ABSTRACT

The concept of State has undergone a paradigm shift due to Liberalization, Privatization and Globalization. The state is not a ‘Service Provider’ rather it is a ‘service facilitator’ or regulator of the economy. Most of the functions earlier performed by the State are performed by private actors now; as a result protection of the fundamental rights has also fallen into the hands of private actors. As per the Constitution of India, barring a few exceptions fundamental rights are enforceable against the ‘State,’ as defined under Article 12 of the Constitution. Thus the concept of ‘State’ under Article 12 is the threshold through which fundamental rights can be claimed. As per the definition, State is defined as “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.” Though the Constitution explicitly defines the term ‘State’ over time, the term ‘other authority’ under Article 12 was interpreted to include any ‘instrumentality or agency’ of the State. Various criteria were also formulated for bringing an authority/body under the concept of instrumentality or agency of State. In the context of LPG, the criteria’s appear to be stringent to bring private actors under Part III of the Indian Constitution. In US long before the commencement of globalization itself, through the doctrine of State Action, bills of rights were held enforceable against the private actions/actors through the interpretation of Fourteenth Amendment. In holding so, judiciary has devised number of tests mainly on the basis of the facts brought before it. To bring private actor under the State Action concept in India, the approach adopted by the Courts in US can be taken into consideration. The judiciary can also give emphasis to the application of fundamental rights horizontally as against the private actors. A purposive interpretation of Article 12 in tune with the purpose behind Part III can also be brought into effect while interpreting the flexibility phases under Article 12.