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Reservation Not a Fundamental Right: Supreme Court

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Why in News

Recently, the **Supreme Court** of India has said that **reservation** of seats provided to certain communities is not a fundamental right.

Key Points

- All political parties from Tamil Nadu had filed a writ petition in the Supreme Court seeking direction to the Centre to implement 50% Other Backward Class (OBC) reservation in the all-India **NEET** seats surrendered by the state.
- They have accused the Centre of “violating the right of the people to have a fair education” by neither implementing the 50% quota for OBC in Tamil Nadu nor providing 27% reservation for OBC candidates in other states for the All India Quota seats.
- However, the Supreme Court pointed that a writ petition under Article 32 of the Constitution can be filed only in case of violation of fundamental rights.
- The Court observed that the **Right to Reservation is not a fundamental right.**
- Earlier, the Court had ruled that **reservation in promotion is not a fundamental right.**
 - The fundamental rights have been **classified under the six categories-** Right to Freedom, Right to Equality, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational rights and Right to constitutional remedies.
 - They are mentioned in Part III (Articles 12 to 35) of the Indian Constitution.

Constitutional Provisions for Reservation in Education and Jobs

- Various **provisions in Article 15 and 16 of the Constitution** empower the State to make special provisions in **education and jobs** respectively for the **socially and educationally backward section of the society** and for the **economically weaker section**.
- Although these provisions are mentioned in **Part III (fundamental rights)** of the Constitution, **their nature is like directives to the state i.e.** they are not binding on the state.
- **SC/ST Reservation:**
 - The state (both Centre and the states) is permitted to make any special provision for the advancement of scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions and providing reservation in government jobs if they are not adequately represented.
 - The quota for SCs is 15% and for STs it is 7.5%
- **Other Backward Class (OBC) Reservation:**
 - The state (both Centre and the states) is empowered to make provision for the advancement of OBCs regarding their admission to educational institutions and government jobs.
 - The quota limit for OBCs is 27%. However, various state governments have different quota limits for OBCs in their state. E.g Tamil Nadu (50% reservation for OBCs).
 - In the **Indra Sawhney 1992 judgement**, the Supreme Court fixed the upper limit for the combined reservation quota i.e. should not exceed 50% of seats.
- **Economically Weaker Section (EWS) Reservation:**
The **103rd Constitution Amendment Act, 2019**, empowers both Centre and the states to provide 10% reservation to the EWS category of society in government jobs and education institutions.

Writ Jurisdiction

- The Supreme Court under Article 32 and the High courts under Article 226 of the Constitution can issue the writs of **habeas corpus, mandamus, prohibition, certiorari and quo-warranto.**
- The Parliament under Article 32 can also empower any other court to issue these writs. However, no such provision has been made so far.

- **Difference in writs of Supreme Court and High court.**
 - The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a High court can issue writs for the enforcement of Fundamental Rights and also for an ordinary legal right.
 - The Supreme Court can issue writs throughout the territory of India whereas a High court can issue writs within its territorial jurisdiction.
 - A **remedy under Article 32 is in itself a Fundamental Right** and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a **remedy under Article 226 is discretionary** and hence, a High court may refuse to exercise its writ jurisdiction.
 - The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights.

Source: IE