



**Advanced Contracts, Tendering and Public Procurement**  
**Mr. Jaibatraka Mohanta**  
**Research Fellow, CEERA**  
**National Law School of India University**  
**Writ Reliefs in Government Contracts - Part 01**

(Refer to Slide Time: 00:15)



WRIT RELIEFS IN GOVERNMENT  
CONTRACTS


Jaibatraka Mohanta  
Research Fellow, CEERA-NLSIU





Hello, and welcome to another session on Advanced Contracts. Today's session we will be dealing with the topic of Writ Reliefs in Government Contracts. In this entire session, we would understand what a writ is, what a government contract is, what different kinds of writ reliefs are and why writ reliefs are important specifically in government contracts.

(Refer to Slide Time: 00:45)

**WHY WRIT JURISDICTION IS REQ. IN  
GOVERNMENT CONTRACTS?**



- Government contracts are entered on behalf of the public. It is for the welfare of the society.
- Therefore, government contracts must be fair, free from arbitrariness and without an element of bias involved in it.
- Thus, at times in order to ensure that the contracts entered by the Govt. is fair, the invocation of writ remedies become crucial under Art. 226 & 32 respectively.



Now, as we move ahead, we will understand why writ jurisdiction is required in government contracts. First of all, we need to understand that every contract that the government enters into is entered on behalf of the public. Now, all these contracts whether it is for the building of roads, for bridges, hospitals or for any other purpose, it is for the welfare of the society at large.

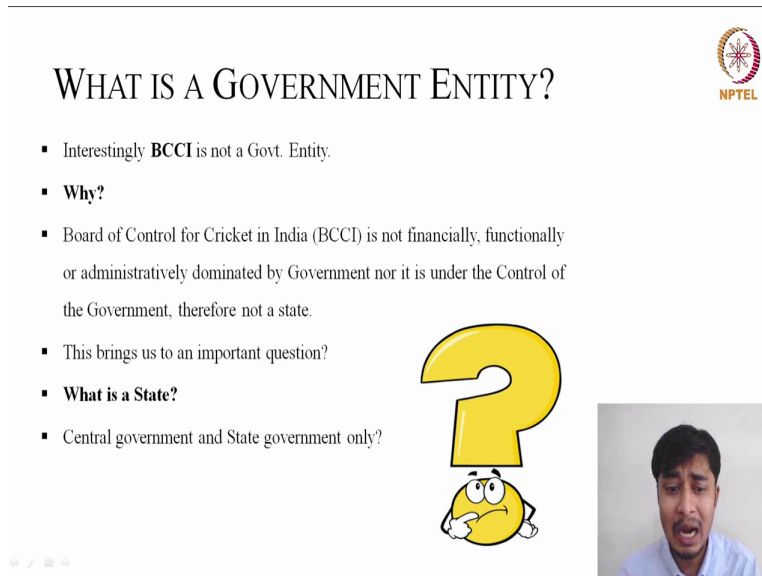
In order to ensure that all these contracts that are entered by the government are fair, they are free from an element of any kind of arbitrariness and without an element of bias involved in it, a writ remedy becomes crucial and important, because every contract that is entered, it must be absolutely fair from any kind of leniency to any particular individual or a group.

Therefore, in order to ensure that the contracts entered by the government are fair, and to ensure that all these steps have been followed in that contract, and if suppose there is an element of biasness involved in it, or the contract entered was not through fair means and unfair means were used the invocation of writ remedies become crucial under Article 226 and Article 32 of the constitution, respectively.

Now, Article 226 relates to the jurisdiction of the High Court and Article 32 relates to the jurisdiction of the Supreme Court. We would be dealing with Articles 226 and 32 in the slides going further ahead.

(Refer to Slide Time: 02:26)

## Government Entity



The slide features the NPTEL logo in the top right corner. The main title is "WHAT IS A GOVERNMENT ENTITY?". Below the title is a list of bullet points:

- Interestingly **BCCI** is not a Govt. Entity.
- **Why?**
- Board of Control for Cricket in India (BCCI) is not financially, functionally or administratively dominated by Government nor it is under the Control of the Government, therefore not a state.
- This brings us to an important question?
- **What is a State?**
- Central government and State government only?

To the right of the text is a large yellow question mark with a cartoon face that looks thoughtful. In the bottom right corner of the slide, there is a small video inset showing a man speaking.

In order to understand a government contract, it is very essential for us to understand what actually a government entity is. And to our surprise, the Board of Cricket Control in India, the BCCI, interestingly, is not a government entity. BCCI, just for everyone's knowledge, is the richest Cricket Board in the entire world. It is richer than the International Cricket Covenant as well, the ICC. Now, why is this not a government entity?

The Supreme Court in a landmark judgment held that, because BCCI is not financially, functionally or administratively dominated by the government; nor is under the control of the government, and therefore, it is not a state. Why did the court use the term state and not a government entity?

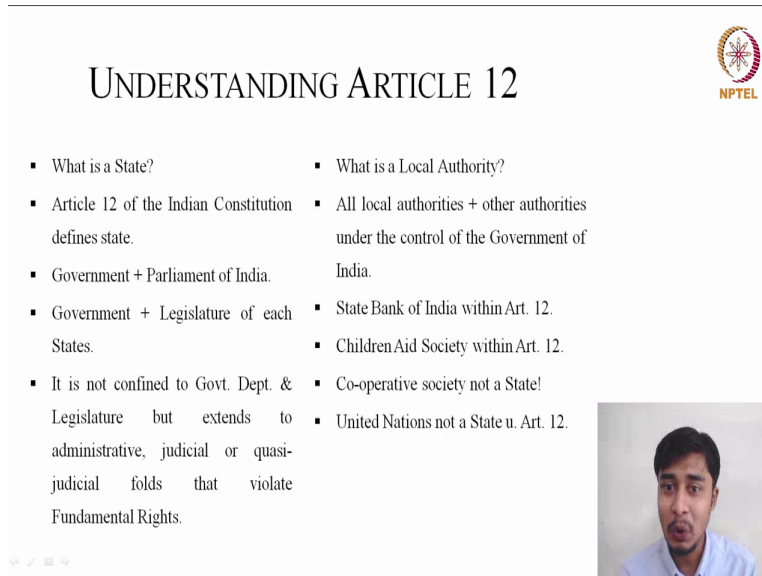
In order to understand why the court uses the word state and not government entity, we need to look into Article 12 of the Constitution. This brings us to the most important question that BCCI is not a government entity. Why, because it does not relate its function to the government. It is a private body that is not financially or functionally or administratively dominated by the government nor is it under the control of the government.

That means the government does not have any say over the working of the Board of Cricket Control for Cricket in India. BCCI is free to conduct its own charter, its own constitution in order to ensure its functioning. Therefore, we need to understand why did the court not use the

term government entity in its ruling and instead use the term state. The central government and state governments are these only considered states or is there anything more to it?

(Refer to Slide Time: 04:44)

## Understanding Article 12



The slide is titled "UNDERSTANDING ARTICLE 12" and features the NPTEL logo in the top right corner. It contains a list of bullet points organized into two columns. A small video inset of a man is visible in the bottom right corner of the slide.

- What is a State?
- Article 12 of the Indian Constitution defines state.
- Government + Parliament of India.
- Government + Legislature of each States.
- It is not confined to Govt. Dept. & Legislature but extends to administrative, judicial or quasi-judicial folds that violate Fundamental Rights.
- What is a Local Authority?
- All local authorities + other authorities under the control of the Government of India.
- State Bank of India within Art. 12.
- Children Aid Society within Art. 12.
- Co-operative society not a State!
- United Nations not a State u. Art. 12.

Let us understand Article 12 of the Indian Constitution in more detail. Article 12 of the constitution states that unless otherwise, it requires the State to include 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 are under the control of the government of India.

Now, what does this mean when it says that the state will include the government and the parliament and the government and the legislature of each state and all local authorities and other authorities as and when required or under the control of the government of India? Article 12 is that article of the constitution that goes on to explain what actually the meaning of state is.

As we just read, every government and every government in every state will be considered as part of Article 12. Every legislature and every legislative council in each state will also be considered under Article 12. Article 12 also uses the word local authorities. When we say local authorities that means the municipal corporations, other bodies such as the PWD (Public Works Department), all these authorities are under the control of the Government of India, the Central government or the state government somehow and the other. And therefore, they are considered as a government entity.

Therefore, in order to understand Article 12, we need to understand that an entity that is funded by the government or that is functionally under the aegis of the government or takes its command from the state government or the central government will be a state and eventually a government entity. And any of these entities if they enter into a contract, that would be a government contract.

It is not defined by government departments and legislatures. By defined, it means that government departments and legislatures are not the only entities that will be considered as state under Article 12, but it extends to the administrative, judicial or quasi-judicial folds that violate the fundamental rights of individuals. In our constitution, there are fundamental rights that are guaranteed to every citizen in India.


Administrative bodies such as IAS offices, the District Magistrate or the Collector, would come under the purview of Article 12, judicial or quasi-judicial bodies. For example, the consumers, the consumer redressal forums, would also be considered as state under Article 12. State Bank of India is a government entity as per Article 12, because it is under the aegis of the Government of India. A children's aid society will also come under Article 12.

However, a cooperative society will not come under Article 12. And the reason a cooperative society will not come under Article 12 is because it is not financed or governed by the state or the central government. A cooperative society is a coming together of different residents in a society and for the welfare of the society, they come up with a cooperative in order to ensure that the living of the society happens in a proper and ambient manner.

Now, interestingly, United Nations being a global body also does not come under Article 12. And the reason the United Nations does not come under Article 12 is that it is not financially or functionally dependent on the Government of India or the government of any of the Indian states or the union territories.


(Refer to Slide Time: 09:25)

**PRINCIPLES TO DETERMINE GOVT.  
ENTITY AND AGAINST WHOM – WRIT  
REMEDY WILL LIE**



- Entire share capital of the corporation is held by the government.
- Financial assistance is almost meeting the entire expenditure of the corporation.  
*Eg. Jawaharlal Nehru University.*
- The Corporation enjoys monopoly status in the particular sector. *Eg. Indian Oil Corporation.*
- Deep rooted state/government control.
- Functions of the entity closely related to government functions.
- If an arm of the government is transferred to a corporation. *Eg. Delhi Transport Corporation.*

*\* These principles were enunciated by J. Bhagwati in Ajay Hasia v. Khalid Mujib's case (AIR 1981 SC 487).*



This brings us to one of the most important principles which is how do we determine what is a government entity and against whom will a writ remedy actually lie. There are around six to seven principles that have been incorporated by our honorable courts in order to understand against to which entity a writ remedy will lie.

Justice Bhagwati around the years 1980 and 1981 in the landmark judgment of *Ajay Hasia v. Khalid Mujib*, enshrine the principles under which we can understand that what are the important and crucial factors that we need to understand in order to decide whether a writ remedy will lie against that particular entity or not.

The first is the entire share capital of the corporation is held by the government. That means a body that is completely financed by the government against such a body a writ remedy will definitely lie. For example, the Defense Research and Development Organization, is a body whose entire share capital is held with the government, and therefore, against organizations like the DRDO or other state entities against these corporations, a writ remedy will definitely lie.

The second principle, a financial assistance is almost meeting the entire expenditure of that cooperation. Now, in order to ensure that a writ remedy lies against this, it needs to be understood that an institute or an organization that is partly or more than partly assisted by the government in terms of finances to meet their expenses, for instance, the JNU, the Jawaharlal

Nehru University or the Indian Oil Corporation, all these entities they enjoy financial assistance from the government, and therefore, a writ remedy will lie against them.

The third principle that was enshrined by honorable Justice Bhagwati was the corporation enjoys monopoly statutes in a particular sector, for example, the Indian Oil Corporation. The Indian Oil Corporation enjoys a monopoly in the petroleum sector. In the crude oil sector, it enjoys a major monopoly. Then ISRO enjoys a monopoly in the space sector in India. So, all these sectors have a monopoly in their particular sector and they are also financed by the Indian Government, either wholly or partly, and therefore, a writ remedy will lie.

The next principle that was enshrined, a deep-rooted state or government control, for example, all the municipal councils, the municipal corporations in all the states across India, have a deep-rooted state control within them. And therefore, all these entities will also be liable to a writ remedy if they enter into a government contract that is of an unfair nature.

The fifth principle that was enshrined was that the functions of this entity are closely related to the government functions. Now, there are some entities, for example, the Water Department in our state, their work is to ensure that proper and safe drinking water is provided to every household. In order to ensure this responsibility, they are categorizing and they are implementing a duty a function of the state, and therefore, a writ remedy will also lie against them.

And the last principle that was enshrined was if an arm of the government is transferred to a corporation, for example, the Delhi Transport Corporation or the Karnataka Transport Association, all these functions are government functions that have been transferred to a private entity or a semi-private entity in order to ensure that they run the business. For example, in Meghalaya, there is the MTDC, the Meghalaya State Transport Corporation and the Meghalaya Tourism Corporation.

So, these corporations are carrying out a duty of the government. The government has given them a duty that you ensure that the transport department in the state is run by you, the tourism at major attractions or in smaller attractions you build a hotel and then earn revenue out of it. So, this entire tourism arm of the government is transferred from the government's deep-rooted handle to private or semi-private entity.

And therefore, if any of these six criteria if either or, or even one of the criteria are met a writ remedy will lie against the government or against such a corporation who is indulging in any one of the activities if they fall in one of the six categories.