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Altering Boundaries of State under Article 12

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Fundamental Rights are essential for all-around development i.e. material, intellectual, moral, and spiritual, and such rights are protected by the Indian Constitution. These rights are not a mere donations but rather confirm the survival of the citizens along with a guarantee. In order to ensure these rights, it is important to understand where the right should be addressed before an authority and whether such “authority” is falling under the ambit and scope of Article 12 of the Indian Constitution. The Apex Court has resorted to three types of interpretation—the restricting, liberal and broader interpretations of the terms. With the changing role of the State from merely being a police state to a welfare state, it was imperative to broadly widen the scope of “other authorities” by getting in the bodies acting as agencies for the government within the purview. Illustrative principles for the determination and classification of a body in serving as an agency of the Government are funding source, state control, the essence of the functions, and conferment of monopoly status by state, etc.

Keywords: *fundamental rights, interpretations, welfare state, other authorities, state control.*

INTRODUCTION

The insertion of the segment of Fundamental Rights in the Indian Constitution clears the intent of the makers to establish a Government with no specific predilections and whereby the minority are not tyrannized by the majority. Admittedly, the Indian Constitution in this respect is much more advanced than any other Constitution of the world and the makers were indeed

farsighted. Merely providing security and even-handedness of citizenship of the people for nation-building wouldn't have helped therefore the incorporation of this Part, provides a certain standard of conduct, justice, and fair play. It is for the individuals to cherish that the highest law of the land has assembled all privileges and has given prime importance to perfect equality amongst all the sections of the society about those rights which are indispensable for the material and more perfection of man.

Article 12¹ of the Indian Constitution secures and protects the Fundamental Rights of the people and it is for the State to make sure that these rights are not violated and prejudiced. In case of violation, one can approach the Court of Law to seek remedies. The Apex Court in *M. Nagraj v Union of India*² opined that these basic rights are not donations or freebies by the State to the citizens. Part III of the Constitution not only confers the Fundamental Rights but also confirms their survival along with a guarantee. The fact that, as individuals, we are born to the human race makes us possess basic rights of intrinsic values. Withdrawal of certain areas from the domain of political controversy and placing them beyond the clutches of officials is called for. The design of the entrenchment of these rights protects them from any violation, interference, and tampering by the Government and importantly it serves as the legal guidelines in the administration of justice by the Courts.

The underlying idea of entrenching Fundamental Rights has a dual position. The first one is conferring such rights which are justiciable in nature and can be enforced by the people against the Government. Secondly, they create limitations and restrictions for the Government from taking any administrative action which may infringe the Fundamental Rights. Constitutional Protection can be only sought against the Government. However, these Fundamental Rights are only guaranteed by the State and some are unavailable to a private individual. Any action, private in nature is adequately sheltered by the ordinary laws of the Country. To understand the expansive nature of Fundamental Rights, we need to determine the concept of the State and its instrumentalities.

¹ Constitution of India 1950, art 12

² *M. Nagraj v Union of India* AIR (2007) SC 71

Article 12 of the Constitution specifically elaborates on the concept of states and 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. It, therefore, includes the executive and the legislative organs of the Union and the States. The workings and activities of only these constitutional organs can be challenged in the Court of Law in case of an infringement. However, the most significant expression 'other authorities' has not been determined and outlined in the Constitution. Therefore, it is on the Supreme Court to determine the comprehensive and all-embracing meaning of the term 'other authorities'. In recent years, the term has been interpreted with the widest possible scope and the ambit of the term has been increasing with the modern age and the developments in Constitutional Jurisprudence.

OTHER AUTHORITIES

While interpreting the term 'other authorities' in the light of Article 12³, the Apex Court has faced a fair and great amount of intricacy and perplexity. Opinions of the judicial mechanism of the Country have witnessed a radical change over the years. The prevailing and ever-increasing philosophy of a social welfare state makes the Government perform numerous functions. The acts are being carried out by both natural and juridical persons. The role of the government in establishing and ensuring a social welfare state in a dynamic country is vast and therefore, autonomous bodies like corporations and companies, which do not exist within the departmental framework and structure, are roped in, to perform governmental duties. Autonomous bodies can be categorized into two parts- a statutory body or a non-statutory body established under general laws like the Companies Act, the Societies Registration Act, etc. The essential question raised here is the inclusion of these bodies in 'other authorities' under the scope of Article 12⁴. However, the Apex Court has resorted to three types of interpretation- the restricting, liberal, and broader interpretations of the term.

³ Constitution of India 1950, art 12

⁴ *Ibid*

The placement of the words 'other authorities' in Article 12 is superseded by the word 'the Government and Parliament of India and the Government and the Legislature of each of the States'. Therefore, the Madras High Court based on the above proposition, in a case⁵ held that 'other authorities' could only indicate and mean authorities of similar character, i.e. *ejusdem generis*. It could only account for authorities discharging sovereign functions. The inclusion of persons, natural or juristic, was not possible. However, the Apex Court in *Ujjambaoi v State of U.P.*⁶ had altogether a varying opinion. It rejected the restricted interpretation of the Madras High Court and held that the application of the *ejusdem generis* rule cannot be the guiding principle to interpret the expression. There was no common genus in the words arranged in Article 12 and these bodies cannot be singularly classified and labelled on any rational basis. Further in *Electricity Board, Rajasthan v Mohan Lal*⁷ the Apex Court clarified that the joint expression "other authorities" is sufficiently broad to cover all such authorities on whom powers have been conferred by law and the origin of the same authorities can be traced from the Constitution or any other statute. Engagement in performing governmental or sovereign functions shall not stand as an indispensable pre-condition in determining whether the authority would fall under the scope of Article 12. The power of an authority to design bye-laws under the Co-operative Societies Act, 1912, puts it in the ambit of the Article. The expression "other authorities" also includes the Chief Justice of a High Court as he has the authority in making appointments of officials of the Court.⁸ In another case⁹ the Supreme Court followed the test laid down in *Electricity Board, Rajasthan's* dispute and held that the Oil and Natural Gas Commission, the Life Insurance Corporation, and Industrial Finance Corporation are included under Article 12 as the regulations for the duties to be discharged, conduct to be observed and conditions of service of officers including other employees are framed by these statutory corporations. These regulations are binding. Though concurring but in a separate judgment, Mathews, J, laid a broader test stating that if the functions and workings of the Corporation were

⁵ *University of Madras v Shantha Bai* AIR (1954) Mad 67

⁶ *Ujjambaoi v State of UP* AIR (1962) SC 1621

⁷ *Electricity Board, Rajasthan v Mohan Lal* AIR (1967) SC 1857

⁸ *Parmatma Saran v Chief Justice* AIR (1964) Raj. 13

⁹ *Sukhdev Singh v Bhagat Ram* AIR (1975) SC 1331

of public significance and intricately connected to government functions, it should be treated as an agency or instrumentality of government and therefore, falls within the ambit of Article 12.

Although the Court moved ahead from the concept of *ejusdem generis* and had a liberal approach, there was a requirement for a broader perspective. With the changing role of the State from merely being a police state to a welfare state, it was imperative to broadly widen the scope of “other authorities” by getting in the bodies acting as agencies for the government within the purview. In *Ramana Dayaram Shetty v The International Airport Authority of India*,¹⁰ Bhagwati, J. preferred the broader test laid down by Mathews, J. in *Sukhdev Singh’s* case. The Court laid down certain illustrative principles for the determination and classification of a body in serving as an agency of the Government:

- The chief funding source is the State’s financial resource;
- State control is extensive and widespread
- The essence of the functions and their working is governmental;
- A department of the government is relocated to the corporation
- The monopoly status that the corporation enjoys has been conferred and protected by the state.

Powers conferred on authority to carry out commercial activities or the bodies promote economic activities aptly fall within the scope of Article 12. A nexus with the government must be established in determining the nature of the authority or company. To resonate, it can be said that through these agencies the Government operates behind a corporate veil for carrying out governmental activities and functions. In the leading case of *Ajay Hasia*¹¹, a question was raised about whether a registered society fell under the scope of Article 12. The Apex Court thought that In light of the guiding principles and philosophies enshrined in the Preamble of the Constitution, the Government is heavily expected and required to take multi-dimensional measures for operations that are socioeconomic in nature and the fact that the working of a device like that of a corporation gives the Government, the practical advantages and embarks

¹⁰ *Ramana Dayaram Shetty v The International Airport Authority of India* AIR (1979) SC 1628

¹¹ *Ajay Hasia v Khalid Mujib* AIR (1981) SC 487

on countless commercial and economic activities by engaging the instrumentality or agency of a corporation. However, the such contrivance of working through a corporation shall not exonerate or absolve the Government from obedience to Fundamental Rights that stand implicit in nature.

The basic obligation of the Government is to respect fundamental rights and such obligation is not liberated and exempted by mere usage of the corporate methodology. The Government can escape the indispensable constraint of red-tapism and snail pace by just mantling and tasking a corporation, but this does not allow the Government to hope the wag with basic human rights. The assignment of maximum responsibilities to numerous corporations and carrying out State affairs would simply be cheating with the rights guaranteed by the Constitution and serve as a mockery of the entire mechanism. The Government cannot escape from its guarantee by simply carrying out the activities through an independent agency with sole control over it and then stepping back from its liability. This would be absolute treachery and a sheer breach of faith with its people. Such judicial construction would entirely be futile and meaningless. It would also wipe out the Chapter in total.

Therefore, a registered society could be a "State" after a proper assessment in the light of relevant factors. On the contrary in *Tekraj Vasandi v Union of India*¹², the Apex Court held that the "Institute of Constitutional and Parliamentary Studies", a registered society under the Societies Registration Act, 1860, is cannot be categorized as State under Article 12. Admittedly it is a voluntary organization with no pervasive control of the State through funding by the State was taken into account. It must touch all aspects of social existence. The NCERT was also held not to be "State" under Article 12¹³, as the objective and intent of NCERT were just to assist and advise the Ministry of Education and Social Welfare in the implementation of governmental policies and programs in the field of education.

¹² *Tekraj Vasandi v Union of India* (1988) 1 SCC 236

¹³ *Chandra Mohan Khanna v NCERT* AIR (1992) SC 76

However, in a recent case - *Jigyada Yadav v CBSE*,¹⁴ the Central Board of Secondary education was held to be “State” as the Board discharges public functions in aspects relating to the formal education of a student. The Apex Court has also clarified that a Cooperative Bank whose ultimate objective is to raise funds to finance the members of the society shall not be construed as a ‘State’¹⁵. Also in the recent case of *Ramakrishna Mission v Kago Kunya*,¹⁶ the Apex Court held that though the hospital received a grant from the government, it did not discharge any public functions and the government did not have any control over the management of the hospital. An important question again came up before the Apex Court about the obligation for equal pay for equal work to the teachers.¹⁷ It was held that the right to equality could not be claimed against an unaided minority school as the State had no administrative control due to its authority under Article 30(1) of the Constitution. However, a Private University which was declared a “Deemed University” by the Central Government, was held to be an authority under Article 12 though the Management was in a private trust. The rationality behind the decision was that the private university imparted education at large which was a discharge of public function and the ultimate benefit reached out to the public.¹⁸

The inclusion of the Judiciary included in the word “State” was a big question and it came for consideration before the Supreme Court. In *Naresh v State of Maharashtra*,¹⁹ the Apex Court thought that the Judiciary can fall in the scope of Article 12 but a writ cannot be issued against the Judicial orders of a High Court of competent jurisdiction because such orders are not meant to infringe Fundamental Rights.

CONCLUSION

To conclude, we can say that India has been a progressive country, and the State under Article 12 has assumed a dynamic role with the changing needs. From the police state, we have moved to a welfare state. As and when required the Courts have been interpreting the concept of the

¹⁴ *Jigyada Yadav v C.B.S.E* AIR (2021) SC 4775

¹⁵ *Sri Kona Seema Co-operative Central Bank Ltd. v N Seetharama Raju*, AIR 1990 AP 171

¹⁶ *Ramakrishna Mission v Kago Kunya* AIR(2019) SC 5570

¹⁷ *Satimbla Sharma v St.Paul’s Senior Secondary School*, AIR (2011) SC 2926

¹⁸ *Janet Jayepaul (Dr.) v SRM University*, AIR (2016) SC 73

¹⁹ *Naresh v State of Maharashtra* AIR (1967) SC 1

State rationally and vigorously. Quoting the words of Bhagwati, J. in *Maneka Gandhi v Union of India*²⁰ 'These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions. It is apparent from the enunciation of these rights that the respect for the individual and his capacity for individual volition which finds expression there is not a self-fulfilling prophecy. Its purpose is to help the individual to find his liability, to give expression to his creativity, and to prevent governmental and other forces from alienating the individual from his creative impulses.' It is evident that Fundamental Rights are to be secured for individual development. These guarantees can be invoked only from the State and therefore, a wide and broad approach is required for its interpretation.

²⁰ *Maneka Gandhi v Union of India* AIR (1978) SC 597