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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **WHAT IS 'STATE'– THE GROWTH OF ARTICLE 12**

AUTHORED BY - SOMITRA VARDHAN DUBEY

Articles 12 to 35 of Part III of the Indian Constitution list the essential rights that it guarantees. Article 12 of Part III lists the bodies and departments that fall under the definition of "states" and are therefore subject to the regulation of fundamental rights.

Definition - Unless the context clearly dictates otherwise, "the State" in this Part refers to the Government as well as the Parliament of India, the Government, and Legislature in each of the States, as well as any local or the other authorities operating on Indian territory or under Government of India control.<sup>1</sup>

The following authorities are specifically mentioned in the description of Article 12:

The aforementioned article mentions the governments and legislatures of every State, the government & parliament of India, and the legislative and executive departments of the Union and the States directly and specifically. However, the two remaining categories, "local authorities" and "other authorities," don't offer adequate information. The Supreme Court examined the organizations that fit under these two categories through a number of its cases.<sup>2</sup>

But what is a local authority? The Judiciary answered the question through various case laws as the ambiguity had led to a lot of confusion.

In the case of *RC Jain v. UOI*, the Supreme Court set the methodology for determining whether entities could be considered local authorities according to the definition of state contained in Article 12 in the constitution. Whether the Delhi Development Authority (DDA) was a local entity was in

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<sup>1</sup> Article 12: Definitions Constitution of India, <https://www.constitutionofindia.net/articles/article-12-definitions/> (last visited Oct 15, 2023)

<sup>2</sup> Explained: Article 12 of the Indian Constitution LexForti, <https://lexforti.com/legal-news/article-12-constitution/> (last visited Oct 15, 2023)

question in this case. As the Court decided:

- It works in a particular field;
- It has a distinct legal existence;
- It is independent;
- It can generate revenue on its own;
- It falls under the category of "local authorities" and would be deemed a "state" under Article 12 if it were granted statutory authority that is normally granted to municipalities.

Article 12 refers to the authorities which do not fall under the the first three categories as "other authorities". The phrase "Other Authorities" refers to various authorities even though it is not defined in the Constitution. This is because the term has been interpreted broadly via multiple court decisions.

The phrase "Other Authorities" is used to refer to a variety of authorities even though it is not defined in the Constitution. This is because the term has been interpreted broadly via multiple court decisions.

The Madras Court developed the concept of "ejusdem generis" in the *Shanta Bai v. University of Madras* case. This means that entities performing governmental or sovereign functions would only fall under the purview of other authorities and that all things of similar characteristics. The range of such bodies is limited because only constitutional bodies make up the genus.

The term 'ejusdem generis' means that a particular class or specific class of the same genus has constitutional bodies in common.

The court dismissed the ejusdem generis argument from *Shanta Bai in the Ujjam Bai v. State of UP* case. The Supreme Court rejected the narrow definition of "other authorities" and ruled that the idea of ejusdem generis was moot. The court pointed out that to be able to meet the ejusdem generis criterion, the heads going through the previously mentioned bodies should fall under a different group. There is no common genus among the bodies listed in Article 12.

This was a liberal interpretation that overruled the *Shanta Bai* judgment.



In the case of *RSEB v. Mohanlal*, the Supreme Court decided that the term "other authorities" under Article 12 should encompass all authorities created by the Constitution as well as any supplementary statutes having legal standing. RSEB, under this case, had the authority to issue directions, and it was an offence to violate them. The court remarked that the statutory body need not be involved in carrying out sovereign or governmental duties. This case overturned the ruling in the *University of Madras vs. Shanta Bai*, that excludes "Universities" from the state's (definition). The genus is not utilized in the terminology for other authority.

This was a case that took a Structural Approach<sup>3</sup> of identifying 'a state' it laid down a two-rule theory (as I like to call it):

1. The Body has the power to punish
2. The Body is made by law or is made under the business of a state

The primary question on the court's agenda in the *Sukhdev Singh v. Bhagatram* case is whether acts-constituted organizations like LIC, IFC, and ONGC qualified as "states" for Article 12. Because these three organisations were created by legislation, were subject to strong government scrutiny, and could legally enact binding rules and regulations, so were classified as state institutions. Statutory corporations serve as the state's proxies or instruments in trade and commerce transactions that state departments would have handled otherwise.

Here Justice KK Mathew <sup>4</sup> (who is a semi-functionalist) actually gave a judgement that can be seen as a Functionalist View. It stated that whenever a state works through cooperation, it will be a state if it is - statutory body of high public importance.

In the matter of *Shebhajit Tiwari*: This case was resolved on the same day as Sukhdev Singh's. The decision was really made by the same bench. The question in this case was whether the Societies Registration Act of 1898, which was the only registration mechanism for CSIR, would include the organization as a "State" for the purposes of Article 12. The above-mentioned entity was found not

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<sup>3</sup> If the body has the structure of a state or not

<sup>4</sup> Justice KK Mathew – the unsung hero of Article 12 jurisprudence Bar and Bench - Indian Legal news, <https://www.barandbench.com/columns/justice-kk-mathew-unsung-hero-article-12-jurisprudence> (last visited Oct 15, 2023)

to be a "state" since it had been registered in compliance with a statute, it was not performing essential state functions, and it was not run entirely under the executive branch's jurisdiction. Despite having strong government oversight, the CSIR did not qualify by Article 12 as a "state."

Quite a roundabout it was but the semi-functionalist approach would've aged better had the cases not been decided on the same day. It emphasized how is the body created in the first judgment and why is the body created in the latter one.

In the case of *Uttar Pradesh Housing Corporation*, the respondent worked for a government agency. He was accused of misappropriating money and stealing it. He was fired from his job without being given the chance to be heard. The Single Bench dismissed this writ. The Corporation, which was obligated to act in a quasi-judicial capacity, failed to provide the fired employee an opportunity to be heard, hence the order of dismissal was invalid, according to High Court Division Bench. The Supreme Court ruled that because the body was firmly created by an Act, it is a state.

In the case of *Ajay Hasia*, the silhouette came to be seen as a proper perhaps defined figure. This was very much dependent on *the International Airport Authority Case* which had laid down 6 guidelines –

1. Shares of the company should have been acquired by the Govt.
2. Assistance of the Government in the body.
3. Monopoly of the body in the sector.
4. Deep and Persuasive control of the government
5. Matter of Public Importance
6. Transfer of the department would support the government's interference

This judgment of the Ajay Hasia case is peak functionalism of the approach to defining a state. It was stated that it is immaterial whether the body is made by a statute or otherwise.

The test can be based on whether it is a govt agency and 'why does it exist?'

The judgment asks about the existence of the body itself and the spiritual questions about the functions it will play, hence Peak Functionalism.

1. In the case of Pradeep Biswas Justice KK Mathew questioned the factual matrix in four ways
2. Whether the State has Financed?

3. If it performs an important public function?
4. Degree of closeness to the government?
5. The Body works in benefit of?

CSIR was questioned again here but this time the court made a wide interpretation resulting in a right judgement that cemented CSIR as a state. The Basis of which were laid and still are revered as:

1. Nature of Administration of the Body
2. Government sources of Finance of the Body
3. Function performed by the Body

BCCI is a state? This was answered by the case of *Zee Telefilms case* which laid down that since the government does not finance the BCCI ii has its own sponsors, the government may give the names of the players but BCCI is not bound to accept them lastly it does perform an important public function but then it will too vast of a consideration for 'state'.

Here the dissenting opinion of Justice Sinha is to be considered he said that the body performs regulatory functions, debars someone from playing, and discharges public duty even represents India on the largest scale there is so it should be *elevated* from Private to Public.

The state under Article 12 has made a remarkable improvement in its scope and the basis of recognition. This incredible judicial journey has made the citizens elated, rights fixated and complaints redressed.