

Judicial Perspective on Article 12 of the Indian Constitution¹

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Abstract

The Constitution of India which was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. Part III of the Constitution of India is one of the most important pillar of the democratic country. It is most essential for protect rights and liberties of individuals. Without this the individual just live like a mere animal existence. The part III of the constitution of India has very well described as the Magna Carta of India.² The fundamental rights available against state not against the private persons. If any rights of the individual are violating they shall claim against the state under the constitutional remedies. For private action sufficient ordinary laws are available. In Article 12 defines the term 'State' which are used in different Articles of Part III of the Constitution. The 'State' includes Government and Parliament, government of each State, local authorities and other authorities. This article discusses the judicial perspective on Article 12 of the Indian Constitution. Initially the court had restricted interpretation of the other authorities but after the Ujjambai case Supreme Court rejected this restrictive interpretation of the expression of other authorities. Every time the judiciary has widen the concept of the State.

Key Words: Article 12, Local Authorities, Other Authorities.

Introduction

The Part III of the Constitution of India of Fundamental Rights is in accordance with the trend of modern democratic thought, the idea being to preserve that which is in indispensable conditions of a free society. The aim of having a declaration fundamental right is that certain elementary rights such as, right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majority in Legislature of the country should not have a free hand in interfering with these fundamental rights.³

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² V. F. Ram Chandran – Fundamental Rights and Constitutional Remedies., Vol. 1 (1964), p. 1

³ A. K. Gopalan v. State of Madras, AIR 1950 SC 27.

The object behind the inclusion of the chapter of Fundamental Rights in the Indian Constitution is to establish a 'a government of law and not of man' a governmental system where the tyranny of majority does not oppress the minority. In short, the object is to establish Rule of Law and it would not be wrong to say that the Indian Constitution in this respect goes much ahead than any other Constitutions of the world. The object is not merely to provide security and equality of citizenship of the people living in this land and thereby helping the process of nation building, but also and not less important to provide certain standards of conduct, citizenship, justice, and fair play. They were intended to make all citizens and persons appreciate that the paramount law of the land has swept away privileges and has laid down the paramount perfect equality between one section of the community and another in the matter of all those rights which are essential for the material and more perfection of man.⁴

The Indian Constitution has classified the fundamental rights under six categories:

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right Against Exploitation (Article 23 & 24)
4. Right to Freedom of Religion (Article 25 to 28)
5. Cultural and Educational Rights (Article 29 & 30)
6. Right to Constitutional Remedies (Article 32 to 35)

The importance of fundamental rights is provided in the historic judgment of **Maneka Gandhi v. Union of India**⁵, Bhagwati J. observed: "These fundamental rights represent the basic values cherished by the people of this country (India) 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 guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in its various dimensions."

Article 12 of the Constitution

Article 12 provides the definition of State. 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."⁶

As per the definition three types of State. Authorities, local authorities, and other authorities.

⁴ Moti Lal v. State of Uttar Pradesh, AIR 1951 All. 257.

⁵ AIR 1978 SC 597 at p. 619

⁶ Article 12 of the Constitution of India.

Authorities: According to Webster's Dictionary it means a person or body exercising power to command. In the context of Article 12, the word "authority" means the power to make laws, order, regulations, bye-laws, notification etc. which have the force of law and power to enforce the laws.⁷

Local authorities: The definition is given under the General Clauses Act and it includes Municipalities, District Board, Panchayats, Improvement Trust, Mining Settlement Boards.

Other authorities: Initially the Supreme Court has restricted the interpretation of the other authorities but as per the case it interprets it liberally.

Judicial Perspective on Article 12 of the Indian Constitution

The Constitutional protection of fundamental rights are available against only the State. The rights which are available under the Constitution under Part III of the Constitution are guaranteed by the State and so it is the responsibility of the State for protection of rights. If any fundamental rights violate by the State so individual can under Article 32 of Fundamental rights of Constitutional remedies challenge. If any private person violate rights so other ordinary laws are available under this, they can claim remedies. The Fundamental Rights are available against the State only and not against the private persons. Here one of the big question arise that which authorities covered under the State.

Mohammad Yasin V. Town area Committees, Jalalbad & Another⁸

The fact of the case that petitioner Mohammad was wholesale dealer in fresh vegetables and fruits in the Jalalabad market from 7 years. The town area committee has framed the certain by-laws under which they could collect levy or commission on sale and purchase of vegetables and fruits in the limit of town. Only the committee had an authority to deal of wholesale fruits and vegetables and collect the commission on it. Here petitioner challenged that the committee has infringed the fundamental rights under art. 19 (1) (g) of the Constitution. Here questions arise that can Town Area Committee cover under the Article 12 – State of the Constitution. The Supreme court provided the test of determine Local Authority. Under the General Clauses Act Section 3(31) provided that authorities like Municipalities, District Boards and Panchayats, Improvement Trust and Mining Settlement Board. In this case Supreme Court held that by-laws of Municipal Committee charging a prescribed fee on the wholesale dealer was an order by s State authority contravened Art. 19(1)(g) of the Constitution.⁹

⁷ Pandey J. N., Constitution of India, Central Law Agency, 2017 p.n. 62

⁸ AIR 1952 SC 115.

⁹ Op. cite, Pandey.

University of Madras v. Shantha Bai¹⁰

In 1949 Mahatma Gandhi Memorial College was established affiliated with the University of Madras. At that time, they had enacted regulations that it allowed only 10 girls students in Junior Intermediate class and syndicated granted permission to them. The petition Shantha Bai had not got admission so she was challenged regulations and filed writ of mandamus against Principal of the College and said that she was not got admission in the college because she was woman. These regulation were violating of Art. 15(1) of the constitution discriminatory on the ground of sex and also against the Section 5(1) of the Madras University Act VII of 1923. On basis of these the college counter claimed that they were governed under the Art. 29(2) of the Constitution and because of that they were not violating fundamental right of the Constitution. In this case two questions were arisen

1. Is the university covered under the Art. 12 of the Constitution?
2. Is university violating fundamental rights Art. 15(1) of the Constitution?

This was the first case which was dealt with the meaning of the Art. 12 of the constitution. The Madras High Court held that other authorities could only indicate authorities of a like nature, for example, '*ejusdem generis*' so construed, it could only mean authorities exercising governmental or sovereign Functions. It cannot include persons, natural or juristic, such as a University unless it is maintained by the State.¹¹

Electricity Board, Rajasthan v. Mohan Lal¹²

In this case Mohan Lal was worked under as workman Rajasthan Electricity Board. He had filed petition under Article 226 and 227 of the Constitution of India. He argued that he was eligible for equal treatment with other 10 workers. The Board had violated of Article 14 and 16 of the Constitution and not considering him for promotion. Here also same question arisen that whether Electricity Board has considered under Article 12. In this case Supreme Court held that expression other authorities are wide enough to include all authorities created by the Constitution or statute on whom powers are conferred by law. It is not necessary that the statutory authority should be engaged in performing governmental or sovereign function. As per this interpretation the Rajasthan Electricity Board has enacted by-laws for their employee so it covered under the definition of Article 12 of the Constitution.

After this order the Supreme Court again in the **P. B. M. Namoodripad v. Cochin Devasom Board**¹³ and in **Dukhoram v. Co-operative Agricultural Association**,¹⁴ have power to make by laws for proper working of board or society so they were covered under the Article 12 of the Constitution.

¹⁰ AIR 1954 Mad 67.

¹¹ Ibid

¹² AIR 1967 SC 1857.

¹³ AIR 1956 TC 19.

¹⁴ AIR 1961 MP 219.

Sukhdev Singh v. Bhagatram¹⁵

In this case Supreme Court had again taken into consideration the judgement of the Rajasthan Electricity Board case by 4:1 majority, Alagiriswamy, J. dissenting, held – the Oil Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation are authorities under the State. They are statutory authorities and come in separate statues. As per these statutes they enact by-laws, rules and regulation for their employees. So the employee has right to claim fundamental rights of the Constitution against them.

Ramana Dayaram Shetty v. The International Airport of India¹⁶

In this case Bhagwati, J., has put weight on test of Mathew, J., on judgment of Sukhdev Singh case and held that “If a body is an agency or instrumentality of government it may be an authority under the Article 12 of the Constitution.

As per above judgments court laid down mentioned below test for determined whether agency is the State or not:

1. Financial resources of the State are the chief funding source, i.e. the entire share capital of the corporation is held by Government.
2. Existence of deep and pervasive State control
3. Functional character being governmental in essence, i.e. the functions of the corporation are of public importance and closely related to governmental functions.
4. A department of Government is transferred to a corporation,
5. Whether the corporation, enjoys monopoly status which is state conferred or State protected.¹⁷

Conclusion

Article 12 is the first article in Part III of the Constitution. It is not specified any fundamental rights but it provides the authorities in which the individuals claim fundamental rights. In this Article given the definition of State. This definition is not exhaustive but inclusive. The Supreme Court of India through various landmark judgements has mentioned the test of authorities which are decide whether it considered State or not.

¹⁵ AIR 1975 SC 1331.

¹⁶ AIR 1979 SC 1628.

¹⁷ Op. cite p. n. 64

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