

‘State’ Need for Widening the Definition in the Wake of Liberalization.

Introduction

At one time it was thought that the state was mainly concerned with the maintain of law and order and the protection of life, liberty and property of the subject. But today such restrictive concept is not valid today under constitution, State under IV is bound to take certain directions in order to promote the welfare of the people and achieve economic democracy.

Liberalization rejects to relaxation of previous governmental restriction usually in the area of social or economic policy. In the area of special policy, it may refer to a relaxation of law restricting for example divorce, abortion or drugs and to the elimination of law. Whereas liberalization in trade that is in economic policy means removal of tariffs, subsidies and other restrictions on the flow of goods and services between the countries.

Thus it can be interned that due to liberalization the education, economy and various there industrial sectors are affected. The sphere of state control is reduced. In the light of above factors it is very much essential to consider the definition of ‘State’ what it is and in the wake of liberalization what it should be.

Before analyzing the definition of state also, it is very important to know about the fundamental rights.

As we know that part III of the constitution contains a long list of fundamental rights. The inclusive of fundamental rights in the Indian Constitution is in accordance with the trend of modern democratic thought to protect certain basic rights relating to life liberty speech, fault and so on. All these rights are given to the citizen under Part III of the constitution against the state. The aim is to

protect the private action by ordinary law of the land.

Art. 12 gives an extended significance to the term 'state' occurring in art. 13(2) or any other provision concern fundamental rights, has an expansive meaning.¹

In P. D. shamdasani V/s Central Bank of India.²

Supreme court held that Art. 19(1) and Art.31(1) contains the rights which are available against the state not against the private individual.

Definition of State – Article 12

Article 12 defines the term 'state' it says that-Unless the context otherwise requires the term 'state' includes the following –

- 1) The Government and Parliament of India that is Executive and Legislature of the Union.
- 2) The Government and Legislature of each states.
- 3) All local or other authorities within the territory of India.
- 4) All local and other authorities under the control of the Government of India.

So it means the 'state' under art. 12 includes executive as well as legislative organ of union and states. It is therefore an action of these bodies that can be challenged before the courts as violating the fundamental rights.

a) Authorities –

It means a person or body exercising power to command in the context of Art. 12. word 'authority' means – the power to make laws. Orders, regulations, bye-laws, notification etc. which to enforce those laws.

b) Local Authorities-

Under section 3(31) of General clauses Act. it means authorities like

Municipalities, District Board, Panchayats, Improvement Trust and Mining settlement Board.

Mohammad Yasin V/s Town Area Committee

The S.C. held that the bye-laws of Municipal Committee charging a prescribed fee on the wholesale dealer was an order by a State Authority contravened Art. 19(1). These bye-laws in effect and in substance have brought about a total stoppage of the wholesale dealer's business in the commercial sense.

c) Other Authorities-

In University of Madras V/s Santa Bai.

Madras H.C. held that 'other authorities' could not only indicate authorities of like nature that is ejusdem generic. So it could only mean authorities exercising governmental or sovereign functions. It cannot include authorities or person natural or juristic such as university unless it is maintained by the state.

But In *Ujjambai V/s State of U.P.*

Court rejected the restrictive, interpretation of expression 'other authorities' given by the Madras H.C. and held that ejusdem generic rule could not be resorted to in interpreting this expression.

In Art. 12 the bodies specially named are the Government of Union and States and the Legislature of Union and states and local authorities. There is no common genus running through these named bodies nor can these bodies so placed in one single category on any rational basis.

Electricity Board Rajasthan V/s Mohan Lal

In this case the decision given by Madras High Court in Santa bai's case was overruled and held university to be a 'state' further Patna High Court is in *Umesh singh v. V.N. Singh* following the decision of Supreme Court held that 'Patana

University' is a 'state'.

Supreme Court in many decisions has given a broad and liberal interpretation to the expression other authorities in art. 12. As the role of state to a welfare state keeping in view this it has held that other authorities include all those bodies which are though not created by constitution or by a statute, are- Acting as agencies and instrumentalities of the government. The court in

Romana Dayaram Shetti V/s The International Airport Authorities of India.

The tests were laid down by P.N. Bhagwati, J. for determining whether a body is an agency of instrumentality of government –

- i) Financial resources of the state is the chief funding source that is if the entire share capital of the corporation is held by the government
- ii) Existence of deep and pervasive state control.
- iii) Functional character being governmental in essence.
- iv) If a department of government is transferred to a corporation.

In SM.Ilyar V/s ICAR it has been held that the Indian council of Agricultural research is a state within the meaning of Art. 12 of the constitution.

CSIR is state – 19 April 2002, it is an important case. In this supreme court by 7:5 majority overruled its old judgement delivered in 1975 and held that Council of Scientific and Industrial Research (CSIR) is a state within the meaning of Art. 12 of the constitution and therefore its employees can approach the High Courts or the Supreme Court to enforce their fundamental rights of equality.

State of Assam V/s Barak Upatyaka D.V. Karmchary Sansthan

The Supreme Court has held that the financial assistance provided by the state government in the form of grant-in to Assam co-operative society continuously for some years does not make a society a state within the definition state under Art. 12 of the constitution and therefore the state would not be

responsible to bear and pay salaries and allowances of its employees by extending aid forever.

Need for widening the definition of State –

Mr. H. M. Seervai is of the opinion that the judiciary should be included in the definition of the state and a judge acting as a judge is subject to the unit jurisdiction of the Supreme Court. The courts like any other organ of the State are limited by the mandatory provisions of the constitution and they can hardly be allowed to override the fundamental rights under shield that they have within their jurisdiction right to make erroneous decision.

In America it is well settled that the judiciary is within the prohibition of the 14th amendment.

The judiciary, it is said though not expressly mentioned in Art. 12, it should be included within the expression ‘other authorities’ Since the courts are setup by statute and exercise power conferred by law.

Therefore expression ‘share’ should include judiciary also. Although Supreme Court in –

A.R.Antulay V/s R.S. Nayak

Where it has been held that court cannot pass an order or issue a direction which would be violative of fundamental rights of citizens, it can be said that the expression ‘state’ as defined in Art. 12 of the constitution includes judiciary also.

Liberalization

States in the developing world play a vital role in promoting economic growth and in reducing inequalities and poverty. The Indian state is no exception. Over time the state in India has shifted from a reluctant pro-capitalist state with a socialist

ideology to an enthusiastic pro-capitalist state with a neo-liberal ideology. This shift has significant implications for the possibility of development with redistribution in India².

Due to encouragement to capital has been accompanied by higher rates of economic growth. Since levels of inequality in India are not enormously skewed,

² Atul Kohli, *State and Redistributive Development in India* This paper is written under contract for a project on “Poverty Reduction and Policy Regimes” (case study of India) sponsored by the United Nations Research Institute for Social Development (UNRISD), Mumbai, India, July 12-13, 2007.

say, in comparison to Latin America, the recent growth acceleration is bound to be poverty reducing. On the other hand, however, the state-capital alliance for growth is leading to widening inequalities along a variety of dimensions: city vs. the village; across regions; and along class lines, especially within cities. Not only does rapid economic growth then not benefit as many of the poor as it could if inequalities were stable, but the balance of class power within India is shifting decisively towards business and other property owning classes. This creates the possibility of even more unequal development in the future. An important question then arises: can democracy and activism of the poor modify this dominant pattern of development?

In the changing nature of India's democratic developmental state, the struggles for more inclusive development are occurring at various levels of the body politic, eventual prospects for making India's growth process more inclusive are not encouraging. If rapid growth continues, some of this will necessarily "trickle down" and help the poor.

The sluggish growth rate in India between 1950 and 1980 was a product of a state-dominated economy in which the state pursued a variety of goals simultaneously, and none too effectively. The roots of this "soft state" lay in a multi-class social base, a not-too-well-organized ruling party, and a bureaucracy that was relatively professional at the apex but not in the periphery. By contrast, the improved economic performance since 1980 can be associated with a narrowing of the state and capital ruling alliance, the state's near-exclusive focus on growth promotion as a priority goal, and institutional insulation of key economic decisions from popular pressures³.

³ Ibid

As far as deliberate redistribution and poverty alleviation are concerned, the Indian state's capacity must be judged as fairly dismal. The attempts to redistribute land to the landless, to provide education and health to the poor, and to create employment via public works type of programs, have all been largely ineffective. The underlying causes include the absence of a real commitment among state elites, poor quality peripheral bureaucracy, but most of all, powerful vested interests who have often opposed or subverted such efforts. When viewed comparatively, however, most developing country states, especially those in Latin America and sub-Saharan Africa, have been even more ineffective than India in checking growing inequalities or in providing for their poor⁴

There was some success in India in eliminating the largest *zamindars* (landowners) but much less in ensuring that land was redistributed to the rural landless. *Zamindari* abolition was thus mainly a political phenomena (as distinct from a class phenomena), in the sense that many *zamindars* were allies of the British, lost power as the nationalists gained, and posed an obstacle to the Congress rulers to build political support in the periphery. Congress rulers thus pushed hard and succeeded in reducing the size of *zamindari* holdings. Those who gained were generally the "lower gentry," rather than the land tillers⁵.

In the context of post liberalization India, the legal infrastructure plays a number of important roles. First, it is the means through which the State can create a generalized environment of trust so that various economic entities can interact with each other.

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⁴for some exceptions, see Sandbrook et. al., 2007.

⁵ Atul Kohli, *State and Redistributive Development in India*

Starting around 1980, Indian political system began moving in a new direction, especially in terms of developmental priorities and, related to that, in terms of the underlying state-class alliances. After 1980, there was increasingly prioritized economic growth, and put the rhetoric of socialism on the back burner. This complex political shift reflected several underlying political realities. Thus began a steady process which, over the next quarter of a century, propelled the power of capital in the Indian polity to near hegemonic proportions.

Indian moved “state” away from its socialist ambitions to a growth-promoting state that worked with the corporate sector. The policy shifts were not only of the liberalizing types that limited the state’s role in markets but went beyond, actively supporting the profitability of the corporate sector.

Liberalizing changes included removing a variety of restrictions on the activities of big indigenous business. More activist changes included tax breaks and subsidies to the corporate sector, continuing public investments, expansionist monetary and fiscal policies, a variety of supply side supports to some such favoured industries as computer and soft-ware, and limiting labour’s capacity to strike. The impact on growth was significant. As both public and private investments grew, industrial growth picked up. Since the composition of industrial investment shifted towards consumer goods, and since technology imports became possible, productivity of the economy also improved.

By 1991 a number of new forces emerged that facilitated “liberalization;” two of these, one external and the other domestic are especially notable. India’s external relations changed dramatically with the decline of the Soviet Union. Needing to shore up its relations with the United States, India increasingly opened its economy to American goods and investors. Within India the most important shift over the 1980s involved shifting policy preferences of big business in India.

Whereas Indian business opposed external liberalization in the 1980s, by the 1990s, this unified opposition dissolved.

The first generation of reforms was about liberalizing the system from the constraints of the inward-looking, public sector-dominated arrangement. At this stage “liberalization” and “reform” meant the same thing. Therefore, the first fifteen years of reform were about de-licensing the industrial sector, opening the country to foreign trade and investment and so on. Many commentators now argue that the next generation of reforms should follow up with changes such as full-fledged privatization and changes in labour laws. However, strictly speaking, privatization and labour laws are unfinished business from the first generation as they are still largely about liberalization.

The second generation reforms are a fundamentally different set of changes. They are about adjusting existing institutional arrangements in order to support the new “market-based” economic system that has emerged as a result of liberalization. In essence, this is about building a healthy new relationship between the State and civil society in general and the economic system in particular. The first generation of reforms was about reducing the role of State so that the private sector could expand. This has been achieved to a large extent despite various remaining anomalies. The next generation of reform is about reforming the State itself and helping it to play its rightful role in the new India. There are a wide array of necessary changes ranging from administrative reform to improvements in provision of public goods and services.

Perhaps the most important service that the State fills is the provision of general governance. The term “general governance” is difficult to define formally although most people would agree on what it means. One can say that general governance is

the systemic order that needs to be maintained so that people can engage in economic and social interaction. Virtually all economic and social ventures require collaboration that would not be possible without “trust” that each party would carry out their end of the bargain.