



## Domicile-based preferential policies and its implications

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

### Reference :

- Recently , The Haryana government has introduced 'State Employment of Local Candidates Bill 2020' which is not only constitutionally dubious, economically myopic, and socially divisive but politically cynical too.
- The Bill reserves 75 % of new jobs in private establishments under a compensation threshold of Rs 50,000 for Haryana residents.

### Is it new to the country?

- This is part of a growing pattern of domicile-based preferential policies, where state after state is flirting with laws of this kind.
- Andhra Pradesh has mandated 75 per cent reservation for locals; Karnataka is toying with the idea of reserving all blue collar jobs for locals; Madhya Pradesh has announced that public employment in the state be reserved for state residents.
- The last time there was such a contagion of domicile-based preferences was in the 1970s, when states such as Maharashtra, Tamil Nadu, Andhra Pradesh issued circulars directing employers to hire local residents.

### Constitution V/S The Haryana Bill

- The Haryana Bill is constitutionally indefensible. The Constitution prohibits discrimination based on place of birth.

- The right to move freely in the country and reside and settle in any part of it, the right to carry out any trade or profession, are all established rights. Article 16(3) does, in principle, enable Parliament to provide for domicile-based preferential treatment in public employment. But the right to enact this exception has been given to Parliament, not to the states.
- In fact, Article 16(3) seems to have been a clever piece of constitutional engineering by Ambedkar.
- There were voices in the Constituent Assembly, most notably MahavirTyagi, who were advocating for residential qualifications as the bedrock of a strong federalism. He argued that if there were no residential qualifications, provinces would not be able to enjoy “self-government” and it would “go against the real spirit of Swaraj.”
- There were also a plethora of existing rules. In the debate on November 30, 1948, Ambedkar conceded that “you cannot allow people who are flying from one province to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for the post and take the plums away.”
- But by decreeing that only Parliament had the right to make exceptions, Ambedkar ensured that such rules would not be enacted, simply because Parliament would favour uniform rules across India.

### **Constitutionality of domicile-based employment**

- The constitutionality of domicile-based employment preferences (unlike preferences in education) has never been frontally tested.
- The courts have not shown an urgency in pricking this balloon. But almost all the existing case law that impinges on the matter clearly indicates such laws are unconstitutional.
- In ‘Pradeep Jain vs Union of India’, the court had indicated this direction; in ‘Kailash Chandra Sharma vs State of Rajasthan’, the court had warned against parochialism. The Andhra Pradesh Bill is sub judice in the high court.

### **The Perspective**

- We can debate where private sector reservation is desirable or not. But the one prong of a defence used to be that the private sector cannot be subject to the same yardstick as the public sector; imposing reservation would not just interfere with freedom of trade and business, it might also be a form of expropriation.
- Given the variety of parties now espousing domicile-based reservation, the argument that the “private sector” can be protected will be an argument in bad faith; and arguably the case for reservation for social justice is stronger than the case based on domicile.

- Fourth, these bills will open up a new form of competitive ethnic politics. It is odd that a state like Haryana which has benefitted from being part of a cosmopolitan zone like NCR should unilaterally impose reservations.
- If you are rich, privileged or highly skilled, there are no entry barriers in accessing any labour market. But we shall put entry barriers on lower skilled migrants; our own internal version of an H-1B visa.

## **Conclusion**

- These bills are a canary in the mine. States are still not entirely comfortable with migration.
- They militate against the ideal that any Indian should be able to countenance the prospect of making a life in any part of India.
- The sociology of the Bill is also interesting: It seems to want to protect, not the most vulnerable workers, but the educated who cannot seem to be able to compete in a tight labour market.
- But the fact that states feel the need to enact these bills is an indictment of the economy as a whole: They suggest a pessimism about both education and job creation.