
THE CONCEPT OF STATE AND ITS ROLES: THE NEW CHALLENGES

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Abstract

The concept of state has takes its root from the police state to welfare state according to the change in social dynamics. Today, the definition and the idea of state have travelled to modern stage and has get it place in the written constitution of the country. This research paper will try to focus on the concept of evolution of State and how the meaning of this Sate has changes with the development of society and how this concept of state is incorporated and defined under the Indian Constitution and plays a vital role in Citizens Right. This research will also focus on how through the judicial interpretations, this concept of state has gets wider meaning. This paper will also look into the challenges which to be seen in today's scenario due to wider role of state and its authorities.

INTRODUCTION

The definition of State was evolved according to the change in social dynamics. The idea of western state can be traced back to Aristotle and Plato's theories, city-state, was defined as the ideal form of association, where the whole community's religious, cultural, political, and economic needs could be satisfied. The city-state was self-sufficient and was perceived by Aristotle as the means of developing morality among the individuals in the community. With the time modern concept of state emerged in the theories of Machiavelli and Bodin. Later on, the concept of state was thought of as a "social contract" According to Locke the state is the social contract between individuals whereby they agree not to infringe on each other's "natural rights" to life, liberty, and property, in exchange for which each man secures his own "sphere of liberty."¹

Later on Hans Kelsen came up with the theory which defined the state as simply a centralized legal order, with no more sovereign than the individual, in that it cannot be defined only by its own existence and experience. It must be seen in the context of its interaction with the rest of the world.

¹Available at <https://www.studocu.com/in/document/university-of-calcutta/political-science/class-11-pol-sc-state-and-its-elements/8024062> (last seen on 15-09-2022).

In modern times a state can be said to be more than a government. Governments change, but states are perpetual. A state is the means of rule over a defined or “sovereign” territory with a population. It is comprised of an executive, a bureaucracy, courts and other institutions to ensure law and order is maintained. Now, we see the evolution of Information Technology State in present era of development of society.

This research will focus on the concept of evolution of State and how the meaning of this State has changes with the development of society and how this concept of state is incorporated and defined under the Indian Constitution and plays a vital role in Citizens Right. This research will also focus on how the concept of state has its new challenges and roles to play.

OBJECTIVE OF STUDY

To aim and objective of study to know the wider concept of state and to know the mechanism of states functions and right granted under constitution to claim against state in case of curtailment of rights.

REVIEW OF LITERATURE

For the purpose of this study, the researcher has consulted vast literature, various judgments delivered by courts, reports of Law Commission, collected relevant data from published sources. The researcher also relied on the judicial pronouncements, research article and journals AIR, SCC, etc. The researcher took help of internet also. Few Books & Articles referred by researcher named as following below:-

PRIMARY SOURCES

- **The Constitution of India, 1950.**

The Constitution of India came into force on 26th January, 1950. At the time of its adoption, the Constitution contained 395 Articles and 8 Schedules and was about 145,000 words long, making it the longest national Constitution to ever be adopted. Every Article in the Constitution was debated by the members of the Constituent Assembly, who sat for 11 sessions and 167 days to frame the Constitution, over a period of 2 years and 11 months. The Constitution provides for a Parliamentary form

of government which is federal in structure with certain unitary features. Part III of the Indian Constitution deals with Fundamental Rights. Since Fundamental Rights provide for the security of citizens' sets of rights in relation with speech, expression, religion, against exploitation, education, language, culture, and constitutional remedies; the term 'State' has been used in a wider context to include all such agencies, actions of whose can challenged in the constitutional Court if they violate the any of these fundamental rights. And that definition is given in Article 12 of the Indian Constitution includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

SECONDARY SOURCES

BOOKS

- **Dr. Durga Das Basu, Commentary on the Constitution of India, 8th Edition, Lexis Nexis, p.635, 2011.**

Durga Das Basu's Commentary on the Constitution of India, 8th edn. 2011, Vol. 8 (HB). The commentary was first published within nine months of the commencement of the Constitution in 1950. A pioneering work on the Indian Constitution, the series is not merely a digest of cases. It is the authoritative work on the Constitution of India with an interdisciplinary approach, examining this great document from the philosophical, sociological, political as well as legal perspectives. D.D. Basu's Commentary on the Constitution of India is the first Indian work and a masterly survey on the Constitutional law to be studied from one end of the world to the other, including countries that do not belong to the Anglo-American jurisprudential tradition. This latest volume comprehensively covers the entire ambit of relations between the Union and the States in respect of legislative, administrative and financial matters. The book also traces developments in constitutional jurisprudence through the 73rd and 74th Amendments which seek to empower Panchayats and Municipalities at the grass-root level for the smooth and effective functioning of a parliamentary democracy. In this Article 12 definition of state and its interpretation by constitutional court and Other Authorities is well dealt in this commentary.

- **Seervai, H.M., Constitutional Law of India, Vol. I, 4th edition; Universal Law Publishing Co. Pvt. Ltd., Delhi, 2013.**

The Critical Commentary on the Constitutional Law of India by the eminent Jurist HM Seervai is a Masterpiece. It is a book for advanced students [LL.M. (Constitutional Law) and Higher] and Practitioners of Constitutional Law. It presupposes a high degree of familiarity of the reader, with the Constitutional Law of India, Politics related to the Constitution, and the General Principles of Constitutionalism. It offers a comparative perspective on the development of the legal theories of Constitutional Law, frequently quoting decisions from USA, UK, Australia and other Common Law Jurisdictions and explaining how the Courts in India have been influenced by these. In this book concept of state are well in detail analyzed with the case laws.

- **V.N. Shukla, Constitution of India, M.P. Singh, revised by, 10th edition, Eastern Book Co., Lucknow, 2006.**

The 10 th edition of "V. N. Shukla's Constitution of India" provides a reflective, lucid and comprehensive account of the Indian Constitution. First published in 1950, the book has consistently grown in popularity. Today, academics, lawyers and judges recognise this classic text as an authority and confidently cite and rely upon it. The Indian Supreme Court cited the 10th Edition in Rameshwar Prasad v. Union of India, [(2006) 2 SCC 1], and the 7th Edition in Umaji Keshnao Meshram v. Radhikabai, 1986 [(Supp) SCC 401)], while the Constitutional Court of South Africa cited the 9th Edition in Nalandazeli Fose v. The Minister of Safety and Security (case CCT 44/96). Prof. Singh has thoroughly revised and brought up to date the 11th Edition; including the latest Constitutional Amendments and Supreme Court decisions on issues such as, equality and affirmative action, education, women's rights, and principles of constitutionalism and judicial review, which have far reaching implications on individual rights and for the State. The chapter dealing with Article 12, defining State in very conceptual manner has elaborated the definition of state with the recent interpretation by the Supreme Court as well as High Courts, covering what are the Instrument of State falls under the Other Authorities.

- **Dr. J.N. Pandey, Constitutional Law of India, 55th edition, Central Law Agency, Allhabad, 2018.**

Like the previous edition, this edition of Late Dr. Jai Narain Pandey's Constitutional Law of India, a classic for the law students and competitive examinees is expected to be received warmly by them as well as by the faculty. Some of the cases decided by the Supreme court of vital constitutional importance are worth to be mentioned here. In *Lok Prahari v. State of U.P.*, AIR 2018 SC2209, Section 4(3) of U.P. Ministers (Salaries, allowances and Miscellaneous Provisions) Act, 1981 as amended in 2016 by virtue of which former Chief Ministers of The States were entitled to allotment of Government accommodation for their life time was held to be not based on reasonable classification and, therefore, ultra vires of the Constitution. This book also deal the concept of State as defined under Article 12 and also states, how the state can be challenged in case of curtailment of right under part III.

ARTICLES

- **Rashmi Sharma, “The Concept of State under Article 12 of Indian Constitution”, Pen Acclaims, Volume 2, July 2018, ISSN 2581-5504.**

In this article, the researcher well defined the concept of state under article 12 of Indian constitution has undergone a paradigm shift due to liberalization privatization and globalization. The state is not a service provider rather it is a service facilitated or regulated of the economy. Most of the function earlier performed by the state is private actors now as a result protection of the fundamental rights has also fallen into the hand of private actor. As per the constitution of India barring a few exception fundamental rights are enforceable against the state, as defined under article 12 of the constitution thus the concept of state under article 12 is the threshold through which fundamental rights can be claimed.

- **Daniel Compagnon, the Changing Role of the State, available at <https://www.researchgate.net/publication/286291073> (last seen on 12-09-2022).**

This article deals with the role of state in this world of era of globalisation and information technology.

- **Chandran KUKATHAS, A definition of the state, University of Queensland Law Journal, Vol 33, Issue 2, 2014, Pages 357–366, Available at: https://ink.library.smu.edu.sg/soas_research/2917(last seen on 14-09-2022).**

- This article deal with that a state is a form of political association, and political association is itself only one form of human association. Other associations range

from clubs to business enterprises to churches. Human beings relate to one another, however, not only in associations but also in other collective arrangements, such as families, neighbourhoods, cities, religions, cultures, societies, and nations. The state is not the only form of political association.

- **Governance in India: Issues and Challenges, Available at <https://www.shivajicollege.ac.in/sPanel/uploads/econtent/df253a153f75b66cde572aee9fe21f10.pdf> (last seen on 20-09-2022).**

This article deal with the meaning of state and society with particular reference to India. State, as you all know attempts to achieve set goals and objectives for the welfare of its citizens. These are accomplished through the instrument of government.

- **Frankline Olum, The Concept State, Metropolitan Community College Omaha, Nebraska-United States, June, 18, 2020, Available at: <https://www.researchgate.net/publication/343889950> (last seen on 19-09-2022).**

This article tries to see that Political scientists have always been intrigued by the amorphous nature of the concept State especially when it comes to meaning, definition and understanding in contemporary global political economy. Even though theorists and philosopher have attempted to define it in the past, its definition and meaning are still engulfed with mystery and ambiguity especially in today's world with the emergence of World's newest and youngest nation.

- **The Evolving Role of the State, Available at https://openknowledge.worldbank.org/bitstream/handle/10986/5980/9780195211146_ch01.pdf (last seen on 19-09-2022).**

This article deals that how the state has with time advanced and has change their role in the governance.

RESEARCH OBJECTIVES

1. To understand the conceptualization of State and its role in governance.
2. To understand the potential challenges, State is facing and key to all issues.
3. To know whether the Definition of State under Article 12 of Indian Constitution is limited to Part –III.
4. To Know Article 366 Includes and Define State or not.

HYPOTHESIS

1. The role of State has been striving in tackling the potential challenges.
2. The definition of State given under Article 12 which includes other Authorities has wider meaning.
3. Definition of State under Article 366 includes State or not.

RESEARCH QUESTIONS

1. How the evolution of State with the time taken their shapes and find a place in Constitution?
2. How this concept of State has vital role in claiming right guaranteed under Article 12?
3. Is Article 12 has its defined boundary in constitution?
4. Is Article 366 has any role to play in definition of concept of Indian State?
5. How are State and Governance connected and the new challenges faced by them?

RESEARCH METHODOLOGY

The present research work is a result of a doctrinal research attempted by gathering of the information from books and internet. The research incorporates information and data from both the essential and the assisting resources in the preparation of the present research work.

SOURCES OF DATA

This research is mixture of both primary and secondary data. Primary search has its reference from Constitution of India, Case Laws whereas Secondary is combination of Articles, Books, Journals etc.

Limitation of Study

The Following Limitations:

1. The research study is based on the theoretical study of the books, articles and journals available in short time frame.
2. The research focuses on analysis of laws relating to research topics and judicial interpretations which totally based on a theoretical study but in a time limit frame.
3. There is possibility of further study of this research paper with evolution of new

circumstances as well as further amendment of law relating to research topic and fulfilling the gap because of present law not adequate in meeting the issues involved in the research topic.

Scope of study

The scope of this study will be a academic one and will give a overall picture, finding and status related to present research topic which will be helpful for Academic purposes.

ORIGINS

THE CONCEPT OF THE STATE

The word State has been derived from the Latin word Status which means particular social position. Since in ancient times, no difference was made between State and the Society. The term State has been derived from the Latin word "Status which means particular

State is the sovereign political institution of the people living as an organised society .Each one of us lives under the supreme power of the State , enjoys rights and freedoms and performs several duties as a citizen of the State.

The term "State" generally refers to a social political structure. It is a type of human association that aims to create order and law in society. The definition of State was evolved according to the change in social dynamics. The purpose of creating a state is to use laws to arbitrate conflicts amongst people. The origins of the western state can be found in the views of Aristotle and Plato, who considered the polis, or city-state, as the ideal type of association in which the demands of the entire society in terms of religion, culture, politics, and economics could be met. Aristotle believed that the city-state served as a vehicle for fostering morality among its citizens since it was self-sufficient.

A state is a type of political organisation or polity that is distinguished by the fact that, despite having the ability to do so, it is not itself absorbed into any other political associations. Therefore, even if it may be subordinate to other authorities, the state is an ultimate corporate entity because it is not incorporated into any other entity (such as another state or an empire). One state can be separated from another by its adherence to distinct physical territories and

independent political authority structure. Even if not all political communities are states, the state itself is a political community. A state may contain a single nation, portions of multiple nations, or a people, but it is not a nation or a people.²

EVOLUTION OF THE STAGES OF THE STATE

Evolution of the Stages of the State

1. **Police State:** - In this state, the sovereignty vests with the King. Legislative as well as judicial power was vested with the King. King was the head of the state. In this state, the concept of 3Ps were there as following below:-
 - To protect the people from internal and external aggression.
 - To punish.
 - To provide.
2. **Laissez-Faire State:** - In this state, the people have got certain freedom; the government should not intervene in the economy except to protect individuals' inalienable rights. This state gave birth to French Revolution and also this was the era when the Industrialization and Agriculture growth started. 3Ps, continued in this state also.
3. **Welfare State:** - A welfare state is a government that is committed for providing its residents with a minimum level of economic security by shielding them from market risks related to old age, unemployment, accidents, and illness. During World War II, the phrase "welfare state" initially became popular in the UK. Since then, it has been applied much more widely to define social welfare institutions that have emerged since the nineteenth century. 3Ps, continued in this stage also.³
4. **Modern State:** - In this, power of state is centralised and exercised by sovereign control over a clearly defined territory. Modern states are ruled by a centralised power and authority.

A THEORY OF THE STATE

² Frankline Olum, The Concept State, Metropolitan Community College Omaha, Nebraska-United States, June, 18, 2020, Available at : <https://www.researchgate.net/publication/343889950> (last seen on 15-09-2022).

³ Available at <https://www.sciencedirect.com/topics/economics-econometrics-and-finance/welfare-state>(last seen on 18-09-2022).

The Social Contract Theory: - The social contract theory of the origin the state is associated with Thomas Hobbes and John Locke, The theory holds that the state is the result of man's deliberate intentions expressed through contract/agreement concluded in a pre-civil and pre-political period, called the state of nature. This theory, therefore, assumes that there existed a time when there was no state and that people lived in the state of nature, meaning thereby a situation when people lived without law, without authority and without government. The importance of the social contract theory however, cannot be overlooked, at least on two grounds:

- (1) it served as the basis for modern democracy by declaring the state as the product of people's consent
- (2) it condemned the divine origin theory as obsolete and provided an alternative theory of the origin of the state.

The Historical/Evolutionary Theory: - This theory of the origin of the state, also known as the liberal theory of the origin of the state, is more or less a correct explanation as to how the state originated. According to it, the state is a historical growth or the result of gradual evolution. State is a continuous development, always in the process of evolution.⁴

JURISTS VIEWS

In the 16th century, a modern concept of state emerged in the theories of Machiavelli and Bodin. Machiavelli's concept of state was centered around the importance of the durability of government. It set aside moral considerations and focused completely on the strength of the ruler. However, Bodin's view was that power is not sufficient in itself to create a sovereign. Rules must be complied with morality to be long lasting, and need to be continuous. In other words a means of establishing succession is essentially state. This theory worked for the time its proponent formulated it and supported the form of government followed at that time, monarchy.

Later on, the concept of state was thought of as a "social contract" According to Locke the state is the social contract between individuals whereby they agree not to infringe on each other's "natural rights" to life, liberty, and property, in exchange for which each man secures his own "sphere of liberty."

⁴Available at <https://egyankosh.ac.in/bitstream/123456789/43921/1/Unit-4.pdf> (last seen on 19-09-2022).

Rousseau recognized the state as the environment for the moral development of humanity. Rousseau's theory was a deviation from his predecessor whose theory revolved around monarchy. He proposed that the state owed its authority to the general will of the people. According to him, the nation is sovereign, and the law is the will of the people.

In the development of concept of State next was Hegel. He said the state was the highest form of social existence. According to him, Legitimacy of the state comes from upholding common morals rather than particular interest of the individuals in a society. He believed in the power of national aspiration. He says that every man is subordinate to the state and if a state claims one's life, he must surrender it. This differed from his predecessor Immanuel Kant, who proposed the establishment of a league of nations to end conflict and to establish a "perpetual peace."

In the 19th century new idea of State emerged. Jeremy Bentham proposed state as an artificial means of producing a unity of interest and a device for maintaining stability. As per him, the role of the state was to ensure more happiness and lack of pain in the individuals. This theory is known as the utilitarian theory.

In later times Karl Marx suggested that a state is nothing but an "apparatus of oppression". It is operated by the ruling or a stronger class to ensure economic supremacy over the weaker class. He saw state as the product of class struggle, the struggle between "haves" and "haves not".

Later on Hans Kelsen came up with the theory which defined the state as simply a centralized legal order, with no more sovereign than the individual, in that it cannot be defined only by its own existence and experience. It must be seen in the context of its interaction with the rest of the world.

In modern times a state can be said to be more than a government. As we know governments change, but states are perpetual. A state is the means of rule over a defined or "sovereign" territory with a population. It is comprised of an executive, a bureaucracy, courts and other institutions to ensure law and order is maintained. But, along with that a state also levies taxes and operates a military and police force. States distribute and re-distribute resources and wealth. As per legal dictionary, in broad terms a State can be defined as "Groups of

people which have acquired international recognition as an independent country and which have a population, and a defined and distinct territory.”

FUNCTIONS OF A ‘STATE’

ELEMENTS OF STATE

PEOPLE

Population (Jansankhya): Population comprises of a considerable group of people present in the definite territory. State is a community of persons. It is a human political institution. Without population there can't be existence of state. The people of state are the citizens of the State. They enjoy rights and freedom as citizens as well as perform duties towards the state.

TERRITORY

Territory (chetra): Territory comprises of definite area on the surface of the earth on which the population resides. Territory is the second essential element of State. State is a territorial unit or entity. Definite territory is its essential component. A State cannot exist in the air or at sea. It is essentially a territorial State. The size of the territory of a State can be big or small, nevertheless it has to be a definite and well-marked portion of territory. The territory of the state can also include some islands located in the sea . Fore example Andaman - Nicobar and New Moor islands are parts of India. State exercises sovereignty over all parts of its territory. Ships of the State are its floating parts and aeroplanes are its flying parts . Even a States can lease out its territory to another State e .g. India has given on lease her Teen Bigha corridor to Bangladesh.

GOVERNMENT

Government (Sarkar): It is an agency or political organisation that carries out the administration of the state. It is the agency through which people can express their collective will. Government is the political organisation or machinery or agency or magistracy of the State through which the laws of the State are made , implemented, enforced and adjudicated . It is the third essential element of the State. The state exercises its sovereign power through

its government . This sometimes creates the impression that there is no difference between the State and Government. However, it must be clearly noted that government is just one element of the State . It is the agent or the working agency of the State. Sovereignty belongs to the State, the government uses it on behalf of the State.

Each government has three organs:-

- 1) Legislature – which formulates the will of State i.e. performs rule-making functions ;
- 2) Executive - which enforces and implements the laws of the State i.e. performs the rule-application functions; and
- 3) Judiciary – which applies the laws to specific cases and settles the disputes i.e. performs rule-adjudication functions.

SOVEREIGNTY

Sovereignty (Samprabhuta): It means the State is supreme over all individuals and associations internally and is free from any other external control. It is free to take decisions both internally and externally. Sovereignty is the most exclusive element of State. It stands accepted as the most essential element because the State alone possesses sovereignty. Some institutions existing in a state can have the first three elements but not sovereignty. State has the exclusive title and prerogative to exercise sovereignty over its people and territory. In fact, as Laski opines, Sovereignty provides the basis on which the State regulates all aspects of the life of the people who live on its territory. Sovereignty means supreme power of the State. It has two dimensions : Internal Sovereignty and External Sovereignty.

- Internal means supreme legal authority and group within its territory.
- External means freedom of state from any kind of outside control. It means Pot – Independence of state.

STATE AND GOVERNMENT

The government, as we discussed above that it is one element of the state. It is the agency through which laws are made, enforced and those who violate laws, are punished. It is the visible manifestation of state authority. It consists of all the persons, institutions and agencies through which the will of the state is expressed and carried out. Though the state speaks through the government, it is proper to differentiate between the two.

- The state has authority inherent in itself whereas the government has no inherent powers.
- The government gets its structure, authority and power from the Constitution of the

State.

- The state is a larger entity that includes all the citizens; the government is, relatively a smaller unit that includes only those who are employed to perform its functions. We are all citizens of the state, but we are all not functionaries of the government. Garner writes: “The government is an essential organ or agency of the state but it is no more than the state itself than the board of directors of a corporation is itself the corporation.”
- The idea of state is quite abstract. The government is the concretization of the idea of the state. We see the government, not the state.
- The state is a near permanent institution; it is so because it does not die unless it is attacked and made a part of the other state. The government is temporary; it is so because it may change: today’s rulers may not be tomorrow’s rulers. To put it the other way, the state may be the same everywhere whereas, the government may vary from one state to another. India, the United States, Great Britain and France for example, are all states. But the governments which work in these states may not be of the same type. In India and Great Britain there is a parliamentary government, whereas in the United States of America there is presidential government.
- The sovereign powers lay with the state; it is the state which is sovereign. The government only exercises power. The government’s powers are delegated and derivative; the state’s powers are real and original.
- The opposition to the state is different from the opposition of the government. We criticize the government; we never condemn the state. The criticism of the state is a revolt; the criticism of the government is not a rebellion. We would never hear from an Indian that India is bad; but we would usually hear that the policies of the Indian Government headed by a political party or a multitude of political parties are bad. It is a crime to condemn one’s state; it is a duty, in fact it is a right to criticise one’s government.
- The government is merely an element of the state. Accordingly, it is one part of the state. It is a part of the whole (of the state). As a part, the government is not greater than the whole. When we talk of the state, we talk of the population, the definite territory, the government and sovereignty. But when we talk of the government, we talk of one part, one element of the state.
- The state’s territory is always definite. It remains unchanged. Its boundaries remain

where they are. The government's territory is never permanent. Muhammad Tughlaq had changed his capital to a place called Daulatabad. Many governments had changed their capitals to London during the World War II, fearing the German attack.⁵

CONNOTATION OF STATE IN INDIAN CONSTITUTION

THE CONCEPT OF STATE UNDER ARTICLE 12 OF INDIAN CONSTITUTION

Because to liberalisation, privatisation, and globalisation, the concept of state under Article 12 of the Indian Constitution has experienced a paradigm shift. The state regulates or facilitates economic activity rather than providing services directly. Since private actors now execute the majority of the state's former duties, the responsibility for defending fundamental rights has also been transferred to them. The idea of state under article 12 of the constitution is the threshold via which fundamental rights can be asserted. According to the Indian constitution, with a few exceptions, fundamental rights are enforceable against the state. Unless the circumstances are met, status is defined as in this part.

STATE DEFINED

The word state is defined under art. 12 of part 3rd of the constitution⁶ which states as following below:-

“In this part, unless the context otherwise requires, the state includes the government and parliament of India and the government and the legislature of each of the state and all local or other authorities within the territory of India or under the control of the government of India.”

Article 12 of the Constitution of India, 1950 gives an inclusive definition to the expression „State“.⁷ The significance of Article 12 lies in the fact that it occurs in Part III of the Constitution of India, 1950 which deals with fundamental rights.⁸ Article 13(2) of the Constitution of India, 1950 bars the „State“ from enacting laws, that may, amount to infringement of fundamental rights. Definition of „State“ in Article 12 is only for the purpose of application of the provisions contained in Part III of the Constitution of India, 1950. Hence, a claim is made against the State (and its instrumentalities) and not against private bodies, for the

⁵ Available at <http://www.ppup.ac.in/download/econtent/pdf/State.pdf> (last seen on 16-09-2022).

⁶ The Constitution of India, 1950.

⁷ See: Board of Control for Cricket in India v. Cricket Association of Bihar, (2015) 3 SCC 251 (Para 22).

⁸ See: Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 (Para 8).

enforcement of fundamental rights.⁹ However, even though a „body of persons“ may not constitute „State“ within the instant definition qua Article 12, a writ petition under Article 226 of the Constitution of India, 1950 may lie against it, either on constitutional grounds, or on grounds of contravention of some provisions of the Constitution of India, 1950 outside the ambit of Part III of the Constitution, as for example, where such a body has a public duty to perform, or where its acts are supported by the State or public officials.¹⁰ To maintain a writ against a person, or against a non-statutory body, it is necessary that the order must be in discharge of public function (or public duty). A private body discharging public duty or positive obligation of a public nature, or a person (or body) under a liability to discharge any function under any statute is also amenable to writ jurisdiction.¹¹

According to Article 12 of the Constitution of India, 1950, the term „State“ includes the following: (a) the Central Government and the State Governments; (b) the Parliament of India and the State Legislatures; (c) all local authorities; and (d) other authorities within the territory of India, or under the control of the Central Government. Article 12 envisages a special definition, with a broader goal, qua the term “State”. Article 12 does not restrict the conceptual framework of the term „State“ within the bounds of the language of the constitutional provision, that is, Article 12. It in fact, embraces a definition which is wider in scope and perspective, to bring under its sweep all authorities under the control of the Government. The constitutional philosophy as enumerated in the Preamble of the Constitution of India, defines India as-sovereign, socialist, secular, democratic, republic; this in fact mandates the State to undertake multi-dimensional socio-economic operations inspired from Part IV of the Constitution of India, 1950, thus State is empowered to enter into vast domain of activities, carrying on operations monopolistically or competitively, to ensure achievement of the one-dimensional goal of „welfare state“.

It can said with affirmation that, the definition of “State” as contained in Article 12 of the Constitution of India, 1950 will include not only the Executive and Legislative organs of the Union and the States, but also local bodies (that is, municipal corporations) as well as “other authorities”, which include the “instrumentalities or agencies” of the State, or bodies (or institutions) which discharge public functions of governmental character; in other words, it comprises of all acts which can be brought within the fold of “State Action”¹². It is necessary to note that, the concept of “State Action” has been enlarged to bring within its domain acts done

⁹ See: *Shamdasani v. Central Bank of India*, AIR 1952 SC 59; *Vidya Verma v. Shivnarain*, AIR 1956 SC 108.

¹⁰ See: *Kartick v. W.B.S.I.C.*, AIR 1967 Cal 231 (234); Also see: Dr. Durga Das Basu, *Commentary on the Constitution of India*, 8 th Edition, Lexis Nexis, p.635.

¹¹ See: Dr. Durga Das Basu, *Commentary on the Constitution of India*, 8 th Edition, Lexis Nexis, Volume 1, p. 636.

¹² See: *Som Prakash Rekhi v. Union of India*, AIR 1981 SC 212 (Para 34 and 37).

by private persons or bodies exercising statutory powers¹³ or, acts supported by the State¹⁴, with or without legislative authority or in abuse of such authority¹⁵, or even where the State has become involved in private action.¹⁶

JUDICIAL APPROACH ON THE CONCEPT OF ‘STATE’

Tests for the Determination of ‘State’

In a series of judgments, the Supreme Court of India has deliberated upon „tests“ for the determination of “State”; the underlining principle being, functional, financial and administrative domination, coupled with deep and pervasive control. In the case of *Ajay Hasia v. Khalid Mujib Sehravardi*¹⁷, the Constitution Bench of the Apex Court relied upon the “test” formulated in the case of *R.D. Shetty v. International Airport Authority of India*¹⁸, for the determination of term “State”. The following test was formulated in R.D. Shetty:

- (i). If the entire share-capital of the body is held by the government, it goes a long way indicating that the body is an instrumentality of the government;
- (ii). Where the financial assistance rendered by the government is so substantial, so as to meet almost the entire expenditure of the body, it is indicative of the fact that the body is impregnated with “governmental character”;
- (iii). If the body enjoys “monopoly status” which is State conferred or State protected, it is indicative of the fact that the body is within the periphery of Article 12;
- (iv). Existence of deep and pervasive control of the government, qua the functioning of the body, affords an indication that the body is State instrumentality;
- (v). If the functions performed by the body are of public nature, public character or public importance, and are closely related to governmental functions, it is a relevant factor to treat the body as an instrumentality of the State.

In the case of, *Pradeep Biswas v. Indian Institute of Chemical Biology*¹⁹, a Seven-Judges Bench of the Apex Court laid down the following test for the determination of “State”:

- (i). The test formulated in the case of *Ajay Hasia v. Khalid Mujib Sehravardi*²⁰, is not rigid in principle that needs to be complied with in all cases without exception, to determine,

¹³ See: *Steele v. L. & N.R. Co.*, (1944) 323 U.S. 192; *Pennsylvania v. Board of Trustees*, (1956) 353 U.S. 230.

¹⁴ See: *Smith v. Allwright*, (1944) 321 U.S. 649; *Marsh v. Alabama*, (1946) 326 U.S. 501.

¹⁵ See: *U.S. v. Classic*, (1941) 313 U.S. 299; *Screws v. U.S.*, (1945) 325 U.S. 91.

¹⁶ See: *U.S. v. Classic*, (1941) 313 U.S. 299; *Blum v. Yaretsky*, (1982) 457 U.S. 991.

¹⁷ AIR 1981 SC 487.

¹⁸ AIR 1979 SC 1628.

¹⁹ (2002) 5 SCC 111.

²⁰ AIR 1981 SC 487; In this case, the Supreme Court of India noted that, the constitutional philosophy of a

whether or not, a body (or authority) is a State; **(ii)**. All cases are to be determined in the light of their respective cumulative facts, that is to see, whether or not, a body (or authority) is financially, functionally and administratively dominated by, or is under the control of, the government; **(iii)**. The control should not be perfunctory, but it should rather be deep and pervasive; **(iv)**. If the control is mere regulatory under a statute (or otherwise), then the body (or authority) cannot be termed as a State under the aegis of Article 12. Complementing the decision rendered in the *Pardeep Kumar Biswas* (supra), the Supreme Court in *G. Bassi Reddy v. International Crops Research Institute*²¹, held that, the International Crops Research Institute (ICRI) is not a State within the meaning of Article 12 of the Constitution of India, 1950, as it has been set up as a non-profit research and training centre to help developing countries to alleviate rural poverty (and hunger); ICRI is neither set up by the government, nor is controlled (or is accountable) to the government, and hence it is outside the sweep of Article 12 of the Constitution of India, 1950.

In the case of *Zee Telefilms Ltd. v. Union of India*²², deliberating upon the term “other authorities” as appearing in Article 12 of the Constitution of India, 1950, the Apex Court held that, the following bodies (or authorities) shall fall under the aegis of the term “other authorities”, as appearing in Article 12 of the Constitution of India, 1950: **(i)**. Corporations and Societies created by the State for carrying out trading activities, in terms of Article 298 of the Constitution of India, 1950; where the capital, infrastructure, initial investment and financial aid is provided by the State (and the State exercises the necessary regulation and control thereof); **(ii)**. Bodies created for, or otherwise carrying out, works in the nature of research and development, which are, broadly speaking, in periphery of “governmental functions”, but may or may not be in the domain of “sovereign functions”; **(iii)**. A private body discharging a “public duty” or a “positive obligation of public nature”, and is carrying out activities which are otherwise in the nature of the “job of the government”.

democratic socialistic republic requires the Government to undertake a multitude of socio-economic operations, and there are practical advantages of functioning through the legal device of a corporation for a myriad of commercial and economic activities. But any such contrivance of carrying on such activities cannot be declared by the Apex Court, to exonerate the Government of its basic obligation to respect the fundamental rights of the citizens, for otherwise it would be the easiest thing for any Government to do, that is, to assign a plurality of corporations of almost every State, businesses and thereby cheat the people of the country of their fundamental rights, guaranteed to them under the Constitution. The Court went on to enunciate certain tests applicable for determining whether or not, an entity is an “instrumentality or the agency of the State”, an expression that does not figure in Article 12 of the Constitution but which would constitute an authority under Article 12 of the Constitution.

²¹ AIR 2003 SC 1764.

²² AIR 2005 SC 2677: (2005) 4 SCC 649.

The court further held that, in case of “hybrid bodies”, the relevant factors qua the determination of State, shall be the following: (a) When a body acts as a public authority, and has a public duty to perform; (b) When it is duty-bound to protect the human rights; (c) When it monitors a profession (or vocation) qua the citizens, which otherwise is a fundamental right under the Constitution; (d) When it regulates the right of a citizen as contained in Article 19(1) (a) of the Constitution of India, 1950, available to the general public, viewers of the game of cricket in particular; (e) When it exercises “*de facto*” or “*de jure*” monopoly; (f) When to a body (or authority), the State outsources its legislative power; and (g) When a body is obliged with a positive obligation of public nature. These tests are of an independent standing. In this case, the Apex Court held that BCCI (Board of Control for Cricket in India) is not a State under the aegis of Article 12 of the Constitution of India, 1950, for the control exercised by the government over BCCI was merely regulatory in nature and not pervasive. The court stated with affirmation that, if a private body chooses to discharge functions (or duties) which are State functions (or public duties), which are not prohibited under law, then such a private body may be considered as an instrumentality of the State.

Recently, the Supreme Court of India in the case of, *Board of Control for Cricket in India v. Cricket Association of Bihar*²³, speaking through the bench of Justice T.S. Thakur and Justice F.M. Ibrahim Kalifulla, held that, BCCI is amenable to the writ jurisdiction of Article 226 of the Constitution of India, 1950, even though admittedly, it is not a “State” within the meaning of Article 12 of the Constitution of India, 1950, for BCCI is neither created by a statute, nor any part of its share capital is held by the Government; no financial assistance is given to the BCCI by the Government; and it is not created by transfer of a government owned corporation.

Local Authorities: Section 3(31) of the General Clauses Act, 1897 defines the term local authority as follows, “local authority shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the government with the control or management of a municipal or local fund”.

Hidayatullah, J. in the case of *Municipal Corporation of Delhi v. Birla Cotton, Spinning & Weaving Mills Delhi*²⁴, describing some of the attributes of local bodies, held as follows: “Local bodies are subordinate branches of governmental activity. They are democratic

²³ (2015) 3 SCC 251.

²⁴ AIR 1968 SC 1232.

institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local areas. They are political sub-divisions and agencies which exercise a part of State functions. As they are intended to carry on local self-government, the power of taxation is a necessary adjunct to their other powers. They function under the supervision of the Government.”

In the case of, *Union of India v. R.C Jain*²⁵, the Supreme Court of India held threadbare that, to be characterised as an „authority“ within the periphery of „local authority“, it should have the following attributes:

- a) it must have separate legal existence as a corporate body;
- b) it must not be a mere government agency but must be legally an independent entity, functioning in a defined area; ordinarily, wholly or partly, directly or indirectly, elected by the inhabitants of the area;
- c) it must enjoy a certain degree of autonomy (either complete or partial), which must be entrusted to it by a statute; and
- d) such a body must have power to raise funds for furtherance of its activities and fulfilment of its objectives by levying taxes, rates, charges or fees. Following the above laid test, the Apex Court in the present case held that, Delhi Development Authority being a statutory body, is a local authority within the meaning of Article 12, for because it was constituted for the avant-garde purpose of development of Delhi according to government plans, which inherently constitutes a municipal function.

LIST OF ENTITIES COMING UNDER THE PURVIEW OF ARTICLE 12

ENTITIES	POSITION	JUDGES AND RATIO
University	Ujjambai v. State of U.P.; AIR 1962 SC 1621.	S.K. Das, J.L. Kapoor, A.K. Sarkar, K. Subbarao, M. Hidayatullah, R.N. Ayyangar, J.R. Mudholkar JJ. (5:2)
Rajasthan Electricity Board	Electricity Board, Rajasthan	K.Subbarao(CJ), M.

²⁵ AIR 1981 SC 951.

	v. Mohan Lal; AIR 1967 SC 1857.	Shelat, G.K. Mittar, P.N. Bhagwati, J.C. Shah JJ. (4:1)
Cochin Devasom Board	P.B.M. Namboooripad v. Cochin Devasom Board; AIR 1956 TC 19.	Not found
Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation	Sukhdev Singh v. Bhagatram; AIR 1975 SC 1331.	A.N. Ray(CJ), Y.V. Chandrachud, A.C.Gupta, Mathew, Alagiriswami JJ. (4:1)
International Airport Authority of India	R.D. Shetty v. The International Airport Authority of India; AIR 1979 SC 1628.	P.N. Bhagwati, V.D. Tulzapurkar, R.S. Pathak JJ. (3:0)
Bharat Petroleum Corporation (a government company)	Som Praksah v. Union of India; AIR 1981 SC 212.	V.R. Krishnaiyer, O.C. Reddy, R.S. Pathak JJ. (2:1)
Warehousing Corporation	U.P. Warehousing Corporation v. Vijai Narain; (1990) 3 SCC 459.	R.S. Sarkaria, O.C. Reddy JJ. (2:0)
Registered Societies	Ajay Hasia v. Khalid Mujib; AIR 1987 SC 487.	Y.V. Chandrachud(CJ), P.N. Bhagwati, V.R. Krishnaiyer, S.M. Fazal Ali, A.D. Koshal JJ. (5:0)
Indian Statistical Society	B.S. Minhas v. Indian Statistical Institute; (1983) 4 SCC 582.	P.N. Bhagwati, R.B. Mishra JJ. (2:0)
Indian Council of Agricultural Research	P.K. Ramachandra Ayer v. Union of India (1984) 2 SCC 142.	D.A. Desai, B.V. Eradi JJ. (2:0)
Food Corporation of India	Workmen, Food Corporation of India v. M/s. Food Corporation of India; AIR	D.A. Desai, B.V. Eradi, V. Khalid JJ. (3:0)

	1985 SC 670.	
Steel Authority of India	Bihar State Harijan Kalyan Parishad v. Union of India; (1985) 2 SCC 644.	O.C. Reddy, E.S. Venkataramaiah JJ. (2:0)
Sainik School Society	AISSF Association v. Defence Minister-cum-Chairman, B.O.G.S.S. Society; AIR 1989 SC 88.	Not found
Children's Aid Society	Sheela Barse v. Secretary, Children Aid Society; (1987) 3 SCC 50.	P.N. Bhagwati, R.S. Pathak JJ. (2:0)
Council for Scientific and Industrial Research	P.K. Biswas v. Indian Institute of Chemical Biology; (2002) 5 SCC 111.	S.P. Bharucha(CJ), S.S.M. Quadri, R.C. Lahoti, N.S. Hegde, O. Raju, Ruma Pal, Arijit Pasayat JJ. (7:0)
U.P. Rajya Karmachari Kalyan Nigam	V.K. Srivastava v. U.P. Rajya Karmachari kalyan Nigam; AIR 2005 SC 411.	Not found
Co-operative Society	Dukhoram v. Co-operative Agricultural Association; AIR 1961 MP 219.	Not found
Delhi Transport Corporation	D.T.C. v. Mazdoor Congress; AIR 1991 SC 101.	S. Mukharji(CJ), B.C. Ray, L.M. Sharma, P.B. Sawant, K. Ramaswamy JJ. (4:1)

LIST OF 'NON-STATE' ENTITIES –

ENTITIES	POSITION	JUDGES AND RATIO
Institute of Constitutional and Parliamentary Studies	Tekraj Vasandi v. Union of India; (1988) 1 SCC 236.	Rangnath Mishra, S. Rangnathan JJ. (2:0)

NCERT	Chandra Mohan Khanna v. NCERT; AIR 1992 SC 76.	K.J. Shetty, Y. Dayal JJ. (2:0)
International Crop Research Institute	G. Bassi Reddy v. International Crop Research Institute; AIR 2003 SC 1764.	Ruma Pal, B.N. Srikrishna JJ. (2:0)
Co-operative Sugar mill	General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v. Satrughna Nishad; AIR 2003 SC 4531.	Y.K. Sabarwal, B.N. Agrawal JJ. (2:0)
State of Council of Educational Research and Training (SCERT)	Lt. Governor of Delhi v. K. Sodhi; AIR 2007 SC 2885.	P.K. Balasubramanyam, P. Naolekar JJ. (2:0)
Unaided Minority School	Satimbla Sharma v. St. Paul's Senior Secondary School; AIR 2011 SC 2926.	R.V. Raveendran, A.K. Patnaik JJ. (2:0)

Whether 'State' includes 'Judiciary'?

In the United States, a „judicial decision“ is included in the concept of „State Action“ for the purpose of enforcement of fundamental rights conferred by the Fourteenth Amendment (citizenship rights and equal protection of laws) of the Constitution.²⁶ In *Ex parte Virginia*²⁷ it was held that, “A State acts by its legislative, its executive, or its judicial authorities; it can act in no other way”. Further, in the United States, the acts of Courts and judicial officers (in their judicial capacity) are equally acts of the State, to which the guarantee of „equal protection“ extends. This aspect can be understood comprehensively through the decision in the case of, *Shelley v. Kraemer*²⁸. In this case (*Shelley*) a restrictive covenant albeit stipulation, forbade the use of property by individuals, who were not from the Caucasian race. It was held that, the covenant was unenforceable as the covenant excluded a class of persons simply on the ground of their race, which in turn was violative of the equal protection clause. It was ruled that, the covenant would be unenforceable in the Court of Law, and a

²⁶ In the case of *Virginia v. Rives*, (1880) 100 U.S. 313, the Supreme Court of the United States observed as follows: “It is doubtless true that a State may act through different agencies- either by its legislative, its executive, or its judicial authorities; and the prohibitions of the Amendment extend to all actions of the State denying equal protection of laws, whether it be action by one of these agencies or by another.”

²⁷ (1880) 100 U.S. 339 (347).

²⁸ (1948) 334 U.S. 1.

judicial decision which would attempt to enforce it would be violative of the constitutional guarantee of equal protection. It was asserted with affirmation that, it cannot be suggested that a court action is immune from the operation of the provisions of the Constitution simply because it is an act of the „judicial branch“ of the State (that is, the Government). In short, the position that entails in the United States of America is that, a conviction will fall (that is, will be quashed) if the accused succeeds to establish that, the method of trial or the judicial strategy devised to reach the verdict was bad of the “equal protection clause”.

It is interesting to note that, in the case of *Budhan v. State of Bihar*²⁹, the Supreme Court of India taking inspiration from the decisions rendered by the United States Supreme Court held that, any “State Action”- executive, legislative or judicial, which contravenes or is in conflict with Article 14 of the Constitution of India, 1950 is void. Needless to say, Article 14 of the Constitution of India, 1950 is based on lines verbatim qua the „equal protection clause“ of the American Constitution. In the case of *Mahendra v. State of U.P.*³⁰, it was held that, the courts like any other organ of the „State“ are limited by the mandatory provisions of the Constitution of India, 1950, and they cannot be allowed to override the fundamental rights under the shield that they have within their jurisdiction, the right to make erroneous decisions.

The jurisdiction of a court is limited by the *Suprema Lex* (the Constitution); it cannot, henceforth, have the jurisdiction to decide a case, contrary to the provisions of the Constitution. Where a decision contravenes a fundamental right, it is not merely a case of wrongful decision; for a decision that attempts to override the constitutional limitations is without jurisdiction and is a nullity.³¹ The fundamental premise can thus be stated as follows: *“If the decision of a court is intra-vires in the legal sense of being within the jurisdiction conferred by a statute, it may be legally valid; but when it contravenes a fundamental right guaranteed by a written Constitution, it becomes constitutionally invalid.”*³²

In *Rupa Ashok Hurra v. Ashok Hurra*³³, the Apex Court affirmatively ruled that, no judicial

²⁹ AIR 1955 SC 191

³⁰ (1963) Supp. 1 SCR 912 (930)

³¹ In the case of A.G. v. Lachmi, AIR 1986 SC 467 (468), a Three-Judge Bench of the Supreme Court of India allowed a joint petition and quashed the judicial order of the Rajasthan High Court which had directed a death sentence to be executed by “public hanging”, on the ground, inter alia, that such a direction is violative of Article 21 of the Constitution of India, 1950.

³² See: Rogers v. Richmond, (1961) 365 U.S. 534; See also: A.R. Antulay v. R.S. Nayak, AIR 1988 SC 1531, in this case a Seven-Judge Bench of the Supreme Court of India held that, a judicial order which violates a fundamental right is without jurisdiction, and therefore is a nullity and may be rectified by the superior court which passed that order, in exercise of its inherent jurisdiction.

proceeding could be inferred to have been violating the fundamental rights contained in Part III of the Constitution of India, 1950. The task of the superior courts of justice as the custodians of the Constitution is to protect the fundamental rights of the citizens from State transgressions. It was emphasised that, the superior courts of justice do not fall within the ambit of „State“ or „other authorities“ vis-à-vis Article 12 of the Constitution of India, 1950.

Position in India: “...If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective...The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive...” – *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (p.197-198)

The doctrine of separation of powers enumerates that, there are three-wings of the State; the legislature, the executive and the judiciary. The legislature enacts the laws, the executive implements the laws and the judiciary interprets the laws. Although, the third wing of the State, that is, the judiciary is considered as the weakest wing of the State, it is often termed as the “watchdog” of the Constitution, for it sees that the legislature and the executive work as per the mandate of the Constitution, which in turn draws impetus from the “will of the people of the country”.

The definition of “State” as contained in Article 12 of the Constitution of India, 1950, in no specific terms mentions “judiciary” to be within the periphery of the “State”, but it is understood that for administrative purposes albeit the working of the court, and not for the dispensation of justice, judiciary falls within the terrain of the State. In no uncertain terms, in the case of *Kesavananda Bharti v. State of Kerala*³⁴, the Apex Court held that “independence of judiciary” is a part of the “basic structure doctrine”.

The mention of the word “includes” in Article 12 of the Constitution of India, 1950 is of great relevance. The mention of this word indicates that the definition of “State” in Article 12 is not exhaustive. Thus, even though Article 12 specifically speaks of the Government and the Legislature, there might be other instrumentalities (or agencies) of the State, within its periphery. The non-counting of “judiciary”, hence, does not necessarily indicate that the

³³ AIR 2002 SC 1771.

³⁴ (1973) 4 SCC 225; AIR 1973 SC 1461.

courts are outside the purview of Article 12.³⁵ In the case of *Paramatma v. Chief Justice*³⁶, it was categorically held that, the Chief Justice of High Court, having the power to make statutory appointments, will be within the purview of Article 12, under the expression “other authorities”. Further in the case of, *State of Bihar v. Bal Mukund*³⁷, it was held that, the High Court is an „authority“ within the purport of Article 12 of the Constitution of India, 1950, and its administrative decision is amenable to its writ jurisdiction on the judicial side. Observations made in the case of *Rajasthan State Electricity Board v. Mohan Lal*³⁸, are trite and they still hold the ground. In this case it was held that, the expression “other authorities” appearing in Article 12 of the Constitution of India, 1950 need not be construed *ejusdem generis*. It was further observed that, the definition of “State” in Article 12 of the Constitution of India, 1950, is not exhaustive. Based on the jurisprudential analysis of Article 12 pursuant to this case, scholars in the likes of Dr. Durga Das Basu observed that, there appears no reason as to why the “judicial organ” of the State be excluded from the ambit of Article 12 merely because it expressly mentions only the Executive and the Legislative branches. In the recent case of, *Riju Prasad v. State of Assam*³⁹, the Supreme Court of India, clearing the air qua the controversy as to whether or not, judiciary falls within the purport of Article 12 of the Constitution of India, 1950, held as follows:

“The definition of ‘the State’ under Article 12 is contextual depending upon all relevant facts including the concerned provisions of Part III of the Constitution. The definition is clearly inclusive and not exhaustive. Hence, omission of judiciary when the Government and Parliament of India as well as Government and Legislature of each State has been included is conspicuous but not conclusive that judiciary must be excluded.”

Quasi-Judicial Authorities: It is a settled law that, an administrative tribunal is a limb of the Executive; but because it is obliged to “hear” before it “decides”, it has some “trappings of the court”; but, such an obligation cannot bring it up to the status of a court, in all respects.⁶⁷ It is because of the fact that, an administrative tribunal is not a court, it is called quasi-

³⁵ See: *Ujjam Bai v. State of U.P.*, (1963) 1 SCR 778, Ayyangar, J. dissenting; *Naresh v. State of Maharashtra*, (1966) 3 SCR 744, Hidayatullah, J. dissenting; *Aman Preet Singh v. Government of India*, AIR 1996 P&H 284.

³⁶ AIR 1964 Raj 13.

³⁷ AIR 2000 SC 1296: (2000) 4 SCC 640.

³⁸ (1967) 1 SCR 377 (385).

³⁹ 2015 SCC Online SC 613 (Para 60).

judicial. Being a limb of the Executive, it comes clearly within the periphery of Article 12 of the Constitution of India, 1950. In the case of, *Kamala Mills v. State of Bombay*⁴⁰, the Apex Court held that, if a quasi-judicial body acts under an *ultra-vires* law or, outside its jurisdiction or, ignores the mandatory rules of procedure prescribed under the relevant law (for time being in force) or, infringes the principles of natural justice and thereby affects the fundamental rights, then its action can be quashed by the Court of Law. Deliberating further, the Constitution Bench of the Supreme Court of India, in the case of, *Sitaram v. Union of India*⁴¹, purposively held that, an act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if: it is in conflict with the *Suprema Lex* (the Constitution); or, the Governing Act; or, the general principles of the law of the land; or, it is so arbitrary or unreasonable that no „fair-minded“ authority could have ever made it.

Thus, quasi-judicial authorities come within the ambit of Article 12 of the Constitution of India, 1950, and hence their acts vis-à-vis decisions attain legitimacy only if they are able to withstand the test of fundamental rights, that is, if their acts vis-à-vis decisions do not infringe the fundamental rights conferred upon the citizens of the country.

Can the State claim ‘fundamental rights’ for itself?

In *State of West Bengal v. Union of India*⁴², SINHA, C.J., for the majority, set forth a proposition that under the Indian Constitution fundamental rights may be claimed not only by individuals and corporations but sometimes also by the State. His Lordship was obliged to assert this proposition as a concomitant of his major conclusion that the Union may acquire the property of a State Government by making a law of compulsory acquisition under Article 31 (2) gives rise to a right to compensation in favour of the expropriated owner which should logically belong to the State when property belonging to it is compulsorily acquired by the Union.

4.3 IS THE DEFINITION OF STATE UNDER ARTICLE 12 OF INDIAN CONSTITUTION LIMITED TO PART –III?

*In Tashi Delek Gaming Solutions Ltd. & Anr. Vs State of Karnataka & Ors.*⁴³, the Supreme Court held that the enlarged definition of State under Article 12 of Constitution of

⁴⁰ AIR 1965 SC 1942: (1966) 1 SCR 64.

⁴¹ (1990) 3 SCC 223 (Para 52).

⁴² (1964) 1 SCR 371: 1963 BLJR 675: AIR 1963 SC 1241.

⁴³ AIR 2006 SC 661.

India would not extend to Article 131 of the Constitution of India. The Supreme Court says that it is also not in dispute that even a statutory corporation is not a State within the meaning of the said provision. The Courts in India continuously says that instrumentalities of State are different from State Government, though both may answer the definition of State under Article 12 of Constitution of India for the limited purpose of Part-III of the Constitution of India.

The Supreme Court *In Srikant Vs Vasantrao & Ors.*⁴⁴, said that the very inclusive definition of State under Article 12 by referring to Government of India, the Government of each of the States and the local and other authorities, made it clear that a State Government and a local or other authorities, are different and that they fall under a common definition only for the purpose purpose of Part-III of the Constitution of India.

The Court refused to apply the enlarged definition of State given in Part - III (and Part - IV) of the Constitution of India, for interpreting the words State or State Government occurring in other parts of the Constitution of India. The Supreme Court continued to say that while the term State may include a State Government as also statutory or other authorities for the purposes of Part - III (or Part - IV) of the Constitution of India, the term State Government in its ordinary sense does not encompass in its fold either a local or statutory authority. Considering these findings, the Supreme Court held that the Corporation or other States instrumentalities are not State. So, from the above discussion, it is proved that the definition of state under Article 12 is limited to part III and in case of curtailment of right by institution before claiming for right, attributes of Article 12 must be satisfied.

IS ARTICLE [366(15)] INCLUDES AND DEFINE STATE?

Article 366(15)⁴⁵ states as “Indian State” means any territory which the Government of the Dominion of India recognised as such a State;

In this Article Indian State means any territory recognised before the commencement of this constitution by his Majesty or the Government of the Dominion of India as being such a state. It apparent that language of sub-clause (2) shows that the term ‘Indian State’ has been given a very wide meaning and it denotes not only that territory which was recognised by the Government of the Dominion of India as being such a state but also that territory which was recognised by his Majesty as state.⁴⁶

⁴⁴ AIR 2006 SC 918.

⁴⁵ Supra at 1.

⁴⁶ State of Rajstan Vs Shamlal

It may be pointed out, that although it may appear from the sub-clause (2) as if this wide meaning has been given only for this Article, but the perusal of other Articles would show that the term 'Indian State' has been used in the same of old covenanting state or what at one time used to call as an Indian Native State because it has been used with the word Ruler. Similarly in article 362, the term Indian State has been used with the word Ruler and there also, it means that old Indian State recognised by the Dominion of India, and not the United State because there was no single ruler of the United State. It is thus clear that term Indian State has been used in the Constitution as meaning both that is

1. the various covenanting states
2. the united state which they integrated prior to the enforcement of the Constitution.⁴⁷

Thus, from the above analysis, it can be said that the meaning defined Article 366(15) is related to recognition of it as Indian Domain and it does not define the state as provided under Article 12, here, the definition of state is related to Indian Domain which we called and referred to Article-1 i.e. Bharat a union of states and definition of state under Article 12 is restricted to Part III & IV only as broadly discussed in the earlier sub chapter.

NEW CHALLENGES

EVOLVING ROLE OF STATE IN 21ST CENTURY

The power to steer society has diffused away from the chieftain or king towards a broader base of elected representatives, managers, bureaucrats and interest group leaders. Movement along this long-run trend has been far from linear or painless, and no one decision-making model has prevailed. Over time, however, economic growth has combined with changing values and institutions to reshape the nature, scope and means of exercising authority throughout society – in government, firms, associations and families. The 21st century as a result of trends including disruptions in technology, globalization, the economic crisis of 2008 and its recovery, and shifting market and institutional dynamics. In many ways, changes for individuals have been for the better, including new opportunities and overall economic growth—and the prospect of more to come as the century progresses, through developments in science, technology and innovation, and productivity growth. It seems that with the advancement of society and being the era of technology, the system of governance has also turned up their way and trying to meet the expectation of people with the help of technology. State acted in way with transparency with the advancement of technology in their way of

⁴⁷ Available at <https://books.google.co.in/books?id=fp8kNHi8-/> (last seen on 25-09-2022).

governance.

RELATIONSHIP BETWEEN GOVERNMENT AND CHANGING ROLES OF STATE

State, in its wider sense, refers to a set of institutions that possess the means of legitimate coercion, exercised over a defined territory and its population, referred to as society. The state monopolizes rulemaking within its territory through the medium of an organized government. The term government is often used differently in different contexts. It can refer to the process of governing, to the exercise of power. It can also refer to the existence of that process, to a condition of "ordered rule." "Government" often means the people who fill the positions of authority in a state. Finally, the term may refer to the manner, method, or system of governing in a society: to the structure and arrangement of offices and how they relate to the governed. While keeping these distinctions in mind, we also use the terms state and government colloquially and sometimes interchangeably as they are often used in discussion and writing around the world. Government is normally regarded as consisting of three distinct sets of powers, each with its assigned role. One is the legislature, whose role is to make the law. The second is the executive (sometimes referred to as "the government"), which is responsible for implementing the law. In the modern era, we had seen that the role of state whose power was to act, legislate has shift with the advancement of the society and now the role of state has changed to focus on different issues and challenges and they are now shifted the patterns of governance by delegation of their powers. Previously the State who remains to be the rule maker has shifted to the lower level for better implementation.

POTENTIAL AND NEW CHALLENGES

It has also been seen that now in the era of advancement and technology, the government agencies are getting privatisation with the advancement of technology and with the shift of this government instrumentality in the hand of private institutions, the biggest challenge which may arises is that this private intuitions are not the agencies or instrument of the government who fall under the definition of Article 12, then, it will a challenge for both government and citizen that in case of curtailment of the right, how they will fight for their rights provided under part III of the Constitution. It is also a new challenges that whether with a rapid privatisation of Government Agencies will make apex court to interpret the definition of Sate provided under Article 12 differently.

CRITICISM

With globalization, liberalization and privatization, touching the Indian shores, some scholars entail and apprehend serious doubts qua the application and efficacy of fundamental rights in India, principally on two counts, which during this research also highlighted as potential and new challenges, which are as following below:-

- I. With the increasing role of the private enterprise and decreasing role of the State, fundamental rights would be violated more by the private enterprises than by the State;
- II. The private enterprise will claim for itself fundamental rights as any other legal person, without been answerable qua their violation, as the State is (ordinarily speaking) answerable.

SUGGESTIONS

With the increase of the concept of privatization or private-government partnership as well as involvement of private companies in government organization, in discharging public functions, the definition of State as provided under Article 12, need to be reviewed and amend and include any person in relation to such of its functions which are of a public nature under other authorities to protect the rights of citizen in the era of globalization and information technology.

CONCLUSION

As we had seen in this research, the wider interpretation of definition of State under Article 12 of the Indian Constitution, 1950, as other authorities through various case laws and had also seen about the hypothesis drawn as proved under chapter-3 & 4. The research questions drawn has also in very well manner discussed in the chapters and the answer to that pointed out questions has in very detailed manner discussed and answered with reasoning. On the basis of this research, few criticism has been pointed out as potential challenge in today's scenario and to conclude upon the same highlighted criticism, the author, in regards to the first premise, want to put his view and states that, merely by increasing the role of the private enterprise, the State cannot absolve itself from the responsibility of honouring and safeguarding the fundamental rights of the citizens. Judicial wing of the State as the custodian of the Constitution is enrobed with the responsibility to ensure that fundamental rights of the

citizens of the country are protected in all eventualities, even if it demands, taking an activist view (*salus populi est suprema lex*).

As regards to the second premise, it can be said that, the decisions rendered by the Apex Court in the following two cases, *M.C. Mehta v. Union of India*⁴⁸ and *Indian Council for Enviro-Legal Action v. Union of India*⁴⁹, are not only sufficient to deal with ensuing issue, but are also well reasoned and far-reaching. In *M.C. Mehta v. Union of India* (supra), the question that came for adjudication before the Supreme Court was, whether or not, a private corporation (Shriram Food & Fertilizers Limited) was a “State” within the purport of Article 12 of the Constitution of India, 1950? The Supreme Court observed that, a non-governmental company can be placed within the periphery of Article 12, if for reasons of State control and regulations (and the kind of public function the non-governmental company performs) it satisfies the agency vis-à-vis instrumentality test qua the government. In *Indian Council for Enviro-Legal Action v. Union of India* (supra), it was held that, if by actions of private corporate bodies, the fundamental rights qua individuals are violated, then the court would not accept the argument that, it cannot proceed against them for the reason of such private corporate bodies not falling within the purport of Article 12 of the Constitution of India, 1950. Purposive interpretation of the term “State” as contained in Article 12 of the Constitution of India, 1950 is required, so that, the meaning of the term “State” is inclusive and exhaustive, and is not exclusive and restrictive. This is required moreso because protection of fundamental rights qua the citizens (and individuals in general) stands, albeit in direct consequence of, the manner in which the term “State” is understood and interpreted. What requires, thus, is a „beneficial construction“ of the term “State” vis-à-vis Article 12 of the Constitution of India, 1950. The author further like to states that as already, drawn that definition of State under Article-12 can be read only part III and IV, so, the basic rights which the state want to curtailed, can be easily claimed on the foot of this Article as it is already discussed and proved that Article 366(15) of the Indian Constitution, defining state does not include the definition of state as there in Article 12 but that definition of State relates to Indian Domain which states about the India as Bharat which is called as Union of States.

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