreme Court in Rajahmundry Electric Supply Corporation Ltd. v. A Nageswara Rao(3), but the question whether the fundamental right could be enforced by a company was, it appears, not raised. In Jupiter General Insurance Company Ltd. v. Rajgojalan(4), it was held by the Punjab

(1) [1964] 1 S.C.R. 371. (2) A.I.R. 1951 Mad. 979.
(3) [1955] 2 S.C.R. 1066. (4) I.L.R. [1952] Punjab 1.

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High Court that a company cannot raise the question that an impugned legislation takes away or abridges the rights conferred by Art. 19(1)(f) & (g) of the Constitution, because a company is not a citizen. In Amrita Bazar Patrika Ltd. v. Board of High School and Intermediate Education U.P.(1) a single judge of the Allahabad High Court held that Art. 5 applied to natural-born persons and not to artificial persons and hence a corporation is not a citizen within the meaning of Art. 19. But the Rajasthan High Court in

Maharaja Kishangarh Mills Ltd. v. State of Rajasthan (2) assumed that the question whether a corporation was a citizen for the purpose of Art. 19 was generally decided in Chairanjitlal Chowdhur's case(3) and held that a corporation was entitled to raise by a petition under Art. 226 a plea of a breach of a fundamental right under Art. 19. Authorities in the Calcutta High Court appear to be somewhat conflicting. In Everett Orient Line Incorporated v. Jasjit Singh(4) it was held that the rights conferred by Art. 19 being granted only to citizens, non-citizens could not enforce such rights and the Company incorporated in India not being a citizen could not challenge the validity of ss. 52-A and 167(12-A) of the Sea Customs Act on the ground that those provisions infringed Art. 19(1)(g) of the Constitution. The same view was affirmed in Cherry Holsery Mills Ltd. v. S. K. Ghose(5). It was held in that case that a company was not entitled to enforce the fundamental rights granted under Art. 19, which are available only to citizens. But it was held in M/s T. D. Kumar and Brothers Private Ltd. v. Iron and Steel Controller(6) that a corporation ordinarily resident in India for a period exceeding five years prior to the commencement of the Constitution being a person was a citizen within the provisions of Art. 5(c) of the Constitution and entitled to enforce fundamental rights under Art. 19(1), but a company incorporated after January 26, 1950, will not be regarded as a citizen., for the Citizenship Act expressly excludes artificial persons from the benefit of citizenship rights. In recording this conclusion the earlier judgment of the Calcutta

(1) A.I.R. 195) All. 595. (2) I.L.R. [1953] Raj. 363.
(3) [1950] S.C.R. 869, 893. (4) A.I.R. 1959 Cal. 237.
(5) A.I.R. 1959 Cal. 397. (6) A.I.R. 1961 Cal. 258.

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High Court in Liberty Cinema v. The Commissioner, Cor-Poration of Calcutta(1) was referred to, and it was pointed out that in the group of cases which were then heard relief was granted to petitioners some of whom were corporations claiming that their fundamental rights were infringed.

In The State of Bombay v. R.M.D. Chamarbaugtvala(2) in considering whether a company incorporated under the Indian Companies Act prior to the Constitution could claim protection of its fundamental rights under Art. 19(1)(g), Chagla C.J., speaking for the Court observed

> ".....can it be said in the first place that a corporation can ever be under any circumstances a citizen, and if it can be so said, 'What must be the constitution of the corporation before it could be said that it is a citizen? "Citizen" has not been defined by the Constitution and the only provision which is relevant is the provision contained in Art. 5. But that article only deals with the citizenship at the commencement of the Constitution and it lays down who was a citizen at the commencement of the Constitution. although domicile is a question of private international law, rights and acquisition of citizenship is a creation of municipal law and it is only Parliament by municipal law that can determine who is a citizen. It would be perfectly competent to Parliament by legislation to provide that a corporation satisfying certain conditions should be deemed to be a citizen for the purpose of Art. 19(1) but Parliament has not

done so. But the very curious anomaly that arises is that when we turn to some of the provisions of Art. 19(1) it is impossible to contend that it could ever have been the intention of the Constituent Assembly that the rights guaranteed by those provisions were not to apply to corporations but only to individual citizens. Take two of the rights guarantied under Art. 19(1)(f) and (g). Can it be suggested that a corporation which, let us

(1) A.I.R. 1959 Cal. 45.
(2) I.L.R. [1955] Bom. 680.

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assume, is Indian in every sense of its term- its shareholders are Indians, its directors are Indians, its capital is Indian-that such a corporation should not have the right under cl. (f) to acquire, hold and dispose of property, or under cl. (g) to practise any occupation, trade or business?"

In The Assam Company Ltd. v. The State of Assam(1) the High Court of Assam proceeded to consider the claim for protection of fundamental rights under Art. 19(1)(f) on the assumption that a corporation could seek to enforce those rights.

In Reserve Bank of India v. Palai Central Bank Ltd.(2) Raman Nayar J. observed :

"Many of the rights in Art. 19(1) and, in particular those in clauses (f) and (g) thereof, are capable of. enjoyment by companies. Our Constitution-makers could not have been unaware of the existence of legal persons. By Article 19(1)(c) they gave all "citizens the right to form associations and unions, and it could not have been their intention that the corporate bodies so formed by citizens, should be denied the rights guaranteed to the individual citizens, in particular that the agencies through which a substantial portion of their business is conducted by the citizens of this country and a considerable portion of their property held, should not have the protection of clauses (f) and (g).

That would mean a denial of the fundamental rights to property and occupation not merely to companies but to all corporate bodies even though they may be Indian in every sense of the term, their members Indian, directors Indian, and capital Indian,a denial which virtually amounts to a denial of those fundamental rights to the citizens who (though, of course, different persons) really constitute those bodies."

The Palai Central Bank's case(2) was carried to this Court in appeal, and the Court entered upon an exhaustive discussion of the complicated questions raised

(1) A.I.R. 1953 Assam 177. (2) I.L.R. [1961] Kerala 166.

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therein, instead of disposing of the appeal on the limited ground that the Palai Bank was not a citizen and could not claim any fundamental rights under Art. 19(1)(f) and (g) : Joseph Kuruvilla Vellukunnel v. Reserve Bank of India(1).

It was submitted that he alone can be a citizen who can take an oath of allegiance to the State because the bond of citizenship arises by virtue of the allegiance which the citizen bears to the State. Municipal laws of various States do insist upon an oath of allegiance being taken on naturalisation, but the actual swearing of an oath of allegiance is not one of the conditions which go to make or constitute the right of citizenship. Children of Indian citizens become citizens by their birth and taking of oath or even capacity to swear an oath of allegiance is not predicated as a condition of citizenship. If allegiance may be presumed from birth and the requirement of taking a formal oath of allegiance is not a condition of citizenship the law proceeding upon a presumption of allegiance in respect of natural persons, I see no reason why such a presumption of allegiance may not be made in respect of artificial persons like corporations.

It was also submitted that corporations are incapable of rendering military service, or to assist in the maintenance of peace when called upon to serve the State. But that again, in my view, is not a ground on which the rights of citizenship could be denied. Incapacity to render service may arise on account of diverse causes such as infancy, physical or mental incapacity, and such incapacity in the case of a natural person will not deprive him of the rights of citizenship. By reason of their constitution, artificial persons are incapable of rendering service-military or civil but that may not by itself be a ground for holding that they cannot be citizens. If the corporations or artificial persons can be regarded as nationals of the State where they are incorporated and if they are permitted to exercise the various functions for which they are constituted and no prohibition is imposed upon them in the enforcement of the rights similar to those which are enforceable by natural per

(1) A.I.R. 1962 S.C. 1371.

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sons who are citizens, notwithstanding the special character of the corporations and their incapacity to perform duties or to exercise such other rights which natural persons may possess, it will not be a ground for depriving them of the rights of citizenship for enforcing the fundamental rights under Art. 19.

Two views are presented before us as to the meaning of the expression "citizen" used in Art. 19(1). On the one hand it is said that a citizen is a person natural or artificial who is entitled to all the rights which are capable of being enjoyed by the citizens under the municipal law as distinguished from persons who are aliens or persons who arc not competent to exercise such rights. The distinction, according to this view, springs from the capacity to exercise the rights-whether the body which exercises the rights is a natural person or an artificial person. The other view is that citizens are only natural persons who being national and not aliens are under the municipal law competent to exercise all the rights which the State permits. This view proceeds on the assumption that an artificial person can never be a citizen and it is only the natural persons who can be citizens. But having regard to the privileges and duties of nationals competent by the municipal law to exercise full political and civil rights, and also having regard to the fact that companies invested with important fundamental rights like equality before law, protection against taking of property without authority of law, protection against acquisition of property without payment of

compensation or without public purpose, protection from imposition of taxes for sectional purposes, and also having regard to the fact that the companies are persons by their constitution and by the recognition afforded to them are competent to hold property and a dispose of property and to carry on trade, business, vocation or occupation and are protected from levy of taxes without authority of. law and are guaranteed the freedom of trade, commerce and inter-course it would be difficult to hold that the expression citizen" used in Art. 19 was intended to have a restricted meaning of one who is a natural person.

The alternative argument submitted by Mr. Setalvad based upon the decision of the Bombay High Court in The

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State of Bombay v. R.M.D. Chamarbaugwala(1) need not then be considered in any detail. Chagla, C.J., in delivering the judgment of the Court relying upon a number of cases which arose under Art. 3 s. 2 of the Constitution of the United States of America expressed the view that it was open to the Court "to tear the corporate veil" and to look behind it and if all the shareholders of the corporation are found to be citizens, the corporation should not be denied the fundamental rights which each of the shareholders has under Art. 19(1)(g) of the Constitution. In reaching that conclusion the learned Chief justice relied upon the obser-vation made by Mukherjea J., in Chiranjit Lal Chowdhury's case(2) which have already been set out. I am however unable to agree with the principle enunciated by the learned Chief justice. A corporation is distinct from the shareholders who constitute it. The theory of corporate existence independent of shareholders, and its capacity to exercise rights has been built on Salomon v. Saloman and. Company Ltd.(3). The rights and obligations of the company are different from the rights and obligations of the shareholders. By action taken against the company, the shareholders may be indirectly affected because their in-terest in the capital of the company is reduced. But action taken against the company does not directly affect the shareholders. The company in holding its property and carrying on its business is not the agent of the shareholders. Mukherjea J. in Chiranjit Lal Chowdhury's case (2) pointed out the difference in the passage already quoted between the rights of the company and the shareholders. Even if a company consists of shareholders who are all Indian citizens, the company has still a distinct personality and an infringement of the rights of the company alone will not furnish a cause of action to the share holders. The doctrine of what is called ripping open the Corporate veil was evolved by American jurists in dealing with cases under the "diversity of jurisdiction" clause to enable companies constituted within one State to have recourse to the Federal Courts in respect of disputes arising in other States as citizens. If the company is not a citizen it would be difficult to found a claim upon this doctrine attributing status of

(1) I.L.R. [1955] Bom. 680. (2) [1950] S.C.R. 869, 893.
(3) L.R. (1897) A.C. 22.

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citizenship to the company relying upon the status of its shareholders and thereby to enforce rights of the share-holders as if they were the fundamental rights of the Com-pany. In enforcing the rights of the shareholders, as if they were the rights of the company as envisaged by Chagla C.J. numerous practical difficulties may arise. Suppose in

the case of a company a substantial number of shareholders though not the majority are aliens, would it be -possible for the Court to attribute right of citizenship to the company relying upon the citizenship of some of its members so as to enable it to enforce fundamental rights under Art. 19? Similarly in a case where a company incorporated in India may have a majority of its shareholders aliens. Would it be possible for the Court to enter upon an enquiry and to deny the rights of citizenship notwithstanding the place of its incorporation, because a majority of its members are aliens? The shareholding may vary from time to time : to-day the shareholding of aliens may exceed the shareholding of citizens and the next day the position may be revised. Can it be said that the company goes on changing its citizenship, according as the shareholding fluctuates between nationals and aliens? If the place of incorporation and the centre of management of its affairs do not confer right of citizenship upon the company, it would be impossible to project the citizenship of the shareholders upon the company so as to enable it to claim this reflected right and on that basis to claim relief for breach of fundamental rights.

The first part of the second question raises what is essentially a question of fact. The State Trading Corporation was, on the date of the petition, functioning under the direct supervision of the Government of India, the shareholding was in the names of the President and two Secretaries to the Government and its entire subscribed capital was contributed by the Government of India. But it is a commercial body, incorporated as the Memorandum of Association indicates to organise and undertake trade generally with State Trading countries as well as other countries in commodities entrusted to it for such purpose by the Union Government from time to time and to undertake purchase, sale and transport of such commodities in India or any where else in the world and to do various acts for that pur-

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pose. The Articles of Association make minute provisions for sale and transfer of shares, calling of general meetings, procedure for the general meetings, voting by members, Board of Directors and their powers, the issue of dividend, maintenance of accounts and capitalisation of profits. The State Trading Corporation has been constituted not by any special statute or charter but under the Indian Companies Act as a Private Limited Company. It may be wound up by order of a competent Court. Though it functions under the supervision of the Government of India and its Directors; it is not concerned with performance of any governmental functions. Its functions being commercial, it cannot be regarded as either a department or an organ of the Government of India. It is a circumstance of accident that on the date of its incorporation and thereafter its entire share-holding was held by the President and the two Secretaries to the Government of India.

Strong reliance was sought to be placed upon the decision of the House of Lords in Bank Voor Handel En Scheepvasrt N.V. v. Administration of Hungarian Property(1) in support of the contention that the State Trading Corporation, which is the first petitioner in this case, was merely an agent of the Government of India. That was a case in which after the invasion of Holland in 1940, certain stocks of gold belonging to a Dutch banking corporation in London were transferred to the Custodian of Enemy Property, who sold the same and invested and reinvested the proceeds. These investments were subsequently transferred to the

Administrator of Enemy Property in the erroneous belief that they were the property of a Hungarian national. After the termination of hostilities the Bank obtained judgment for recovery of the proceeds of sale, together with interest or other profits earned thereon. During the management of the Custodian, tax was paid to the British Treasury on the income received by him by the sale of the stocks of gold but the Bank claimed that it was entitled to recover a sum equivalent to an amount assessed on the Custodian as tax in respect of the income of the invested proceeds of sale and paid by him. The House of Lords by a majority held that if the Custodian had asserted Crown

(1) L.R. (1954). 584.

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immunity, he would not have been obliged to pay tax on the income, for the Custodian was a servant or agent of the Crown and under the 'trading with the enemy legislation' the Crown had sufficient interest to enable it to invoke immunity from tax if it chose to do so even if the Crown had no beneficial interest in the income. The principle of that case, in my judgment, has no application in the present case. The Custodian who was constituted a Corporation sole was regarded by the House of Lords as entitled in the circumstances of the case to Crown immunity from payment of income-tax.

The question whether the corporation either sole or aggregate is an agent or servant of the State must depend upon the facts of each case. In the absence of any statutory provision a commercial corporation acting on its own behalf, even if it is controlled wholly or partially by a Government Department, will be presumed not to be a servant or an agent of the State. The fact that a Minister appoints the members of the Corporation and is entitled to call for information and to supervise the conduct of the business, does not make the Corporation an agent of the Government. Where, however, the Corporation is performing in substance governmental, and not commercial functions an inference that it is an agent of the Government may readily be made.

In Tamlin v. Hannaford(1) a house had vested by the operation of the Transport Act, 1947, in the British Transport Commission and the question arose whether the house could be regarded as owned by the Crown and administered by the British Transport Commission as Crown's agent. Denning L.J., pointed out that the Minister of Transport had extensive powers over the British Transport Commission. The Minister had powers as great as those of a man who holding all the shares in a private company possesses. He appointed the Directors i.e. the Members of the Commission and fixed their remuneration. They were bound to give him the information he wanted, he was entrusted with power to give directions of a general nature, in matters which appeared to him to affect the national interest, as to which he was the sole judge and the Commissioners were bound to obey him. Notwithstanding these great powers

(1) L.R. (1950) 1 K.B 18.

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the Corporation could not be regarded as an agent of the Minister any more than the Company is the agent of the share-holders or even of the sole shareholder. Denning L.J., observed :

> "In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or

> privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

The assumption underlying the second question that a department and organ of the Union or the State even if it is entitled to be called a citizen cannot claim to, enforce fundamental rights under Part III of the Constitution against the "State" as defined in Art. 12 thereof needs to be examined. Assuming that the State Trading Corporation is a department or organ of the Government of India, it is not still seeking to enforce any fundamental rights against the Union of India; it is seeking to enforce its rights against the State of Andhra Pradesh. By Art. 12 of the Constitution the Union as well as the State of Andhra Pradesh are States. Assuming that the State Trading Corporation be regarded as 'the State' within the meaning of Art. 12 of the Constitution, if it be regarded as a citizen there is nothing in Art. 19 which prohibits enforcement by the citizen of the fundamental rights vested in it. For the application of Art. 19, two conditions are necessary-(1) that the claimant to the protection of the right must be a citizen and (2) that the right infringed must be one of the fundamental freedoms mentioned in Art. 19 If these two conditions are fulfilled, the citizen would, in my judgment, be entitled subject to the restrictions imposed by the Article to enforce the rights against their infringement by action executive or legislative by any Government or the Legislature of the Union or the State and all local or other authorities within the territory of India or under the control of the Government of India. There is no warrant for restricting the enforcement of these rights on :some implication that an agent or servant of the State if he

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or it be a citizen cannot enforce the fundamental rights against another body which can be regarded also as a State within the meaning of Art. 12 of the Constitution.

In my view, therefore, the first question should be answered in the affirmative, and the first part of the second question in the negative. The answer to the second part of the second question will be as follows : even if the State Trading Corporation be regarded as a department or organ of the Government of India, it will, if it be a citizen competent to enforce fundamental rights under Part III of the Constitution against the State as defined in Art. 12 of the Constitution.