

A Study on the Origin and Definition of the State with Special Reference to the Constitution of India and the Judicial Interpretation of the Expression other Authorities

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Abstract: *The definition of State has been differently written by many political thinkers in different stages of the society. The State is the sovereign authority which must protect the interest of its people. The primary responsibility of the State is to give basic protection to its individual only then the State as a highest political organisation can rule on its subjects. The act of State may any time become Tyrannical. Therefore, it is possible that the fundamental rights of the individual can be enforced against the State and its agencies and instrumentalities as per the definition of the state provided under the Constitution of India and further widened through various judicial interpretations from time to time.*

Keywords: *State, individual, fundamental rights, agency, instrumentality.*

“The State is neither the handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family. The State is not a mere artificial mechanical creation or invention but an institution of natural growth or historical evolution.”

Dr. Garner

1. INTRODUCTION

The State is the highest political organisation. And the relation between the State and the individual is subjected to criticism from time to time. The sovereign power of the state makes it all powerful at the state as well as at the international level. Before, analysing the Constitutional provisions I would like to draw some attention towards the origin of the State. The word State has been defined by many political philosophers in various ways since past to the present time. The emergence of State is not yet historically determined. In this connection, Professor R.N. Gilchrist opined that “of the circumstances surrounding the dawn of political consciousness, we know little or nothing from history. Where history fails we must resort to speculation”. [2]

The well-known theories regarding the origin of the State are following:

1. Speculative Theories: this includes i) The theory of divine origin; ii) The force theory; iii) The social contract theory.
2. Speculative and half actual theories: this includes i) Patriarchal and ii) Martioarchal theories.
3. Historical theory: This theory includes the evolutionary theory.

The theory of divine origin:

According to this theory the State is a divine institution of God who created it for the common welfare. It was propagated under this theory that King is the representative of God and therefore, he is responsible to God and not to people. And it is the duty of the people to obey the commands of the King. So it is clear that nobody is entitled to go against the King. James I writes as “Kings are breathing images of God upon earth, and disobedience to their dictates is the disobedience to God”.

The divine theory in Hindus:

In “Manusmriti” it is stated that “though the King is a human being yet no one should hate him because he is God in the Shape of man”. It has been further stated that “people

were fed up with the anarchy and so God created the State for their protection”.[4]

The divine theory for Jews:

It is stated in the religious book of the Jews “The Old Testament” that the “God is looked upon as the immediate source of royal powers”. In the Bible it has been stated, “Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be, are ordained of God.

The divine theory for Christians:

The Church-fathers founded this theory on the well-known saying of Paul: “Let every soul be subject unto the higher powers; for there is no power but of God; the powers that be, are ordained of God. Whatsoever resisteth the power resisteth the ordinance of God and they that resist shall receive to themselves damnation”. The Church fathers preached this theory in the entire Europe. According to them man in the beginning lived in heaven but for his own sins, he was hurled from the paradise. Then God created the State on the Earth and appointed the Kings as its head. Therefore, the King was respected as the “infallible head” over the people.

The Force Theory:

This theory states that the state is created by the use of force applied by the strong over the weak. In the primitive society the people use to live in small groups. Many times conflicts used to take place and whenever the strong group succeeded in acquiring the control over the weak group the State was organised and as a result the leader of the strong group used to become the King and brought the defeated group into his subjection. According to Jenks, “Historically speaking there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare.”[5]

The Social Contract Theory:

In the eighteenth century, this theory conquered the European political thinking which has played a very important role in the development of the modern political theory and practice. The social contract theory is one of the oldest important theories. This theory came into being as a result of reaction against the theory of divine origin. This theory says that State was not created by God. The people made a contract with the rulers and as a result the State was organised.

Thomas Hobbes:

Thomas Hobbes witnessed the civil war (1642-49) in England and he was deeply affected by its miseries. He concluded that the salvation of the Country lay in the absolute

system of the government. He believed that only powerful monarchy could save England and maintain peace there. He sought to justify the absolute power of the sovereign in his book “Leviathan”.

John Locke:

John Locke was another English political philosopher who belonged to seventeenth century. He was an ardent advocate of Constitutional monarchy and antagonist of absolute monarchy in England. His famous book “Two Treatises on Civil Government” was published in 1689 where he expressed his ideologies. He stated about two types of contracts namely, social contract and governmental or political contract. The social contract emphasised on formation of civil society and the governmental contract leads to the establishment of government.

According to John Locke, “The State of nature has a law of nature to govern it which obliges everyone; and reason, which is that law which teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions”.[6] Therefore, “Locke’s state of nature with its sequence of recognised rights is already a political society.”[7]

Rousseau:

Jean Jacques Rousseau was a renowned French philosopher and a great political thinker of the eighteenth century who wrote his theory of social contract in his famous book, “Social Contract”. According to him there was only one contract that was social and political at the same time. The individual surrendered himself completely and unconditionally to the contract of which he became the member. Rousseau called the contract the General Will.

Speculative and Half Actual Theories:

Patriarchal and Matriarchal Theory:

MacIver, an eminent philosopher opined that, “in the family, the primary social unit, there are always present the curbs and controls that constitute the essence of government, which is in continuation by the more inclusive society of a process of regulation that is highly developed within the family. The same necessities that create the family also regulate it. Here is government in miniature and already government of a quite elaborate character”. Hence, it can be said that the family has played very important connection in the development of State.

According to Sir Henry Maine, “The eldest male parent and the eldest ascendant was absolutely supreme in his household and his dominion extended to life and death and was as unqualified master over his children and their houses

as over his saves.” [8] He further says, “Over the members of his household, the eldest male parent possessed despotic authority. He was not only absolute owner of the property including even what his children had acquired but he could even chastise and even kill, could sell or transfer by adoption could marry or divorce any of his children at will”. Sir Henry Maine expressed his views regarding the process of State as “The elementary group is the family, connected by common subjection to highest male ascendant. The aggregation of families forms the Gens or houses The aggregation of house makes the tribe. The aggregation of tribes constitutes the commonwealth.”[9] To support his theory he referred to Jews scripture and also the powers of the heads of the families in Rome, Greece and India.

Historical theory:

This theory most scientifically defines the State. According to historical theory the state originated through a process of historical growth. Leacock opined that, “the state is a growth, and evolution, the result of a gradual process, running throughout all the known history of man and receding into remote and unknown past”. [10] Burgess observed that, “state is a continuous development of human society out of a grossly imperfect beginning through crowd but improving forms of manifestations towards a perfect and universal organisation of mankind”. [11]

Definition of the State under the Constitution of India:

The definition of the State is given in the part III under article 12 of the Constitution of India which says:

In this part unless the context otherwise requires “the State” includes

- i) The Government and the Parliament of India and
- ii) The Government and the Legislature of each of the States and
- iii) All local authorities or
- iv) Other authorities within the territory of India or under the control of the Government of India.

Article 12 gives an extended meaning to the word ‘the State’. The Definition not only includes the executive and legislative [12] organs of the Union and the States, but also local bodies [13] for example municipal authorities and other authorities [14] which include the agencies or instrumentalities of the State, or any type of institutions and bodies discharging public functions of the governmental character. [15]

The term ‘State’ has been very widely defined to secure the fundamental rights in respect of all possible institutions. The scope of this definition has been further widened by judicial interpretation of the term ‘other authorities’ from time to time. With this the expansion of administrative law also

became possible and now more bodies are covered under its scope which helps in the widening of the scope of judicial review because many other bodies came under the writ jurisdiction and subjected to fundamental rights.

Local Authorities:

The word local authorities means the Panchayat [16], a port trust [17] and it also includes other bodies as mentioned under section 3(31) as local authority in the General Clauses Act, 1897 [18].

Other Authorities:

The word other authorities has an extensive meaning which is not certainly been given any definite area but has been widened through judicial decisions from time to time.

The expression ‘other authorities’ refers to instrumentalities [19] or agencies [20] of the government and government departments [21].

The instrumentalities and agencies having independent status like government companies and public undertakings held to be the State for the purpose of enforcing the fundamental rights [22]. The other authorities will include some public authorities which exercise statutory powers [23], and that powers may be governmental or quasi governmental [24] and also may be non-governmental [25] which is under the control of the government and if engaged in trade and commerce [26] for example any Board [27] or any University [28] or the Chief justice of a High Court [29], are the type of authorities who has the power to issue the rules, regulations by laws having the force of law. It also includes public corporations [30] and the authorities having the power to make statutory appointments [31] like a High Court from the administrative side [32].

The judicial interpretation done in some important cases [33] regarding the agency and instrumentality of the State which clearly gives a number of tests to be applied while considering any institution to be the agency or instrumentality of the State which are as follows:

1. Whether the entire share capital is held by the Government.
2. Whether the corporation enjoys monopoly status conferred by the State.
3. Whether the functions of the corporation are governmental functions or functions closely related thereto.
4. If a department of the government has been transferred to the corporation.
5. The volume of the financial assistance received from the State.
6. The quantum of State control.
7. Whether any statutory duties are imposed upon the corporation.

8. The character of the corporation may change with respect to its different functions.

In *Unnikrishnan J.P. v. State of A.P.*[34], it was held that a private educational institution does not become an instrumentality of the State just on the ground that it has received recognition or affiliation by the State.

In the case of *Secretary, Haryana State Electricity Board v. Suresh*[35], a contractor employed a safai karmachari whose services he terminated after those workmen worked for more than 240 as a continuous services. The High Court held that the safai karmacharis were employees of the Haryana State Electricity Board which was an agency of the government and therefore, the karmacharies found entitled to get reinstated.

In *Zee Telefilms Ltd.v.Union of India*[36], the issue was whether the Board of Control for Cricket in India was “State” within the meaning of article 12. The Board argued that it is an autonomous body and does not come under article 12 of the Constitution. The Court held that the board was not created by statute, not having any monopoly status and the share capital is not held by the government. There was no financial assistance and control by the government nor it was transferred from a government department into a corporation. Hence, it was not coming under the term other authorities as mentioned under article 12 of the constitution.

2. CONCLUSION

The State cannot exist without individuals as the king can never without his subjects. To protect the interest of the individual the highest political organisation came into being. As the State is a sovereign body therefore there is a possibility of tyranny and oppression on the individual by the State. So, it is important to protect the fundamental rights of the individual. Thus, it can be said that the definition of the State has been provided with a wider interpretation through various judicial decisions from time to time. More initiatives should be taken to include giant private bodies for the purpose of enforcing the fundamental rights so that the interest of a large number of people can be protected.

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