



## Domicile based job laws raises constitutional questions

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**(Mains GS 2 : Federalism, Government Scheme/Policies, Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure)**

### **Context:**

The petition by the Haryana government to remove the stay on the Haryana State Employment of Local Candidates Act, or the Haryana Act will soon be heard by the Supreme Court.

### **Brief about the Act:**

- The Haryana State Employment of Local Candidates Act reserves 75% of jobs in the private sector in the State for local residents.
- The Act applies to jobs that pay up to ₹30,000 per month, and employers have to register all such employees on a designated portal.
- The Government may also exempt certain industries by notification, and has so far exempted new start-ups and new Information Technology Enabled Services (ITES) companies, as well as short-term employment, farm labour, domestic work, and promotions and transfers within the State.
- The Act was enacted in February 2021, and brought into effect in January 2022 but last week, the Punjab and Haryana High Court admitted a petition challenging the constitutionality of the Act, and stayed the implementation until it heard the case.

### **Encroach right to occupation:**

- There are important constitutional questions that arise from this Act as Article 19(1)(g) of the Constitution guarantees freedom to carry out any occupation, trade or business.
- There may be reasonable restrictions “in the interests of the general public”, and in particular related to specifying any professional or technical qualifications, or to reserve a sector for government monopoly.
- This Act, by requiring private businesses to reserve 75% of lower end jobs for locals, encroaches upon their right to carry out any occupation.

### **Court’s mandate:**

- In 2002, in the T.M.A. Pai Foundation case, the Supreme Court stated that private educational institutions have autonomy in their administration and management.
- In 2005, in the P.A. Inamdar case, it said that reservation cannot be mandated on educational institutions that do not receive financial aid from the state, as that would affect the freedom of occupation.
- In 2005, the Constitution was amended to allow reservation in private educational institutions for socially and educationally backward classes and Scheduled Castes and Scheduled Tribes.
- Note that this amendment applies to admissions in private educational institutions and not to jobs in the private sector.

### **Domicile based reservation:**

- The provision of reservation by virtue of domicile or residence may be unconstitutional as Article 16 of the Constitution specifically provides for equality of opportunity for all citizens in public employment.
- It prohibits discrimination on several grounds including place of birth and residence; however, it permits Parliament to make law that requires residence within a State for appointment to a public office.
- This enabling provision is for public employment and not for private sector jobs and the law needs to be made by Parliament, and not by a State legislature.

### **Related cases:**

- There have been several cases related to public employment; for example, the Supreme Court, in 2002, ruled that preference given to applicants from a particular region of Rajasthan for appointment as government teachers was unconstitutional.
- It said that reservations can be made for backward classes of citizens but this cannot be solely on account of residence or domicile.

- In 1995, Rules in Andhra Pradesh that gave preference to candidates who had studied in the Telugu medium were struck down on grounds that it discriminated against more meritorious candidates.

#### **Exercise caution:**

- In the Indra Sawhney case in 1992, the Supreme Court capped reservations in public services at 50%; thus the question lies whether 75% reservation is permitted or not.
- It however said that there may be extraordinary situations which may need a relaxation in this rule by giving examples of far-flung and remote areas, where the population may need to be treated in a different way.
- It also specified that “in doing so, extreme caution is to be exercised and a special case made out” i.e. the onus is on the State to make a special case of exceptional circumstances, for the 50% upper limit on reservations to be relaxed.

#### **Observation of Court:**

- Telangana (2017), Rajasthan (2019) and Maharashtra (2018) have passed Acts which breach the 50% limit.
- The Maharashtra Act, which provided reservations for Marathas was struck down by the Supreme Court in May 2021 on grounds of breaching the 50% limit.
- It stated that the 50% limit is “to fulfil the objective of equality”, and that to breach the limit “is to have a society which is not founded on equality but on caste rule”.

#### **Affects equality:**

- The Haryana Act does not further “caste rule” as it is for all residents of the State irrespective of caste but it breaches the notion of equality of all citizens of India.
- All these cases relate to either public employment or to admissions to educational institutions, while the Haryana Act is about private sector employment.
- However, one may contend that any reservation requirement imposed on the private sector should not be higher than the limits on the public sector.

#### **India as a nation:**

- Recently, States have enacted laws that limit employment for citizens from outside the State but these laws raise questions on the conception of India as a nation.

- The Constitution conceptualises India as one nation with all citizens having equal rights to live, travel and work anywhere in the country but these State laws go against this vision by restricting the right of out-of-State citizens to find employment in the State.
- This restriction may also indirectly affect the right to reside across India as finding employment becomes difficult and if more States follow similar policies, it would be difficult for citizens to migrate from their State to other States to find work.
- There would be adverse economic implications of such policies as there may also be an increase in income inequality across States as citizens of poorer States with fewer job opportunities are trapped within their States.

**Conclusion:**

The courts, while looking at the narrow questions of whether these laws violate fundamental rights, should also examine whether they breach the basic structure of the Constitution that views India as one nation which is a union of States, and not as a conglomeration of independent States.