CHAPTER -1

INTRODUCTION

..... It is the business of the State .... to maintain the conditions without which a free exercise of the human faculties is impossible. ***T.H. Green***

The relationship between individuals and the state is of great importance since past to the present. Before mentioning to the constitutional definition of the State it is more important to know about the very concept of the State. The term "State" has been defined in different ways by various philosophers in different stages of the society. By studying the ideas and opinions of different classical, medieval and modern philosophers one can better understand the importance and significance of the relationship between the individual and the State.

Political theoreticians from ancient times through middle ages and modern times, have provided divergent and sometimes diametrically opposite ideas about the nature, purposes, functions and relationship with the individuals and the State. Opinions differ as to the connotation of the term 'State' since the concept emerged. The Greek used the word "Polis" which correspond most nearly to English term 'State'. The Greeks used the word "Polis" for "City States". The term was appropriate because at that time there were "City States" in Greece. The ancient Greek city-states exhibited distinct political patterns. Aristotle's 'Polis' was more a 'city community' than a 'state'. MacIver treats the Greek city communities as transitional forms rather than full-fledged states. As he observes:

> Perhaps they should not be included within the classification of states any more than the pithecanthropus is to be included among the reces of man.[1]

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1. MacIver, *The Modern State,* at 338.

The term 'state' was non-existent in Greek and Roman thinking. The Greek common wealths put accent on the enjoyment of rights rather than on supremacy and obedience; while the Roman citizens formed a 'political guild' based on the exploitation of the slaves. The Romans used the term "Civitas" which also means the same but the term "Civitas" employed by Romans implied not nearly the idea of citizenship of a city but the notion of public welfare. The Teutons employed the terms "status" which forms only the part of the phrase. The modern term "State" has been derived from the word "status" earlier employed by the Teutons. It was Niccolo Machiavelli (1469-1527) who first of all seems to have employed the term "State" in Political Science. It was he, who first of all introduced this term in modern literature of Political Science. Thus, it becomes very clear that the term "State" did not become very popular untill 16th Century. The concept of modern "State" was not known to the people living in a greater part of the Medieval Europe. In the course of time, the word became popular and acquired the neutral scense of authority pure and simple or constitution whatever its principles or direction.

The function of the state is to make and enforce a legal framework. Its main purpose is the maintenance of law and order. As Barker observes, "organised legally, in the terms and under the rules of the one legal purpose, the members of a nation belong to one organisation only, the state", on the other hand " organised socially, in the terms and under the impulse of their many social purposes the members of a nation belong to many organisations."[2] G.D.H. Coles observes:

> "A state is nothing more or less than the political machinery of government in a community."[3]

The state is a political organisation. Easton defines:

> "Political science is the study of the authoritative allocation of values as it is influenced by the distribution and use of power."[4]

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2. Barker, *Principles of Social and Political Theory,* at 43.
3. *Self-Government in Industry,* at 119.
4. David Easton, *The Political system,* Alfred A. knopf, 1953 at 146.

Thomas Hobbes, who was a tutor to Charles II of England, sought to justify absolute power of the sovereign in his Leviathan . State absolutism in Hobbes' view , was the sure conditions of social solidarity.

There was absence of law and justice in the state of nature. Life in Hobbes's classic phrase, was "solitary, poor, nasty, brutish and short." Craving for a new refuge where security could be assured, men come out of the state of nature through a contract of each with all and of all with each, and set up the civil society. Only the right of self preservation was retained by every individual. Each man addressed every other person: " I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner.[5]

The Divine Origin theory was a theocratic conception of the State, and justified the origin and legitimacy of political authority in terms of divine will. The social contract theory, on the other hand, sought to secularise the basis of the state. The contractualists argued that State and Government are human institutions deriving their authority from popular will.

The Divine Origin theory by holding that authority has a religious origin and sanction, undermined the principle of responsibility of the rulers to the ruled and advocated a dangerous theory of passive obedience. It sought to justify the claims of autocratic rulers. The people were mercilessly subjected to a reign of cruelty and oppression. It was necessary to find out the means of justifying resistance to such rule. As Laski said, "The doctrine of social contract provided exactly the weapon needed for this end."[6]. The theory of social contract traces the origin and emergence of the State through voluntary contract entered into by individuals of the state of nature. Historically the theory of social contract 'swept out of the way the endless deductive arguments based on subjective interpretations of the scriptures, and refounded the state on its true foundation the will of men and the common purpose which inspires that will to institutional life" [7]

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5. Hobbes, Thomas, *Leviathan*, Ch 17.
6. *"Social contract" in Encyclopaedia of the Social Sciences,* Vol. 14
7. MacIver, *The Modern State*, at 439.

Locke upheld the ultimate rights of the people to remove the monarch from his authority if he ever behaved in a despotic manner. He analysed human nature in terms of essential social virtues. In the state of nature peace and goodwill prevailled . As Locke wrote, The State of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, 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."[8]

. If the ideals of "constitutionalism" give expression to the need of a human society for limits on the power of government, the need for a society to pursue its collective goals through effective concentration of organised governmental power is encapsulated in the idea of "the State".[9] If this idea has been less influential in the British political tradition than in other Western countries, it is partly because the concentration of power has been symbolised instead by "the Crown". Nevertheless the idea of the State is fundamental.

A State will usually claim hegemony or predominance within a given territory over all other associations, organisations or groups within it. However this supremacy is legal - it is based on rules which have some degree of universal recognition within the territory. In other words, the rules are not just the whims of the ruler. Thus exclusive power to determine rights and duties within a territorial limit is both *de facto* and *de jure*. Such an idea runs up against a multitude of problems. Since the advent of international legal, political, economic, military and cultural organisations - for example, the existence of international law and courts, the United Nations, as well as multinational companies and so on - it is less easy to speak of the dominance of a State even within its own territory. Despite this point there is still a formal acknowledgement that States have legal supremacy within their territory and that they are independent of external powers.

In comparison to groups within the State, it is generally true that the

8. *Two Treatises of Government*, Bk. 2, Ch 2.
9. Black Shield, Tony and Williams, George, *Australian Constitutional Law and Theory*, 4th Edn. 2006 at 9.

State has the maximal control over resources and force. At the same time it is not simply a power system. The forces of the State are regulated by rules, which of course can be distorted. However, the monopoly of force is tied to specific ends, namely the maintenance of internal order and external defence. The idea of legitimacy is important here since force exercised by the State is usually recognised by the population as distinct from other types of force. The State possesses authority to carry out actions. Its monopoly is recognised formally as necessary and *de jure*.

The State as supreme authority claims sole imperium within a territory. It is sovereign. The State is the source of law or at least its very nature is tied up with the existence of law. Law originates with the State. The most extreme version of this idea is the school of legal positivism. Austin says that only the positive law is the proper subject-matter of study for jurisprudence. "The matter of jurisprudence is positive law: law simply and strictly so called : or law set by political superiors to political inferiors."[10] Jurisprudence is the general science of positive law.

Law is command of the Sovereign. Command implies duty and sanction. Laws properly so called are species of commands. But being a command every law properly so called flows from a determined source or emanates from a determinate author. In other words, the author from whom it proceeds is a determinate rational being or a determinate body or aggregate of rational beings. For whenever a command is expressed or intimated, one party signifies a wish that another shall do or forbear; and the latter is obnoxious to an evil which the former intends to inflict in case the wish be disregarded. But every signification of a wish made by a single individual, or made by a body of individuals as a body or collective whole, supposes that the individual or body is certain or determinate. And every intention or purpose held by a single individual or body is certain or determinate. And every intention or purpose held by a single individual, or held by a body of individual as a body or

10. John Austin, "*The Province of Jurisprudence determined* " Universal Law Publishing Co. Reprint 2005 at 9.

collective whole, involves the same supposition. [11]. The power and purpose to inflict penalty for disobedience are the very essence of a command. The person liable to the evil or penalty is under a duty to obey it. The evil or penalty for disobedience is called sanction.

"A wish conceived by one and expressed or intimated to another, with an evil to be inflicted and incurred in case the wish be disregarded" are signified directly and indirectly by each of the three expressions. Each is the name of the same complex notion."[12] So every law is a command, imposing a duty, enforced by a sanction.

Only General commands are law. However all the commands are not law, it is only the general command, which obliges to a course of conduct, is law.

Positivism regards law as the expression of the will of the State through the medium of the legislature. Theories of legal realism [13] too, like positivism, look on law as the expression of the will of the State, but see this as made through the medium of the courts. Like Austin, the realist looks on law as the command of the sovereign, but his sovereign is not Parliament but the judges; for the realist the sovereign is the court.

One verion of realism was held by Salmond [14]. All law, he argued, is not made by the legislature. In England much of it is made by the law courts. But all law, howevermade, is recognised and administered by the courts and

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11. *Ibid.*, at 133.
12. *Ibid.*, at 18.
13. The term "American Realists" serves to describe a number of American legal theorists, who, though in no way constituting a formal school of jurisprudence, share the view that the law consists of the pronouncement of the courts. On this theory of law, *see* Holmes, *"the Path of the Law"* (1897) 10 H.L.R. 457-478, reprinted in *Collected Legal Papers*; Llewellyn, *The Bramble Bush* (2nd Ed.); Frank, *Law and the Modern Mind* and *Courts on Trial*; Gray, *The Nature and Sources of Law* (2nd Ed.). *See* also, Friedmann, *Legal Theory* (4th Ed.), Chap. 23.
14. Salmond, *Jurisprudence* (7th ed., 1924 by Sir John Salmond) , at 15.

no rules are recognised and administered by the courts which are not rules of law. Accordingly, he defined law as the body of principles recognised and applied by the state in the administration of justice, as the rules recognised and acted on by courts of justice.

The State is recognized as the only source of compulsory rules. There are other traditions, such as natural law and customary law, which do not identify the State as the source of law. The whole point of natural law approach is to argue that the State is subject to law or law pre-dates the State.

The really crucial formal feature of the State is that it is a continuous public power. This public power is formally distinct from both ruler and ruled. Its acts have legal authority and are distinct from the intentions of individual agents or groups. Thus the State, as public power, embodies offices and roles which carry the authority of the State. Since this appears to give the State an autonomy apart from private individuals many theorists have been led to accord the State a personality.[15]

The State is that order of human behaviour that we call the legal order, the order to which certain human actions are oriented, the idea to which the individuals adapt their behaviour. There is only a juristic concept of the State : the State as -centralized - legal order.

It is the juristic concept of the State that sociologists apply when they describe the relations of domination with the State. The properties they ascribe to the State are conceivable only as properties of a normative order or of a community constituted by such an order. Sociologists also consider an essential quality of the State to be an authority superior to the individuals, obligating the individuals. Only as a normative order can the State be an obligating authority, especially if that authority is considered to be sovereign. Sovereignty is conceivable only within the realm of the normative.

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15. Black Shield, Tony and Williams, George, *Australian Constitutional Law and Theory*, 4th Edn. 2006 at 9.

The State must be a normative order is obvious also from the 'Conflict" between the State and the individual is a specific problem. If the States were an actual fact, just as the individual is, then there could not exist any such conflict, since facts of nature never are in "conflict" with each other. But if the State is a system of norms, then the will and the behaviour of the individual can "conflict" with these norms and so can arise the antagonism between the "is" and the "ought" which is a fundamental problem of all social theory and practice.

The identity of State and legal order is apparent from the fact that even sociologists characterise the State as "politically" organized society. Since society - as a unit - is constituted by organisation, it is more correct to define the State as "political organization". An organization is an order. But in what does the "political" character of this order lie? In the fact that it is a coercive order. The State is a political organization because it is an order regulating the use of force, because it monopolizes the use of force. This however is one of the essential characters of law. The State is a politically organized society because it is a community constituted by a coercive order, and this coercive order is the law.[16]

The State is sometimes said to be a political organization on the ground that it has, or is, "power". The State is described as the power that lies back of law, that enforces law. In so far as such a power exists, it is nothing but the fact that law itself is effective, that the idea of legal norms providing for sanctions motivates the behaviour of individuals, exercises psychic compulsion upon individuals. The fact that an individual has social power over another individual manifests itself in that the former is able to induce the latter to the behaviour which the former desires.[17]

The State is not a visible or tangible body. But, then, how does the invisible and intangible State manifest itself in social life? Certain actions of

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16. *Ibid* at 11.
17. *Ibid.*

individual human beings are considered as actions of the State. Under what conditions do we attribute a human action to the State? Not every individual is capable of performing actions which have the character of acts of the State; and not every action of an individual capable of performing acts of the State has this character. How can we distinguish human actions from human actions which are not acts of the State? The judgment by which we refer a human action to the State, as to an invisible person, means an imputation of a human action to the State. The State is, so to speak, a common point into which various human actions are projected, a common point of imputation for different human actions. The individuals whose actions are considered to be acts of the States, whose actions are imputed to the State, are designated as "organs" of the State. Acts of State are not only human actions by which the legal order is executed but also human actions by which the legal order is created, not only executive but also legislative acts. To impute a human action to the State, as to an invisible person, is to relate a human action as the action of a State organ to the unity of the order which stipulates this action. The State as a person is nothing but the personification of this unity. An "organ of the State" is tantamount to an "organ of the law".

The fundamental Rights are mostly of individual character and are primarily meant to protect individuals against arbitrary State action. They are intended to foster the idea of a political democracy and are meant to prevent the establishment of authoritarian rule.

The fundamental Rights of the Constitution are, in general, those rights of citizens, or those negative obligations of the State not to encroach on individual liberty, that have become well-known since the late eighteenth century and since the drafting of the Bill of Rights of the American Constitution - for the Indians no less than other peoples, become heir to this liberal tradition. These rights in the Indian constitution are divided into seven parts : the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, the right to property,[18]

18. The Sub-heading *"Right to Property"* omitted by the Constitution (Fortyforth Amendment) Act, 1978, S. 5 (w.e.f. 20.06.1979).

and the right to constitutional remedies. The rights lay down that the State is to deny no one equality before the law. All citizens are to have the right to freedom of religion, assembly, association, and movement. No person is to be deprived of his life, liberty, or property, except in accordance with the law. Minorities are allowed to protect and conserve their language, script and culture.

The Indian Constitution provides for the political regime in which certain basic rights are guaranteed to the people and the governing power is restrained from being so exercised as to interfere with enjoyment of these rights. Still the rights remain basically a guarantee against State action. It is another matter that "the State" is given a special definition in the Constitution for the purpose of fundamental rights. Article 12 of the Constitution of India defines the 'State' as : In this part unless the context otherwise requires "the state' includes (1) the Government and Parliament of India and (2) the Government and the Legislature of each of the states and (3) all local or other authorities within the territory of India or under the control of the Government of India.

Definition of the State in the Constitution other than Article 12 has been mentioned under Articles 1,3, 36 and Article 54. Article 1 of the Constitution declares that the sovereign democratic Republic of India 'Shall be the Union of States'. The Choice for a federation with a strong Centre was made both for political and administrative reasons although the move to describe the Constitution as federal failed. The Constituent Assembly accepted the view of the Drafting Committee that describing the Union as Federation was not necessary.[19] While submitting the Draft Constitution Dr. Ambedkar, the Chairman of the Drafting Committee stated that 'although the constitution may be federal in structure, the Committee had used the term "Union" because of certain advantages."[20] These advantages as explained in the Constituent

19. *See,* the Drafting Committee's footnote at 2 of the Draft to the following effect: "The Drafting Committee considers that following the language of the British North American Act, 1867, it would not be inappropriate to describe India a Union although its Constitu tion may be federal in structure CAD, VII, at 6, 399, 400.

20. Draft Constitution 21.2.1948, at 4.

Assembly[21] indicate two things, (a) that the Union of India is not result of an agreement among the units like the American Federation, and consequently, (b) the States have no rights to secede from the federation. Dr. Ambedkar explained the purpose of the word 'Union' thus" .... though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement, no states to join in a Federation and the people can be divided into different States for convenience of administration the country is an integral whole, its people a single people living under single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right to cession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at outset, rather than to leave it to speculation.

The name of the Union is India, that in Bharat. The members of the Union at present are the States specified in the First Schedule.

Further, Article 3 provides that a new state may be formed or established

(1) by separation of territory from any State; or

(2) by uniting two or more States; or

(3) by uniting any parts of States; or

(4) by uniting any territory to a part of any State.

Parliament under this article can also increase or decrease the area of any State of a new State out of the territories of the existing States. The power to form new States under Article 3 (a) includes the power to form a new State or Union territory. The word ' State' in Article 3, Clauses (a) to (c) includes a 'Union territory' also.

The Indian Constitution empowers the Parliament to alter the territory or names. etc. of the States without their consent or concurrence. It can form

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21. *Constituent Assembly Debates*, Vol. 7. at 43.

new States, and can alter the area, boundaries or names of the existing States by a law passed by simple majority. The conditions laid down for making of such a law are - First, no Bill for the formation of new States or the alteration of the boundaries or the names of the existing State shall be introduced in either House of Parliament except on the recommendation of the President. Secondly, if the Bill affects the area, boundaries or names of the States the President is required to refer the Bill to the Legislature of the State, so affected for expressing its views within the period specified by the President, the President may extend the period so specified. If the State Lagislature to which the Bill has been referred does not express its views within the period specified by the President. The president may extend the period so specified. If the State Lagislature expresses its views within the time so specified or extended, the parliament is not bound to accept or act upon the views of the State Legislature. [22] Further, it is not necessary to make fresh reference to State Legislature every time an amendment to the Bill is proposed and accepted. [23].

Now mentioning about Article 36[24]; since this Article adopts the definition of 'State' in Art. 12, it would include Courts and statutory tribunals,[25] so that they can not over-look the objectives of the Directives.

Hence, any statutory corporation which answers the tests of a State instrumentality or agency even though it may not be a 'public utility undertaking', is bound to act in consonance with the Directive Principles, e.g. Arts. 38, 39 (6), and thus to charge only fair and reasonable price for its products, having regard to the needs of the consumers.[26]

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22. *Babulal* v. *State of Bombay*, AIR 1960 SC 51.
23. In *re, Berubari*, AIR 1960 SC 858 at 860.
24. Art.36 says: In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.
25. *N.K.V. Bros. Pvt. Ltd.* v. *Karumi Ammal. M.*, AIR 1980 SC 1354; *U.P.S.E. Bd.* v. *Harishankar Jain*, AIR 1979 SC 65 (para 4 A).
26. *O.N.G.C.* v. *Assocn*, AIR 1990 SC 1851 (paras 15, 30).

Art. 54 provides that the President shall be elected by an electoral college consisting of :

(a) the elected members of both Houses of Parliament and

(b) the elected members of the Legislative Assemblies of the States.

The Constitution (70th Amendment) Act, 1992 has added a new explanation to Art. 54 which provides that the word "State" includes the National Capital Territory of Delhi and the Union Territory of Pondicherry. This means that the M.L.A's of the National Territory, Delhi and the Union territory will be included in the electoral college of the President.

As a general rule a writ lies against the "State" as defined under Article 12 of the Indian Constitution.[27] The term 'State" has been 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. The ambit and scope of the expression "other authorities" under Article 12 is very wide and the development and growth of law shows the said phrase has been interpreted more and more liberally so as to include within its sweep more and more authorities with a view to giving protection to the aggrieved persons against the actions taken by these authorities.

In certain circumstances an act of a private party begins to resemble the act of a public authority and private right begins to look like public power. This may happen because of governmental nexus and assistance to the private act or concentration of economic power or the simple fact that the private party has control over something which is indispensable for the ordinary living of other individuals. The circumstances may be diverse, but the essence of the matter is that it is possible for a private party to exercise control over the lives

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27. The said Article reads as under : 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.

and fortunes of other in vital matters and here it is only reasonable to suggest that in such circumstances the party should be required to observe the same norms as a public authority.

One of the important aspects of judicial activism has been the interpretation of Article -12. The Supreme Court has been expanding the meaning of the words "other authorities with a view to bringing even non-statutory organisations within the purview of the definition of the "State" so as to bring them under the control of the provisions of the fundamental rights.

Some of the fundamental rights, for example, the rights mentioned under Articles 15(2), 17,18,19, 20 (3), 21,23, 24, 25(1), 26, 28 (3) 29 and 30, are available against individuals also.

The law regarding what is State for the purpose of Article 12 has been settled since *Ajay Hasia's* [28]case. However, question as to what is an instrumentality or agency of the State keep on coming before the courts.

It must be remembered that Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32 in the Supreme Court. Whereas Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. Therefore, the term "authority" used in Article 226, must receive a liberal meaning unlike the terms in article 12. The words "any persons or authority" used in article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The only relevant factor is the nature of duty imposed on the body. The form of the body concerned is not relevant.

There is no particular idea given for the expression "*other authorities*" that means it may include any kind of authority or authorities irrespective of their nature and foundation basis. Whether the expression " *other authorities*" is bearing a clear picture which is free from any kind of ambiguity so that the

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28. AIR 1981 SC 487.

individual can seek the justice for enforcement of their fundamental rights against private bodies and private individuals also? Whether the rule of *ejusdem generis* is applicable to article 12? Whether an association or a society registered under the Societies Registration Act 1860 is the State? What is the relationship between the words 'Authority' or 'person' used in article 226 against whom the writ may be issued by the High Courts and the words 'other authorities' used under article 12? Whether the words 'any person or authority' used in article 226 are confined only to statutory authorities ? Whether the judicial interpretation of article 12 of the Indian constitution has become really successful for securing justice to the individual against the State? In the present work a modest attempt has been made to answer the aforesaid issues. These issues and related matters have been examined in the present work.

In order to study the Definition of the State for the purpose of Fundamental Rights in the Constitution of India. It becomes necessary to understand the rights of the people and their relationship with the State prior to the commencement of the Constitution during the British period and beyond. The nature of the State as well as of the fundamental rights changed from the British period after independence. No study can be complete without tracing the historical Development. Therefore the present thesis traces out that development and makes observation how far the present status of the State is based upon the foundation of the past.

The State has been defined separately for the purposes of fundamental rights in our constitution which enumerates various categories of the Institutions and associations since the fundamental rights are enforceable against the State, the scope of the State for this purpose is very significant. Some of the terms used under the definition were subjected to the judicial interpretation at times. The expression "other authorities" has been expanded so as to include even the Institution and the associations less having the nature of the State and more like private bodies. The matter becomes more complex when the judicial creation of instrumentality test was again and again subjected to varied test for determination. The aforesaid issues have been critically analysed in the present work.

Coming to the framework of the study, the present work is divided into eight Chapters. Chapter 1 introduces the subject and the issues involved therein. The concept of the definition of the State and the constitutional provisions, as well as some other Constitutions and international instruments in the historical context have been discussed in chapter 2. Chapter 3 concentrates upon the scope of the definition of the State and discussion has been made for different aspects of the interpretations regarding the term 'state'. Chapter 4 deals with the judicial interpretation of the expression other authorities. It has been made clear in this Chapter that how the Supreme Court has given a wide scope to article 12 by interpreting the word "other authorities" in different cases. Special emphasis has been given to the vital role of the Supreme Court for the interpretation of the word "other authorities".

Chapter 5 deals with the enforcement of fundamental rights of the individuals against the State and private bodies. This chapter discusses about the remedies available for the individuals for the effective enforcement of their fundamental rights. Chapter 6 deals with the test for determining agency or instrumentality of the State. It has been discussed in this chapter that on which points any institution or company can be held to be the agency or instrumentality of the State so that the fundamental rights of the individuals can be enforced against them. Chapter 7 deals with the role of judiciary and the recent developments regarding article 12. The discussion has been made on the vital role of the judiciary for the recent judgments given which has some current issues and developments regarding article 12. At the end, the work closes with conclusion in chapter 8. The present study takes stock of the judicial decisions in India and some of the important American and English cases, available academic writings and relevant statutory provisions.