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Judicial Controversy On Ascertaining The True Purpose Of Doctrine Of State Action: A Critical View

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Abstract

The doctrine of State Action is still considered as a mystery for the law practitioners and for the judges as its true purpose has never been short out clearly by judiciary while interpreting it. Moreover, it has been misunderstood many times while giving effect. It has been stated by many scholars that this particular doctrine is without any purpose which contains a set of arbitrary rules which holds back certain constitutional protection such as equality, liberty and fairness. Professor Charles Black also remarked this doctrine as "a conceptual disaster area".

The Supreme Court of US has many a time wrongly interpreted this doctrine due to which it is acting as a limitation on the operation of fourteenth amendment. The SC observed that "the state action doctrine preserves an area of individual freedom by restricting the scope of federal law and federal judicial power". This misinterpretation has given rise to a judicial controversy as this view has been taken up other judges in different cases. The focal point of controversy because an individual or a private institution do not have a constitutional right to function in a manner that is not bound by constitutional principles like equality, fairness, and tolerance. From one end the SC has interpreted the concept too narrowly on the other hand, some legal scholars gave this concept a broad interpretation.

Thus, this paper has been designed to analyze the dichotomy between state and private action as well as to evaluate the judicial controversy over the doctrine of state action to understand the true purpose of the said doctrine. This paper has further developed to draw a clear picture of fourteenth amendment and its operation which has also remained in question for a long time.

Keywords: State-Action, Private-Action, misinterpretation, controversy

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Chapter 1

Introduction

General Introduction:

Law students, legal scholars, lawyers, and judges are all unfamiliar with the state action doctrine. The doctrine appears to be strangely without purpose, a collection of arbitrary rules that obstruct constitutional protection of liberty, equality, and fairness for no good reason. It is a key component of the Fourteenth Amendment—a threshold requirement that must be satisfied before triggering protection of our fundamental rights—but the doctrine itself appears to be curiously without purpose, a collection of arbitrary rules that obstruct constitutional protection Professor Charles Black described the state action doctrine as "a conceptual disaster area"[1] and scholarly commentary on it as "a torchless search for a way out of a damp echoing cave"[2] nearly four decades ago. Other legal scholars have called the state action doctrine "analytically incoherent" and "a miasma" in recent years.

The Supreme Court has misinterpreted the state action doctrine's purpose. "Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power," the Supreme Court stated in *Lugar v. Edmondson Oil Co*[3]. in 1982. Individuals and private organizations do not have a constitutional right to operate free of constitutional norms mandating equality, fairness, and tolerance, as the Supreme Court's justification for the state action doctrine demonstrates. Privately owned restaurants are not allowed to discriminate based on race under the law. Similarly, to how the Supreme Court misinterpreted the state action doctrine by interpreting it too narrowly, several progressive legal scholars have misinterpreted the doctrine by construing it too broadly. The argument is that "state action is always present"[4] because background principles of contract, tort, and property law unfairly favor powerful individuals and organizations. Another common claim made by progressive academics is that the Constitution requires the government to protect its citizens from hunger, cold, and disease.

The fact that the state action doctrine is four strands of doctrine rather than one adds to the difficulty. The doctrine distinguishes "state action" from "private action" in one way.

[1] Charles L. Black, Jr., Foreword: "State Action," Equal Protection, and California's Proposition 14, 81 HARV. L. REV. 69, 95 (1967).
[2] Gary Peller & Mark Tushnet, State Action and a New Birth of Freedom, 92 GEO. L.J. 779, 789 (2004).
[3] Lugar v. Edmondson Oil Co, 457 U.S. 922 (1982).
[4] Alan R. Madry, State Action and the Due Process of Self-Help: Flagg Bros. Redux, 62 U. PITT. L. REV. 1, 2 (2000).

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A different strand distinguishes between "state action" and "state inaction." The distinction between "mere repeal of a law" and "distortion of the governmental process" is crucial in a third application of the doctrine. The state action doctrine's impact on Congress' ability to enforce the Due Process Clause and the Equal Protection Clause under Section 5 of the Fourteenth Amendment is the fourth aspect of the doctrine.

Research Problem

Supreme Court observed that the aim of state action doctrine is not to "preserve an area of individual freedom." That is what the Fourteenth Amendment is all about. Instead, the state action doctrine serves as a constraint on the application of the Fourteenth Amendment. Individuals and private organizations do not have a constitutional right to operate free of constitutional norms mandating equality, fairness, and tolerance, as the Supreme Court's justification for the state action doctrine demonstrates. Which indicates that the Supreme Court misconstrued the state action doctrine by interpreting it too narrowly; similarly, several progressive legal scholars misunderstood and misconstrued the doctrine broadly, one major issue arise from this point of view that "state action is always present" because background principles of contract, tort, and property law unfairly favors wealthy individuals and corporations. progressive academicians further claimed that the Constitution imposes an affirmative duty on the government to keep its citizens safe from hunger, cold, and disease. Both the views are erroneous in nature, and the true purpose of this doctrine has never been ascertained truly and fully, the purpose of the same remains in dilemma.

Review Of Related Literature

- In an article issued by MHRD, govt. of India,[5]dealt with the definition and concept of state action doctrine, where it has been stated that the Indian Constitution forbids the state from interfering with an individual's fundamental rights. The government cannot act arbitrarily, irrationally, or unfairly. The state cannot impose unreasonable limitations on an individual's fundamental freedoms and to limit someone's right to life and liberty, the state must follow a just, fair, and reasonable procedure as held in *Maneka Gandhi v. Union of India*[6].

[5] Law - epgp.inflibnet.ac.in, EPGP, https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/14._advanced_constitutional_law/04._state_under_article_12_of_the_indian_constitution/et/7616_et_04_et.pdf (last visited Mar 29, 2022).
[6] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

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- In a research article by Pratik Gandhi,[7] the author has established a comparative study to move beyond expository approaches and look to newer jurisdictions for relevant information in this subject matter. He further establishes India's novel legal position, which makes it an appropriate comparative case study in this regard. On the one hand, no Indian authority has ever explicitly referred to the horizontal and vertical approaches defined by American and European legal academics.
- Further in an article by Richard S. Kay,[8] the author has taken the view drawn by C.J. Marshal in *Marbury v. Madison* [9] and further established that the reach of the "state action" doctrine in connection with certain provisions of the Constitution, most notably the Equal Protection and Due Process Clauses of the Fourteenth Amendment, is the most directly relevant. These provisions have been interpreted to apply only to the infliction of injuries that can be traced back to a "state." The infliction of similar injuries by private individuals is unregulated by constitutional rule under this doctrine. The author also discusses the distinction between public and private manifest and stated that The public-private distinction is implicit in courts' common refusal to interpret constitutional rules as imposing affirmative duties on the state.
- In a Journal article by Bruce H. Jackson,[10] the author has discussed about affirmative state action whereby he has marked out that the fourteenth amendment's state action doctrine can be conveniently divided into two categories: cases where the state or an agent of the state has directly and affirmatively acted, and cases where the state has become significantly involved in the actions of a private individual, thereby making the individual's actions those of the state.
- Another article by Wilson R. Huhn,[11] deals with the actual essence and purpose of state action doctrine. The author has tried to establish the true purpose of state action doctrine by analyzing various judicial pronouncements and scholars' view. According to the

[7] Pathik Gandhi, DE-CONSTRUCTING THE 'STATE ACTION' DOCTRINE IN INDIA: A COMPARATIVE ANALYSIS SSRN (2009), https://dx.doi.org/10.2139/ssrn.1488061 (last visited Mar 29, 2022).
[8] Richard S. Kay, THE STATE ACTION DOCTRINE, THE PUBLIC/PRIVATE DISTINCTION, AND THE INDEPENDENCE OF CONSTITUTIONAL LAW. SCHOLARSHIP REPOSITORY (1993), https://scholarship.law.umn.edu/concomm/888 (last visited Mar 29, 2022).
[9] Marbury v. Madison, 5 U.S. 137 (1803).
[10] Bruce H. Jackson, *The Fourteenth Amendment and the State Action Doctrine*, 24 WASHINGTON AND LEE LAW REVIEW 133–138 (1967).
[11] Wilson R. Huhn, THE STATE ACTION DOCTRINE AND THE PRINCIPLE OF DEMOCRATIC CHOICE https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v34n04_cc2.huhn.final.pdf (last visited Mar 30, 2022).

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author due to the divergent view drawn by the supreme court regarding this doctrine the true meaning and purpose of this doctrine has never been established correctly.

Objective:

1. To find out the reason for divergent decision given by Supreme Court over the doctrine.
2. To understand the true purpose of the doctrine of State Action and its applicability.
3. To find the marginal error while ascertaining the purpose of the said doctrine.
4. To compare the applicability of this doctrine globally and its interpretation in different country.

Hypothesis:

The researcher on his opinion that both liberals and conservatives are mistaken in their interpretation of the state action doctrine because they both misunderstand the doctrine's purpose. Conservatives are mistaken because the state action doctrine was never intended to be used to protect either individual or state rights. Liberals are mistaken because the Constitution was never intended to be used to regulate individual behavior or to guarantee governmental benefits.

Scope And Limitation:

The ambit of this research includes a critical view of the doctrine of State Action supported by various judicial pronouncements and divergent views of prominent jurists and scholars in the field. The researcher in this paper has taken the Indian legal framework as standard and comparison has been drawn while taking in consideration the practice of USA, UK, and Canada. Further the research is limited to ascertain the purpose and applicability of this doctrine truly and fully and not otherwise. Also, this research work includes an analytical approach to magnify the legal validities of State Action doctrine with respect to law of the land.

Methodology

The researcher in this paper used doctrinal method of research throughout. The paper is divided into various chapters to deal with the statement of problem with different aspects. All the data and judicial decisions stated in this paper has been extracted from relevant sources only and a major weightage has been given judicial pronouncements from U.S Supreme Court and Indian Supreme Court to reach to the conclusion. The researcher has further referred to various national and international journals to explore the views of other research scholars and interpreted to make his decision.

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Chapter 2

State Action Private Action Dichotomy

The first aspect of the state action doctrine emphasizes the word 'state,' and it is the idea that, with one exception, the Constitution does not prescribe how private individuals or private organizations should treat one another; rather, the Constitution only applies to governmental action.[12] The original Constitution's text makes it clear that it is a law that governs governments, not individuals. Articles I, II, and III of the United States Constitution establish the legislative, executive, and judicial branches of the federal government, respectively, while Article I, Sections 9 and 10, and Article IV define the federal and state governments' respective powers.

The Bill of Rights and the Fourteenth Amendment are both framed as limitations on government power. The First Amendment declares that "Congress shall make no law," while the Fourteenth Amendment declares that "no state shall make or enforce any law."[13] Furthermore, the framers of the Constitution believed that the document was meant to serve as a blueprint for government. In the foundation case of *Marbury v. Madison*, Chief Justice John Marshall, who must be counted among the framers, observed that the Constitution "organizes the government, and assigns, to different departments, their respective powers."[14] The Constitution, on the other hand, makes no attempt to dictate how one person should treat another. It is not a violation of the Constitution for one person to steal another's possessions, assault another person, or even murder another person, according to the Constitution. The commandment contained in the Thirteenth Amendment is the sole exception to this generalization.

In the United States, there is one thing that no one may do to another person: no one may enslave another person. Apart from cases involving slavery, the state action doctrine makes it necessary to determine whether the act complained of was committed by the government or by a private individual in cases arising under the Constitution. [15]

2.1. Criticism to SC's decision on State Action and Private Action:

In most cases, the major question revolves around is whether the act complained of was "state action" or "private action" is obvious. The adoption and enforcement of laws, as well as the

[12] Shelley v. Kraemer, 334 U.S. 1, 13 (1948).
[13] U.S. Const. amend. XIV, § I.
[14] Id 5.
[15] U.S. CONST. amend. XIII.

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promulgation and application of policies by public officials, clearly constitute state action, whereas the vast majority of civil and criminal cases, from common automobile accidents to corporate employment policies, clearly demonstrate that the defendants' actions are entirely private. However, in many cases, it is unclear whether the alleged act was carried out by the government or by a private citizen. These are cases in which private parties have been allegedly imbued with governmental power and have abused it.[16]

The factual circumstances of state action cases are diverse, and the standards that have evolved to resolve these cases are similarly diverse. The Supreme Court has generally stated that a private party will be considered a "state actor" in cases where the government was "significantly involved" in the defendant's actions, or, to put it another way, where the defendant's actions are "fairly attributable" to the government.[17] The Supreme Court has identified a number of subcategories of state action based on the evaluation of recurring patterns of relationships between private and governmental bodies under these two general standards. The Court has established a rule for determining whether or not the behavior in question is state action for each pattern of state action it has defined. Furthermore, the Court has recognized an antithesis that does not constitute state action for every fact pattern and accompanying rule of inclusion within the concept of state action.

The Supreme Court has ruled that simply entering into or performing a contract with another person does not constitute state action.[18] When a person uses the judicial system to enforce a contract, this is considered state action, and the contract must be enforced in accordance with the Constitution's procedural and substantive requirements. Similarly, it is not state action when the law simply acknowledges or accepts an individual's preexisting right or power.[19] State action occurs when the government coerces, encourages, or influences one person to violate the rights of another. Basically, there are two approaches to justify certain test relating to state action doctrine. The conservative wing of the Supreme Court, led most recently by the late Chief Justice Rehnquist, prefers a "rule-oriented" approach to state action analysis, to determine whether or not the challenged party is a state actor. The liberal wing of the Court, on the other hand, uses a "totality of the circumstances" test to make this determination. *Burton v. Wilmington Parking Authority*[20] is the seminal case utilizing the "totality of the circumstances" test, in which the Court stated that "only by sifting facts and weighing circumstances can the

[16] Wilson R. Huhn, THE STATE ACTION DOCTRINE AND THE PRINCIPLE OF DEMOCRATIC CHOICE https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v34n04_cc2.huhn.final.pdf (last visited April 20, 2022).
[17] Lugar v. Edmondson Oil Co., 457 U.S. 922.
[18] Id 8.
[19] Flagg Bros., Inc. v. Brooks, 436 U.S. 149.
[20] Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

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nonobvious involvement of the State in private conduct be attributed its true significance." In numerous cases, the Supreme Court has wavered between a rule-based approach and a totality of the circumstances approach.

The Supreme Court's reasoning in Blum and Rendell-Baker was skewed toward protecting "individual freedom," a private nursing home does not have a constitutional right to change the level of medical care provided to a patient without consulting the patient or the family, and a private school does not have a constitutional right to fire teachers for criticizing the administration. In state action cases, the task of the courts is not to protect the individuals and private organizations who commit these acts from government regulation, so there is no reason to interpret the state action requirement narrowly. Rather, the Court's task is to determine the extent of the government's involvement in the challenged acts in order to determine whether they are subject to constitutional scrutiny. Because the nature of government involvement in any given case can take many different forms as a result of various combinations of factors, the "totality of the circumstances" test is more appropriate for determining whether private parties are involved in state action than the "rule-oriented approach."[21]

2.2. Critique to progressive scholars in consideration

Even the "totality of the circumstances" test, according to a number of progressive legal scholars, is insufficient to capture the meaning of the state action doctrine because "state action is always present." As evidenced by the text of the Constitution and its early interpretations, the framers believed there was a distinction between government and private action. The Constitution requires us to draw a line between state and private action, and this line must be drawn, even if it is subject to fair debate in difficult cases.[22] There is no denying that there is a spectrum between state and private action, and the multivariate factors that can influence that judgement make it a particularly difficult calculation. Finally, the decision should be based on the extent or degree of government involvement in any given event. The Supreme Court currently believes that background principles of law allowing individuals to enter into contracts and statutes subjecting businesses to extensive governmental regulation do not turn these private entities' actions into state action.[23] Is it fair to say that private individuals and organizations have more power over us than they did over our forefathers, or that we face greater challenges in controlling the exercise of private power than they did? Colonial America had a "virtual aristocracy" that dissolved slowly in the Revolutionary War's cauldron.

Framers who formed the "Slave Power" dominated southern society and subjugated half of the

[21] Louis Kaplow, Rules Versus Standards: An Economic Analysis, 42 DUKE L.J. 557, 621-22 (1992).
[22] Supra Note 9.
[23] Dred Scott v. Sandford, 60 U.S. 393, 455 (1857).

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population in the early nineteenth century.[24] The Robber Barons attempted to seize control of the nation's economic life in the latter half of the nineteenth century. [25] However, the people eventually found a way to rein in these oppressive accumulations of private power by expanding the franchise, outlawing racial and gender discrimination,98 and regulating business and industry through the democratic process.[26] People will be able to regulate powerful private interests as long as the democratic process remains strong, and it will not be necessary to rely on the Supreme Court's interpretation of the Constitution to do all of the work. Controlling private power abuses is up to the people acting through the democratic process. This is where the framers put the power and responsibility,[27] and the Court should interpret the state action doctrine in a way that preserves this area of democratic choice.

[24] Allen D. Boyer, Activist Shareholders, Corporate Directors, and Institutional Investment: Some Lessons from the Robber Barons, 50 WASH. & LEE L. REV. 977, 978 (1993).
[25] Supra Note 20.
[26] U.S. CONST. amends. XIII, XIV, XV, XIX; Public Accommodations Act, 42 U.S.C. § 2000a (2000).
[27] U.S. CONST. amend X.

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Chapter 3

Practice And Adoption Of State Action: A Comparative View

The *Civil Rights Cases*[28] in 1883, when the Civil Rights Act of 1875,[29] prohibiting racial discrimination in public accommodations, was declared void, based on the determination that the fourteenth amendment-imposed restrictions only against the states, began statutory construction of the fourteenth amendment's limitations. The Supreme Court ruled that unsupported by State authority in the form of laws, customs, or judicial or executive proceedings, civil rights, such as those guaranteed by the Constitution against State aggression, cannot be harmed by wrongful acts of individuals. Unsupported by any such authority, an individual's wrongful act is simply a private wrong, or a crime committed by that individual.

When there was a clear indication that the state was involved, this restriction was simple to implement. The state action requirement was met where the alleged deprivation was caused by the actions of a state agency or official, or involved a state law, regulation, or rule." *However, there were times when determining whether the alleged wrongdoing was the result of state action was more difficult. In the mid-nineteenth century, the state action doctrine was further developed. During this time, the Supreme Court began to formulate theories for determining when a private actor's actions could be prohibited under the 14th Amendment.* "[30] Two tests have emerged: "public function" and "private function."[31] The question of whether a private individual is performing a government function is put to the test. And the second one the "state involvement or encouragement" theory is based on the notion that a private actor can become so involved with or encouraged by the state that his actions are considered state action."[32]

3.1. State Action and State inaction

The state action doctrine makes another distinction by emphasizing the word "action."[33] State inaction, according to the Supreme Court, is not the same as state action. This aspect of the state action doctrine is understood to mean that, while the Constitution prohibits the government from exceeding its constitutional powers or infringing on individual rights, it does not require the government to take any specific action in most cases. Judge Richard Posner, who has described the Constitution as "a charter of negative rather than positive liberties,"[34] agrees with this viewpoint. Understanding the difference between state action and state

[28] Civil Rights Cases, 109 U.S.
[29] Civil Rights Act of 1875.
[30] Evans v. Newton, 382 U.S. 296 (1966).
[31] Ezra Ripley Thayer, *Public Wrong and Private Action*, 27 HARVARD LAW REVIEW 317–343 (1914).
[32] Supra Note 31.
[33] Robin West, Response to State Action and a New Birth of Freedom, 92 GEO. L.J. 819, 824 (2004).
[34] Jackson v. City of Joliet, 715 F.2d 1200, 1203.

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inaction requires understanding the democratic choice principle. The democratic choice principle states that the people, through their elected and appointed representatives, have the authority to legislate on civil rights and social welfare benefits, and to decide how far they want to go beyond the constitutional baseline in each area.

The concept of the "neutral state" is consistent with the idea that the state has no affirmative duties in terms of civil rights or social welfare rights. While the concept of the neutral state is no longer considered constitutionally required, the neutral state now serves as the default position of American government in the absence of affirmative legislation as a result of the Court's current interpretation of the state action doctrine. The distinction between "state action" and "state inaction" has the result that there is no constitutional right to governmental benefits in the case of social welfare rights.[35] This means that the people, acting through the democratic process, have complete discretion over how generous they want to be with public funds. The idea that the government has "no affirmative duty" to provide benefits has been referred to by the Supreme Court.[36]

3.2. practice of State Action in India:

The Indian Supreme Court has consistently followed the vertical approach, holding that the protection of fundamental rights enshrined in Part III[37] is limited to the 'state' and not to private individuals. *P.D. Shamdasani v. Central Bank of India*[38] was the first case in which the Supreme Court addressed this issue. In this case, the petitioner's shares in the bank were sold off while the bank exercised its right to lien. As a result, the petitioner went to the Supreme Court to assert his fundamental right to property against the Bank under Article 19(1)(f) and Article 31. The petition was dismissed by the constitutional bench because fundamental rights are not enforceable against private actors, according to Patanjali Shastri, J.

While ruling on the application of Article 19's freedoms to private individuals,[39] Shastri, J. examined subsequent clauses of Article 19 and noted that because the clauses' restrictions were the sole prerogative of the state, this provision contemplated infringement through state action. Because the language of Article 31 is similar to that of Article 21, Shastri, J. observed that these rights can only be limited by "procedure established by law" or "express authority of law," thus confining their protection against the State. In *A.K.Gopalan v. State of Madras,*[40] Shastri, J. expressly dismissed the question of whether fundamental rights should be applied to

[35] Goldberg v. Kelly, 397 U.S. 254.
[36] Rust v. Sullivan, 500 U.S. 173, 201 (1991).
[37] The Constitution of India, 1950.
[38] P.D. Shamdasani v. Central Bank of India, AIR 1952 SC 59.
[39] Art. 19, The Constitution of India, 1950.
[40] A.K.Gopalan v. State of Madras, AIR 1950 SC 74.

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non-state actors.

The Supreme Court later relied on the reasoning in these cases in *Vidya Verma v. Shiv Narain Verma*[41]. The petitioner sought to have the writ of habeas corpus against her father enforced in this case. Bose, J., rejected the argument, citing the decision in Shamdasani and Gopalan, and stating that "a person whose property rights are infringed by a private individual must seek his remedy under the ordinary law and not under Article 32." Several Indian High Courts have followed the precedent set in the Shamdasani and Shastri's Gopalan observations. In *Krishna Madhaorao Ghatate v. The Union of India*[42], Dharmadhikari, J., of the Bombay High Court, while dealing with a writ of habeas corpus, observed that a private individual's violation of a right to personal liberty is not within the purview of Article 12 and is thus governed by Article 21 of the Constitution. As a result of the above capitulation of Indian judicial trends, we can safely conclude that Indian courts have consistently maintained a narrow view of the application of fundamental rights against non-state actors and have followed a strict vertical approach.[43]

The vertical approach has been adopted by the Supreme Court of India, but it has been subject to several exceptions. Fundamental rights such as Articles 17, 23, and 24 of the Indian Constitution have been recognized by the Supreme Court in several decisions as exceptions to the general rule that can be enforced against nonstate actors. The Abolition of Untouchability is addressed in Article 17 of the Indian Constitution.[44] Articles 23 and 24 deal with the prohibition of human trafficking, forced labor, and the employment of children in factories, respectively. In *Sukhdev Singh v. Bhagatram*[45], the Supreme Court stated: "Articles 17, 23 and 24 postulate that fundamental rights can be violated by private individuals, and that the remedy under Article 32 may be available against them."[46] In fact, the Supreme Court has made an exception to the general vertical approach by including Article 21, which deals with the right to life and personal liberty. 30 The prohibition of discrimination in Article 15(2)[47] has been extended to private individuals.

[41] Vidya Verma v. Shiv Narain Verma, AIR 1956 SC 108.
[42] Madhaorao Ghatate v. The Union of India, 6 AIR 1975 Bom 324.
[43] Pathik Gandhi, DE-CONSTRUCTING THE 'STATE ACTION' DOCTRINE IN INDIA: A COMPARATIVE ANALYSIS SSRN (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1488061 (last visited May 1, 2022).
[44] Art. 17, The Constitution of India, 1950.
[45] Sukhdev Singh v. Bhagatram, AIR 1975 SC 1331.
[46] Art. 32, The Constitution of India, 1950.
[47] Art. 15, The Constitution of India, 1950.

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4. Conclusion

The fundamental value served by the state action doctrine is "democratic choice," not "individual freedom." Because the Supreme Court has failed to recognize this, the state action doctrine has been misinterpreted and applied in a variety of cases. The Reitman-Romer line of authority, which authorizes "mere repeal" of anti-discrimination legislation but prohibits restructuring of the governmental process to the detriment of minority groups, is the only line of authority whose results are fully consistent with the principle of democratic choice. Left-wing critics have also failed to recognize that the state action doctrine's goal is to strengthen democracy, and as a result, they, like the Supreme Court, have misunderstood the distinction between state and private action. Although the exercise of private power can be oppressive, it is up to the people, acting through the legislature, to determine the conditions and extent to which private power is regulated. The people, according to the state action doctrine, have the primary responsibility for deciding whether and to what extent fundamental principles of fairness, tolerance, and equality should govern the actions of private individuals and organizations. For the same reason, progressive legal scholars overlook the significance of the distinction between state action and inaction. The state action doctrine asserts that the people alone have the final say in determining the type and extent of government services that they will fund with their tax dollars. Legislative grace, not constitutional right, governs social welfare policy. The errors of both the Supreme Court and its critics become obvious once it is understood that the state action doctrine serves and is controlled by the principle of democratic choice, and the doctrine emerges as a rational and coherent building block of our democracy.

5. Suggestion & Reforms

Most of the answers can be derived from understanding the problems that pervade state and federal court decisions, so creating a new state action test does not require much imagination. A test should not be limited to any one factual situation as much as possible. This solves the Burton problem, which has perplexed potential users of the theory who have been unable to overlook the symbiotic relationship test's factual limitations. A multiplicity of connections is the first factor that should be present in the state/private actor relationship.[48] This is an extension of the nexus test, which does not consider multiple connections. However, the Court should not only consider the quantity of connections, but also the quality of those connections.

[48] Hala Ayoub, *The State Action Doctrine in State and Federal Courts*, 11 FLORIDA STATE UNIVERSITY LAW REVIEW 893–920 (1984).

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If many minor connections could pass the first hurdle, there would be inherent unfairness. As a result, the quantity and quality factors should be balanced in the first investigation. The quality requirement will have been met if a few connections between the state and a private actor involved a compelling argument for interdependence. However, if there were many minor connections, the investigation would end, and no state action would be possible. It should now be clear that there is an analytical framework within which all factual circumstances can be viewed while maintaining consistency. The new theory is well suited to this area of law since it can encompass an infinite number of factual circumstances. State and federal courts would no longer have to rely on a haphazard search for parallels between a jumble of previous decisions and the case at hand. Instead, the courts will be able to do exactly what the US Supreme Court intended: they will be able to apply the test on a case-by-case basis.

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