

ANALYSIS OF TERM STATE UNDER INDIAN CONSTITUTION

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INTRODUCTION

Earlier, Kings would recognise various rights and liberties of their subjects. As human thinking evolved, then we got to know there are some rights and liberties where we cannot compromise, we need to protect the state, result of this was first Magna Carta, Bill of Rights and finally the fundamental rights were consolidated. In the year 1928, Motilal Nehru observed we should guarantee fundamental rights in such a manner, it should not be withdrawn in any of the circumstances. Fundamental rights which are guaranteed to the citizens and to a certain extent for non-citizens as well, even this guarantees that the state shall not act against these fundamental rights, if the state does anything which infringes fundamental rights, that aggrieved person can sue the state. From here the question arises what is "state" and what can be considered as state.

RESEARCH OBJECTIVES

1. To study the significance of inclusion of definition of state.
2. critical analyzing the provision.

RESEARCH QUESTION

1. To analyze the non-enforceability of fundamental rights against non-state actors, as globalization is increasing.

ANALYSIS OF TERM STATE

Most of the fundamental rights provided to the citizens are claimed against the state and not against the private bodies. Fundamental rights start in part 3, that is from Article 12 and Article

12 defines what is state. The definition given in Article 12 is only applicable for part 3 and 4, and not the rest of the constitution. Now let us look at the definition of Article 12, which defines state and says that these four authorities must be considered as state

- (i) Government and Parliament of India.
- (ii) Government and legislature of State.
- (iii) Local Authority.
- (iv) other authorities.

when we look at the first two authorities that is Government and Parliament of India and Government and legislature of state, even in the absence of Article 12 these two authorities could be called as state, but the ambiguous part was local authorities and other authorities.[1]

LOCAL AUTHORITIES

It is defined under section 3(31) of General Clauses Act, they have given reference of Municipalities, village panchayats, district boards, which means local self governing bodies comes under the ambit of local authorities.[2]

OTHER AUTHORITIES

The dynamic nature of state was kept in mind while interpreting other authorities and defining its scope. The first case is that University of Madras v. Shantabai , it was asked in this case that University of Madras, which was under the Madras UNiversity Act, whether this University can be considered as state, judges stated that the term "other authorities" used in this Article should be 'ejusdem generis' (of same kind) with government or legislature and should derive its color from the preceding three authorities under Article 12. Finally, it was considered University is not a state because it is not governmental in nature neither exercising sovereign function. According to this case 'sovereign function' was inherent quality.[3]

But this approach of using 'ejusdem generis ' was used in a restrictive manner and thus was canceled in the case of Ujjam Bai v. State of U.P.[4]

In the case of Rajasthan Electricity Board v. Mohanlal , the Supreme Court thought of formulating a new criteria that 'if any body is created by law, or constitution, then it is obvious,

that body has certain power that would affect fundamental rights , if any body possess this amount of enormous power, then it is qualified under 'other authorities', it also stated it is not necessary it should be governmental in nature or exercise sovereign function, held that 'University is a state'.[5]

Now the question arose that body which is created out of statute and used for commercial purpose, whether can be considered as state, this question was answered under the case of Sukhdev v. Bhagatram , Supreme Court said that the statutory bodies like OMGC, LIC, IFC which was set up under special statutes are 'state' under 'other authorities'.[6]

In the case of R.D Shetty v. International Airport Authority, international airport authority invited many tendors and even R.D Shetty applied for a tendor because of some discriminatory reason, authority did not accept his tendor, then he filed a case for infringement of his fundamental right, challenging whether airport authority can be considered as state, court said that International airport authority was enacted under Airport Authority Act under 1971, it is an Parliamentary Act where central government has enormous power , which they were exercising under thid body and central government has empowered to appoint chairman, other members, the entire capital that was required for the establishment of international airport authority was invested by central government and was also empowered to transfer the management of various airports. Supreme Court said looking at above mentioned matter that airport authority will be considered as state under Article 12 of Indian Constitution, in this case, they did not give any weightage to airport authority's functional aspect, court did not even bother whether it is performing sovereign function, court said that whether it is a private body, but if it is under government's degree of control and extraordinary financial assistance, then we can consider them as ' instrumental or the agency' of the state.

In the case of Som Prakash v. Union of India it was decided that Bharat Petroleum was a state, but this case was important because it gave us criteria whether authority or body is state or no, court laid down few criteria to decide given as following:

1. Financial resources of the state being the chief funding source.
2. Functional character being governmental in essence.

3. Plenary control residing in government (absolute control of government).
4. Prior history of the same activity being carried out by the government and made over to the new body.
5. Some element of authority or command.[7]

Supreme Court in the case of *Ajay Hasia v. Khalid Mujib*, stated that 'determining test' is not that whether body was formulated by or under a statute, it is that whether a body is acting as a instrument or an agency of the state, and laid down criteria for 'determining test' given as follows:

1. Entire share capital is held by the government.
2. Financial Assistance.
3. Monopoly Status.
4. Deep and persuasive state control.
5. Function of the corporation.
6. A department of government is transferred to the corporation. [8]

Now, when it comes to the judiciary, since Article 12 did not specifically mention the judiciary is state. So, when judiciary is performing the administrative functions that can be challenged in the court of law, but when judiciary is performing judicial functions and gives decisions, those decisions cannot be questioned nor it can be challenged in the court of law.[9]

CRITICAL ANALYSIS

According to my research study under Article 12 the non -state actors who perform public functions, where non-state actors are the private companies, now if we read the *Puttaswamy's* case they have discussed about non-state actors, but if we read speak about the enforceability we cannot enforce our fundamental rights on them because they are not part of Article 12 under Indian Constitution. As the globalization is increasing many citizens are facing problems regarding the infringement of fundamental rights, because when the citizens are living in this changing era, basic fundamental rights are in the hands of this changing world, because of this even basic human rights are violated, hoping that these expansion of human rights will ensure enforcement of fundamental rights in changing scenario.

CONCLUSION

Our Indian constitution is an organic living thing, which can be interpreted by the courts and amended, which brings wider concept to the provisions through judicial pronouncements and ensures its basic structure is not taken away, in the same way we need to combat the loopholes of Article 12 under Indian constitution, though it has been interpreted many times according to changing scenario, and also mention what can be considered and cannot be as non-state actors and impact on enforceability of fundamental rights against them, I suggest that there should be an explanation below the provision of Article 12 elaborating the enforceability of fundamental rights if the non-state actors infringe.

ENDNOTES

- [1]. D.D.BASU, "SHORTER CONSTITUTION OF INDIA", New Delhi, Wadhwa & Company Law Publisher, 2006.
- [2]. V.N SHUKLA, "CONSTITUTION OF INDIA, Lucknow Eastern Book Company, 2006.
- [3]. The University Of Madras By The ... vs Shantha Bai And Anr ...<https://indiankanoon.org>.
- [4]. Smt. Ujjam Bai vs State Of Uttar Pradesh on 28 April, 1961 <https://indiankanoon.org> > doc
- [5]. Rajasthan State Electricity ... vs Mohan Lal & Ors on 3 April ...<https://indiankanoon.org>
- [6]. Sukhdev Singh v. Bhagat Ram | Delhi High Court - CaseMine <https://www.casemine.com>
- [7]. Ramana Dayaram Shetty vs The International Airport ... on 4 ...<https://indiankanoon.org>
- [8]. Ajay Hasia Etc vs Khalid Mujib Sehravardi & Ors. Etc on 13 ...<https://indiankanoon.org> >
- [9]. Whether 'Judiciary' a 'state' under Article 12 of the Constitution ...<https://www.iilsindia.com>