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AMENABILITY OF WRIT JURISDICTION UNDER ARTICLE 226: RE-EXAMINING THE STATE REQUIREMENT IN THE BANKING AND EDUCATIONAL SECTORS

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Introduction

In the current legal landscape, the amenability of Writ Jurisdiction hinges upon the judicial scrutiny of whether a body can be recognised as "State" under Article 12 or otherwise be subjected to writ jurisdiction under Article 226 of the Constitution of India. Writ is a formal written order or command issued by the Hon'ble Supreme Court (under Article 32) or High Courts (under Article 226) in the name of the state, directing a person, lower court, or authority to act or refrain from acting, primarily to enforce fundamental rights or correct legal errors. However, whether the party for which a writ has been filed is a "State" or not, has long engaged judicial scrutiny. Article 226 grants the High Courts the power to issue writ to "any person or authority" for "enforcement of any of the rights conferred by Part III and for any other purpose", meaning that while the Article 12 limits the scope to only "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.", Article 226 increases the scope over the Article 12's definition and makes it easier for the citizens to approach the court for Writ Petitions. Article 12 of the Indian Constitution was last comprehensively examined over 2 decades ago in *Zee Telefilms Ltd. v. Union of India*[1], where the Hon'ble Supreme Court held that the Board of Control for Cricket in India (BCCI) did not qualify as "State" under Article 12, despite performing functions of significant public importance. The Court reiterated that mere public function or public impact is insufficient

[1] *Zee Telefilms Ltd. v. Union of India*, (2005) 4 **SCC** 649 (India)

unless deep and pervasive governmental control is established. However, the exact scope of Article 226 remains a question, as many judgements have been given on the matter, yet they often lacked consistency. The present article examines the evolving scope of Article 226, with a particular emphasis on Banking (Financial) and Educational Sector.

Judicial Tests for Determining "State" under Article 12

Article 12 of the Constitution of India is the basis of constitutional law, because it establishes the meaning of the term "State" in the context of the application of fundamental rights in Part III. However, even though Article 12 is not a remedy in itself, it is significant in that it establishes the people against whom constitutional remedies may be applied. Courts have been requested over the years to rule many times on whether non-governmental bodies may be considered to be part of the government in terms of constitutional applications.

The Hon'ble Supreme Court has regularly stated that not all the persons carrying out the functions of the State can be necessarily considered as such under Article 12. Rather, this is determined by the level of government control on such bodies. This strategy is indicative of a judicial effort to strike constitutional accountability with the independence of the private and non-governmental institutions.

In *Zee Telefilms Ltd. v. Union of India*[2], a big stride was made in the growth of this jurisprudence. The question in this case before the Court was whether the Board of Control for Cricket in India (BCCI) could be considered as a State under Article 12. Although it was accepted that BCCI had exercised considerable control over cricket in India and its activities had a significant public impact, the Hon'ble Supreme Court concluded that BCCI was not a State. The Court explained that the element of public importance is not enough; the element that is needed is deep and pervasive governmental control over the body in question.

The decision in Zee Telefilms made it clear that Article 12 is mainly concerned with the interaction between the body and the government, and not the type of activity carried out by the body. The Court was keen to note that financial aid, administrative control, and functional domination by the government are important aspects that ought to be taken into account in deciding whether an entity is an instrumentality or agency of the State. Without such control,

[2] *Zee Telefilms Ltd. v. Union of India*, (2005) 4 **SCC** 649 (India)

even bodies that carry out functions that have an implication on the general populace would not be covered by Article 12.

Later rulings related to institutions in the financial and the educational sectors have confirmed this restrictive interpretation. To take an example, the courts have time and again refused to consider private banks, private financial institutions, and privately run educational institutions as the State, just because they are subject to statutory regulation, or just because they are, or are likely to be, areas of public concern. Regulation, in and of itself, has been found to be inadequate to create State character.

The fact that the Hon'ble Supreme Court has taken this approach means that Article 12 applies to only a limited number of entities that perform a public function and not to all of them. Although this meaning maintains the confidential nature of various institutions, it also poses restrictions to those who want a constitutional solution to those structures that wield a lot of influence on the rights of individuals.

Due to such a restrictive framework, most complaints that are a result of the action of private bodies cannot be further dealt with directly under Article 32, despite the fact that the actions of the same may have severe consequences to the people. Courts have responded to this limitation by increasing dependence on the wider meaning of Article 226 which permits the issuance of writs by High Courts in the right cases against any individual or authority. The difference between Article 12 and Article 226 therefore becomes critical when it comes to explaining the developing aspect of writ jurisdiction in India.

This chapter confirms that although Article 12 still remains a very rigid point of entry to the promotion of fundamental rights, it has been interpreted in too narrow a manner to be applicable to the realities of contemporary governance. The subsequent chapters will thus study how courts have applied Article 226 in sealing this loophole especially in the banking and education sector.

Scope of Writ Jurisdiction under Article 226 of the Constitution

The Constitution of India in Article 226 provides the High Courts with the authority to issue writs to enforce fundamental rights and for any other purpose. This is phrased to render Article 226 quite extensive as compared to Article 32 which is restricted to the enforcement of fundamental rights in relation to the State. The broad terms of Article 226 are an embodiment of the constitutional intention to grant extensive supervisory powers to the High Courts in order to achieve legality, fairness, and accountability in the exercise of authority.

The most significant thing about Article 226 is that it is not limited to actions against the "State" as it is understood under Article 12. Article 226 authorizes High Courts to grant writs against any authority or a person unlike Article 32 that can only be invoked against a State or its instrumentalities. This difference has enabled the courts to come up with a more appreciative way of scrutiny in cases where the bodies are not necessarily within the definition of State but yet perform functions that influence the rights of the population.

The Hon'ble Supreme Court has made it clear that the meaning of Article 226 should be construed in a functional manner and not in an institutional manner. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*[3], the Court said that writs under Article 226 could be granted against a non-governmental body where it was performing a governmental function. It was not focused on the status of the body in law, but the kind of duty being carried out. This was a significant change from the strict structure of Article 12 and it formed the basis of a more liberal interpretation of the writ jurisdiction.

The enlargement of Article 226 however does not imply that all the actions of a private body are intended to be subject to writ jurisdiction. Courts have always made a contrast between the cases that have particular elements of public law and the cases that have arisen as a direct result of the relations of private contracts. The jurisdiction of writ is not usually invoked where the dispute relates to the enforcement of private contracts, issues of personal service, or solely to commercial dealings.

This difference was well explained in *Federal Bank Ltd. v. Sagar Thomas*[4]. In this instance, the Hon'ble Supreme Court decided that a private bank in view of the fact that it was under statutory regulation and in the business of activities of public interest could not be considered as State under Article 12. The Court also noted that the disagreements that occurred in the circumstances of the services between a private bank and its employees were essentially

[3] *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 (India)
[4] *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733 (India)

personal, and they did not attract writ jurisdiction as covered by Article 226. The ruling made it clear that statutory regulation cannot be relied upon to make a private body a public authority so that it may have writ jurisdiction.

The same can be observed when it comes to the instances of private financial institutions. In *S. Shobha v. Muthoot Finance Ltd.*[5], the Hon'ble Supreme Court reiterated that non-banking financial companies that are subject to the regulation of the Reserve Bank of India cannot be rendered amenable to writ jurisdiction by the same. The Court determined that transactions covered by private law such as loan arrangements between the persons and financial institutions do not go beyond those.

Article 226 has also been discussed in the light of educational institutions. In *Dr. Janet Jeyapaul v. SRM University*[6], the Hon'ble Supreme Court handled the maintainability of a writ petition against a deemed university called SRM University. Although the Court understood the regulatory framework governing such institutions, it looked at whether the dispute was the enforcement of a public duty or simply on the conditions of private service. The case brings into the limelight the reservation taken by the courts when handling writ petitions against non-State educational institutions.

According to the recent rulings in relation to educational societies such as the one that concerned the Army Welfare Education Society and Air Force Schools, there is a more subtle use of Article 226. Some of the factors that have been considered by courts include the extent of government control, funding, and nature of duties being carried out. The courts have been hesitant to apply writ jurisdiction to purely civil service disputes even in jurisdictions where education has been recognized as a public exercise.

Based on these court trends, it is clear that Article 226 is a constitutional process to avoid injustice and not to diminish the strictness of Article 12. The High Courts are very careful in invoking this power so that the writ jurisdiction is not invoked as an alternative to civil remedies or contract enforcement.

Therefore, Article 226 is broad but not absolute. It enables the courts to interfere when the activity of non-State organizations directly affects the rights of the population or includes

[5] *S. Shobha v. Muthoot Finance Ltd.*, (2020) 13 SCC 157 (India)
[6] *Dr. Janet Jeyapaul v. SRM Univ.*, (2015) 16 SCC 530 (India)

statutory or other public obligations. Simultaneously, it maintains the difference between public and private law, as writ jurisdiction shall always be a last resort.

This chapter confirms the fact that Article 226 is a mediating factor between constitutional responsibility and institutional independence. The next several chapters will bring these principles to the banking and the education sector in order to investigate how the courts have dealt with writ amenability in practice and why inconsistencies still occur.

Writ Amenability in the Banking and Financial Sector

The banking and financial sector offers one of the most common situations when the issue of writ amenability under Article 226 appears. Financial institutions and banks are vital in the economic life of the people and the country and their activities would mostly affect the borrowers, employees and consumers in a great way. Concurrently, most of them are privately owned and this makes it hard to classify them under constitutional law.

The courts have always been aware of the fact that the banking business is a business of social concern especially in that it puts the confidence of people, the economy, and the financial well-being of individual persons to the test. This appreciation is also evidenced by the constitutional distribution of legislative competence since banking is under the Union List. Judicial rulings have made it however clear that the public significance is not enough to be a significant factor in drawing writ jurisdiction under Article 226.

Federal Bank Ltd. v. Sagar Thomas[7] provided a clear stand on this issue. In the given case, the Hon'ble Supreme Court considered the possibility of writ jurisdiction regarding a situation connected to service terms of the employees of a bank that is privately owned. The Court determined that a private bank was not State as per Article 12 and that conflicts arising out of employment contracts were in fact of a private nature. It was found that the fact that such disputes were regulated by statutory bodies like the Reserve Bank of India was not enough to give a public nature to such disputes.

The Federal Bank ruling is important as it establishes a distinction between regulatory control and governmental control. Regulatory control makes sure that they take care of statutory norms, but it is not deep and widespread control such that it would make a private bank an

[7] Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 (India)

instrumentality of the State. Consequently, writ jurisdiction under Article 226 is not available due to the mere fact that a bank transacts in a regulated system.

This argument was further supported in *S. Shobha v. Muthoot Finance Ltd*[8]. The Hon'ble Supreme Court has discussed whether a writ petition was maintainable against a non-banking financial company. The petitioner reasoned that the financial institution being under the guidelines of the Reserve Bank of India, should be subject to writ jurisdiction. The Court overturned this argument including the view that regulation by statutory authorities does not transform a private financial institution into a public authority.

The Court in S. Shobha also underlined the difference between public and private law remedies. The relations between borrowers and financial institutions were considered to be the affairs of private contract. Although there may be statutory guidelines, breaches of statutory guidelines do not necessarily establish a remedy in public law unless the act that is the subject of the complaint is of an obvious public nature. The right solution in these situations, the Court said, is before civil courts or any other venue as stipulated by law.

The same argument has been put into use by High Courts that deal with cases involving private banks. Where the court has refused to grant writ jurisdiction on the basis that the case does not involve the discharge of a statutory duty, courts have in a wide range of cases concerned with recovery proceedings, retention of documents or enforcement of terms of a contract. Even the fact that banking influences the masses in general has not been seen as enough to supersede the privacy of the one-on-one transactions.

Meanwhile, the courts have not entirely eliminated the fact that writ jurisdiction may be applied against banking institutions. In cases where the actions of a bank or other financial authority are plainly statutory in nature, or are of such that they impact on the rights of the population not contractually but on non-contractual basis of powers, courts have been more ready to intervene. The extent of such intervention is however limited and it is done with restraint.

The judicial treatment of banking cases demonstrates the regular effort to avoid the abuse of writ jurisdiction as an alternative to civil or contract remedies. Courts have on numerous occasions emphasized that Article 226 is not aimed at settling conflict that occurs solely on

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[8] *S. Shobha v. Muthoot Finance Ltd.*, (2020) 13 SCC 157 (India)

account of individual contracts though one of the parties is involved in an activity of societal significance.

Therefore, in the banking and financial industry, writ amenability under Article 226 is less dependent on the character of the institution than on the character of the duty and the controversy surrounding it. Although writ jurisdiction can be more easily drawn to the banks that are owned by the State, the banks and other financial institutions that are privately owned are often resistant to writ proceedings unless the clear element of public law is proved.

As evidenced in this chapter, the banking industry has historically been a location of comparatively consistent judicial demeanor in which the courts have solidly upheld the difference between the public and the commercial aspects. The following chapter will also look into the question of whether the same consistency can be found in the individual sphere of educational institutions or whether more uncertainty of the judiciary can be observed in that sphere.

Writ Jurisdiction and Educational Institutions

Implementation of writ jurisdiction in education (under Article 226) has exposed more judicial complexity than in the banking sector. It is a well-known fact that education is an issue of general concern and educational institutions directly influence the rights and interests of students, teachers as well as the society in general. But most of the educational institutions in India are privately run, are incorporated as societies or trusts, and are not strictly speaking within the definition of State in Article 12. This duality has led to different judicial solutions when deciding on writ amenability.

Among the earliest and the most prominent ones in the given context, there is *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*[9]. In this instance, the Hon'ble Supreme Court decided that writs could be awarded against a private educational trust in which it was performing a governmental duty. The case involved payment of terminal benefits to teachers and the Court noted that the institution was undertaking a governmental role of providing education. The decision was significant in

[9] *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 (India)

identifying that the writ jurisdiction under Article 226 had the potential to go beyond State-controlled institutions in which public obligations were at stake.

The subsequent judicial rulings have, however, been more conservative especially when issues of service to employees in privately run institutions of learning are involved. In *Dr. Janet Jeyapaul v. SRM University*[10], the Hon'ble Supreme Court analyzed the maintainability of a writ petition by a member of the faculty against a deemed university. Despite being the target of statutory regulation by the University Grants Commission framework, the Court determined that the university was not subject to Article 12 as it was not State. It was determined that the dispute arose due to a private service relationship and as such the writ jurisdiction was not maintainable.

The case of Dr. Janet Jeyapaul shows a significant difference between regulatory control and governmental control. The Court understood that inasmuch as statutory bodies exercise control over deemed universities, it is not the form of control that is pervasive and deep-rooted in the government. Consequently, employer-employee disputes over service in either of these institutions will fall under the province of private law unless some express statutory or common law obligation is breached.

The same has been done in cases of schools operated by either welfare or educational societies linked to the armed forces. The Air Force School cases, as one of them in *Dileep Kumar Pandey v. Union of India*[11], inquired on the question of whether Air Force Schools should be considered as a State under Article 12. Although it was argued that there was a need to fund the schools by the government, have administrative capability and affiliation to statutory bodies, the Court eventually decided that such schools failed to meet the criteria of deep and pervasive governmental control in all circumstances. Therefore, writ petitions that questioned service issues were deemed not maintainable.

The rationale that was applied in these cases was re-established in *Army Welfare Education Society v. Sunil Kumar Sharma*[12]. The Hon'ble Supreme Court said that the Army Welfare Education Society was a self-sustaining entity operating learning institutions although connected to the armed forces. The Court noted that the Society was not considered to be a

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[10] *Dr. Janet Jeyapaul v. SRM Univ.*, (2015) 16 SCC 530 (India)
[11] *Dileep Kumar Pandey v. Union of India*, (2020) 4 SCC 471 (India)
[12] *Army Welfare Educ. Soc'y v. Sunil Kumar Sharma*, (2022) 5 SCC 594 (India)

"State" under Article 12 and that service questions raised by the employees could not be determined by writ petitions under Article 226 unless an element of clear public law was present.

What comes out of these judgments is that there is a recurrent judicial unwillingness to intervene in service-related differences in private or self-funding schools of learning. Although courts recognized that education is a civic activity, they have drawn a distinction between an activity of offering education and litigation which occurs as a result of a personal employment agreement. When the conditions of service are not regulated by statutory requirements, these conflicts are perceived as being under common law.

Meanwhile, the courts have not fully left out educational institutions from Article 226. In cases where an institution carries out a social responsibility that directly impacts on statutory rights, or breaches binding regimes, writ jurisdiction can still be invoked. But this interference is constrained and is based on the circumstances of the cases in question.

The more subtle and inconsistent application of writ jurisdiction can therefore be found in the educational sector. Education cases unlike the banking industry where the courts have exercised a relatively uniform approach also tend to take a closer look at the institutional structure, funding and control. This has led to contrasting results even in institutions whereby they are doing similar tasks.

In this chapter, it has been shown that although Article 226 offers the flexibility to solve the problem relating to public law, the courts have been cautious in order to avoid confusion between the elements of public accountability and the autonomy of the private sector in the field of education. The last chapter will draw the comparison between the judicial approaches employed in the banking industry and the educational industry and discuss why these differences happen.

Comparative Analysis, Judicial Inconsistencies, and Conclusion

An inter-judicial comparison of the judicial rulings on the amenability of writs in the banking and education areas shows that there is convergence as well as divergence when applying Article 226. Although courts have always upheld the restrictive meaning of State under Article

12, there have been different approaches applied to Article 226, depending on the nature of the sector, role played and nature of the dispute in question.

Judicial reasoning has been quite stable in the banking and financial sector. Courts have found over time that even though they are regulated by statutory authorities, privately-owned banks and other financial institutions are not considered to be a "State" under Article 12. Cases like *Federal Bank Ltd. v. Sagar Thomas*[13] and *S. Shobha v. Muthoot Finance Ltd.*[14] expressly address the fact that regulatory control is not deep-seated and extensive governmental control. Moreover, the cases involving loan transactions or the terms of service have been interpreted as the subject of private law and thus, were not the subject of writ under Article 226. Considering this, people who get upset about the activities of private financial institutions are usually channeled towards other solutions within civil or statutory law.

However, the situation is different and more diverse in the educational sector. Although it is a matter of fact that education is a public function, the courts have been cautious to use writ jurisdiction on educational institutions that are privately operated. Cases like *Dr. Janet Jeyapaul v. SRM University*[15] and *Army Welfare Education Society v. Sunil Kumar Sharma*[16] illustrate that the courts are unwilling to accept writ petitions based on service issues in privately or self-financed institutions. Meanwhile, previous cases such as *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*[17] indicate a wider mentality, whereby writ jurisdiction was allowed based on the principle of social responsibility.

To a great extent, this divergence could be explained by the nature of disputes at issue. Courts in both areas have been more ready to make use of writ jurisdiction where the statutory requirements or the obligations of public law are well defined. Nevertheless, in the case of disagreements which only occur through a personal contract, more so an employment contract, the courts have always refused to intervene. The distinction is that the cases concerning the

[13] *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733 (India)
[14] *S. Shobha v. Muthoot Finance Ltd.*, (2020) 13 SCC 157 (India)
[15] *Dr. Janet Jeyapaul v. SRM Univ.*, (2015) 16 SCC 530 (India)
[16] *Army Welfare Educ. Soc'y v. Sunil Kumar Sharma*, (2022) 5 SCC 594 (India)
[17] *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 (India)

terms of service, membership and acknowledgment are more frequently disputed in educational institutions and tend to be on the border of public and private law.

The other issue which is a cause of inconsistency is the level of perceived government involvement. In situations involving institutions that are affiliated to the armed forces like Air Force Schools, the argument of funding and administrative control has tended to obscure the distinction between the government and the character. However, the courts have mostly reiterated that such associations are not enough to meet the provisions of Article 12.

In general, the court way is an effort to balance constitutional accountability and institutional autonomy. Article 226 has proven to be a versatile instrument where the court may step in where there are social obligations, but it does not broaden the meaning of State under Article 12. Nonetheless, the lack of a standard examination in the process of establishing public duty has led to different results, especially in the educational sector.

To summarize, although Article 12 still places a lot of restrictions on the concept of who is and is not a State, Article 226 is a valuable constitutional protection against injustice. The reserved but changing willingness to use writ jurisdiction by the courts is indicative of the fact of contemporary governance as more and more functions of public significance are being played by private bodies. Nevertheless, there is still a necessity for more doctrinal clarity to make the application of Article 226 consistent and predictable. Until this clarity is reached, the issue of writ amenability will remain very dependent on the facts of the particular case and the character of the role undertaken.