

## Art. 12 of The Constitution of India

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### ABSTRACT

Fathers of our constitution demonstrated that they had the will and were prepared to give legitimately enforceable crucial rights and furthermore gave solution for the infringement of same. Therefore, fundamental rights became enforceable also against local or other authorities. To prevent the State from violating fundamental rights, the constitution makers created a new fundamental right by enacting Art. 32. And the availability of article 32 gave rise to Article 12, the concept of state against whom these were available. And further laid the concept of "authority", which signifies authority who has the ability to make laws, orders, guidelines, bye-laws, warnings and so on which have the power of law and capacity to authorize those laws.

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The chronicled and political improvement in India made by the constitution makers of India feel constitution is basic bill of Fundamental Rights. Our constitution sought after the United States Precedent and Enacted basic rights in the constitution itself. In ordering and inserting basic rights in Part III of our Constitution (Art. 12 to 35) the establishing fathers of our constitution demonstrated that they had the will and were prepared to give legitimately enforceable crucial rights and furthermore gave solution for the infringement of same.

Article 12: In this part, except if the setting generally requires, „the state“ incorporates the Govt. what's more, Parliament of India and the Govt. what's more, the Legislature of every one of the states and all neighborhood or different specialists inside the region of India or under the influence of Govt. of India.<sup>11</sup>

Therefore, fundamental rights became enforceable also against local or other authorities. Secondly, fundamental rights became enforceable against laws and executive actions which violated fundamental rights. To prevent the State from violating fundamental rights, the constitution makers created a new fundamental right by enacting Art. 32.

### The Background

The State has been defined by different political thinkers. In Political theory for state to exist the Territory, Population, Sovereignty and Capacity to maintain international relation is important but this definition could not fill the need of implementation of Fundamental Rights. Key Rights establish constraint on the intensity of the State and are an assurance against State activity. The Fundamental Rights are an assurance against intrusion of the rights by the State.

Authority implies an individual or body practicing capacity to order. With regards to Article 12, "authority" signifies authority who has the ability to make laws, orders, guidelines, bye-laws, warnings and so on which have the power of law and capacity to authorize those laws.

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<sup>1</sup> The Constitution of India ,1950.

**Other authorities:** In article 12 „other authorities“ is utilized in the wake of referencing a couple of them, for example, the administration, parliament of India, the legislature and governing body of every one of the states and every neighborhood authority. For example, protection partnerships, nationalized banks, aircraft enterprises, power sheets, instructive establishments and social orders whose arrangement and organization are transcendently constrained by the legislature.

The compass and degree of security of central rights has been extended and more prominent insurance has been managed particularly in the region of work against unfair practices. "Institutions engaged in matters of high public interest or performing public functions are, by virtue of the nature of the functions performed, government agencies."<sup>2</sup>

### Interpretation of "Local Authority"

The distinctive attributes and characteristics of an authority to be a "local authorities were noticed by Supreme Court in *Union of India v R.C. Jain*<sup>3</sup>. These are that specialists must have separate lawful presence as collaborate bodies, not be simple government organizations however should be legitimately free offices. Next they should appreciate a level of self-sufficiency with opportunity to choose for themselves the inquiries of approach influencing the region managed by them. They should be depended by rule with such legislative capacities and obligations.

At last they should have the ability to raise assets for the advancement of their. In *Union of India v R.C. Jain*,<sup>8</sup> it was said "what is essential is that control and management of the fund must vest in the authority."

Local Authority also includes Town Area Committee<sup>11</sup>, the Gram Panchayat,<sup>12a</sup> Notified Area Committee<sup>13</sup>, Improvement Trust, a Mining Settlement Board, A Municipal Corporation, and a Port Trust.<sup>14</sup> In *P. Srivastava v Union of*

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<sup>2</sup> AIR 1975 SC 1331, 1355.

<sup>3</sup> AIR 1981 SC 951

India,<sup>15</sup> the Ramgarh Cantonment Board, created by the Cantonment Act.

### Interpretation of "Other Authorities"- Judicial Evolution

The elucidation of the expression "different specialists" in Article 12 has caused a decent arrangement of trouble, and legal sentiment has experienced changes after some time. Today's government plays out countless capacities in view of the overall way of thinking of a social welfare state. The administration demonstrations through normal people just as juridical people. A few capacities are released through the customary legislative divisions and authorities while a few capacities are released through self-sufficient bodies existing outside the departmental structure, for example, organizations, enterprises and so on.<sup>16</sup>

In *University of Madras v Shanta Bai*<sup>17</sup> the Madras High Court held that „other authorities“ could just demonstrate specialists of a like sort, for example ejusdem generis. Ejusdem generis is a Latin expression which signifies "of a similar kind." As a lawful term it alludes to a standard for deciphering the language of a resolution. The standard of ejusdem generis says that when a nonexclusive portrayal pursues explicit things, the more conventional depiction is perused to apply just to things having a place with a similar gathering or class as the particular things. So interpreted, it must be specialists practicing legislative or sovereign capacities. In ca exclude people, normal or juristic, for example, a University except if it is „maintained by the State“.

**Statutory Authority:** Meaning of State isn't thin. It incorporates every single such element that are established by the State. Extensive light is tossed on what are the „other authorities. Bhargava J., conveying the judgment of the greater part brought up that the articulation "different specialists". Is that an established or statutory authority would be inside the importance of the articulation "different specialists", in the event that it had been contributed with statutory capacity to issue restricting bearings to outsiders, the insubordination of which would involve reformatory result.

In context of this case, the Supreme Court in *Sukhdev v. Bhagatram*<sup>20</sup> considered the significance of "different specialists" as gave in Article 12 of the Constitution. It was asked under the watchful eye of the Supreme Court that the International Airport Authority being state" inside the significance of Article 12 of the Constitution, will undoubtedly offer impact to the state of qualification set up by it was and not qualified for leave from it at its very own sweet will without normal defense. The Airports Authority fought that since the appealing party had not presented any delicate, he had no locus standi to keep up the request and he had endured no damage by the award of permit to one of the respondents. In further raised the dispute that the state of qualification had no statutory power. Hence, regardless of whether there was any takeoff from.

The standard or standard of qualification, it was not justiciable. The appealing party had not presented any delicate and he had endured no damage. In any case, it held that "where the government is dealing with the public, whether by the way of giving jobs or entering into contracts or issuing

quotas or licenses or granting other forms of largesse, the Government cannot act, arbitrarily and its sweet will, and, like a private individual deal with any person it pleases, but its action must be in conformity with a standard or norm which is not arbitrary, irrational or irrelevant.

The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licenses, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such norm or standard in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

Subsequent to setting out the aforementioned tests, the Supreme Court saw that the rundown isn't thorough and by its very nature, it can't be, on the grounds that, with expanding supposition of new errands, developing complexities of the executives and organization.

### State and its instrumentalities

The enquiry must be not how the juristic individual was conceived but rather for what reason was it brought into reality. It was in this way irrelevant whether the partnership was made by a rule or under a resolution. The idea of instrumentality or organization of the administration was not constrained to a partnership made by a rule yet was similarly appropriate to an organization or society thinking about the important variables.

### Judiciary- Is it a Part of Thestate?

In *Paramatam Sharan v Chief Justice*<sup>4</sup> it was held that when Chief Justice of the High Court or Supreme Court picks authority of the Court in the movement of his ability of course of action and the game plan made by him disavow the Fundamental Rights, they may be tried in the Court since when Chief Justice of the High Court or Supreme Court makes game plan authority of the Court the action of his ability of game plan, he acts in administrative farthest point and along these lines, he is fused inside the significance of term "State" under Article 12.

Gajendragadhkar, J. speaking to the larger part, held that reproached Rule invalid, as it hindered the certification or vindication of the Fundamental Right to move to the Supreme Court under Article 32. The Rules surrounded under Article 145, the Court held are limited in the action of the allocated force of institution, and the said power couldn't be polished so as to impact the Fundamental Rights. In like way, the Chief Justice, in rehearsing powers of course of action of authority under Article 146, will be pleasing to the writ region, if plans are made encroaching upon Article 14-16 of the Constitution. It is in this way be communicated that "Legitimate official" while rehearsing its standard making power would be verified by enunciation "State" which methods for Art 12.

### Judiciary in its judicial capacity:

<sup>4</sup> AIR 1964 Raj. 13.

The Bombay High Court in *Ratilal v State of Bombay*<sup>5</sup> communicates the view that the judgment of the court can't be tested for infringement of Fundamental Rights. The Mysore High court in *Keshavanlyenger v State of Madras*<sup>6</sup>, held that equivalent insurance condition of Article 14 applies to the Judiciary with a similar power and Spirit.

However the view of the Supreme Court does not appear to be consistent. In *Budhan v State of Bihar* the Supreme Court held that the assurance of equivalent insurance under Article 14 of the constitution reaches out to all the three organs of the State viz official, authoritative and Judicial. The self-assertive and irrational legal choices are exposed to legal audit by the unrivaled courts.

In *Naresh Kumar v State of Maharashtra*<sup>7</sup> the issue presented under the steady gaze of the Supreme Court for thought whether legal executive is secured by the Expression „State“ in Article 12 of the Constitution. For this situation a suit identifying with guarantee of harms, for the distribution of the English week after week "Rush" a supposed pernicious criticism, was being heard by Mr. Equity Tarkunde of the Bombay High Court. During the pendency of the suit, the educated Judge orally coordinated the Petitioner that the proof of an observer ought not be distributed in the Blitz.

The applicant felt bothered by the said oral request and moved the Supreme Court under Article 32 and battled that the request had encroached his essential right contained in Article 19(1)(a) of the Constitution. Rejecting the writ request Court decided that: When a judge manages the issues brought before him for his arbitration, he initially chooses question of truth on which the gatherings are at issue, and afterward applies the pertinent Law to the said actualities. Regardless of whether the discoveries of certainties recorded by the Judge are correct or wrong, and whether the finish of law drawn by him experiences any illness can be considered and chose if the gathering abused by the choice of the Judge takes the issue under the watchful eye of appealing party Court.

In this way, the Court held that Fundamental right isn't encroached by request of Court and no writ can be given to High Court. In Naresh the lion's share judgment held that the extent of the purview of this Court managing writ petitions under Art. 32 was analyzed by a Special Bench of this Court in *Smt. Ujjam Bai v. State of Uttar Pradesh*<sup>7,8</sup>, The choice would demonstrate that it was shared belief under the watchful eye of the Court that in three classes of cases an issue of the requirement of the major rights may emerge; and on the off chance that it arises, an application under Article 32 will lie.

In any case, for the situation the Supreme Court communicated the view that the Regional Transport Authority while going about as a semi legal body, its choices can't be tested as violative of Article 14 of the constitution. Examination of the perception of the Supreme Court would uncover that the central rights are not accessible against the Judiciary. The court

held that infringement of Fundamental Rights under Article 14 can't be arrangement against the choice of the RTA.<sup>9</sup>

The majority of the Judges in *A. R. Antulay v. R. S. Nayak* approved the decision in Naresh Kumar case and held that a wrong determination of the Court could not be corrected in proceeding for Certiorari. Finally in *Rupa Ashok Hurra v Ashok Hurra*<sup>10</sup> a constitutional bench of 5 judges held that no judicial proceeding could be said to violate any of the Fundamental Rights. Even though this is the settled law, the observation in Naresh Mirajkar v. State of Maharashtra<sup>11</sup> Apex court held that judgment of the Court might violate the fundamental rights of the people.<sup>12</sup>

Hon'ble Justice Ganguly, writing a Judgment on 2-1-2011 observed: The learned judge gave the instances of Habeas Corpus case<sup>13</sup> and emphatically said, "There is no doubt that the majority judgment of the Court in the ADM Jabalpur case violates the fundamental right of a large number of people in this country." So it can be concluded that when judiciary acts in its judicial capacity it is not State under Article 12. But when judiciary acts in administrative capacity or rule making body it is included within the meaning of "other authorities" and therefore, it is State under Article 12.

#### Can The State Claim 'Fundamental Rights' For Itself?

In the case of *State of West Bengal v. Union of India*<sup>14</sup>, it was observed that, fundamental rights are primarily for the protection of the rights of individuals and corporations, and are enforceable against executive actions and/or legislative actions of the government agency. However, it is essential to remember that all pre-existing laws, which are inconsistent with, and all post-constitutional laws which contravene (or prohibit) the fundamental rights, to the extent of inconsistency or contravention are void.

It is important to note that there are Articles in the *Suprema Lex* (the Constitution of India, 1950) which are not in the form of rights but are rather in the form of fundamental disabilities [For example: Article 18 (2) to Article 18 (4)]. The principal question that came to be answered before the Supreme Court was: Whether or not, „State“ has fundamental rights? Apart from this, in the case of *Election Commissioner v. State of Haryana*, it was held that where a State (State Government) is affected by an order of an independent public body, for example, the Election Commission, to which Article 131 has no application, the State (State Government) can file a writ petition under Article 226 of the Constitution of India.<sup>15</sup>

#### Conclusion

The idea of human rights ensures people against the abundances of the state. The idea of human rights exhibits an endeavor to shield the person from abuse and bad form. In present day times, it is generally acknowledged that the

<sup>9</sup>Ujjam Bhai v State of UP, AIR 1962 SC 1621.

<sup>10</sup> AIR 2002 SC 1771.

<sup>11</sup> AIR 1967 SC 1.

<sup>12</sup>Remdeo Chauhan alias Rajnath Chauhan v State (2-1-2011).

<sup>13</sup>ADM Jabalpur v S. Shukla AIR 1976 SC 1207.

<sup>14</sup>(1964) 1 SCR 371: 1963 BLJR 675: AIR 1963 SC 1241

<sup>15</sup>(1984) Supp. SCC 104: AIR 1984 SC 1406.

<sup>5</sup>1954 AIR 388, 1954 SCR 1035

<sup>6</sup>1974 AIR 2309, 1975 SCR (2) 372

<sup>7</sup> AIR 1967 SC 1.

<sup>8</sup>AIR 1962 SC 1621.

privilege to freedom is the very substance of a free society and it must be defended consistently. Guaranteeing certain rights is to guarantee that an individual may have a base ensured opportunity.<sup>16</sup>

The two significant ideas utilized in this arrangement are: „state“ and „law“. These ideas along these lines, need some clarification. Essential Rights are for the most part guaranteed against the „state“. Article 12 gives an all-inclusive hugeness to the term „state“. Article 12 explains that the term „state“ happening in Article 13(2), or some other arrangement concerning Fundamental Rights, has a far reaching meaning. The activity of the any of the bodies included inside the term „state“ as characterized in article 12 can be tested under the watchful eye of the courts under Article 32 on the ground of disregarding Fundamental Rights.

The most critical articulation utilized in Article 12 is "different specialists". This articulation isn't characterized in the Constitution. The translation of the expression "different specialists" in Article 12 had caused a decent arrangement of trouble, and legal conclusion has experienced changes after some time. It is, thusly, for the Supreme Court, as the Apex Court, to characterize this term. The word „State' under Article 12 has been deciphered by the courts according to the evolving times .It has increased more extensive importance which guarantees that Part-III can be applied to a bigger degree. In this way, it is trusted that it would keep on degree its width in coming occasions.

## References

1. The Constitution of India ,1950.
2. AIR 1975 SC 1331, 1355.
3. AIR 1981 SC 951
4. AIR 1964 Raj. 13.
5. 1954 AIR 388, 1954 SCR 1035
6. 1974 AIR 2309, 1975 SCR (2) 372
7. AIR 1967 SC 1.
8. AIR 1962 SC 1621.
9. Ujjam Bhai v State of UP, AIR 1962 SC 1621.
10. AIR 2002 SC 1771.
11. AIR 1967 SC 1.
12. Remdeo Chauhan alias Rajnath Chauhan v State (2-1-2011).
13. ADM Jabalpur v S. Shukla AIR 1976 SC 1207.
14. (1964) 1 SCR 371: 1963 BLJR 675: AIR 1963 SC 1241
15. (1984) Supp. SCC 104: AIR 1984 SC 1406.
16. Shamdasani v. Central Bank of India, AIR 1952 SC 59.

<sup>16</sup> Shamdasani v. Central Bank of India, AIR 1952 SC 59.