

# Definition of State

Article 12

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According to Article 12 the term 'State' includes:

- The Government and Parliament of India i.e., Executive and Legislature of the Union
- The Government and the Legislature of each State i.e., Executive and Legislature of States.
- All Local Authorities.
- Other Authorities within the territory of India, or under the control of the Central Government.

# Scope and Purpose of State

- John Locke says that the purpose of state is “common good or good of mankind”.
- State is a body that comes into existence for maintaining the life and upholds the dignity of its individuals by holding their rights.
- The framers of the constitution wanted to create a society in which all its citizen shall acquire all the basic fundamental rights. Thus it became a duty on state to enforce so that they could overcome the oppression

- The rights provided in Part III are guaranteed against the **State** and are distinguished from violation of rights by privates
- Part III and Part IV carry a theme of Human Rights, Dignity of Individual and also of the unity and dignity of the nation.
- These parts respectively act as a Negative Obligation of the State and that is not to Interfere with the Liberty of the Individual, and Positive Obligation of the State which is to take steps for the welfare of the Individual

# Authority

- ‘Authority’ means a person or body exercising power, or having a legal right **to command** and be obeyed.
- ‘An Authority’ is a group of persons with official responsibility for a particular area of activity and having **ability to control** others
- It also includes all constitutional or statutory authorities on whom powers are conferred by law **to make laws, orders, regulations, bye-laws,** notification etc which have the force of law and power to enforce those laws

# Local Authority

- according to sub-section (31) of Section 3 of the General Clauses Act, 1897 “Local Authority” shall mean a **municipal committee, district board, body of commissioner or other authority legally entitled to or entrusted by the Government within the control or management of a municipal or local fund.**
- According to Entry 5 of the List II of 7<sup>th</sup> Schedule ‘local government’ includes municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

- The Supreme Court has ruled that to be characterized as a 'local authority'
- -----the authority concerned must have separate legal existence as a corporate body,
- -----it must not be a mere government agency but must be legally an independent entity;
- -----it must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area.
- ----- It must also enjoy a certain degree of autonomy either complete or partial,

- -----It must be **entrusted by statute with such governmental functions and duties** as are usually entrusted to locally like health and education, water and sewerage, town planning and development roads, markets, transportation, social welfare services, etc.
- ----- such body must have the power to raise funds for furtherance of its activities and fulfillment of its objectives by levying taxes, rates, charges or fees.

# Other Authorities

- The term 'other authorities' in Article 12 has nowhere been defined. Neither in the Constitution nor in the general clauses Act, 1897 nor in any other statute of India.
- Hence its interpretation has caused a **good deal of difficulty**, and judicial opinion has undergone changes over time.
- Today's government performs a large number of functions because of prevailing philosophy of a **social welfare** state
- The **government acts through natural persons as well as juridical persons.**
- Some functions are **discharged through the traditional governmental departments and officials** while some functions are **discharged through autonomous bodies** such as, companies, corporations etc.

# Judicial Pronouncements

In the case of **University of Madras v. Santa Bai** *AIR 1954 Mad.67*

- the Madras HC held that 'other authorities' could only indicate **authorities of like nature**, i.e., ejusdem generis. It mean **authorities exercising governmental or sovereign functions**. It cannot include persons, natural or juristic. Such as, a university unless it is 'maintained by State'
- But in **Ujjammabai v. State of U.P.** *AIR 1962 SC 1621*
- , The Court rejected this restrictive interpretation and held that the ejusdem generis rule could not be resorted to this expression.
- In Article 12 the bodies specifically named are the Government of Union and the States, the Legislature of the Union and States and local authorities.
- **There is no common genus running through these named bodies nor can these bodies so placed in one single category on any rational basis.**

- In **Electricity Board, Rajasthan v. Mohan Lal** the Supreme Court held that ‘other authorities’ would include all authorities **created by the constitution or statute** on whom powers are conferred by law.
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- It was not necessary that the statutory authority should be engaged in performing government or sovereign functions.
- The court emphasized that it is not material that some of the power conferred on the concerned authority are of **commercial nature**. This is because under Art. 298 the government is empowered to carry on any trade or commerce.

- Thus, the court observed : “ The circumstances that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore give any indication that the ‘Board’ must be excluded from the scope of the word ‘State’ is used in Article 12.
- Other authorities includes electricity board, co-operative society which have power to make bye-laws under Co-operative Societies Act.
- The Chief Justice of High Court is also included in the expression other authorities as he has power to appoint officials of the court.

- **Sukhdev Singh V. Bhagatram**, The Supreme Court, following the test laid down in *Electricity Board Rajasthan's Case* stated that the three statutory bodies viz., LIC, ONCG & FCI were held to be 'authorities' in Art 12
- These corporations were **created by the statutes**,
- had the **statutory power to make binding rules & regulations**
- were subject to the **pervasive governmental control.**
- These corporations do have independent personalities in the eyes of law, but that does not mean that they are not subject to the control of the government or they are not instrumentalities of the government.
- The employees of these statutory bodies have a **statutory status** and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

- Mathew, J., in a separate but concurring judgement, held that
- the **Public Corporations is a new type of institution which sprang from the new social and economic functions of the government,**
- it should be adopted to the changing time and conditions.
- The State being an abstract entity, could undertake trade or business as envisaged under Article 298 through an agency, instrumentality or juristic person.
- He preferred a broader test that if the functions of the Corporation are of **public importance** and **closely related to governmental functions** it should be treated an **agency or instrumentality** of government and hence a 'State' within the ambit of Article 12 of the Constitution.

- **Sukhdev Singh case**, was reiterated with approval in **R D Shetty V. International Airport Authority, Bhagwati, J.**, speaking for the Court, pointed out the corporations acting as instrumentality or agency of government would obviously be subject to the same limitation in the field of constitutional or administrative as the government itself, though in the eye of the law they would be distinct and independent legal entities.
- **government acting through the instrumentality or agency of corporations should equally be subject to the same limitations.**

- Where the financial assistance of the state is so much as to meet almost entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.
- Whether the corporation enjoys monopoly status which is state conferred or state protected.
- Existence of deep and pervasive state control may afford an indication that corporation is state agency or instrumentality
- If functions of corporation are of public importance and closely related to government functions it may be classifying a corporation as an instrumentality or agency of government

- If a department of the government is transferred to corporation it would be a strong factor supporting the inference of the corporation being an instrumentality or agency of government.
- “The concept of the instrumentality or agency of the government is not limited to a corporation created by statute but is **equally applicable to a company or society.**”
- However, these tests are not conclusive or clinching, and it must be realized that ***it would not be stretched so far as to bring in every autonomous body*** which has some nexus with the government within the sweep of the expression.

- This line of approach was finally confirmed in **Som Prakash Rekhi V. Union of India**.
- Applying the criteria laid down in the International Airport Authority case, the Supreme Court reached the conclusion that **there is enough material to hold that the *Bharat Petroleum Corporation* registered as a company under the Companies Act, is State within the enlarged meaning of Art. 12.**
- **Ajay Hasia v Khalid Mujib** *AIR 1981 SC 487*
- the question arose whether the Regional Engineering College, Srinagar, established, administered and managed by a society registered under the J & K Registration of Societies Act, was a State within the meaning of Article 12.

- **Bhagwati, J.**, reiterated the tests. The enquiry must be not how the juristic person is born but **why it has been brought into existence.**
- It is, therefore, **immaterial whether the corporation is created by the statute or under a statute.** The concept of instrumentality or agency of government, is not limited to a corporation created by the statute but **is equally applicable to a company or society**
- **Court held it was an instrumentality or agency of State and for the reason that these governments had full control of the working of the society and the society was merely a projection.**

- In this expansive trend, there have been some discordant notes as well. One such example is
- ***Tekraj Vasandi v. U.O.I.,***
- where the Supreme Court held the '***Institute of Constitutional and Parliamentary Studies***', a society registered under the Societies Registration Act, 1860, as not being an 'authority' under Article 12, The Institute is a registered society receiving grants from the Central Government and having the President of India, Vice-President and the Prime Minister among its honorary members.
- The Central Government exercises a good deal of control over the Institute.
- **Inspite of the government funding and control, the court has refused to hold it as an authority.**

- ***Zee Telefilms Ltd. v. Union of India***, (2005) 4 SCC 649:

It was held that, functions or duties of a public nature performed by a body not prohibited by law does not make the body "State" for the purposes of Article 12. It was held that BCCI is not a State within the purport of Article 12.

- Board of Control for Cricket in India v. Cricket Association of Bihar, (2015) 3 SCC 251: It was held that-
  - BCCI is amenable to writ jurisdiction under Article 226 of the Constitution;
  - BCCI's control over the sport of cricket in India is deep and pervasive, it enjoys a monopoly status in the game of cricket in India;



- Owing to the doctrine of fairness and good faith, BCCI has a huge responsibility at its peril to discharge, that is, to look after the sport of cricket in India;
- BCCI is a private body formed under the Tamil Nadu Registration of Societies Act, 1975, it is subject to the writ jurisdiction of the Constitution vide Article 226, with little regards to the fact that it is not financially, functionally or administratively dominated by the Government.



## IS JUDICIARY INCLUDED IN THE WORD 'STATE'

- Unlike in **U.S.A**, where the judicial decision implies 'State action' for the purposes of enforcement of fundamental rights, in India the 'judiciary' is not specifically mentioned in Art. 12.
- The judicial view is that the judgments of courts cannot be challenged on the ground that they contravene fundamental rights.
- There is distinction between the ***judicial and non-judicial functions*** of the courts.
- In the exercise of the non-judicial functions, the courts fall within the definition of the 'State'.
- The exercise of judicial functions will not occasion the infringement of fundamental rights and, therefore, the question of bringing the courts within the definition of the 'state' would not arise.

- In **Naresh v. State of Maharashtra** *AIR 1967 SC 1*,
- it was held that even if a court is State a writ under Art. 32 cannot be issued against its judicial orders,
- because such orders cannot be said to violate the fundamental rights.
- What the judicial decisions purports to do is to decide the controversy between the parties and nothing more.
- The court said that the ‘judiciary’ while exercising its rule-making power under Art. 145 would be covered by the expression ‘State’ within the meaning of Art. 12, but while performing its judicial functions, it is not so included.

- In **A. R. Antulay v. R.S. Nayak** *AIR 1988 SC 1531*,
- it was held that the court could not pass an order or issue a direction which would be violative of the fundamental rights, thus, it can be said that the expression 'state' includes judiciary also.
- It is submitted that the judiciary, though not expressly mentioned in Art. 12, it should be included; discrimination may be brought judiciary. The courts, like any other organ of the State, are limited by the mandatory provisions of the Constitution

