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**CONSTITUTIONAL LAW OF INDIA-II**

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### **❖ Meaning and Concept of State(ARTICLE – 12)**

A state for a layman is a nation or territory that is a politically organized community under one government. The word “State” comes from the Latin word ‘status’ meaning “condition of a country”. But the state has a much larger meaning in the constitution, it includes the Legislature and Executive of nation and states, local or other authorities, and all instrumentalities of the state in the territory of India.

A state ensures that individuals in the country are protected from the arbitrary power of the state, as there are enough ordinary laws that protect an individual against private actions.

Article 12 has been defined in the Indian Constitution as: In this part, unless the context otherwise requires, ‘the State’ includes:

1. The Government and the Parliament of India;
2. The Government and the Legislature of each of States;
3. Local Authorities; or
4. Other Authorities; Within the territory of India or under the control of the Government of India.

### **Government and Parliament of Union Parliament-**

Parliament is the supreme law-making body of the government of India. India has a bicameral Legislature. It is composed of the President, the Rajya Sabha (Council of states or Upper House) and the Lok Sabha (House of Commons or lower house).

- **Executive-** The role of the executive is to implement the laws and policies made by the Legislature in the country. It also holds the responsibility for the governance of the state.

The executive executes and enforces the laws.

- **Legislature-** The legislature enacts laws for the people of the nation.

It depicts the will of the state which is given legal authority and force. After a lot of deliberations and discussions, the laws are made to satisfy the needs of the people. It is an assembly of people who are directly or indirectly elected by the people.

- **Government-** An organized group of people governing the state forms the government. In common usage, often the party which forms the majority in the Lower House is denoted by the term government. But governments include all its organs i.e., Legislature, Executive and Judiciary.

Generally, governments have a constitution from which they derive their power and function accordingly.

- **Government and Legislature of State**

The State Legislature includes legislative assemblies in the states and union territories. It consists of State Legislative Assemblies (Vidhan Sabha) and State Councils (Vidhan Parishad). Most states in India follow the unicameral legislature, as there are only legislative assemblies. Only 7 states have their state councils, which is a permanent body.

- **Local Authorities**

The term “Local Authorities” includes authorities like Municipalities, Panchayats, District Boards, Improvement Trusts, Port Trusts, Mining Settlement Boards, etc. In different judicial decisions, different authorities have been declared as local authorities and included in that list. For example in Rashid Ahmed vs. Municipal Board, Kairana is one of the early cases in which municipality was held to be a local authority under Article 12. Even all Panchayats, Municipalities and cooperative societies mentioned in Part IX, IX- A and IX- B respectively will also be included in this category.

### **Mohammed Yasin Vs. Town Area Committee (1952)**

The term local authority has not been defined in any act or the constitution. In Mohammed Yasin vs. Town Area Committee the term “local authorities” was defined. It was also held by the Supreme Court that ‘Municipality’ is a state under Article 12

### **Union of India Vs. RC Jain (1981)**

In Union of India vs. RC Jain, certain tests were laid down to determine which all authorities can fall under the head of “local authorities”: 1. It has a separate legal existence; 2. It functions in a defined area; 3. Has the power to raise funds on its own; 4. It enjoys autonomy(self-rule); and 5. It is entrusted by statute with functions which are usually entrusted to municipalities.

- **Other Authorities**

Article 12 encompasses all other authorities which do not fall in the first three categories.

The term Other authorities is neither defined in the Constitution nor in the General Clauses Act, 1897 (definition clause). This term has been so far interpreted widely through various judgments and now includes many authorities in it. Local authorities mean all the local selfgovernment who has the power to make laws and is considered as an instrumentality of the state. It is explained through various cases states below. There is no strict rule to decide which all bodies are included in this category. Still, some cases have laid down tests or guidelines in their judgments.

### **University of Madras Vs. Shanta Bai (1954)**

#### **Restrictive Interpretation-**

In University of Madras vs. Shanta Bai, the Madras Court formulated the principle of “**ejusdem generis**” which meant that all things of like nature are included in that thing and this also means that bodies exercising governmental or sovereign function would only be covered under other authorities. In this case, an appeal was made by the University of Madras and the point in question was whether the directions issued by the university to the affiliated colleges of not admitting girl students without obtaining the permission of the Syndicate were valid.

The situation of the case was, a new college named as Mahatma Gandhi Memorial College was established in the town of Udipi in 1929. While granting affiliation, permission was granted by the syndicate for the admission of only 10 girl students in the junior intermediate class as a transitory measure for that year and directed that in future no women students will be admitted without the special sanction of the syndicate. The appellant Shantha Bai applied for admission in the college, but her application was rejected by the College on the reason that girl students would not be admitted to the college. After this, she filed a petition under Article 32, a writ of mandamus against the Principal of the College to admit her to the Intermediate course. The High Court gave the decision in her favor and held that the directions given by the university were in contravention to her fundamental rights. It was discriminatory on the ground of sex. Against the decision of the High Court, an appeal was made by the University in the Supreme Court. The Supreme Court held that the University of Madras is not a state within the meaning of state given in Article 12 of the Constitution and that its regulations are not in violation of enacted in Article 15(1) as it was not discriminatory on the ground of sex.

#### **Relevant cases: Liberal Interpretation-**

### **Srimati Ujjam Bai Vs. State of UP (1962)**

### **Liberal Interpretation-**

In *Ujjam Bai vs. State of UP*, the Court rejected the principle given in the *University of Madras's* case which is *eiusdem generis*. The Supreme Court rejected the restrictive interpretation of "other authorities" and held *eiusdem generis* to be inapplicable. The court observed that to apply the *eiusdem generis* rule, there should be a different category to the heads running through the bodies already specified. In Article 12, the bodies have no common genus.

### **Rajasthan Electricity Board Vs. Mohan Lal (1967)**

In *Rajasthan Electricity Board vs. Mohan Lal*, the Supreme Court held that the term "other authorities" under Article 12 should include all authorities created by the Constitution and other statutes which are empowered by law. The statutory authority does not need to be engaged in performing governmental or sovereign functions, the court also observed that the Rajasthan Electricity Board, in the instant case had the power to give directions, the disobedience of which was punishable as an offence. This case overruled the judgment given in the *University of Madras vs. Shanta Bai* which excludes 'Universities' from the definition of state.

### **Sukhdev Singh Vs. Bhagatram (1975)**

The primary question lying before the court, in this case, was whether ONGC (Oil and Natural Gas Corporation), IFC (International Finance Corporation) and LIC (Life Insurance Corporation of India) created by an act came under the purview of "state" under Article 12. The court held all the three to be state following the decision given in *Rajasthan Electricity Board vs Mohan Lal*. These three bodies were held to be state as they were created by a statute and had the statutory power to make binding rules and regulations, and were subject to pervasive governmental control. Statutory corporations are agencies or instrumentalities of the state for carrying on trade or business which on the other hand would have been carried out by the state departments. Hence, it must be seen whether a body is acting as an agency or instrumentality of the state.

### **Ramana Dayaram Shetty Vs. The International Airport Authority of India (1979) In the following case the facts of the case were:**

- International Airport Authority is a corporate body constituted under the International Airport Authority Act, 43 of 1971.

- It issued a notice on 3rd January 1977 for inviting Registered IInd class Hotelier having at least 5 years of experience for putting up and running an IInd class Restaurant and two bars at Bombay Airport for a period of 3 years.
- There were Six tenders received in response to a notice by the airport authority. Out of the six tenders received, the tender of only the 4th respondent was entertained as it was complete and offered the highest amount of license fee. All other tenders were rejected because they were incomplete.
- The first respondent got prepared everything for the purpose of running the restraint and snack bars.
- But, since the 4th respondent did not satisfy the description of the second class hotelier having 5 years experience as stated in the tender notice, the first respondent in addition to this called upon the evidence by the 4th respondent proving that they are not the second class hoteliers.

Later on a stranger, Ramana Dayaram Shetty who didn't submit any tender filed a Writ Petition in the High Court of Bombay by challenging their decision of accepting the tender of the 4th respondents. But, unfortunately his petition was also rejected and then he made an appeal to the division bench of the High Court against the order rejecting the writ petition but that too was rejected.

Some rules and tests were given by the Supreme Court, in this case, to determine whether a body is a state under Article 12 or not:

- The financial assistance given by the State and magnitude of such that; Any other kind of assistance whether of the usual kind or extraordinary; Control of management and policies of the corporation by the State (Nature and Extent of Control);
- The State conferred or State protected monopoly status; The functions carried out by the corporation, whether public functions closely related to governmental functions, would ascertain whether a corporation is an instrumentality or agency of the State or not and; If one of the departments of the body is transferred to the government.
- The Supreme Court held that the International Airport Authorities were undoubtedly an instrumentality or agency of the Central Government and falls within the definition of 'State' under Article 12.
- The Court went on to conclude that just as Government acting through its officers, is subject to constitutional and public law limitations, similarly Government acting through an agency is subject to the same level of restrictions. Therefore, the International Airport Authority of India is subject to limitations or restrictions in the Constitution and other public laws.

### **Ajay Hasia Vs. Khalid Mujib Sehravardi & Ors. (1981)**

In Ajay Hasia Vs. Khalid Mujib, a writ petition was filed under Article 32 challenging the admission made to Regional Engineering Colleges, Srinagar for the academic year 1979-80.

The College was established, administered and managed by a Society which was registered under the Jammu and Kashmir Registration of Societies Act, 1898. The Board of Governors, under the Act, laid down the procedure for the admission of students to various courses in the college by a Resolution. The admission procedure to the said colleges requires a student to give a written test of 100 marks and an oral examination which was of 50 marks. The petitioners in the writ petitions applied for admission to the B.E. course for 1st semester in one or the other branch of engineering and they appeared in the written test and after that had to appear for the oral examinations. In the case of petitioners, the interview of each of them did not last for more than 2 or 3 minutes per candidate on an average. When the admissions to the seats were announced, the petitioners discovered that even though they secured very decent marks in the written examination, but on the other hand were not able to get into college because the marks awarded to them in the oral examination were very low as compared to an average marks and candidates who had much fewer marks at the qualifying examination, had succeeded in obtaining very high marks at the viva voce examination. They managed to secure admission in preference to the petitioners. The first thing to ascertain was whether a college that was established by a registered society is a state under Article 12 or not. The Society was held to be state as it was an agent of the state. A Constitution Bench of this Court, while approving the tests laid down in the case observed that these tests are not final or conclusive in nature. It is also to be noted that it cannot include every autonomous body which has some connection with the government.

### **Is Judiciary a state?**

#### **Naresh Sridhar Mirajkar vs. State of Maharashtra (1966)**

**In Naresh Sridhar Mirajkar vs State of Maharashtra**, this question first came to the Supreme Court. The Supreme Court has not expressed any determination on this subject. It only observed that if the court decides that the court is a state, then writ can not be issued under Article 32 (Constitutional Remedies) against its orders or judgments as such orders or judgments violate the fundamental rights of citizens.

**A.R Antulay Vs. R.S Nayak (1988)** Later, in this case, the constitutional bench with a majority in 7 Judges of the Supreme Court held that the court could not give such orders and directions which violates the fundamental rights of the citizens, i.e, the court may also be included, in the state under Article 12 but the condition will remain reversed unless the decision given in Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 case is reversed. By far from different cases it has been deduced that the judiciary is considered as a state while it is performing legislative and executive functions e.g., Appointment of Judges of Supreme and High Court and is not a state while performing its judicial functions.

## **Territory of India**

The territory of India includes:

1. The territories of all the states;
2. The Union Territories specified in the 1st Schedule of the Constitution;
3. Other acquired territory by the state.

It has been held that the territory of India for the purpose of Article 12 means the territory of India as defined in Article 1(3) of the Constitution. Control of the Government of India The control under Article 12 that the government exercises over the body is not necessarily to be absolute. It merely implies that there should be some amount of control of the government. It is not always true that if a body is a 'statutory body'. Both statutory, as well as other bodies, can be considered as a state if they get financial resources from the government to an extent and it exercises deep and pervasive control over it.

## **Conclusion**

The interpretation of Article 12 becomes very important as fundamental rights can be enforced only against the state. Who is a 'state' is determined by the provisions of Article 12. The judiciary tries to include more and more bodies under the purview of the state so that more people can enforce their fundamental rights against it. The interpretation of "other authorities" has seen a drastic change. The scope of Article 12 is increasing day by day to provide justice to people whose fundamental rights are violated. Its only purpose is to provide remedy to people who come under this article.