



## Mains Marathon

**Day 8:** How does reservation in local jobs hamper the ideals of right to equality and India as one nation as defined in the constitution of India?

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### Approach / Explanation / Answer

- Start your answer by introducing the concept of reservation in India.
- Discuss how reservation in local jobs is hampering the right to equality and India as one nation.
- Give points to justify local reservation is not against the constitutional principle.
- Conclude suitably.

### Answer:

**Reservation is a system of affirmative action** that provides historically disadvantaged groups representation in education, employment and politics.

**Article 16** of the constitution of India states that there shall be equality of opportunity for all citizens in matters of employment under the State and No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, discriminated against in respect or, any employment or office under the State.

### Reservation in local job is against right to equality and idea of India as one Nation:

- Article 16 of constitution of India doesn't mention reservation either in private job or reservation based on the domicile and residence.
- Reservation in local jobs promoting regionalism and favours son of soil theory which goes against the spirit of India as one Nation.
- It has crossed the upper limit of reservation i.e., 50% decided by the Supreme Court in **Indra Sawhney & Others v. Union of India, 1992** case because reservation in local jobs is 70-80% in various states.
- It also **overshadowed the concept of creamy layer** and collection of quantifiable data for reservation decided by the supreme court in M. Nagaraj v. Union of India Case 2006.
- The concept of local reservation is **against the concept of right to freedom mentioned in article 19** of the constitution of India which states that all citizens shall have the right
  - to move freely throughout the territory of India;
  - to reside and settle in any part of the territory of India; and
  - to practice any profession, or to carry on any occupation, trade or business
- It shows that reservation in local jobs is against individuals' freedom of profession, movement and settlement inscribed in the constitution of India and gives a sense of super administration in states

of India.

- Although Article 16 of the constitution of India empowers the parliament to make law for upliftment of the economic and weaker section but state legislature is not authorised to make law to give effect to fundamental rights mentioned in part 3 of the constitution of India.
- It shows that the statute of local reservation by the state legislature is against the spirit of schedule 7 of the constitution, which categorically differentiates the power between the states and union legislature.

### **Reservation in local jobs is not against the constitutional spirit and Indian Unity:**

- Article 16 of the constitution of India doesn't prohibit reservation based on the domicile and the residence. It seems constitutionally valid to provide first opportunities to the locals in local jobs because these people wear all the negative externalities generated by job creating establishments.
- Reservation in local jobs provides **equality among the weakest section of the society**, because reservation is only confined to low strata jobs, and it is as per the spirit of the Equal Protection of Law as per Article 14 of the constitution of India.
- In Golak Nath Case (1967), Supreme Court of India directed that if a law is made to give effect to DPSPs in Article 39(b) and Article 39(c) and in the process, the law violates Article 14, Article 19 or Article 31, then the law should not be declared as unconstitutional and void merely on this ground. It justifies the violation of article 14 and 19 for public welfare.
- Article 14 and 19 are not null in China shops but are subject to reasonable restrictions mentioned in the constitution itself. It negates that reservation in local jobs violates the right to equality.
- In the constitution of India, there are special provisions for jobs and education for states of Andhra Pradesh and Telangana under the article 371 D and E, due to their special circumstances. So, the reservation in local jobs amid the unemployment situation seems justified and as per the special provisions of the constitution of India.
- All the judicial pronouncements till date are with respect to the reservation in public employment and not with respect to the jobs provided by the private sector. So, reservation in jobs by states seems justifiable because states facilitate all the provisions to the entrepreneurs.
- Reservation in local jobs is bringing the middle path between the Ease of Doing Business and Ease of Living.

Reservation in local jobs seems a suitable solution amid unemployment and stagnant job creation. But it is not the panacea for all evils. We have to create entrepreneur skills for job creation and a sustainable working environment.

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