

Understanding “The State” Under Article 12 of the Indian Constitution: Judicial Expansion and Constitutional Accountability

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Abstract—Article 12 of the Constitution of India forms the cornerstone of the interpretation of Fundamental Rights by defining the term “State.” This definition is critical because the enforceability of Fundamental Rights under Part III depends upon the actions of entities categorized as the State. Over the decades, the judiciary has played an instrumental role in expanding the scope of this term to include statutory corporations, government-controlled societies, and other instrumentalities performing public functions. This paper examines the textual foundation, judicial evolution, and doctrinal tests that have shaped the contemporary understanding of Article 12. It argues that this broad judicial interpretation strengthens constitutional accountability and bridges the gap between State functions and public interest in a welfare democracy.

Index Terms—Article 12, Fundamental Rights, the State, Instrumentality Test, Constitutional Law, Judicial Interpretation, Accountability.

I. INTRODUCTION

The Constitution of India is the supreme law of the land. It guarantees to every person a set of Fundamental Rights that serve as a bulwark against arbitrary state action. Yet, these rights are principally enforceable against the State and not against purely private actors. Article 12 therefore occupies a pivotal position in Indian constitutional law it acts as the threshold clause that defines the scope of state responsibility and demarcates the boundary between public power and private conduct.

The text of Article 12 is deliberately inclusive rather than exhaustive. The framers, aware of the growing complexity of modern governance, anticipated that governmental functions would increasingly be

discharged through statutory corporations, regulatory authorities, and autonomous bodies. Consequently, they provided a definition flexible enough to adapt to changing institutional forms. This openness has enabled the judiciary to give Article 12 a living interpretation consistent with the Constitution’s purpose of ensuring that power, however exercised, remains answerable to the rule of law.

Over time, the Supreme Court of India has treated Article 12 as a dynamic concept, expanding its meaning to include entities that, though formally distinct from government, perform public duties or are subject to deep governmental control. The jurisprudence surrounding Article 12 thus reflects a continuing tension between two imperatives: the need to safeguard individual liberty from state encroachment and the necessity of limiting constitutional obligations to bodies wielding genuine public power.

II. CONSTITUTIONAL BACKGROUND AND OBJECTIVES

The structure of Part III (Articles 12 to 35) makes clear that Fundamental Rights are directed primarily at the State. Articles 13 to 32 prohibiting discriminatory laws, guaranteeing equality, and empowering courts to issue writs operate only when the impugned act is attributable to a “State” as defined in Article 12. Hence, the meaning of “State” directly influences the enforceability of every fundamental guarantee.

The objective behind Article 12 is twofold:

1. To specify the authorities bound by Fundamental Rights.
2. To prevent circumvention of constitutional obligations through the creation of separate legal

personalities or instrumentalities that exercise governmental power in substance though not in form.

By framing Article 12 in inclusive terms, the Constituent Assembly ensured that the doctrine of constitutional supremacy could evolve with administrative realities. The emphasis on inclusivity was a conscious choice against rigidity.

III. HISTORICAL CONTEXT AND CONSTITUENT ASSEMBLY DEBATES

During the Constituent Assembly debates, the Drafting Committee, chaired by Dr. B. R. Ambedkar, emphasized that the term “State” should encompass not only the Union and State governments but also all local and other authorities exercising governmental functions. Members expressed concern that a narrow definition might allow new agencies or corporations to act beyond constitutional constraints.

Ambedkar explained that “the State is nothing but an instrument of service” and must therefore include every authority exercising governmental power, irrespective of nomenclature. The framers drew inspiration from the American concept of “state action,” ensuring that constitutional limitations applied to every entity that could affect the enjoyment of Fundamental Rights.

This historical context reveals that Article 12 was designed as a living provision, capable of judicial expansion to keep pace with social and administrative developments. The Assembly deliberately refrained from providing an exhaustive list of authorities, trusting future courts to adapt its scope in accordance with constitutional morality.

IV. TEXTUAL INTERPRETATION OF ARTICLE 12

Article 12: The clause contains four components:

1. Government and Parliament of India – the Union executive and legislature.
2. Government and Legislature of each State – the State executive and assemblies.
3. Local Authorities – municipalities, panchayats, district boards, and similar statutory bodies.
4. Other Authorities – a residual category interpreted expansively to include statutory corporations, government companies, and even private entities

performing public duties under governmental control.

The key phrase, “other authorities,” has generated the most litigation. Its interpretation determines whether statutory corporations, universities, government-aided institutions, and even private organizations exercising regulatory or public functions fall within the ambit of Article 12. Courts have repeatedly emphasized that the definition is inclusive; it enlarges rather than restricts the meaning of “State.”

Judicial Evolution of Article 12 and Landmark Case-Law Analysis

The Supreme Court of India has progressively expanded the definition of “State” under Article 12. This evolution reflects the courts’ recognition that governance in India involves not just traditional departments but also statutory corporations, public authorities, and agencies performing public functions. Landmark cases illustrate this expansion:

1. *University of Madras v. Shanta Bai* (1954 Mad 67)
In one of the earliest cases interpreting Article 12, the Madras High Court applied the principle of *ejusdem generis* to limit the meaning of “other authorities.” The Court held that “other authorities” must be similar to the government or local authorities. This restrictive approach confined the definition to statutory bodies directly under governmental control. While influential at the time, this narrow interpretation was subsequently expanded by the Supreme Court.

2. *Rajasthan State Electricity Board v. Mohan Lal* (AIR 1967 SC 1857)

The Supreme Court rejected the narrow view of the Madras High Court, holding that statutory corporations created by law and performing public duties fall within the ambit of Article 12. In this case, the Rajasthan State Electricity Board a statutory body responsible for electricity distribution was held to be the State because it exercised powers delegated by law and had governmental control in its administration. This case marked the beginning of a functional interpretation, focusing on the nature of duties rather than formal governmental designation.

3. *Sukhdev Singh v. Bhagat Ram* (AIR 1975 SC 1331)
In this case, the Supreme Court considered statutory corporations such as the Oil and Natural Gas Corporation (ONGC) and Life Insurance Corporation

(LIC). The Court held that these bodies were “State” because of:

- a) Government ownership of shares
- b) Appointment of key officials by the government
- c) Performance of public functions under statutory provisions

This case emphasized the instrumentality or agency test, establishing that the degree of governmental control and the public nature of functions determine whether an entity qualifies as the State.

4. R.D. Shetty v. International Airport Authority of India (AIR 1979 SC 1628)

Justice Bhagwati laid down a detailed framework to determine whether a body is an instrumentality or agency of the State. He identified five factors:

1. Substantial government funding
2. Government control over management
3. Public or governmental nature of functions
4. Governmental monopoly of the activity
5. Importance of the functions to the public

The case involved the International Airport Authority of India, which performed crucial governmental functions related to airport operations. The Court concluded that its operations were subject to Article 12. This case remains a cornerstone for the functional approach to “State.”

5. Ajay Hasia v. Khalid Mujib (AIR 1981 SC 487)

This landmark case extended Article 12 to include registered societies. The Court held that even a society incorporated under the Societies Registration Act could qualify as the State if it:

- a) Receives substantial government aid
- b) Is subject to pervasive governmental control
- c) Performs public functions of a governmental character

This case clarified that formal incorporation is irrelevant; what matters is substance, control, and function. It effectively bridged the gap between statutory corporations and government-supported private entities.

6. Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (AIR 2002 SC 4205)

A seven-judge bench reaffirmed earlier rulings, holding that CSIR (Council of Scientific and Industrial Research) and its institutions were “State” under Article 12. CSIR was fully funded, regulated, and

controlled by the Government of India. This judgment also emphasized that:

- a) Entities performing governmental functions must adhere to constitutional accountability
- b) Judicial scrutiny applies to their decision-making in matters affecting Fundamental Rights

This case consolidated the instrumentality and functional tests, ensuring consistency across statutory and quasi-governmental organizations.

7. Zee Telefilms Ltd. v. Union of India (2005 4 SCC 649)

The Supreme Court clarified that not every entity performing public or commercial functions is a “State.” In Zee Telefilms, the Board of Control for Cricket in India (BCCI) was held not to be State, as it operated autonomously without deep governmental control. However, the Court noted that entities performing public duties with substantial government involvement could still be subject to constitutional scrutiny.

V. SUMMARY OF JUDICIAL PRINCIPLES

From these cases, the following principles emerge:

1. Agency / Instrumentality Test: A body is State if it is an agency or instrumentality of the government.
2. Functional Test: Performing a public function of governmental importance makes an entity State.
3. Financial / Control Test: Government funding and administrative control indicate State character.
4. Purpose over Form: The legal form (society, company, statutory corporation) is irrelevant; the substance of power and function matters.

VI. DOCTRINAL TESTS UNDER ARTICLE 12

The Supreme Court has developed several doctrinal frameworks to determine whether an entity qualifies as the State. These tests are not mutually exclusive and are often applied cumulatively.

1. Instrumentality / Agency Test

As seen in Sukhdev Singh v. Bhagat Ram and R.D. Shetty v. International Airport Authority of India, the agency or instrumentality test asks whether the entity is acting as an extension of the government. Key indicators include:

1. Appointment of management by the government
2. Governmental funding

3. Oversight and regulatory control
 4. Carrying out governmental or statutory functions
- Entities satisfying these criteria are treated as part of the State, making their actions amenable to judicial review.

2. Functional Test

The functional approach emphasizes the nature of the activities rather than the entity's form. Courts look at whether the entity:

1. Performs public functions of governmental character
2. Provides services to the public
3. Executes statutory powers

This test allows courts to include non-governmental entities performing functions of public importance, ensuring the protection of Fundamental Rights even in modern governance structures.

3. Control and Financial Dependence Test

Entities receiving substantial financial support from the government or subject to pervasive control are likely to be treated as State. The degree of control both managerial and operational is decisive in assessing State character.

Case Reference: *Ajay Hasia v. Khalid Mujib* a registered society performing educational functions was deemed State because of financial dependence and government supervision.

4. Public Purpose / Importance Test

Courts also consider whether the functions of the entity affect public welfare significantly. Even autonomous institutions can be brought under Article 12 if their actions directly impact citizens' rights or interests.

Case Reference: *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* scientific research institutions performing public-funded research were treated as State due to the public purpose of their activities.

VII. EXPANDING HORIZONS: PUBLIC FUNCTION THEORY AND EMERGING ENTITIES

A. Public Function Theory

Modern jurisprudence recognizes that privatization, outsourcing, and public-private partnerships can blur the boundaries of state action. Public Function Theory asserts that entities performing functions traditionally

carried out by the State may be subject to constitutional scrutiny.

Example: Private security companies performing law enforcement duties may fall under State control for Fundamental Rights purposes.

Judicial recognition ensures accountability and prevents circumvention of constitutional obligations.

B. Emerging Entities

1. Public Sector Undertakings (PSUs): Fully or partially government-owned companies are generally treated as State if government control is substantial.
2. Educational Institutions: Government-aided schools and universities often qualify as State due to financial and administrative dependence.
3. Digital and E-Governance Bodies: With the growth of technology, agencies managing public data or digital services may be considered State if they perform governmental functions.

This flexibility ensures that Article 12 remains relevant in contemporary governance.

VIII. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Comparing India's approach to "State" with other jurisdictions highlights its unique breadth.

1. United States

The U.S. Constitution protects individuals from government action (state action doctrine) but generally does not apply to private entities unless performing public functions. Courts apply a "state action" test similar in principle to India's functional test but narrower in scope.

2. United Kingdom

The UK lacks a written constitution and has no codified Fundamental Rights; judicial review of public authorities is exercised through administrative law. The UK approach emphasizes statutory or governmental origin, not explicit constitutional inclusion.

3. South Africa

The South African Constitution uses the term "organs of state," interpreted broadly. Courts examine whether a body exercises public power or functions. The

approach parallels India's functional and instrumentality tests.

Observation: India's Article 12 is more expansive than most common law jurisdictions, combining textual inclusivity with judicial flexibility to encompass modern administrative forms.

IX. CRITICAL EVALUATION

While the judiciary's expansive interpretation strengthens accountability, it raises certain challenges:

1. **Uncertainty:** Broad definitions of "State" create ambiguity about which entities are covered, especially in emerging private-public arrangements.
2. **Overreach:** Applying Article 12 to loosely controlled entities may discourage private participation in public services.
3. **Resource Strain:** Judicial review over a wide range of institutions may burden courts.
4. **Technological Governance:** Rapid emergence of AI and automated decision-making agencies requires reinterpretation of public function.

X. RELATIONSHIP WITH ARTICLES 13–32

Article 12 serves as the gateway to Fundamental Rights, linking closely with Articles 13–32:

Article 13:

Declares laws inconsistent with Fundamental Rights void. Applies only to the State as defined in Article 12. Without a broad interpretation of "State," statutory corporations or agencies could escape the constitutional mandate.

Articles 14–18:

Guarantee equality, prohibition of discrimination, and abolition of untouchability. The enforcement of these rights depends on whether the entity in question is a state actor.

Articles 19–22:

Protect freedoms such as speech, association, and movement. Judicial review against State action under Article 12 ensures that these freedoms are meaningful.

Articles 32 & 226:

Empower courts to issue writs for the enforcement of Fundamental Rights. Only authorities classified as State can be challenged through writs.

Observation: A narrow definition of "State" would render several Fundamental Rights ineffective, especially against emerging quasi-governmental entities. The judiciary's expansive interpretation ensures substantive enforcement of the Constitution's core guarantees.

XI. CONTEMPORARY CHALLENGES

1. **Privatization and Public-Private Partnerships (PPPs):**

Increasing outsourcing of governmental functions blurs the line between State and private actors. Courts must apply the functional and instrumentality tests carefully to maintain accountability without deterring private sector participation.

2. **Digital Governance:**

Government agencies increasingly rely on automated systems for decision-making. Issues arise over whether private software providers or autonomous AI systems performing public functions fall under Article 12.

3. **Globalization:**

International collaborations and foreign-funded organizations may perform quasi-governmental roles. Judicial oversight may need reinterpretation in cross-border contexts.

4. **Judicial Overreach vs. Accountability:**

Expansive readings risk judicial overreach. However, limiting the scope may allow public functions to evade Fundamental Rights scrutiny.

Conclusion: Article 12's interpretive flexibility is essential for addressing these modern governance challenges, ensuring that constitutional accountability keeps pace with administrative innovation.

XII. CONCLUSION

Article 12 of the Indian Constitution is a living provision, foundational to the enforcement of Fundamental Rights. Its inclusive language, interpreted through decades of judicial scrutiny, ensures that all entities performing public functions are accountable to the Constitution.

Landmark judgments (Rajasthan State Electricity Board v. Mohan Lal, Sukhdev Singh v. Bhagat Ram,

Ajay Hasia v. Khalid Mujib, Pradeep Kumar Biswas v. IICB) have expanded the concept of State to include statutory corporations, societies, and government-controlled agencies.

Doctrinal tests instrumentality, functional, financial/control, and public importance provide a structured framework for judicial analysis.

Comparative perspectives show that India's approach is broader and more adaptable than most common law jurisdictions.

Contemporary challenges like privatization, digital governance, and PPPs highlight the need for a dynamic, function-based interpretation of Article 12.

In conclusion, Article 12 is not merely a definitional provision but a constitutional safeguard, ensuring that the essence of Fundamental Rights remains effective against all forms of public power. The judiciary's proactive expansion preserves the balance between individual liberties and the functional realities of a modern welfare state.

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