

## THE CHANGING DIMENSIONS OF OTHER AUTHORITIES UNDER ARTICLE 12

Rachi Singh<sup>1</sup> & Saurabh Mishra<sup>2</sup>

### Abstract

*With the advent of concept of Welfare State, a State is expected to perform myriads of function being responsible from selling of salt to waging of war. The lack of resources and technical expertise has forced to outsource many of its functions to private parties. This paper is an attempt to understand the different approaches adopted by Supreme Court while dealing with Article 12 of our constitution and it also delves into the aspect of enforceability of fundamental rights against private parties. It begins with the textual content of Article 12 of the Indian Constitution. It goes on to analyze the legal and functional approach adopted by the Supreme Court while dealing with Article 12 of the Indian Constitution. It also discusses the role of Indian Supreme Court in dealing with horizontal application of Fundamental Rights. It ends with the authors providing their views*



*Scholarly Research Journal's* is licensed Based on a work at [www.srjis.com](http://www.srjis.com)

### INTRODUCTION

The definition of State is placed under Part III of our Constitution which contains chapter on Fundamental Rights and Article 13 prohibits “State” from enacting laws which may amount to infringement of Fundamental Rights indicating thereby that primarily the fundamental rights are enforceable against “State”. To keep pace with the ever changing world and to ensure that fundamental rights of citizens are not violated, there has been an attempt by the Supreme Court to give an ever expansive definition of State. In modern times the functions of State has increased manifold it is responsible from selling of salt to waging of war, in these times State lacks the adequate infrastructure, technical knowledge and resources to perform these functions hence, many traditional sovereign functions which were performed by State are now outsourced to private parties. In these circumstances the definition of “State” assumes grave importance.

### TEXTUAL CONTENT OF ARTICLE 12

*“In this part [i.e., Part III], 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.”<sup>1</sup>* Article 12 gives extended significance to the term ‘State’, the most significant expression used in Art. 12 is “other authorities”. This expression is not

<sup>1</sup> Article 12, Constitution of India, 1950.

defined in the Constitution. It is, therefore, for the Supreme Court as the apex court, to define this term.<sup>2</sup> It is obvious that wider the meaning attributed to the term “other authorities” in Article 12, wider will be coverage of the Fundamental Rights<sup>3</sup>. In this definition we observe that two phrases has been used “within the territory of India” or “under the control of the Government of India”. They are connected by the word “or”, which implies that they are disjunctive. Consequently, there is a set of bodies that comes under Article 12, which is not under the control of government of India.

The phrase “within the territory of India” should be read as covering a set of circumstances parallel to that of bodies “under the control of government of India” that is private bodies not under the control of government, but performing governmental functions.

One of the important rules of legal interpretation is the rule of *ejusdem generis*. When a legal text has a number of specific and concrete terms, followed by a general term, then the general term must be interpreted to contain only that which would broadly be consistent with the specific terms. Insofar as Article 12 begins with the terms “the Government and Parliament of India and the Government and Legislature of each of the States”, the phrase “other authorities” – under the rule of *ejusdem generis*, ought to be interpreted in a manner consistent with the concrete terms that come before it. That is, “other authorities” must be confined to State-like entities<sup>4</sup>. This is in consonance with traditional concept of fundamental rights as they are designed to structure a vertical relationship between State and Citizen.

#### **CONTROL TEST**

The Supreme Court in one of its earlier cases<sup>5</sup> held that when one individual was detained by another it cannot be violation of Article 21. Justice Patanjali Shastri<sup>6</sup> said that “*as a rule, constitutional safeguards are directed against the State and its organs and that protection against violation of rights by individuals must be sought in the ordinary law.*” The court for the first time in Mohan Lal’s case<sup>7</sup> which pertained to a promotion dispute between some workmen and the Rajasthan Electricity Board, was required to grapple with the issue regarding the status of bodies created by the statute, bodies whose management has government representatives, bodies under the administrative control of the government,

---

<sup>2</sup> M.P. JAIN INDIAN CONSTITUTIONAL, LAW PAGE 907(6<sup>TH</sup> EDITION, 2011).

<sup>3</sup> Id.

<sup>4</sup> University of Madras v Shanta Bai AIR 1954 Mad 67.

<sup>5</sup> Shrimati Vidya Verma v Shiv Narain Verma AIR 1956 SC 108.

<sup>6</sup> A.K. Gopalan v State of Madras AIR 1950 SC 27.

<sup>7</sup> Rajasthan Electricity Board v Mohan Lal AIR 1967 SC 1857.

bodies funded entirely by the government, bodies performing government outsourced tasks vis a vis Article 12.

The Court looked to the dictionary meaning of “authority” and concluded that the expression “other authorities” is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of Government of India. The fact the Board was performing commercial function was irrelevant, since the State could carry out trade and business<sup>8</sup>. The key test was whether there was statutory connection between the Government and body in question.

Justice Shah in concurring opinion observed that “*what mattered was whether the authority was invested with the sovereign power to impose restrictions on very important and basic fundamental freedoms... authorities constitutional or statutory invested with power by law but not sharing the sovereign power do not fall within the expression “State” as defined in Art. 12. Those authorities which are invested with sovereign power i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of “State” in Art. 12<sup>9</sup>.*” His reason for holding Board was State was not that it was created by a statute but that:

*“The Board is an authority invested by statute with certain sovereign powers of the State. It has the power of promoting coordinated development, generation, supply and distribution of electricity and for that purpose to make, alter, amend and carry out schemes under Ch. V of the Electricity (Supply) Act, 1948<sup>10</sup>, to engage in certain incidental undertakings; to organise and carry out power and hydraulic surveys; to conduct investigation for the improvement of the methods of transmission; to close down generating stations; to compulsorily purchase generating stations, undertakings, mains and transmission lines; to place wires, poles, brackets, appliances, apparatus, etc; to fix grid tariff; to issue directions for securing the maximum economy and efficiency in the operation of electricity undertakings, to make rules and regulations for carrying out the purposes of the Act; and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The*

---

<sup>8</sup> Article 298, Constitution of India.

<sup>9</sup> *Supra* 11.

<sup>10</sup> Section 78 A, Electricity (Supply) Act, 1948.

*power to make rules and regulations and to administer the Act is in substance the sovereign power of the State delegated to the Board.*"<sup>11</sup>

The majority and concurrence opinion in this case represent two approaches to Article 12 which we may be called as "legal" and "functional" respectively. The legal approach includes within itself the entities that government creates, or seems to have a complete control over it. The functional approach on the other hand starts from the perspective of the individual, and the individual's guaranteed rights that limit exercise of sovereign power of the State. According to this approach bodies which can affect fundamental rights of an individual must be brought under the purview of Article 12<sup>12</sup>.

#### **AGENCY OR INSTRUMENTALITY TEST**

The Agency or instrumentality test could be traced to concurring opinion of Justice Mathew in Sukhdev's case<sup>13</sup> where while declaring that three public corporations- the Oil and Natural Gas Corporation, the Life Insurance Corporation and Industrial Finance Corporation are State he said that the ultimate question which is relevant for the purpose is whether a corporation is an *agency or instrumentality* of the government for carrying on a business for the benefit of the public.

The next important case which developed the jurisprudence of Article 12 was related to International Airport Authority<sup>14</sup> which came up in 1979. The International Airport Authority was created in 1971 by an Act<sup>15</sup>. It invited tenders for running restaurants and snack bars at the Bombay International Airport and accepted the highest bid. The decision was challenged on the ground that while awarding the contract, the Authority did not abide to its own terms and conditions by treating similarly situated persons differently, had violated Article 14. In these circumstances the first question was whether the Authority was subject to Article 14 obligations. The court concluded by relying on Justice Mathew's "instrumentality and agency" test that this test was a more satisfactory test.

The court held that in rapidly expanding functions of State in the welfare era even when the government is acting as a contractor it is bound by public law obligations of fairness, non

---

<sup>11</sup> *Id.*

<sup>12</sup> Gautam Bhatia, What is State-II: Two Approaches to Interpreting Article 12, <https://indconlawphil.wordpress.com/2014/07/05/what-is-the-state-ii-two-approaches-to-interpreting-article-12/> (last accessed on 14 August 2016).

<sup>13</sup> Sukhdev v Bhagatram AIR 1975 SC 1331.

<sup>14</sup> R. D. Shetty v International Airport Authority AIR 1979 SC 1628.

<sup>15</sup> Section 3, International Airport Authority Act, 1971.

arbitrariness and non discrimination flowing from Constitution<sup>16</sup> and general principles of public and administrative law. Further, the Court held that the Government represents the executive arm of the State, it may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. The expanding horizon of State required creation of public corporations as incidental to governmental function.

It was further observed by the Court that there could be no cut and dried formula that could provide answer to the question whether a body was an instrumentality or agency of State? It held that “extensive and unusual financial assistance” from the government and “unusual degree of State control over policies” might be relevant considerations.

The court finally settled the question with a descriptive test by saying that if the functions of Corporation are of public importance and closely related to governmental functions it would be a relevant factor in categorizing a corporation as an “instrumentality” or “agency” of State. It is interesting to note that the fact that the International Airport Authority was a creation of statute did not play a determining factor in court’s analysis, as it had in previous cases.<sup>17</sup>

#### **AJAY HASIA’S TEST**

In 1981, two years after the R.D. Shetty’s case a constitution bench was asked to consider the status of Regional Engineering College of Srinagar within the meaning of Article 12<sup>18</sup>. The college was established and administered by a society that was registered under the J&K Societies Act<sup>19</sup>.

The court summarized the R.D. Shetty’s case in six points to be considered while treating a body as “State” within Article 12.

- a) holding of the corporation’s entire share capital by the government;
- b) extensive financial assistance
- c) a State-conferred monopoly status;
- d) deep and pervasive State control;
- e) functions of public importance, or closely related to governmental functions;
- f) Transferring a government department to a corporation.

---

<sup>16</sup> Article 14, Constitution of India, 1950

<sup>17</sup> Gautam Bhatia, What is State- III: Adopting the “Instrumentality or Agency” Test, <https://indconlawphil.wordpress.com/2014/08/15/what-is-the-state-iii-adopting-the-instrumentality-or-agency-test/> (last accessed on 15 August 2016).

<sup>18</sup> Ajay Hasia v Khaleed Mujeeb AIR 1981 SC 487.

<sup>19</sup> Jammu and Kashmir Registration of Societies Act, 1898.

Thus the court concluded by examining the composition of society and its board of governors, its finances and its administration that the control of State and Central Government is indeed so deep and pervasive that the Society was undeniably an instrumentality or agency of the State under Article 12.

It was in 2002 in Pradeep Kumar Biswas<sup>20</sup> that the public function test obliterated, it involved the reconsideration of Sabhajit Tewari<sup>21</sup>' case in which it was held that the Council of Scientific and Industrial Research was not State within the meaning of Article 12. Justice Ruma Pal crystallized the tests laid down in Ajay Hasia case and said that if the body is financially, functionally and administratively dominated by or under the Government. Such control must be particular to the body in question and must be pervasive, if this is found then the body is a State under Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a statute.

#### **THE DEATH OF FUNCTIONAL APPROACH**

Pradeep Kumar Biswas impliedly did away with the public function test, the Zee Telefilms case did it expressly.<sup>22</sup> The question here raised was whether the Board of Control for Cricket in India was State within meaning of Article 12. The court ruled in favour of Board by following Pradeep Kumar Biswas, it observed that the Board was not created by Statute, Government held no share capital, provided no financial assistance, conferred no monopoly status, exercised no pervasive control and had not transferred a government owned corporation. Hence, Article 12 was not applicable. The court further said that even assuming that there is some element of public duty involved in the discharge of the Board's function even then as per the judgment of this court in Pradeep Kumar Biswas that by itself would not suffice for bringing the Board within the ambit "other authorities" for the purpose of Article 12<sup>23</sup>.

It was observed by the Court that "*when the actions of Board are not actions as authorized representative of the State, can it be said that the Board is discharging any State functions? The answer should be in negative. In the absence of any authorization, if a private body chooses to discharge any such function discharge any such function which is not prohibited*

---

<sup>20</sup> Pradeep Kumar Biswas v Indian Institute of Chemical Biology (2002)5 SCC 111.

<sup>21</sup> Sabhajit Tewari AIR 1975 SC 1329.

<sup>22</sup> Zee Telefilms v Union of India AIR 2005 SC 2677.

<sup>23</sup> *Id* at 25.

*by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State.”*

This approach of the court is problematic as to what would happen if the State chooses to leave the functioning of policing or maintenance of prisons to private parties. The guarantee of constitutional rights cannot be dependent upon economic policy that a state follows at any given time.

### **Rescuing the Public Function Test**

Pradeep Kumar Biswas and Zee Telefilms rendered “public function” test as irrelevant to the scope of Article 12 rather it made its applicability strictly limited to the instances of pervasive governmental control.

There are three decisions of the Supreme Court which further elaborate this public function test

#### *Unnikrishnan case:*

Justice Mohan’s in concurring opinion observed that private educational institutions discharge a public duty. “If a student desires to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain qualification. If therefore what is discharged by the educational institutions is a public duty which requires them to act fairly.”<sup>24</sup>

#### *SRM University Case:*

This above mentioned view found resonance in a recent case<sup>25</sup> wherein it was held that imparting education in higher studies to students at large was a public function, and since it was a deemed university and governed by the University Grants Commission Act, 1956 alike other universities then it is an authority as provided in Article 12 of the Constitution

#### *Zee Telefilms case:*

It is interesting that the second case which discusses the public function test is the Zee Telefilms case, it was held that private bodies which yield large power cannot be left like an unruly horse. It was observed by the court that “*it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by*

<sup>24</sup> Unnikrishnan v State of Andhra Pradesh AIR 1993 SC 2178.

<sup>25</sup> Dr. Janet Jeyapaul v SRM University Civil Appeal No. 14553 of 2015.

way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.” This view was reaffirmed in the Cricket Association of Bihar’ case<sup>26</sup> where CJI Thakur, held that BCCI was performing a public function as it has control over the game of cricket in India including control over careers of cricket players, secondly the BCCI activities were of considerable financial scope (infrastructure, expenditure on coaches, pension schemes selling broadcast and telecast rights and lastly the BCCI was performing these performances with the “tacit concurrence” of the government which has chosen not to pass any law diluting the BCCI’s monopoly.

The above mentioned cases imply that it is conceptually possible to hold a non- state body accountable for a substantive Part III violation though not by invoking Part III via an Article 32 petition.

#### **HORIZONTALITY UNDER INDIAN CONSTITUTION**

According to the classical model constitutional rights are supposed to regulate the relationship between individual and state, restraining state from abusing power and enforceable vertically against by individual against the State having no application in interaction or transaction between private parties. This conception is changing now, that a purely vertical model of constitutional rights is insufficient because of growing private power and retreat of welfare state.<sup>27</sup>

Constitutional courts, therefore, have developed various ways in which to apply rights “horizontally” meaning thereby to apply fundamental rights where private actors are involved in some way.

Indian Supreme Court was at various times had to engage to with horizontality and required to provide remedies in such cases. It will be interesting to see how the Apex Court has dealt with this issue in various cases.

---

<sup>26</sup> BCCI v Cricket Association of Bihar Civil Appeal No. 4235 of 2014.

<sup>27</sup> Gautam Bhatia, Horizontality under the Indian Constitution: A Schema, <https://indconlawphil.wordpress.com/2015/05/24/horizontality-under-the-indian-constitution-a-schema/>, (last accessed on 13 August 2016).



### **Positive Rights enforceable against State:**

Traditionally, fundamental rights have been understood to be negative in nature acting as constraints upon what State can do, but not imposing a positive obligation to act in a particular way. Internationally, this view holds no good as in interpreting the the ICCPR (International Covenant on Civil and Political Rights), the United Nations Office of the High Commissioner for right has observed that a rights casts a parallel duties upon the State to “respect, protect and fulfill” those rights<sup>28</sup>. It mandates State to protect individual from human right abuses, no matter who might commit them. Here, State’s failure to prevent human rights violation by human rights amounts to abrogation of its duty to protect.

In Vishakha’s case<sup>29</sup> the Supreme Court applied this conception on failure of State to pass sexual harassment legislation for regulating a public and private workplaces. It held that such failure on part of State amounted to a violation of Petitioner’s constitutional rights under Articles 14, 19 and 21. The Court issue guidelines which were to act as a temporary stand in until the legislature framed sexual harassment law. In *Medha Kotwal*<sup>30</sup>, the Supreme Court directed many states to implement guidelines framed under Vishaka’s case. In both these cases court held that individuals have Articles 14, 19 and 21 rights against State which, in turn casts a duty upon State to regulate private actors in a manner that ensures that these rights are not violated.

It is important to distinguish the logic of Vishaka from the Article 21 Jurisprudence developed by the Supreme Court as most of the times it has interpreted Article 21’s guarantee of right to life and personal liberty in an expansive manner, it has done to indemnify certain omission of the actions of State<sup>31</sup>. In *Olga Tellis or Sunil Batra or In Re Ram Lila Incident* or in similar cases there was a duty involved which was to be fulfilled by State meaning that State was required to undertake all acts that ensure that a negatively worded right is nonetheless effectively exercised by the individuals. Vishaka case dealt with State’s abrogation of duties in regulating private actors.

---

<sup>28</sup> United Nations Human Rights, Office of the High Commissioner, What are Human Rights? <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last accessed on 25 August, 2016).

<sup>29</sup> *Vishaka v State Of Rajasthan* AIR 1997 SC 3011.

<sup>30</sup> *Medha Kotwal Lele v Union of India* 2013 (1) SCC 311.

<sup>31</sup> *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180; *Hussainara Khatoon v State of Bihar* AIR 1979 SC 1360; *Raghubir Singh v State of Haryana* AIR 1980 SC 1087; *Prem Shankar v Delhi Administration* AIR 1980 SC 1535; *Sunil Batra v Delhi Administration* AIR 1980 SC 1579; *In Re Ram Lila Maidan Incident Case* 2012 (5) SCC 1.

### **Indirect Horizontality:**

One classic example of Indirect Horizontality is in the famous case of *New York Times v. Sullivan*<sup>32</sup>, the American Supreme Court in instance case held that common law of defamation as applied by State Courts of Alabama against New York Times were in contravention with the constitutional guarantee of the freedom of speech and expression. Here, the Court in private defamation proceeding between Sullivan and New York Times modified the defamation law in order to bring in line with the constitution and held that New York Times was liable to pay damages for defamation. This case was cited by the Indian Supreme Court in *R. Rajgopal v State of Tamil Nadu*<sup>33</sup> here the Supreme Court also modified the common law of defamation by adopting a stricter threshold for the plaintiff in order to bring it in line with the freedom of speech and expression. It is interesting to see that in this the respondent is State as it was the officials who brought privacy and defamation claim against the appellant similar to the Sullivan case where Sullivan was the Police Commissioner of Montgomery, Alabama. In both these cases it is not the private action that is being questioned rather it is the law which authorizes that action is being questioned.

In cases involving indirect horizontality a delicate balancing act is required as laws that merely permit, or facilitate, private arrangements that individuals are entitled to enter but State is prohibited should not be invalidated or modified an example of this is found in *Zoroastrain Cooperative case*<sup>34</sup> where Supreme Court held that members of a cooperative society had freedom and right to associate with whomever they pleased and it overrode right of individual against discrimination on the basis of religion, race ,caste. Here, the court upheld the impugned legislation as well as the bye-laws that permitted and authorized the society to exclude people purely on the basis of religion.

However, the Supreme Court took different approach in *Cine Makeup Artist's case*<sup>35</sup> while striking down a clause of the Cine Costume Make-up Artist and Hair Dressers Association bye laws that prohibited women from becoming members, it held that the Association was not state under Article 12 of the Constitution of India or may not be amenable to writ jurisdiction under Article 226 of the Constitution of India but its constitution and bye laws

---

<sup>32</sup> 376 US 254 (1964).

<sup>33</sup> AIR 1995 SC 264.

<sup>34</sup> *Zoroastrain Cooperative v District Registrar* 2005 (5) SCC 632.

<sup>35</sup> *Charu Khanna and Others v Union Of India Writ Petition (Civil) No. 78 of 2013.*

have been accepted or ratified by the Registrar of Trade Unions who have been authorized by the Competent Government and hence cannot violate the Constitutional mandate.

### **Direct Horizontality:**

It refers to a situation where the private act of a private party is challenged on the touchstone of the Constitution. The Indian Constitution has three specific provisions that outlaw horizontal rights violations. Under Article 15(2), no citizen may be restricted from access to shops, public restaurants, hotels and places of public entertainment, as well as places of public resort dedicated to the use of the general public, on grounds only of religion, race, caste, sex, place of birth, or any of them. Article 17 prohibits the practice of untouchability. Article 23 prohibits traffic in human beings, as well as bonded labour.

In *IMA vs Union of India*<sup>36</sup>, the Supreme Court referred back to the Constituent Assembly Debates to hold that the word “shops” was of very wide import, and referred not merely to a physical “shop”, but to any arms-length provision of goods or services on the market. In that case, the Court held that schools came within the meaning of shops for the purposes of Article 15(2), and that consequently, private schools were subject to the non-discrimination guarantees under the Constitution. At the heart of the Court’s reasoning was the understanding that the most pervasive forms of discrimination in Indian society had been horizontal, and took the form of excluding a section of society from the economic and social mainstream through boycotts and denial of access.

With respect to Article 23, in *PUDR vs Union of India*<sup>37</sup>, the Supreme Court did something similar, holding that “*begar*” under Article 23 did not simply refer to “bonded labour” in its technical sense, i.e., inter-generational captivity, but “*every form of forced labour*.”

This line of reasoning, however, remains underdeveloped. Apart from Article 23, when it comes to Article 15(2), the Court is yet to provide a rigorously developed understanding of the scope of the word “shops”.

### **LAST WORDS**

The notion of fundamental right which has its genesis in French Revolution, Glorious Revolution and American War of Independence has gone under tremendous change. The notion that fundamental rights are enforceable only against State has been diluted. In the era of Welfare State, a State cannot perform the all the functions assigned to it because of lack of technical expertise and resources, so it regularly outsources many of its functions to private

---

<sup>36</sup> 2011 (7) SCC 179.

<sup>37</sup> AIR 1982 SC 1473.

parties. The tricky question arises whether the fundamental rights should be enforceable against these private parties when they are performing these outsourced functions.

In our Indian Constitution “State” is defined in Part III, Article 12 of our Constitution signaling thereby that fundamental rights are enforceable against those bodies which are covered within the ambit of Article 12. The entire focus has been on the phrase “other authorities” used in Article 12. The Supreme Court has given varied interpretation to the phrase depending upon the socio-economic needs of the time. There was a time till very recent past when Supreme Court adopted a legalist approach and brought within the parameters of Article 12 those bodies which had functional, financial and administrative control exercised over them by Government. However, there was also a second approach to determine the scope of Article 12 called as the “public function” approach which had its genesis in Concurring opinion of Justice Shah in Mohan Lal’s case. In this approach it was formulated that the relevant factor for determining whether a body is State is the fact that whether by virtue of its function it has influence over exercise of fundamental rights of individual, if it could influence or hamper the exercise of fundamental rights it should be brought within the ambit of the term State used in Article 12. The recent SRM university case was decided on this principle. This is supposed to be a more pragmatic approach than the legalist conceptions of State. The correct approach seems to be is that the Court should look into the kind of function which is in question and if the function can have an influence over effective exercise of fundamental right by an individual then should be brought within the ambit of Article 12. This approach will also ensure horizontal application of fundamental right i.e., if a private body is performing a function which could hamper or influence individual’s exercise of fundamental right it could be brought within the purview of Article 12.