

Jharkhand Domicile Bill

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Context- The Jharkhand Governor has returned the Domicile Bill, that defines a 'local' in the state to the state government to "seriously review" its legality.

Key Highlights

- Domicile is a legal concept which links a person to a place with which he has a personal connection or treats it as his permanent place.
- However it is not always the place of a person's residence.
- Jharkhand was formed in 2000 by separating districts that had significant tribal population from Bihar with the goal of better tribal development and cultural preservation.
- Since the formation of Jharkhand the definition of domicile was contested.
- In 2002 the formation was based on land records of 1932.
- In 2016 the government came up with a relaxed domicile policy, that mentions six ways in which one could be considered a domicile.

- The present government has reignited the debate for domicile with the new bill.

Provisions of draft domicile Bill

- It defines a 'local' in Jharkhand on the basis of 1932 land records. People who have their names or their ancestor's name in the land records of 1932 or before, will be considered local inhabitants of Jharkhand.
- Those who have lost their land records or who are landless people can approach their respective Gram Sabhas for their inclusion.
- Only local persons, as identified under it, would be eligible for appointment in class 3 and 4 positions of the state government.
- The bill would come into force only after the Centre carries out amendments in order to include it in the Ninth Schedule, putting it beyond judicial scrutiny.

Arguments in Favour of the Bill

- In 1932, the land survey and revenue register also known as '1932 khatiyān' was done in large parts of the State.
- It was observed that migration of people from other States to Jharkhand i.e. undivided Bihar had adversely impacted the "original inhabitants/moolvasis/aboriginals".
- The percentage of people from Scheduled Tribes and moolvasis has seen a steady deduction since the census of 1941 in Jharkhand.
- The affirmative action for the development moolvasis will provide them social, cultural, educational service and other advantages.

Arguments against the Bill

- Policy measures such as reservation without social and economic development will encourage fragmentation and flame regional tensions which can become counter-productive
- Several areas of Jharkhand are covered under the Fifth Schedule which deals with provisions for Scheduled Tribes.
- In the case of Satyajit Kumar vs. State of Jharkhand, the Supreme Court has declared 100 per cent reservation given by the state in scheduled

areas to be unconstitutional.

- Making only local persons eligible for appointment in class 3 and 4 positions of the state government is not in accordance with Article 16 of the Constitution, that guarantees equality in employment.
- According to Article 16(3) of the Constitution, only the parliament has been empowered to impose any kind of conditions in the case of employment under Section 35 (A) under its special provision.
- But the State Legislature does not have this power.
- The Bill goes against supreme court orders in the case of AVS Narasimha Rao and others vs Andhra Pradesh, which was about jobs to the non-domicile persons.

Ninth Schedule

- NINTH Schedule became a part of the Constitution in 1951, when the document was amended for the first time.
- It was created by Article 31B, which along with 31A was brought in by the government to protect laws related to agrarian reform and for abolishing the Zamindari system.
- While A. 31A extends protection to 'classes' of laws, A. 31B shields the specific laws or enactments.
- For instance when The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993, ran into legal obstacles in the 1990s for reserving 69 per cent of the seats in colleges and jobs in the state government.
- In order to save it from legal troubles, its reservation provision was then included in the Ninth Schedule.
- When the Tamil Nadu law was challenged in 2007 in I R Coelho v State of Tamil Nadu case, the Supreme Court ruled in a unanimous verdict that while laws placed under Ninth Schedule cannot be challenged on the grounds of violation of fundamental rights, they can be challenged on the ground of violating the basic structure of the Constitution.
- By placing the current legislation in the Ninth Schedule, the Jharkhand government aims at shielding it from judicial scrutiny.

Way Forward

- This bill is in line with the recent trend of reserving jobs for local persons by states such as Andhra and Haryana, who earlier passed bills to such effect.
- There is also a need to study repercussions of such bills in a holistic manner and arrive at a consensus within the four walls of the constitution.