

NAME OF TEACHER	Sanjeev Kumar Nimesh
MOB. NO	9759886804
E MAIL ID	Sara2015nim@gmail.com
DESIGNATION	Assistant Professor
UNIVERSITY NAME	Monad University
COLLEGE NAME	Department of Law Monad University
STREAM NAME	Law
FACULTY NAME	Law
DEPARTMENT NAME -	Law
SUBJECT NAME	Constitutional Law
COURSE	BALLB /LL.B / LL.M
COURSE DURATION	5 year/ 3 year/ 2year
SUBTOPIC NAME	State' under Article 12 of the Constitution of India
CONTENT TYPE	Text
SEARCH KEYWORD	State' under Article 12 of the Constitution of India
(CONTENT CREATER/TEACHER) Sanjeev Kumar Nimesh	

BA.LL.B /LL.B/LL.M-111: Constitutional Law

Course Objective

The Objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the Constitution and their functions

Unit	CONTENTS	CONTACT HRS
3 rd	<p>1. Fundamental Rights –</p> <p>(a).General : Scheme of Fundamental Rights, Who can claim Fundamental Rights :Against whom Fundamental Rights are available ? Suspension of Fundamental Rights.</p> <p>(b). Specific Fundamental Rights</p> <ul style="list-style-type: none">• Right to Equality (Articles 14 to 18)• Right to Freedom of Speech and Expression (Article 19(1)(a))• Protection in respect of Conviction for offences (Article 20)• Right to Life and Personal Liberty (Article 21)• Right to Education (Article 21A)	

'State' under Article 12 of the Constitution of India

Introduction

Fundamental rights are a group of rights which are guaranteed to all the citizens of the nation by the Constitution of India under Part III. These rights apply universally to all citizens residing in the nation, irrespective of their race, place of birth, religion, caste or gender. They are recognized by law as rights requiring a high degree of protection from the government and they cannot be violated by the Government. Fundamental rights cannot be enforceable against individuals and private entities. The obligation of protecting these rights lies on the government or the state or its authorities.

Most of the Fundamental rights provided to the citizens are claimed against the State and its instrumentalities and not against the private bodies. Article 12 gives an extended significance to the term 'state'. It is very important to determine what bodies fall under the definition of a state so as to determine on whom the responsibility has to be placed.

The framers of the Constitution used the words 'the State' in a wider sense than what is understood in the ordinary or narrower sense. It does not merely mean the states in the Union. The word 'includes' in the article shows that the definition

is not exhaustive and through judicial interpretations, the court has widened the scope of the Article way beyond what even the framers of Article 12 may have had in mind during the framing of the constitution.

Meaning of State under Article 12

Article 12 of the Indian Constitution states that,

"Definition 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 States and all local or other authorities within the territory of India or under the control of the Government of India."

In other words, for the purposes of Part III of the constitution, the state comprises of the following:

1. Government and Parliament of India i.e the Executive and Legislature of the Union
2. Government and Legislature of each State i.e the Executive and Legislature of the various States of India
3. All local or other authorities within the territory of India
4. All local and other authorities who are under the control of the Government of India

Key terms discussed under the article

1. Government (Union and state)
2. Parliament and state legislature
3. Local authorities
4. Other authorities
5. Territory of India
6. Control of the government of India

The above-mentioned terms are better explained in the following section along with relevant cases.

Government (Union and state), Parliament and State Legislature

- **Parliament:** The parliament comprises of the President of India, the lower house of the parliament that is the Lok Sabha as well as the upper house of the Parliament, that is the Rajya Sabha.
- **Executive:** It is that organ which implements the laws passed by the legislature and the policies of the government. The rise of the welfare state has tremendously increased the functions of the state, and in reality, of the executive. In common usage, people tend to identify the executive with the government. In contemporary times, there has taken place

A big increase in the power and role of the executive in every state. The executive includes the President, Governor, Cabinet Ministers, Police, bureaucrats, etc.

- **Legislature:** The legislature is that organ of the government which enacts the laws of the government. It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important in every democratic state. It is the assembly of the elected representatives of the people and represents national public opinion and power of the people.
- **Government:** The law-making or legislative branch and administrative or executive branch and law enforcement or judicial branch and organizations of society. Lok Sabha (the lower house) and Rajya Sabha (the upper house) form the legislative branch. Indian President is the head of the state and exercises his or her power directly or through officers subordinate to him.

The Supreme Court, High Courts, and many civil, criminal and family courts at the district level form the Judiciary.

- **State Legislature:** The legislative body at the state level is the State Legislature. It comprises of the state legislative assembly and the state legislative council.

Local Authorities

Before understanding what a local authority is, it is important to define Authorities. According to Webster's Dictionary; "Authority" means **a person or body exercising power to command**. When read under Article 12, the word authority means the power to make laws (or orders, regulations, bye-laws, notification etc.) which have the force of law. It also includes the power to enforce those laws

Local Authority: As per Section 3(31) 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."

The term Local authority includes the following:

1. **Local government:** According to Entry 5 of the List II of VII Schedule 'local government' includes a municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
2. **Village Panchayat:** In the case of [Ajit Singh v. State of Punjab](#), it was held that within the meaning of the term local authority, village panchayat is also included.

Test to determine Local Authorities

In [*Mohammad Yasin v. Town Area Committee*](#), the Supreme Court held that to be characterized as a 'local authority' the authority concerned must;

1. Have a separate legal existence as a corporate body
2. Not be a mere government agency but must be legally an independent entity
3. Function in a defined area
4. Be wholly or partly, directly or indirectly, elected by the inhabitants of the area
5. Enjoy a certain degree of autonomy (complete or partial)
6. Be entrusted by statute with such governmental functions and duties as are usually entrusted to locally (like health, education, water, town planning, markets, transportation, etc.)
7. Have the power to raise funds for the furtherance of its activities and fulfilment 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. Therefore, its interpretation has caused a good deal of difficulty, and judicial opinion has undergone changes over time.

The functions of a government can be performed either the governmental departments and officials or through autonomous bodies which exist outside the departmental structure. Such autonomous bodies may include companies, corporations etc.

So, for the purpose of determining what 'other authorities' fall under the scope of State, the judiciary has given several judgements as per the facts and circumstances of different cases.

In the [University of Madras v. Shanta Bai](#), the Madras High Court evolved the principle of '*ejusdem generis*' i.e. of the like nature. It means that only those authorities are covered under the expression 'other authorities' which perform governmental or sovereign functions. Further, it cannot include persons, natural or juristic, for example, Unaided universities.

In the case of [Ujjammabai v. the State of U.P.](#), the court rejected the above restrictive scope and held that the '*ejusdem generis*' rule could not be resorted to in interpreting 'other authorities'. The bodies named under Article 12 have no common genus running through them and they cannot be placed in one single category on any rational basis.

Lastly, in [Rajasthan Electricity Board 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. Such statutory authority need not be engaged in performing government or sovereign functions. The court emphasized that it is immaterial that the power conferred on the body is of a commercial nature or not.

Territory of India

Article 1(3) of the Constitution of India states that;

"The territory of India shall comprise- (a) the territories of the States;(b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired."

In the case of [Masthan Sahib v. Chief Commissioner](#), the court held that the territory of India for the purposes of Article 12 means the territory of India as defined in Article 1(3).

Control of the government of India

Under Article 12, the control of the Government does not necessarily mean that the body must be under the absolute direction of the government. It merely means that the government must have some form of control over the functioning of the body. Just because a body is a statutory body, does not mean that it is 'State'. Both statutory, as well as non-statutory bodies, can be considered as a 'State' if they get financial resources from the government and the government exercises a deep pervasive control over it.

For example- State includes Delhi Transport Corporation, ONGC and Electricity Boards, but does not include NCERT as neither is it substantially financed by the government nor is the government's control pervasive.

The test laid down in the case of *Ajay Hasia* is not rigid and therefore if a body falls within them, then it must be considered to be a State within the meaning of Article 12. It was discussed in the case that- *"whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of Government. Such control must be particular to the body in question and must be pervasive."*

Whether State includes Judiciary?

Article 12 of the Constitution does not specifically define 'judiciary'. This gives the judicial authorities the power to pronounce decisions which may be contravening

to the Fundamental Rights of an individual. If it was taken into the head of 'State', then as per the article, it would be by the obligation that the fundamental rights of the citizens should not be violated. Accordingly, the judgements pronounced by the courts cannot be challenged on the ground that they violate fundamental rights of a person. On the other hand, it has been observed that orders passed by the courts in their administrative capacity (including by the Supreme Court) have regularly been challenged as being violation of fundamental rights.

The answer to this question lies in the distinction between the judicial and non-judicial functions of the courts. When the courts perform their non-judicial functions, they fall within the definition of the 'State'. When the courts perform their judicial functions, they would not fall within the scope of the 'State'.

So, it can be noted that the **judicial** decision of a court cannot be challenged as being violation of fundamental rights. But, an **administrative** decision or a **rule made** by the judiciary can be challenged as being violative of fundamental rights, if that be supported by facts. This is because of the distinction between the judicial and non-judicial functions of the courts.

In the case of ***Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1***, a 9-judge bench of the Supreme Court held that a judicial decision pronounced by a judge of competent jurisdiction in or in relation to a matter brought before him for adjudication cannot affect the fundamental rights of the citizens since what the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. Therefore, such a judicial decision cannot be challenged under Article 13.

In AISSF Association v. Defense Minister-cum-Chairman, B.O.G.S.S. Society, it was held that Sainik School Society fall under the term State as entire funding of it was done by State Government and Central Government.

In case of **Central Inland Water transport Corporation v. Brojo Nath Ganguly** , the court held that it was wholly owned by the Central Government by applying the above test.

In case of **General Manager, Kisan Sakhari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishan** , it was held that this corporation is not included in State as it only holds 50% share in the company. Expenditure of the mill was also not met by government. And also there was no deep and pervasive control over the mill.

Functionality Test:

In **Zee Telefilms & Ors. v. Union of India** , it was held if private body perform public function that is amenable under article 226 of the constitution even though private body is not included in meaning of article 12 of the constitution. The reason behind that BCCI is not liable because of the 'floodgates' principle.

Does the word State include Judiciary?

In case of **A.R.Antulay v. R.S.Nayak**, it was held that the term 'State' under article 12 of the Constitution of India, 1950 includes judiciary too but cant issue any order or issue.

Conclusion

The Constitution of India not only gives fundamental right to the citizens but also imposes the duty on the state to ensure that the fundamental rights are protected. The court through its interpretations has widened the scope of the term State to include a variety of statutory and non-statutory bodies under its umbrella.

The need to determine what falls within the meaning of state is, to assign the party on whom the duty to implement such right is placed upon. Not only that, the definition of state under Article 12 has several words which may not have definite meanings, words such as local authorities, control of government, other authorities, etc. and as seen in the above sections, the courts have, through the course of their judgements, described the extent of the article by laying down a test and discussing the meaning of the terms.

References

1. <http://www.legalserviceindia.com/legal/article-3301-article-12-of-the-constitution-of-india-1950.html>
2. <https://blog.ipleaders.in/state-article-12-constitution-india/>
3. <https://www.drishtias.com/daily-updates/daily-news-analysis/state-under-article-12-of-the-constitution>
4. <https://www.intolegalworld.com/LegalArticles?title=the-concept-of-state-under-article-12-of-the-indian-constitution>

