



drishti

'State' Under Article 12 of the Constitution

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Recently Delhi High Court has given judgement in **Sanjaya Bahel v. Union of India & Others** case, that the **United Nations** is **not a "State"** within the meaning of Article 12 of the Constitution of India and is not amenable to the jurisdiction of the Court under Article 226 of the Constitution of India.

- The court says, by no stretch of the imagination an organisation of the United Nations which is an international body be treated as "instrumentality" and or an "agency" of the Government."
- Part III of our constitution consists of a long list of fundamental rights, it starts right from Article 12 to Article 35.
 - The purpose behind having our fundamental rights rests in the need for having a just society i.e a nation ruled by law and not by a tyrant.
 - With great power comes a greater risk of abuse and in order to safeguard the rights and freedom of individuals it needs constitutional protection from the acts of the state itself.
 - However, in order to delve deeper into the concept, it is firstly imperative to explore the definition of "state".

Article 12 defines the state in the following manner

- In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

- **Dispute and discussion:** around phrase of Article 12 i.e “other authorities”, which has evolved over time:
 - Earlier, a **restrictive interpretation** was given to this term, i.e, the authorities exercising governmental or sovereign function would only be covered under other authorities.
 - The **liberal interpretation** says that it is not necessary for an authority to be engaged in sovereign or governmental function to come under the definition of the state. The bodies like State Electricity Board, LIC, ONGC and IFC also come under “other authorities”.
- In **R.D Shetty v. Airport Authority of India** Justice P.N Bhagwati gave 5 Point test This is a test to determine whether a body is an agency or instrumentality of the state and goes as follows –
 - Financial resources of the State, where State is the chief funding source i.e. the entire share capital is held by the government.
 - Deep and pervasive control of the State
 - The functional character being Governmental in its essence, meaning thereby that its functions have public importance or are of a governmental character.
 - A department of Government transferred to a corporation.
 - Enjoys “monopoly status” which State conferred or is protected by it.

This was elucidated with the statement that the test is only illustrative and not conclusive in its nature and is to be approached with great care and caution.

Judiciary

- The Judiciary is not expressly mentioned in Article 12 and a great amount of dissenting opinions exist on the same matter.

Bringing judiciary entirely under Article 12 causes a great deal of confusion as it comes with an attached inference that the very guardian of our fundamental rights is himself capable of infringing them.
- However, in **Rupa Ashok Hurra v. Ashok Hurra** the Apex Court reaffirmed and ruled that no judicial proceeding could be said to violate any of the Fundamental rights and that it is a settled position of law that superior courts of justice did not fall within the ambit of ‘state’ or ‘other authorities’ under Article 12.

This gave the rationale that a Superior Judicial body when acting “Judicially” would not fall under the definition of State but when it performs any **administrative or similar functions** e.g conducting examination, it will fall under the definition of “state” and that remedy could be sought in that context only in case of violation of fundamental rights.