

## Polity Class 11

31st May, 2023 at 9:00 AM

### DEFINITION OF OTHER AUTHORITIES (09:09 AM)

- In **RD Shetty vs. Airport Authority of India** and in **Ajay Hasia vs. Khalid Mujid**, the SC further expanded the definition of the term state under **Article 12**.
- In these cases the court came up with a '**test of instrumentalities**', to determine whether a particular authority is a state or not.
- **Principles of Test of Principalities:**
- Whether the entire share capital of an entity is held by the state or not.
- If the financial assistance given by the state meets the majority expenditure of that entity.
- If the state enjoys deep and pervasive control over an entity.
- If the entity enjoys state conferred monopoly
- If the functions performed by an entity are like public functions closely related to the functioning of the government.

### WHETHER THE JUDICIARY IS STATE OR NOT? (09:30 AM)

- The judiciary may be classified as state or not depending upon the functions it performs.
- The judiciary performs two types of functions:
- **1. Judicial Functions:** According to it judiciary pronounces, orders rulings, judgments, etc.
- When the court performs these functions, it shall not be termed as state, under Article 12.
- **2. Administrative Functions:** Apart from judicial functions, it also exercises various administrative functions, which include functions such as making rules to regulate its functioning and hiring and firing of the staff for its administration.
- When the judiciary exercises such functions it may be termed a state.

## ARTICLE 13 OF THE INDIAN CONSTITUTION (09:43 AM)

- No law can be allowed to operate if it is against the provision of Fundamental Rights.
- It applies to both pre-constitutional and post-constitutional laws.
- **Article 13(1)**, is applicable to pre-constitutional laws, whereas **Article 13(2)** is applicable to post-constitutional laws.
- Therefore, one can say that no law that is against fundamental rights can be allowed to function in India.

## DOCTRINE OF SEVERABILITY (09:59 AM)

- According to this doctrine, if a particular provision of the law **offends the fundamental rights** and if the provision is **severable** from the rest of the law.
- Then only the offending provisions of the law would be declared unconstitutional and void
- This would be dependent on the following conditions:
  1. Whether the valid and the invalid part can be separated from each other.
  2. Whether the invalid part is so important that the rest of the law would lose its meaning without that part.
  3. Whether the legislature had the intention to treat the unconstitutional part as separable from the rest of the law.
- This interpretation has been drawn from the phrases 'to the extent of inconsistencies' and 'to the extent of contravention' as per Articles 13(1) and 13(2).
- **Article 13(3)(b)**: Defines the terms laws in force and refers to those laws which were made by the legislature and or competent authority in the territory of India, before the commencement of the constitution which was not previously repealed.
- **Article 13(3)(a)**: The definition of the term law in **Article 13(2)** has been given in **Article 13(3)(a)**.
- According to it a law made by the legislature as well as delegated or subordinate legislation and even the schemes and the programs made by the executive may be termed as law.
- Essentially it implies, even executive actions can be scrutinized by the judiciary on the grounds of violating fundamental rights.

## **SUBORDINATE-DELEGATED LEGISLATION (10:33 AM)**

- In modern times, the process of administration has become extremely complex and as a result, the legislature is not able to provide all the details in a law made by it.
- Therefore, those tasks are left to the executive to make detailed provisions.
- Such provisions made by the executive are called Sub-ordinate or delegated legislations and go by different names such as bye-laws, rules, notifications, etc.
- **Delegated Legislation:** The legislature makes framework laws and leaves the responsibility of making detailed provisions to the executive.

## **DISCUSSION ON: IS CONSTITUTIONAL AMENDMENT AN LAW? (11:16 AM)**

- **Abolish Zamindari System** was one of the purposes of constitutional makers.
- To implement Land reform in the country after independence various states passed Land reform laws. E.g. Bihar, Madhya Pradesh, etc.
- Zamindari approached the courts that these laws are violative of Fundamental Rights under Articles 14, 19, 31.
- **Bihar Land Reform Act, 1959:** was challenged in Bihar HC by the Zamindaris as they are violative of FR. And HC agreed.
- **By 1st CAA, 1951**, exceptions were provided for land reforms so that laws even violative of Articles 14, 19, 31 would not be struck down by the courts.
- Two provisions were Introduced: Article 31A and Article 31B.
- **Shankari Prasad v/s Union Of India, 1951**
- 1st CAA was challenged on the grounds of violating the Fundamental Rights
- **Petitioners:**
- CAA is also law under Article 13(2)
- 1st CAA provides exceptions to Articles 14, 19, 31, therefore, weakening them
- Since no law can be made in contravention of Fundamental rights 1st CAA, 1951 is unconstitutional

- **Government:**
- 31A and 31B have been enacted in pursuance of DPSPs, mentioned under 39(b) and 39(c). Parliament can provide exceptions to some FRs in favor of DPSPs under Part IV.
- **The court states that-**As far as Ordinary legislative Powers are concerned - It is subject to judicial review under Article 13. Constituent legislative power is not subject to Judicial review.
- 1ST CAA 1951- Constitutionally validity-As a result, the Supreme Court gave the decision in favor of the govt and upheld the validity of the 1st CAA
- Sajjan Singh Vs State of Rajasthan, 1965-The SC reiterated its position that CAAs are not a law u/a 13(2) and therefore, not subject to judicial review.
- The 5-judge bench of the court gave a 3:2 decision where the dissenting opinion provided by Justice Hidayatullah and Justice Mudholkar paved the way for future judgments of the Supreme Court.

**The Topic for the Next Class: Discussion on Sajjan Singh Case (Continued)**