

LEGAL LOCK JOURNAL
2583-0384

VOLUME 2 || ISSUE 4

2023

This Article is brought to you for “free” and “open access” by the Legal Lock Journal. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at Legal Lock Journal, kindly email your Manuscript at legallockjournal@gmail.com.

**DECODING ARTICLE 12 (STATE) OF THE CONSTITUTION:
UNDERSTANDING THE ROLE OF THE GOVERNMENT**

Kalash Jain¹

ABSTRACT

This Paper analyses the scope of Article 12 of the Indian Constitution which came into force on 26th January 1950, that it also exaggerates and includes certain categories of authorities on different levels which has the authority of law in the contemporary times of Indian Jurisdiction. This manuscript also elaborated on various concepts and principles that make the scope of the word 'State' more broaden like the Principle of Ejusdem Generis, the Doctrine of Instrumentality. Another aspect of the paper analyzed and questioned whether states include the Judiciary and what the standing position of the Judiciary as a State is.

The private financial institutions, carrying of business or commercial activity, may be performing public duties, but cannot be considered to be covered under the definition of State under Article 12 of the Constitution of India.²

Allahabad High Court

In M/S Shiv Shakti Traders & others V. Union of India and another,

On 3 November, 2017

INTRODUCTION: THE CONCEPT OF STATE

The part 3rd of the Constitution of India, defines the ambit of the word 'state' under article 12 that says, In this part, unless the context otherwise requires, " the state" includes the government and legislature of each of the states and al, local or other authorities within the territory of India or under the control of the Government of India.³

¹ The author is a student of law at Lloyd Law College, Greater Noida.

² Indulia B, 'All HC | Does Article 12 of Constitution of India Cover "Private Financial Institutions" under Its Ambit? HC Reiterates Law Laid down by SC' (SCC Blog, 2 December 2020) <<https://www.sconline.com/blog/post/2020/12/02/all-hc-does-article-12-of-constitution-of-india-covers-private-financial-institutions-under-its-ambit-hc-reiterates-law-laid-down-by-sc/>> accessed 17 April 2023

³ Part 3 (article 12) of the constitution of India, 1950.

The following terms fall within the purview of Article 12⁴ :

1. The government and parliament of india
2. The government and the legislature of each state
3. All local Authorities
4. Other authorities within the territory of India or under the control of central government

DEFINITION OF STATE BY DIFFERENT PHILOSOPHERS CONCEPT OF AUTHORITIES

According to *John locke*, the impetus of the word state is to do good commonly for the public at large or good for humililty. The reason for the existence of the state (a body) is to uphold and maintain the life and endorse the dignity of an individual. In furtherance, its purpose is to perpetuate the lifestyle and living standard of its indiavial by keeping their rights, if the states fails its functions then no citizen has any right.⁵

The Drafter of the Indian Constitution have the desire to make the society in which all the citizens or people would have their fundamental and basic. Therefore, it becomes the duty of the state to execute and implement all such rights for all the people so that they get better from the repression that was put in them in the colonial era, and the person requires constitutional safeguards against the state. ⁶ The rights that are mentioned in part 3 of the Indian constitution⁷ are acts against the state and this is kept apart from the violation of state from private body. ⁸ Private actions are safeguarded and secured by other competent statutes. ⁹ Most fundamental rights only apply to the state and are not generally enforced.¹⁰

⁴ Constitution of india, 1950

⁵ 'John Locke's Theory of Property: Problems of Interpretation | Libertarianism.Org' (1 March 1980) <<https://www.libertarianism.org/publications/essays/john-lockes-theory-property-problems-interpretation>> accessed 17 April 2023

⁶ Gokle g.k modern views of political science Himalayan publication, pg.50

⁷ Constitution of india 1950

⁸ Pandey, J.N, "the constitution law in india, central law agency, 49th edition pg 59

⁹ Shamdasani v central bank of india AIR 1956 sc 59

¹⁰ Vidya verma v shivnarain AIR 1956sc 108

CONCEPT OF AUTHORITIES

1. Authority

An entity or person with the authority to command and be obeyed is referred to as an authority. The term "authority" refers to a group of people who are legally and competently able to manage others, as well as having official duty or culpability for the behaviour or conduct of a certain location.¹¹

Additionally, it specifies a business or a public or governmental organization with quasi-governmental authority and authorization to manage a public operation. In administrative law, "authority" refers to a body that has jurisdiction over specific public concerns.¹²

2. Public Authority -

Under Section 2(h) of the RTI Act, the public authority is examined. 'State' is defined under Article 12 of the Indian Constitution. The definition of state covered by this article is far more expansive than the one provided by the RTI Act.

“Public authority means any authority or body or institution of self- government established or constituted -

- (a) By or under the constitution
- (b) By any other law made by parliament
- (c) By any other law made by state legislature
- (d) By notification issued or order made by the appropriate government and includes any-
 - (i) body owned, controlled or substantially financed;
 - (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government; ¹³

3. Local Authority-

¹¹ Ujjambai v state of u.p (1963)1SCR778(968-9)

¹² Cambridge international dictionary

¹³ Section 2(h) of RTI act

The local authority is defined as an authority that is legally permitted to control and manage local finance or funds; hence the gram panchayat is not considered a local authority, despite the fact that the dock labour board is one.¹⁴

Because of the existence of entry 5 of list 2 of the 7th schedule in the constitution of india, the local authorities become the exclusive subject matter of state, and that mentions a few local authorities.

4. Other Authorities-

The other authorities are those that do not fall under the purview of local self-government who have the power and authority to make rules and regulations for themselves that have force of law.

The meaning and the expounding of the word "other authorities" under Article 12 of the Indian Constitution have created great difficulty. The opinion of judges has changed from time to time. It has been observed that the other authorities could be like characters, that is the principle of Ejusdem Generis.¹⁵

The appearance of the term other authorities is so broad in itself that it can enfold or includes all the authorities in itself made out of a constitution or state on whom power is conferred by law. It is not mandatory that the statutory authority only perform sovereign or governmental functions. The Supreme Court defines the more wide and liberal meaning and interpretation of the term other authorities, i.e., it includes all those bodies or instrumentalities that have not been created by the state of government or constitution. They developed the doctrine of instrumentality.

PRINCIPLE OF EJUSDEM GENERIS

If we follow the Oxford dictionary the literal meaning of the Ejusdem Generis is law of or as the same kind. By presuming that a general phrase describing a series of specific terms also refers to other things that are similar to the specific elements, a guideline for reading legislation and other works is indicated through the principle of the Ejusdem Generis. There is no particular definition of the Ejusdem Generis in law, but the same has been interpreted through judicial pronouncements and notable jurist. This idea attempts to resolve the incompatibility between

¹⁴ University of madras v Santa Bai AIR 1954 SC 67.

¹⁵ Basu,D.D "commentary on constitution of India Vol.1 pg 643.

the specific and general words by working in conjunction with the other rules of interpretation, which state that all words in a statute should be given effect whenever possible, that a statute should be viewed as a whole, and that no words in a statute are presumed to be superfluous.¹⁶ In *University of Madras v. Shanta Bai*¹⁷, the Madras High Court created the idea of “ejusdem generis,” or of a like nature. It denotes that the term “other authorities” exclusively refers to those that exercise governmental or sovereign powers.

Additionally, it cannot include entities like unaided universities that are composed of natural or legal persons.

Last but not least, the Supreme Court decided in *Rajasthan Electricity Board v. Mohan Lal*¹⁸ that ‘other authorities’ includes any authorities created by the constitution or statute to whom legal authority has been granted. Governmental or sovereign obligations can be fulfilled without the need for such statutory authority. The authority conferred to the entity, whether or not it is of a commercial nature, is irrelevant, the court emphasised.

‘Ejusdem generis’ is Latin for ‘of the same kind or nature. According to the ejusdem generis theory, when specific words are used in general, the general words should not be understood in the broadest sense but rather as applying to things, people, or objects of the same general nature or class as those specifically enumerated instead, unless of course there is a clear indication of a contrary purpose.¹⁹

DOCTRINE OF INSTRUMENTALITY

While agreeing with the decision and maintaining that all three of them fell under the purview of State, Justice Mathews, known as the Crusader of Article 12, provided a very unusual opinion. He discusses the concept of a welfare state and questions if the entity in question can be referred to as an instrumentality or agency of the state that was established to handle the welfare function of the state.

He specifies two requirements in order for the entity to qualify as a state instrumentality. First, if it is a statutory body, meaning it was established by law, and second, if it has the authority

¹⁶ Dr Sanjiv Agarwal, *DOCTRINE OF EJUSDEM GENERIS*, https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=11152 (last visited Apr 24, 2023).

¹⁷ AIR 1954 Mad 67.

¹⁸ A.I.R 1967 S.C. 25.

¹⁹ Dr Sanjiv Agarwal, *DOCTRINE OF EJUSDEM GENERIS*, https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=11152 (last visited Apr 24, 2023).

to enact its own regulations. Both of these situations would fall under the definition of "state" in both scenarios.

The case of *Ramana Dayaram Shetty v. International Airport Authority of India*²⁰ is the following one that addresses the issue of whether or not an airport authority may be regarded as a state. In this instance, bids were requested for the construction of one restaurant and two snack bars at the Bombay Airport. Only second-class hotels were allowed to apply for the tender, and they had to have at least five years of experience in the industry, according to two particular requirements.

The Supreme Court established the five-pointer test in this case to determine whether the entity qualifies as a State instrumentality or not. The first requirement was that it had to be determined whether or not the State owned all of that body's share capital. Second, it needed to be determined whether or not the state exerted strong and convincing authority over that body. The third need that needed to be examined was if the state's financial support was sufficient to cover all of the body's expenses.

The existence of a monopoly status granted or retained by the State for such entity was the fourth requirement that needed to be examined. The final requirement was whether the organisation served a vital public purpose or was a former government agency that had been given to a private company.

WHETHER STATES INCLUDES JUDICIARY

In *NARESH V. STATE OF MAHARASHTRA*²¹, the Supreme Court of India was asked to assess whether the judiciary is a state under Article 12 of the Indian Constitution.

According to Article 141 of the Constitution, rulings made by the Supreme Court are binding in other Indian courts. Therefore, there is no grounds for challenging the Supreme Court's decision in cases involving infringement of basic rights. There is no such justification, however, why the judgement rendered by the inferior courts cannot be contested as a violation of fundamental rights. So, there's still room for discussion on this.

Although the Supreme Court in *Budhan v. State of Bihar*²² viewed In addition to creating a requirement that there should be "wilful and purposeful discrimination," the judiciary's action

²⁰ AIR 1979 SC 1628.

²¹ AIR 1967 SC 1.

²² (1963) 1 SCR. 778.

as a state action under Article 12 in the case of an Article 14 violation also added a caveat that would largely depend on the facts and circumstances of the case.

In the case of *Naresh Sridhar Mirajkar v. State of Maharashtra*, where the petitioner claimed that the High Court had infringed Article 19(1) (a) i.e., Freedom of Speech and Expression of the Constitution, the majority concluded that there had not been a violation of a fundamental right under that provision. It considered the case of *Ujjam Bai v. State of U.P.*²³ for determining whether or not to issue a writ of certiorari against the High Court of Bombay.. According to a ruling, a If a Supreme Court order violates people' constitutional rights and contradicts natural justice principles, it should be repaired ex debito justitiae (i.e., as a matter of right) and cannot be corrected by the writ jurisdiction under Article 32 of the Constitution. Although not specifically specified in Article 12, it is argued that the judiciary should be included in the category of "other authorities" because courts are established by statute and wield legal authority. However, it has been argued that discrimination may be perpetrated even through the legal system, and Article 14's prohibition applies to any State activities that deny all citizens equal protection under the law, regardless of which of the State's three organs is responsible.

In the *Naresh Sridhar Mirajkar v. State of Maharashtra case*, Because those orders could not yet be deemed to be in violation of fundamental rights, it was concluded that even if the court were the State, a writ under Article 32 could not be filed to the High court of competent jurisdiction against its judicial orders. According to Mr. H.M. Seervai, the judiciary should be considered a part of the "State," and anyone serving as a judge in that capacity is subject to the Supreme Court's writ jurisdiction.²⁴

It can be argued that the judiciary is included in the definition of "State" as stated in Article 12 of the Indian Constitution because the Supreme Court later ruled in *A.R. ANTULAY V. R.S. NAYAK*²⁵ that courts cannot pass any orders or give any directions that would violate citizens' fundamental rights.

STANDING POSITION OF THE JUDICIARY AS A STATE

The Judiciary is not officially referred to in Article 12 as a State. Nevertheless, the power of the court to enact laws can be included within the scope of the state.

²³ (1963) 1 SCR. 778.

²⁴ H.M. Seervai, Constitutional law of India, p.155(1st edi.)

²⁵ AIR 1988 SC 1531

Article 13 of the Constitution, which states that any law (including rules, regulations, etc.) that restricts fundamental rights is void, supports the aforementioned result. Because it possesses the authority to enact laws, the Indian judiciary's regulations would not be recognized as an infringement of fundamental rights if it were not considered "the State" for the purposes of Part III of the Constitution.²⁶ The P.C. Garg v. Excise Commissioner²⁷, Allahabad case, however, the Supreme Court invalidated its own guidelines for violating basic rights. Additionally, a writ of certiorari is valid against entities functioning in a judicial or quasi-judicial capacity²⁸. Since a writ can be issued in protest of such a decision, it follows that a court may transgress fundamental rights. A judge who is acting in a judicial capacity is also bound by the provisions of Article 15(2)(b). In a similar spirit, a judge cannot contravene Article 17 of the Indian Constitution by refusing to allow an "untouchable" to attend court. As a result, under Article 12 there is a chance that the judiciary will be regarded as a state.

²⁶ H.M. Seervai, *Constitutional Law of India*, p.393 (4th ed., 2006).

²⁷ AIR 1963 SC 996.

²⁸ Supra 26, at 394.