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## CAN WRITS BE ISSUED UNDER ARTICLE 15 FOR PROVIDING RESERVATIONS?

SUDESHNA HALDER

AMITY UNIVERSITY, KOLKATA.

### INTRODUCTION:

The Constitution of India is by nature federal with strong centralizing tendency being the supreme law of the land and legal sovereignty lies in it. It is on 26<sup>th</sup> of November 1949<sup>1</sup> that the Constitution of India was adopted and came into force on 26<sup>th</sup> January 1950<sup>2</sup>. Thus, constitution is considered as the mother of all laws. Therefore, constitution is sovereign, socialist, secular, democratic and republic. Reservation System in India is present since the early times in the year

### WHAT ARE WRITS AS ISSUED UNDER CONSTITUTION?

Writs are the remedies for the enforcement of rights conferred by this part. Article 32<sup>3</sup> and 226 of Constitution<sup>4</sup> of India are responsible for issuing writs in the Supreme and High Courts respectively. The five writs being:

- **Habeus corpus**: It is the Latin meaning of ‘to have the body of.’ It provides protection against the arbitrary and illegal detention of an individual.
- **Mandamus**: It is the Latin for ‘we command’ which is used by the courts with superior jurisdiction to oblige the courts of subordinate jurisdiction to do an act or performance. For instance, hearing of a case or transferring a case, etc.

<sup>1</sup> The Constitution of India 1950, Acts of Parliament, (India)

<sup>2</sup> Id.

<sup>3</sup> The Constitution of India Art.32, 1950, Acts of Parliament, (India)

<sup>4</sup> The Constitution of India Art.226, 1950, Acts of Parliament, (India)

- **Prohibition**: The literal meaning of prohibition is to issue this writ to prohibit the courts of subordinate jurisdiction not to proceed with a case which is not under its jurisdiction.
- **Certiorari**: This writ is issued to certify by the superior court to subordinate jurisdiction court or tribunal to transfer a pending case or to quash the case.
- **Quo warranto**: It is a Latin for 'by what authority' and it's a common law remedy to challenge a person's right to hold a office whether public or corporate.

### **RESERAVATION AND THE FIRST CONTITUTIONL AMENDMNET IN INDIAN CONSTITUTION:**

The issue of Reservation was the **State of Madras vs Champakam Dorairajan (1951)**<sup>5</sup> case was the first major verdict of the Supreme Court. The case dealt with the caste-based reservations for medical and engineering admissions in Madras state. The case led to the First amendment in the constitution with the Supreme Court's decision in favor of Champakam Dorairajan which led to introduce Article 15(4) which authorized the States to make special provisions for socially and educationally backward classes. The case emphasized the fact that the need for reconciling between equality and affirmative action through a constitution amendment and thereby, it laid the foundation for reservation jurisprudence in India.

### **WHAT IS ARTICLE 15?**

- No, writs cannot be issued under article 15 of Indian Constitution for providing reservation. Article 15(1) enumerates that it prohibits discrimination on grounds of religion, race caste, gender sex, place of birth by the State.
- Article 15(2) forbids any citizen on grounds of religion, race, caste, sex, place of birth or any of them, be subject to disability, restrictions, or condition regarding – access to shops, public restaurants, hotels, and places of public entertainments. This implies
- Article 15(3) enumerates that the said article shall not prevent State from making special provisions for women and children notwithstanding as to the prohibitions mentioned in Article 15(1).
- In 1954 Article 15(4) allows State by not violating any Fundamental right to make special provisions for women and children and for the progress of socially and educationally backward classes, Scheduled Caste, and Scheduled tribes.

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<sup>5</sup> Supreme Court of India, <https://main.sci.gov.in> › judgment, (last visited on 21<sup>st</sup> Feb 2024, 8:40 AM), [efaidnbmnribpcajpcglclefindmkaj/https://main.sci.gov.in/judgment/judis/1194.pdf](https://main.sci.gov.in/judgment/judis/1194.pdf).

- Article 15(5) enunciates that the caste-based reservations for backward classes in both public and private educational institutions.
- Article 15(6) is added via 103<sup>rd</sup> Constitutional Amendment 2019 is being upheld by Supreme Court to provide reservation to 10% quota to economically weaker sections of society in admission purposes and not for promotions in jobs<sup>6</sup>.

### **CASE LAWS:**

- **Balaji vs State of Mysore (1962)**: The Supreme Court held in the case that while deciding backward classes poverty, occupation, educational backwardness, place of residence, etc.<sup>7</sup> and the reservations should be provided to develop the weaker sections of society but not at the expense of excluding the rest of deserving and qualified candidates of other communities.
- **Revathi vs UOI (1998)**: Scope of Article 15(4) was enumerated and it was held that reservation to weaker section to uplift and not done by cutting the interest of remaining section of society.
- In **Gulshan Prakash vs State of Haryana (2010)** it was held by the Apex Court that the power to provide reservations exclusively with State government and thereby it will be discretionary authority thus should not undermine merit-based system in education otherwise it will compromise the decision.<sup>8</sup>
- **Indian Medical Association vs UOI 2011**: The court's decision being significant in clarifying the constitutional stance on private discrimination. The 100 percent reservation to children of Army personnel to an army college was struck down.<sup>9</sup>

### **CONCLUSION:**

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<sup>6</sup> EWS Reservation, Supreme Court Observer <https://www.scobserver.in/cases/janhit-abhiyan-union-of-india-ews-reservation-case-background/>, (last visited on 21<sup>st</sup> Feb 2024, 8:45 AM)

<sup>7</sup> Do Reservations Have to be Below 50%? From Balaji [1962] to Indra Sawhney [1992], <https://www.scobserver.in/journal/do-reservations-have-to-be-below-50-from-balaji-1962-to-indra-sawhney-1992/>, (last visited on 21<sup>st</sup> Feb 2024, 8:47 AM)

<sup>8</sup> scobserver.in, Can the Supreme Court Provide Reservations for Orphans? <https://www.scobserver.in/journal/can-the-supreme-court-provide-reservations-for-orphans/>, (last visited on 21<sup>st</sup> Feb 2024, 8:51 AM)

<sup>9</sup> Indian Medical Association vs UOI 2011, <https://www.casemine.com/judgement/in/5609af04e4b014971141558d>, (last visited on 21<sup>st</sup> Feb 2024, 8:59 AM)

The Supreme Court has upheld that reservation under Article 15(4) and 15(5) is for development and advancement of society for the socially and educationally backward classes are constitutionally valid. These two above said sub-articles enable a state to make special provision for the reservation in admission in institutions and for the backward classes. But writs cannot be filed under Article 15 to provide reservations, it is the exclusive power of the State to make special provisions for backward classes of society. Article 15(4) and 15(5) also empower to qualify affirmative action through quotas and writs cannot be filed to challenge this affirmative action otherwise the implementation of the same will be unconstitutional.