CHAPTER - 1

SERVICES UNDER THE STATE: A PREVIEW

1.1. Overview

Derived from the Latin word 'servitum,' the term "service" has a wide range of meanings and contexts in which it can be applied. For the purpose of this thesis, the meaning of the word is being restricted to mean "a public department or organisation run by the state". According to the Cambridge Dictionary, 'service' means "a government system or private organisation that is responsible for a particular type of activity, or for providing a particular thing that people need." Again, the Oxford English Dictionary has provided us an arena of meanings including merely "a period of employment with a company or organisation" or "employment as a servant " to "a system supplying a public need such as transport, communications or utilities such as electricity, water, etc."

Here, it is of utmost importance to differentiate between 'employment' and 'service'. Although historically, employment law originated in what was termed as the law of master and servant, the modern terminology adopted is that of 'employer' and 'employee'; and contract of employment is used rather than the older phrase 'contract of service', save that the latter phrase is still used in *social security and related legislation*.[1] An individual in business on his account is known variously as an independent contractor or a self-employed person, and traditionally it has been said that such a person works under a contract for services rather than a contract of employment or a contract of employment or a contract of service.[2] For further elucidation, it can be pointed out that an 'employee', unless otherwise required, "is an individual who has entered into or works under, or where the employment has ceased, worked under a contract of employment; 'employment' means employment under a contract of employment and 'contract of employment' means a ***contract of service*** or apprenticeship, whether express or implied, and, if it is express, whether it is oral or in writing."[3]

[1] Halsbury's Laws of England, Vol. 16, 8 (Butterworths, London,4th ed. Reissue, 1992)
[2] Ibid
[3] Ibid

Therefore, precisely, all employments are not services but all services are employment. This is because employment is understood in a wider perspective. The context of 'service' on the other hand, brings within its ambit the 'welfare notion of the state' and the role played by the modern state in providing service to the public at large.

1.2. The Modern State: Its Meaning, Roles And Functions

Etymologically, the term 'state' means "the political system of a body of people who are politically organised"[4]. Delving beyond this physical aspect of state would direct us to the functionalities of a state. In the words of the famous jurist John Salmond:

"A State or political society is an association of human beings established for the attainment of certain ends by certain means. It is one of the most important of all the various kinds of society in which men unite, being indeed the necessary basis and condition of peace, order and civilisation. What then is the difference between this and other forms of association? In what does the state differ from such other societies such as a church, a university, a joint stock company, or a trade union? The difference is clearly one of function. The state must be defined by reference to such of its activities and purposes as are essential and characteristic."[5]

The concept of 'State' is a comparatively modern concept which owes its origin to Machiavelli, who expressed this idea in the early 16 century as the power which has authority over men. This was an important idea because it describes the nature of state, not as the end of the state which was a question of political philosophy rather than political sociology or political science.[6] This peculiar feature of the state has been the focus of attention of many recent thinkers.

Max Weber, the famous German Sociologist, has sought to evolve a sociological definition of state. Weber observes: 'Sociologically, the state cannot be defined in terms of its ends...Ultimately, one can define the modern State sociologically only in terms of

[4] Bryan A. Garnerand H.C. Campbell (ed.), *Black's Law Dictionary*, 1443 (West Publishing Co., Minnesota, 8th ed., 2005)
[5] Glanville L. Williams (ed.),*John Salmond, Jurisprudence*, 129 (Sweet and Maxwell Ltd., London10th ed., 1947)
[6] O.P. Gauba, *An Introduction to Political Theory*, 56 (Macmillan India Ltd., Delhi, 3rd ed., 1995)

the specific means peculiar to it, as to every political association, namely, the use of physical force."[7]

From this point of view, Weber arrives at the following definition which is widely acknowledged in modern political theory:

"A state is a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory."

That the State is an organic body was conceptualised by the Greeks and the Stoics applied it to humanity. It was taken over by Christianity and throughout the Middle Ages reined supreme. It was challenged in the time of scientific revolution of the 17th Century, which led to the development of the mechanistic view of the State.[8] With this ensued the tug of war between the organic and the mechanistic view of the Sate intercepted by the class theory of state in the middle of the nineteenth century.

The organic theory of the State regarded the state as a natural institution and accordingly one cannot imagine the existence of man as man, i.e., a civilised being, without the existence of state. In sharp contrast to this, the mechanistic theory regarded state as a social institution which gave rise to the doctrine of individualism according prominence to individuals and reducing the state to a mere servant of the individual.[9] This doctrine sought to curtail the regulatory powers of the state over social and economic processes. The mechanistic theory maintains that there are varying conflicting interests of various groups within society and the state uses its supreme regulatory power to harmonise these interests. Since then, there has been a slow shift from the old 'atomistic' view to the new 'pluralistic' view of the nature and function of the state thereby ushering the era of welfare state. The welfare state not only regulates the behaviour of citizens in all essential aspects but itself makes provisions for essential goods and services in such a manner that benefits are distributed according to need while the burden is shared according to individual capacity.[10]

[7] H.H. Gerth and C. Wright Mills (tr. and ed.), *From Max Weber: Essays in Sociology*, 77-78 (Routledge, London, 1st ed. 1991)
[8] Id at71
[9] Id at 76
[10] Id at 77

1.3. The "Welfare Concept Of State" In India

The welfare concept of State is not new to the Indian society. The ancient Indians regarded the Indian state as essentially a beneficent institution evolved in prehistoric times for the efficient protection of human life and for the better realisation of its higher ideals.[11] From the various observations made in relation to Ancient Indian states, we gather that peace, order, security and justice were regarded as the fundamental aims of the state.[12] The functions of the State were not confined only to defence against foreign aggression, protection of person and property, preservation of peace and order and adjudication, but also extended to promotion of welfare of the people, to increase their wealth by a cooperative effort and to add to their amenities of life. The activity of the state as envisaged by the Mahabharata and the Arthasastra, relates to all the aspects of human life – social, economic and religious. The state was not regarded as a necessary evil, whose coercive activities were to be reduced to the minimum. The activity of the state was to embrace the whole of human life, both here and hereafter. The state was to offer facilities to religious sects to develop on their own lines and foster and inculcate piety, morality and righteousness. It was to improve the social order and to encourage learning, education and art by subsidising learned academics and extending patronage to scholars and artists. It was to establish and maintain rest houses, charity halls and hospitals and relieve the distress due to floods, locusts, famines, pestilences and earthquakes. It was to see that the population is evenly distributed and encourage colonisation of fresh lands. It was to enrich the resources of the country by developing forests, working mines and constructing dams and canals in order to make agriculture independent of rain as far as possible. It was to offer active help to trade and industry, but also to protect the population against capitalistic selfishness.[13]

Therefore, since the ancient period the State has been an instrument of welfare mobilisation in India which has also been reflected in our Constitution.

The Preamble to the Constitution of India has expressly stated that India is a 'socialist' democracy. The word 'Socialism' was inserted to "spell out expressly the high ideals of socialism".[14] There is no telling that the aims, objects and functions of a welfare state is

[11] A.S. Altekar, *State and Government in Ancient India*, 42 (Motilal Banarsidass Pvt. Ltd., Delhi, 2005)
[12] Id at 47
[13] Id at 49
[14] As stated in the Statement of Objects and Reasons of the 42nd Amendment Act, 1976.

synonymous to that of a Socialist State. What is meant by 'socialism' is explained in the same context but there is no reference to collectivism or nationalisation but mere 'social justice'. These words are –

"...the objective of socio-economic revolution which would end poverty and ignorance and disease and inequality of opportunity..."[15]

Though the original Constitution did not find any mention of the term 'socialist', both Pandit Nehru and Ambedkar stood for some form of commitment to 'socialism' in the Constitution. While moving the Objectives Resolution, Nehru had inter alia said:

"Well I stand for socialism and, I hope, India will stand for socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way."[16]

Replying to the debate of the Objectives Resolution in the Constituent Assembly, Nehru said that the first task of the Assembly was "to free India through a new Constitution, to feed the starving people and clothe the naked masses and give every Indian the fullest opportunity to develop himself according to his capacity." He added that "the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn we are confronted with this problem. If we cannot solve this problem all our paper constitutions will become useless and purposeless." Nehru believed that the Constituent Assembly and the Constitution framed by it were to be mere parts of the larger national endeavour. The goal of the national endeavour was a new social order under which the basic needs of the ordinary citizens would be fulfilled; all would enjoy fundamental human freedoms and equality of opportunity."[17]

The text of the Preamble as amended gives almost the highest place of honour to the 'Socialist' objective. Nehru once said[18]:

"Much can be said about socialism, but I would like to stress one thing. The whole of the capitalist structure is based on some kind of an acquisitive society. It may be that, to

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[15] Justice Y.V. Chandrachud, Justice S.S. Subramani, Justice B.P. Banerjee(Ed.),*Durga Das Basu, Commentary on the Constitution of India*, 394 (LexisNexis Butterworths Wadhwa,8th Ed. Reprint 2012). Also see this Author's Constitution Amendment Acts.
[16] CAD, Vol. 1, 57-65
[17] Subhash C. Kashyap, *Constitutional Law of India*, Vol. 1, 262 (Universal Law Publishing, 2nd Ed., 2015). Also see CAD, Vol. VII, p. 316-23
[18] Ibid

some extent the tendency to acquisitiveness is inherent in us. A socialist society must try to get rid of this tendency to acquisitiveness and replace it with cooperation.....without this you cannot wholly succeed. Even from the very limited point of view of changing your economic structure, apart from your minds and hearts, it takes time to build up a socialist society. We must realise that the process of bringing socialism to India, especially in the way we are doing it, that is democratic way, will inevitably take place."

The Constitution (Forty Fifth Amendment) Bill, attempted to define 'Socialist' to mean "free from all forms of exploitation – social, economic and political."[19] However, Socialism is difficult to define; its meaning varies from one person to another and is hardly left with any one connotation.

Explaining the meaning of the term 'socialist' in the Preamble with reference to the Statement of Objects and Reasons appended to the Constitution (42 Amendment) Act, 1976, the Constitution Bench in *D.S. Nakara vs. Union of India*[20] has brought to the forth the ambition behind the 42 Amendment to the Constitution in the following words:

"The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from the cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism."

In the celebrated case of *Minerva Mills Ltd. vs. Union of India*[21], the Supreme Court has reflected the spirit and the language of socialism in the following words:

"Now thanks to the rising social and political consciousness and expectations roused as a consequence and the forward looking posture of this court, the under-privileged also are clamouring for their rights and are seeking the intervention of the Court with touching faith and confidence in the Court."

So interpreted, socialism implies and aims at (i) providing free education to all, (ii) equality in pursuit of excellence in chosen vocation without hindrance of caste, colour,

[19] The Bill was finally adopted without the definition as the 44th Amendment of the Constitution.
[20] AIR 1983 SC 130 (para 33)
[21] AIR 1980 SC 1789

sex or religion and with assurance to the less equipped of a decent minimum standard of life without exploitation, and (iii) economic security in old age for all with a reasonable standard of life, medical aid and freedom from fear and want assured.

Again, in *Kesavananda Bharti vs. State of Kerala*[22], the Supreme Court pointed out that:

"it was such a socialist State which the Preamble directs the centers of power – Legislative, Executive and Judiciary- to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this long journey to the fulfilment of goal every State action taken must be directed, and must be so interpreted, as to take the society one step towards the goal."

It has been further held that the word 'socialist' in the Preamble of the Constitution was expressly brought to emphasise that the aim of the Constitution was to establish an egalitarian social order through the rule of law as its basic structure. In Minerva Mills[23], the Constitution Bench had considered the meaning of the word "socialism" to crystallise a socialistic state securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principles of State Policies. In *State of Karnataka vs. Ranganatha Reddy*[24], a Bench of nine judges held that the aim of socialism is the distribution of material resources of the community in such a way as to subserve the common good. In *Sanjeev Coke Manufacturing Co. vs. Bharat Coking Coal Ltd*.[25], in interpreting socialism, Article 39(b) was looped in and held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice to all. Therefore, all State actions should be such as to make socio-economic democracy with liberty, equality and fraternity, a reality to all people through democratic socialism under the rule of law.[26]

The word 'socialist' used in the Preamble must be read from the goals that Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the court to uphold the Government's endeavour to

[22] AIR 1973 SC 1461
[23] Id at 21
[24] AIR 1978 SC 215
[25] AIR 1983 SC 239
[26] *Air India Statutory Corporation vs. United Labour Union*, AIR 1997 SC 645

remove economic inequalities, to provide decent standard of living to the poor and to protect the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular, integrated, socialist Bharat with dignity of person and equality of status to all. The Indian vision of socialism with democracy and human dignity is to be realised by creation of opportunities for the development of each individual. It is not for merging of the individual in the society. The Indian socialist society wants the development of each individual but requires this development to be such that it leads to the upliftment of the society as the whole. The more the talent from backward classes and areas get recognition and support, the more socialist will be the society. Public sector and private sector should harmoniously work. The Indian approach to socialism is derived from the Indian spiritual traditions. Buddhism, Jainism, Vedantic and Bhakti Hinduism, Sikhism, Islam and Christianity have all contributed to this heritage rooted in respect for human dignity and human equality. Indian socialism, therefore, is different from Marxist or scientific socialism. To achieve the goal set down by the Preamble, the directive principles and fundamental rights, the Constitution envisaged planned economy.[27]

From the above discussion at length, it is clear that the Constitution aims at establishing a welfare State. However, the Constitution makers have avoided the use of the term 'welfare' in Part III of the Constitution. We come across this term only in Article 38[28] of Part IV of the Constitution. This article and the succeeding ones in this part of the Constitution specifically show that that the framers of our Constitution did not contemplate a purely 'Police State' but a 'Welfare State' the functions of which should, within the bounds of the Constitution and subject to its limitations, be commensurate with the public welfare.[29]

In *State of Bihar vs. Kameshwar Singh*[30], the Supreme Court had viewed that the ideal that has been set before us in Article 38 by our Constitution makers is to evolve a State which must constantly strive to promote the welfare of the people by securing and

[27] Id at 27, p.264. Also see *Samatha vs. State of Andhra Pradesh*, AIR 1997 SC 3297
[28] ARTICLE 38 – State to secure a social order for the promotion of welfare of the people – (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in status, facilities and opportunities, not only amongst groups of people residing in different areas or engaged in different vocations.
[29] Durga Das Basu, *Commentary on the Constitution of India*, Vol. E, 131(Universal Book Traders, Delhi, 7th Ed., 1994). See also *Lokenath vs. State of Orissa*, AIR 1952 Orissa 42(47)
[30] AIR 1958 SC 252

making as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. In other words, India has to establish an egalitarian social order under the rule of law. *The welfare measures partake the character of sovereign functions.*

Article 38(2) mandates to minimise inequality in status, facilities and opportunities not only among the groups of the people, to secure to them adequate means to improve excellence in all walks of life.[31] Various provisions of the Constitution are aimed at the ideal of 'equality' held out by the Preamble. While Articles 14-16 deal with particular aspects thereof which are enforceable by an individual as 'fundamental rights' the directive principles of state policies emphasise the duty of the State in this behalf by way of removing inequalities wherever they exist, in respect of status, facilities and opportunities, by positive legislation. The fundamental rights as provided under Part III and the directive principles as envisaged in Part IV of the Constitution, together, aim at establishing the equality of status and opportunity, which is promised by the Preamble, and also to minimise inequalities in income between individuals and group as far as possible.[32]

In *State of Himachal Pradesh vs. Umed Ram Sharma*[33], the Constitutional Bench has unanimously agreed that every person is entitled to life as enjoined in article 21 read with Article 19(1)(d) and in background of article 38(2) of the Constitution. Every person has a right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. There should be road for communication in reasonable conditions in view of constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. The Preamble and Article 38 envision social justice under its arch to ensure life to be meaningful and liveable with human dignity. The Constitution commands Justice, Liberty, Equality and Fraternity as supreme values to usher in the egalitarian, social, economic and political democracy.[34]

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[31] *Chatter Singh vs. State of Rajasthan*, AIR 1997 SC 303
[32] Id at 29, p.132
[33] AIR 1986 SC 847
[34] *Consumer Education and Research Centre vs. Union of India*, AIR 1995 SC 922

Therefore, Article 38 constitutes an important operative part of the promises made in the Preamble to the Constitution to achieve the ideal of a democratic State and to bring about the social and economic revolution of which the founding fathers dreamt. It speaks of promoting the 'welfare of the people' which means the State shall take the responsibility of the welfare of the people and its being committed to the objective of building a welfare State. It also speaks of bringing about a 'social order' where 'justice, social, economic and political' prevails.[35] That the fundamental rights as laid down under Part III and the Directive Principles as enumerated under Part IV of the Constitution are complementary and supplementary to one other has been strongly voiced by the Supreme Court in innumerable number of cases. The idea here is of building a true welfare state and of ending economic exploitation and staggering inequalities. Thus, article 38 is the keystone or the core of the Directive Principles. This concern to provide welfare to the people by the state has been worded in the other articles of Part IV of the Constitution.[36]

1.4. Meaning and Scope of the 'State' under Article 12 of the Constitution of India

Article 12[37] does not define the term 'State'; it merely gives an inclusive meaning of 'State' with broader goals. The Constitutional philosophy of a democratic, socialist republic mandated to undertake a multitude of socio-economic operations inspires Part IV and so we envision the State entering the vast territory of industrial and commercial activity, competitively or monopolistically, for ensuring the welfare of the people.[38] A perusal of Article 12 shows that the definition of State in the said article includes:

i. The Government of India, Parliament of India,
ii. Governments of the States and legislatures of the States,
iii. All local authorities as also "other authorities" within the territory of India or under the control of the Government of India.

[35] Subhash C. Kashyap, *Constitutional Law of India*, Vol. 1, 804 (Universal Law Publishing, 2nd Ed., 2015)
[36] Articles 39-51
[37] ARTICLE 12. Definition – 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.
[38] *Som Prakash Rekhi vs. Union of India*, AIR 1981 SC 212

While initiating a debate on this article in the Draft Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this article and the reasons why this article was placed in the chapter on fundamental rights as follows:

"The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority – I shall presently explain what the word 'authority' means – upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear, then they must not only be binding upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even Village Panchayats and Taluk Boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted – and I do not see anyone who cares for fundamental rights can object to such a universal obligation being imposed upon every authority created by law - then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as 'the State', as we have done in Article 7; or, to keep on repeating every time, 'the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority.' It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise on words."[39]

1.4.1. Other Authorities vis- a- vis Instrumentality or Agency of Government under Article 12 of the Constitution of India

Until the year 1967, the Supreme Court was in a dilemma as to whether to give a liberal interpretation to the phrase 'other authority' and if so given what would be the widest scope of the term. The year 1967 marked the watershed year and in *Rajasthan State Electricity Board vs. Mohan Lal*[40], a Constitutional Bench of the Supreme Court held that the expression "other authorities" is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental

[39] [1948 (Vol. VII), CAD 610]
[40] AIR 1967 SC 1857

or quasi governmental functions and functioning within the territory of India or under the control of the government of India. Even while holding so Shah, J. in a separate but concurring judgment observed that every constitutional or statutory authority on whom powers have been conferred by law is not 'other authorities' within the meaning of Article 12. He also observed that it is only those authorities which are invested with sovereign powers, that is, power to make rules and regulations and to administer or enforce them to the detriment of citizens and others that fall within the definition of 'State' in Article 12: but constitutional or statutory bodies invested with power but not sharing the sovereign power of the State are not 'State' within the meaning of that article.

The reasons for necessitating the expansion of the definition of the term 'other authorities' under Article 12, has been sufficiently justified by Mathew, J. in *Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi*[41] in the following words –

"The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be mainly viewed as a service corporation. A State is an abstract entity. It can only act through the instrumentality of agency of natural or juridical persons. There is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State. With the advent of a welfare State the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. The distrust of Government by civil service was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable. The public corporation, therefore, became the third arm of the Government. The employees of public corporations are not civil servants. Insofar as public corporations fulfil public tasks on behalf of the Government, they are public authorities and as such subject to control by Government. The public corporation being a creation of the State is subject to the constitutional limitation as the State itself. The governing power wherever located must be subject to the fundamental constitutional limitations. The ultimate question which is

[41] (1975) 1 SCC 421

relevant for our purpose is whether the Corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public".

From the above, it is to be noticed that because of the change in the socio-economic policies of the Government this court considered it necessary by judicial interpretation to give a wider meaning to the term 'other authorities' in Article 12 so as to include such bodies which were created by an Act of legislature to be included in the said term 'other authorities'. This judicial expansion of the term 'other authorities' came about primarily with a view to prevent the Government from bypassing its constitutional obligations by creating companies, corporations, etc. to perform its duties.[42]

At this stage it is important to refer to the judgment of *Sabhajit Tewary vs. Union of India*[43] which was delivered by the same Constitution Bench which delivered the judgment in Sukhdev Singh on the very same day. In this judgment the Court noticing its judgment in Sukhdev Singh rejected the contention of the petitioner therein that the Council for Scientific and Industrial Research in the said writ petition which was only registered under the Societies Registration Act, would come under the term 'other authorities'.

Subsequent to the above judgments of the Constitution Bench a three-judge Bench of this Court in the case of *Ramana Dayaram Shetty vs. International Airport Authority of India*[44] placing reliance on the judgment of this Court in Sukhdev Singh held that the International Airport Authority which was created by the International Airport Authority Act, 1971 was an instrumentality of the State, hence came within the term 'other authorities' in Article 12. While doing so this Court held:

"Today the Government, in a welfare state, is the regulator and dispenser of special services and provider of large number of benefits. The valuables dispensed by government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kind: leases, licenses, contracts and so forth. With the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of

[42] *Zee Telefilms Ltd. Vs. Union of India*, (2005) 4 SCC 649 at 675
[43] (1975) 1 SCC 485
[44] (1979) 3 SCC 489

these forms may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, it cannot be said that they do not enjoy any legal protection nor can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure.

The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in the Government largess, formerly regarded as privileges, have been recognised as tights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its discretion or at its sweet will."

It is in this context that the Bench in Ramana Dayaram Shetty[45] case laid down the parameters or the guidelines for identifying a body as coming within the definition of "other authorities" in Article 12. They are as follows:

1. "One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government."
2. "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation of the corporation being impregnated with governmental character."
3. "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is State-conferred or State-protected."
4. "Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality."
5. "If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."
6. "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government.

[45] Ibid

These tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government was subsequently accepted by a Constitution Bench of this Court in the case of *Ajay Hasia vs. Khaled Mujib Sehravardi*[46].

The expression "authority" as used in Article 12 has a definite connotation. It has different dimensions and, thus, must receive a liberal interpretation. To arrive at a conclusion, as to which "other authorities" could come within the purview of Article 12, we may notice the meaning of the word "authority".

In his dissenting opinion in Zee Telefilms case, S.B. Sinha, J., opined that the words "other authorities" contained in Article 12 are not to be treated as ejusdem generis.[47] In the Concise Oxford English Dictionary[48], the word "authority" has been defined as under:

"1. The power or right to give orders and enforce obedience. 2. A person or organisation exerting control in a particular political or administrative sphere. 3. The power to influence others based on recognised knowledge or expertise."

Broadly there are three different concepts which exist for determining the questions which fall within the expression "other authorities"[49]:

i. The corporations and the societies created by the State for carrying on its trading activities in terms of Article 298 of the Constitution wherefore the capital, infrastructure, initial investment and financial aid, etc. are provided by the State and it also exercises regulation and control thereover.
ii. Bodies created for research and other developmental works which are otherwise governmental functions but may or may not be a part of the sovereign function.
iii. A private body is allowed to discharge public duty or positive obligation of public nature and furthermore is allowed to perform regulatory and controlling functions and activities which were otherwise the job of the Government.

In *Pradeep Kumar Biswas vs. Indian institute of Chemical Biology*[50], it was again held that:

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[46](1981) 1 SCC 722
[47] Id 42 at 694
[48] The Concise Oxford English Dictionary, 10th Ed., 1999
[49] Supra n. 47

'The pictures that ultimately emerge is that the tests formulated in Ajay Hasia are not rigid set of principles so that if a body falls within any one of them it must, ex-hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of 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 within 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 State."

The guidelines laid down in Pradeep Kumar Biswas are recapitulated here to give a clearer understanding of what would fall within the purview of State under Article 12[51]:

1. Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.
2. The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally administratively dominated, by or under the control of the Government.
3. Such control may be particular to the body in question and must be pervasive.
4. Mere regulatory control whether under statute or otherwise would not make a body a State.

Keeping the above factors in consideration, what is necessary is to notice the functions of the body concerned. A State has different meanings in different contexts. In a traditional sense, it can be a body politic but in modern international practice, a State is an organisation which receives the general recognition accorded to it by the existing group of other States. The expression 'other authorities' in Article 12 of the Constitution is "State" within the territory of India as contradistinguished from a State within the control of the Government of India. The concept of State under Article 12 is in relation to the fundamental rights guaranteed by Part III of the Constitution and the Directive Principles of State Policy contained in Part IV thereof. The contents of these two parts

[50] (2002) 5 SCC 111
[51] *Zee Telefilms Ltd. Vs. Union of India*, (2005) 4 SCC 649 at 679

manifest that Article 12 is not confined to its ordinary or constitutional sense of an independent or sovereign meaning, so as include within its fold whatever comes within the purview thereof so as to instil public confidence in it.[52]

If the Constitution Bench judgment of the Apex Court in *Sukhdev Singh vs. Bhagatram Sardar Singh*[53] and development of law is to be given full effect, it is not only the functions of the Government alone which would enable a body to become a State but also when a body performs governmental functions or quasi-governmental functions as also when its business is of public importance and is fundamental for the life of the people. For the said purpose, we must notice that this court in expanding the definition of State did not advisedly confine itself to the debates of the Constitutional Assembly. It is considered each case on its merit. In Sukhdev Singh, Mathew, J. stated that even big industrial houses and big trade unions would come in the purview thereof. While doing so the courts did not lose sight of the difference between the State activity and individual activity. The Supreme Court took into consideration the fact that new rights in the citizens have been created and if any such right is violated, they must have access to justice which is a human right. No doubt, there is an ongoing debate as regards the effect of globalisation and/or opening up of market by reason of liberalisation policy of the Government as to whether the notion of sovereignty of the State is being thereby eroded or not but we are not concerned with the said question in this case. "Other authorities", inter alia, would be there which inter alia function within the territory of India and the same need not necessarily be the Government of India, Parliament of India, the Government of each of the states which constitute the Union of India or the legislatures of the States.[54]

The term 'State' has thus been very widely defined with a view to securing the guarantee of fundamental rights in respect of all possible institutions. The scope of this wide definition has been further expanded by judicial interpretation of the term 'other authorities' occurring in Article 12. This expansive interpretation promotes the expansion of administrative law as more bodies become subject to the writ jurisdiction, and it also makes bodies amenable to the restrictions of fundamental rights. This trend also helps in the expansion of judicial control over public enterprises which assume

[52] Id at 695
[53] Supra n. 41
[54] Supra n. 52

various structural forms.[55] It is pertinent to mention here that the National Commission to Review the Working of the Constitution (2002) noted that fundamental rights guaranteed by the Constitution are, in the absence of specific constitutional provisions, mainly enforceable against the "State". The definition of the 'State' in Article 12 being an 'inclusive one', courts have ruled that where there is pervasive or predominant governmental control or significant involvement in its activity, such bodies, entities and organisations fall within the definition of 'State'. The Commission has recommended that in Article 12 of the Constitution the following Explanation should be added:

'Explanation. – in this article, the expression "other authorities" shall include any person in relation to such of its functions which are of public nature.'[56]

1.5. Services Under the State

Therefore, by the various judicial pronouncements, Article 12 has been receiving a purposive interpretation as by reason of Part III of the Constitution a charter of liberties against oppression and arbitrariness of all kinds of repositories of power has been conferred – the object being to limit and control power wherever it is found. A body exercising significant functions of public importance would be an authority in respect of these functions. In those respects it would be the same as is executive government established under the Constitution and the establishments of organisations funded or controlled by the Government.[57]

It is not that everybody or association which is regulated in its private functions becomes a 'State'. What matters is the quality and character of functions discharged by the body and the State control flowing therefrom. The concept that all public sector undertakings incorporated under the Companies Act or the Societies Registration Act or any other Act for answering the description of State must be financed by the Central Government and be under its deep and pervasive control has in the past three decades undergone a sea change. The thrust now is not upon the composition of the body but the duties and functions performed by it. *The primary question which has to be posed is whether the body in question exercises public function.*

[55] H.C. Dholakia, *State under Administrative Law*, 358 IBR (JBCI), Vol. 12 (1985)
[56] Supra n. 35 at 391
[57] Ibid

It would be apt to mention here that the phrase *'service under the State' has direct import to public function.* 'Service under the State' would include all those bodies which have employed personnel in fulfilment of the 'public function' and 'public duty'. Public law is a term of art with definite legal consequences.[58] The concept of public law function is yet to be crystallised. Concededly, however, the power of judicial review can be exercised by this Court under Article 32 and by the High Courts under Article 226 of the Constitution only in a case where the dispute involves a public law element as contradistinction from a private law dispute.[59] General view, however, is that whenever the State or an instrumentality of State is involved, it will be regarded as an issue within the meaning of public law but where individuals are at loggerheads, the remedy therefore has to be resorted to in private law field. Situation, however, changes with the advancement of State function particularly when it enters in the fields of commerce, industry and business as a result whereof either private bodies take up public functions and duties or they are allowed to do so. The distinction has narrowed down. Drawing inspiration from the decisions of the Supreme Court as also other courts, it may be safely inferred that when essential governmental functions are placed or allowed to be performed by a private body they must be held to have undertaken a public duty or public function.[60]

1.5.1. The State as a Performer of Public Function

What would be a 'public function' has succinctly been stated by Lawrence H. Tribe in the following words:

"**18-5.** ***The 'public function' cases*** **–** When the State 'merely' authorises a given 'private' action – imagine a green light at a street corner authorising pedestrians to cross if they wish - that action cannot automatically become one taken under 'State authority' in any sense that makes the Constitution applicable. Which authorisations have that Constitution-triggering effect will necessarily turn on the character of the decision-making responsibility thereby placed (or left) in private hands. However, described, there must exist a category of responsibilities regarded at any given time as so 'public' or 'governmental' that their discharge by private persons, pursuant to State authorisation even though not necessarily in accord with State direction, is subject to the federal

[58] *O'Reilly vs. Mackman*, (1982) 3 All ER 680
[59] Dissenting opinion of S.B. Sinha, J. in Zee Telefilms case
[60] Ibid

constitutional norms that would apply to public officials discharging those same responsibilities. For example, deciding to cross the street when a police officer says you may is not a 'public function'; but authoritatively deciding who is free to cross and who must stop is a 'public function' whether or not the person entrusted under State law to perform that function wears a police uniform and is paid a salary from State revenues or wears civilian garb as a volunteer crossing guard...."[61]

Performance of a public function in the context of the Constitution would be to allow an entity to perform the function as an authority within the meaning of Article 12 which makes it subject to the constitutional discipline of fundamental rights. Governmental functions are multifacial. There cannot be a single test for defining public functions. Such functions are performed by a variety of means.

Furthermore, even when public duties are expressly conferred by statute, the powers and duties do not thereunder limit the ambit of a statute, as there are instances when the conferment of powers involves the imposition of duty to exercise it, or to perform some other incidental act, such as obedience to the principles of natural justice. Many public duties are implied by the courts rather than commanded by the legislature; some can even said to be assumed voluntarily. Some statutory public duties are "prescriptive patterns of conduct" in the sense that they are treated as duties to act reasonably so that the prescription in these cases is indeed provided by the courts, not merely recognised by them.[62]

A.J. Harding in his book 'Public Duties and Public Law' summarised the said definition in the following terms:

"1. There is, for certain purposes (particularly for the remedy of mandamus or its equivalent), a distinct body of public law.

2. Certain bodies are regarded under that law as being amenable to it.

3. Certain functions of these bodies are regarded under that law as prescribing as opposed to merely permitting certain conduct.

4. These prescriptions are public duties."

[61] Ibid. See also Lawrence H. Tribe, *American Constitutional Law*, p.1705
[62] Supra n. 58

There are, however, public duties which arise from sources other than a statute. These duties may be more important than they are often thought or perceived to be. Such public duties may arise by reason of (i) prerogative, (ii) franchise, and (iii) charter.[63]

All public and statutory authorities are authorities. But an authority in its etymological sense need not be a statutory or public authority. Public authorities have public duties to perform.

Therefore, the expansion in the definition of the State is not to be kept confined only to business activities of the Union of India or other State Governments in terms of Article 298 of the Constitution but also take within its fold any other activity which has a direct influence on the citizens. In other words, performance of public functions and public duties has a key role to play in according a body, institution or corporation the label of 'service under the state'. For example, the expression "education" must be given a broader meaning having regard to Article 21-A of the Constitution as also Directive Principles of State Policy. There is a need to look into the governing power subject to the fundamental constitutional limitations which requires an expansion of the concept of State action.[64]

Constitutions have to be evolved for welfare of their citizens. Flexibility is the hallmark of our Constitution. The growth of the Constitution shall be organic, the rate of change glacial.[65] A school would be a state if it is granted financial aid.[66] An association performing the function of a Housing Board would be performing a public function and would be bound to comply with the (British) Human Rights Act, 1998.[67] But an old age house run by a private body may not.[68] A school can be run by a private body without any state patronage. It is permissible in law because a citizen has fundamental right to do so as his occupation in terms of Articles 19(1)(g) and 26. But once a school receives

[63] Extracted from *Zee Telefilms Ltd. Vs. Union of India*, (2005) 4 SCC 649 at 714
[64] Supra n. 60, p.700
[65] See R. Stevens: *The English Judges: The Role in the Changing Constitution* (Oxford, 2002, p.xiii), quoted by Lord Woolf in "*The Rule of Law and a Change in the Constitution*", The Cambridge Law Journal 317, 63 (2), (2004)
[66] *Jiby P. Chacko vs. Principal, Mediciti School of Nursing*, (2002) 2 ALD 827
[67] *Poplar Housing and Regeneration Community Assn. Ltd. Vs. Donogue*, 2002 QB 48
[68] *R. vs. Leonard Cheshire Foundation*, (2002) 2 All ER 936

State patronage, its activities would be State activities and thus would be subject to judicial review.[69]

However, it is not enough to enlarge the scope of the State jurisdiction. With the widening of the meaning of Article 12, it also became necessary to expand the limbs of the Government in order to fulfil the dreams of the Constitution Makers and also the teeming millions. The amplitude of the definition of the word 'State' in Article 12, thus, includes services not only under the Government of the States but also under the local authorities or other authorities as broadly construed by courts.[70] The citizens of India, hence, can claim equality of opportunity in all matters relating to employment guaranteed under Article 16(5) in respect of not only the services directly under the control of government of the Union and the government of the State but also under the other authorities falling within the word 'State' under Article 12.

Having guaranteed equality of opportunity in matters relating to conditions of service directly under the Union and the States, the Constitution has made specific provision in the Constitution itself on matters relating to their tenure and conditions of service. In respect of other authorities other than the services under the Union and the services under the State, the matter is left to be regulated either by statutes or statutory rules or regulations required to be framed by the Government or any other authority on whom the power is conferred by the concerned statutes.[71]

For the purpose of this thesis, 'Service under the State' would include the following categories:

a. Service under the Union and the State Governments:

The State is an artificial juristic entity, as has already been discussed previous in this Chapter. Similar to any other juristic entity like companies or corporations, a State can also employ persons to discharge its functions. Since India has adopted a federal constitutional structure and scheme, the executive, legislative and judicial functions of the State are distributed and demarcated by the Constitution between the Union (i.e., Centre) and the States (i.e., the Federated units). The Constitution does not expressly

[69] T.*M.A. Pai Foundation vs. State of Karnataka*, (2002) 8 SCC 481 and *Islamic Academy of Education vs. State of Karnataka,* (2003) 6 SCC 697
[70] M. Rama Jois, *Services Under the State*, 16 (Indian Law Institute, New Delhi, 2007)
[71] Ibid

define ["Union" or the "State"][72] but their meanings are obvious and clear from the very scheme of the Constitution and its various provisions. For example, Part V of the Constitution deals with the Union – its Executive, the Parliament and the Supreme Court whereas Part VI deals with the federating units of the Union, i.e., the States. Again, Article 12 in Part III of the Constitution clearly shows that the concept of State as provided in the Indian Constitution includes two juristic entities: i) the Union, i.e., the Centre; and (2) the States.

The meaning and implication of the expression "employees of the State" or persons employed in "services under the State" has to be understood in this context. It means persons employed by the Union (or less forensically those who are Central Government servants) and persons employed by the State (those who are State Government servants).[73]

Although the legal status of both the categories are fundamentally similar,[74] there are special incidents and terms and conditions of service of State employees which differentiate them from employees of statutory corporations and agencies or instruments of the State, e.g. they are covered by the protective provisions of Article 311 of the Constitution whereas the other two are categories in public employment are not.[75]

A special mention of judicial services needs to be made here. Definition of "State" in Article 12 does not say fully what may be included in the word state but, although it says that the word includes certain authorities, it does not consider it necessary to say that courts and Judges are excluded. The word "State" must obviously include 'courts' because otherwise 'courts' will be enabled to make rules which take away or abridge fundamental rights.[76] Therefore, judicial services at the Union level, i.e., service in the Supreme Court, the State level, i.e., service in the High Court and the District and Sub-divisional level, i.e., service in the District and Sub-divisional Courts are "Services under the State".

b. Service under the State (the meaning and scope of State as expanded by various judicial pronouncements) and its Agencies or Instrumentalities –

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[72] See Articles 366 and 367

[73] Samaraditya Pal, *Laws Relating to Public Service*, 4(LexisNexis Butterworths Wadhwa, Nagpur, 3rd ed., 2011)

[74] *Sukhdev Singh vs. Bhagatram*, (1975) 1 SCC 421

[75] Supra 72

[76] Subhash C. Kashyap, 388 *Constitutional Law of India*, Vol. 1, (Universal Publishing House, Allahabad, 2nd ed. 2015)

As already discussed at length previously in this Chapter, persons serving anybody or institution who can be bracketed within the "agencies and instrumentalities of the State" are actually employees of the State. They, therefore, are employed in "Service under the State". While explaining the meaning of the term "other authorities" under Article 12, the Supreme Court has, vide its various judgments, has declared Rajasthan Electricity Board[77], Cochin Devasom Board, Children Aid Society[78], Life Insurance Corporation, the Oil and Natural Gas Commission[79], the Delhi Transport Corporation[80], the Delhi Jal Board, the Airports Authority of India, the Finance Commission, any Universities and Institutes created by the Act of the Legislature and empowered to make statutes[81], ordinances, regulations, the Bar Council of India, Commissioner of Income Tax, Industrial Financial Corporation[82], the State Bank of India[83], etc. as State and so they are services under the State. On the other hand, institutes like Council of Scientific and Industrial Research[84], Institute of Constitutional and Parliamentary Studies[85] and societies like Board of Cricket Council of India[86] have been not held to be agencies or instrumentalities of the State.

c. Service under Corporations directly incorporated by Statutes –

The growth of public undertakings, statutory or non-statutory, is a by-product of an intensive form of government. In order to undertake and fulfil multifarious welfare and service commitments (already discussed under the title **The "Welfare Concept of State" In India** of this Chapter), the Government may choose from amongst the various forms of organisation. The government may undertake to accomplish its objectives either through its own department, or through an autonomous statutory corporation or through a government company registered under the Companies Act.[87]

The adoptions of the Directive Principles of State Policies in our Constitution have furthered the cause of welfare promised to the people of India at independence.

[77] *Rajasthan State Electricity Board vs. Mohan Lal*, AIR 1967 SC 1857
[78] *Sheela Barse vs. Secy. Children's Aid Society*, AIR 1987 SC 656
[79] Supra n. 74
[80] *Delhi Transport Corporation vs. Mazdoor Congress*, AIR 1991 SC 101
[81] B.*S. Minhas vs. Indian Statistical Institute*, AIR 1984 SC 363
[82] Supra n. 77
[83] *Assistant General Manager, State Bank of India vs. Radhey Shyam Pandey*, (2015) 12 SCC 451
[84] *Sabhajit Tewary vs. Union of India*, AIR 1975 SC 1329
[85] *Tekraj Vasandi alias K.L. Basandhi vs. Union of India*, AIR 1988 SC 469
[86] *Zee Telefilms Ltd. Vs Union of India*, (2005) 4 SCC 649
[87] I.P. Massey, *Administrative Law*, 435 (Eastern Book Co., Lucknow, 6th Ed., 2005)

Directive Principles like those of [Article 39(b) and (c)][88] led to the growth of public undertakings as an instrument for the economic structurisation of the country because in a public body accountability, freedom of action, public purpose and conscience corporate spirit and concern for the consumer could be legitimately expected.

Looking into various judgments of the Supreme Court and the High Courts a statutory corporation is a 'State' within the definition of the term in Article 12. The key to finding out the answer to question that whether a statutory corporation is a 'State' or not shall be verified by the tests laid down in Ajay Hasia and R. D. Shetty's judgments.

The employees of the statutory corporations are appointed by the concerned corporation. Their terms and conditions of service are regulated by the rules and regulations framed by the corporation. Therefore, employees of the corporation are not government servants and consequently not entitled to the protection of Article 311 of the Constitution.[89] Nevertheless, they are holders of 'Services' under the 'State' and hence, the distinction sought to be made between the protection of Article 311 and Part III has no significance. The fact remains that the employment in public sector has grown to vast dimensions and employees of the public sector often discharge onerous duties as civil servants and participate in activities vital to the country's economy. It is, therefore, right that the integrity and independence of those employed in the public sector be secured as much as the independence and integrity of civil servants.[90]

1.6. A Sum Up

The object and purpose of the state evolved in this country from times immemorial has been that it is the paramount duty of the state to ensure that individuals enjoy wealth (Artha) and every kind of pleasure (kama) without transgressing the law (dharma). The

[88] Article 39. Certain principles of policy to be followed by the State. – The State shall, in particular, direct its policy towards securing –

a.) ……..
b.) That the ownership and control of the material resources of the community are to be distributed as best to subserve the common good;
c.) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
d.) ……
e.) ……
f.) ……

[89] Supra n. 87 at 444. Also see *S.L. Agarwal vs. G.M. Hindustan Steel Ltd*., AIR 1970 SC 1150

[90] *A.L. Kalra vs. Project and Equipment Corporation*, AIR 1984 SC 361

ideal placed before the state under the Ancient Indian Constitutional Law (Rajdharma) is that the state must strive for the happiness of the people.[91]

Kautilya in his Arthashastra said that:

"In the happiness of his subjects lies the happiness of the ruler; in their welfare, his welfare; whatever pleases him shall not consider as good but whatever pleases his subjects, the ruler shall consider as good."[92]

For the efficient administration of the affairs of the state and implementation of the above directive, elaborate administrative set up with as many as twenty five departments were required to be created. Provisions regarding the qualification for the appointment to important posts, for taking disciplinary action against civil servants who are found guilty of misconduct, including provisions to punish individuals who made false complaints against civil servants were also made.[93]

In the context of a general approach to studying the 'Services under the State', it has been suggested that it is best to 'start with a broad canvas and take stock of the public service as a whole, narrowing the focus as appropriate'.[94] The categorisation of 'Services under the State' could be based on one or more of the following criteria:

- All those who draw their pay and allowances from the Consolidated Fund of India or the Consolidated Fund of the states (government servants in the strict sense of the term) or
- In addition to those covered by the above criterion, include those who draw their pay and allowances from organisations that are funded entirely or substantially out of the above Consolidated Funds or
- Those who perform functions of the 'state' independently of the sources of their pay and allowances.

Conceptually, the last point, as mentioned above, is appealing. Adoption of this definition would mean that besides employees of the central and state governments, employees of local bodies (Urban Local Bodies, Zilla Parishads, etc.) energy and water

[91] M.Rama Jois,*Legal and Constitutional History of India*, Vol. 1, 576-77 (N.M. Tripathi Private Ltd., Bombay, 1990)
[92] Ibid
[93] Id. At 650-65
[94] Mike Stevens, 'Preparing for Civil Service Pay and Employment Reform: A Primer', in David Linauer & Barbara Nunberg (eds.), *Rehabilitating Government: Pay and Employment Reform in Africa (World Bank, 1994)*

utilities, most public sector undertakings, statutory bodies like the Employees State Insurance Corporation, etc., would get covered. This is, however, not a perfect definition of 'Services under the State' according to many who criticise this point on the ground that it would also include employees of industrial undertakings, etc., who are not the direct result of state employment. The counter-argument posed to such criticism is that one should include all those who are performing functions, which the 'state' has decided it should perform. This accords with the legal concept of 'state instrumentality' contained in Article 12 of the Constitution of India with the broadening of the article by the judiciary. Starting with a judgment, which only included 'authorities' created by a statute for categorisation of an organisation as 'state', the judiciary moved to a definition, which said that it did not matter whether a body/agency was created by or under statute or was a company, etc. What mattered in deciding whether a corporation/agency was an instrumentality of the government is to see whether:

- The entire share capital of the body is held by the government or
- It receives financial assistance from government or
- It enjoys monopoly status conferred or protected by the state or
- There is deep and pervasive state control of the organisation or
- The functions of the body are of public importance and clearly related to government functions.

Hence, employees of all those agencies of the government against whom fundamental rights can be enforced including the police and members of para-military forces are covered in this definition of 'Services under the State'.

Therefore, in order to fulfil the lofty objectives of the Preamble and the Constitution and for efficient administration of the government and the successful execution of all policies, schemes or programmes or plans of the state or other authorities, a large team of dedicated service personnel, as pointed out in the above paragraph, is essential. They are the persons who are not only expected to execute the policies and programmes of the state into action but some of them holding high positions have also a great responsibility even in the matter of policy decisions. It is the service personnel who are appointed to discharge specific duties and responsibilities in connection with the activities relating to the different departments of state who come into contact with the people directly. Therefore, the services of honest and sincere cadre officers are a pre-condition for

achieving the aims and objects of the Constitution.[95] Public servants are expected to exercise their powers in discharge of their duties and responsibilities, honestly and sincerely and impartially without fear or favour. With this object in view, the Constitution makers incorporated specific provisions relating to services under the state in the Constitution and various other legislations, rules and bye-laws.

[95] Ibid