**Domicile Reservations in National Law Universities**



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Submitted by:

**Ishika Sharma**

Post: Intern

College: Symbiosis Law School, Pune

Course: 3rd year, BALLB (Hons.)

Mob No.: 8989877661

Email: ishikagsharma99@gmail.com

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# Abstract

*Justice Bhagwati has warned that “the concept of domicile, if used for a purpose other than its legitimate purpose, may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country”.[[1]](#footnote-2)Some people have the idea that local domicile concept is fallacious in India because every citizen has the right to move freely, reside and settle in any part of the country. But domicile status can be used to grant a privilege only if there is some justifiable context like discrimination. Judiciary on the other hand have the utopian vision that the domicile reservation in NLUs will lead to development and progress of state. The present article will analyse the arguments from both side of debate of whether reservation is beneficial or bring more harm than good in the country and then conclude with the view that the policy of domicile reservation is threat to unity and integrity of country in ling run.*

# Introduction

*“Man is a peculiar mix of bee and bear. While society and state form part of his need, individual interest forms his basic instinct*.”

Ivor Jennings said, equality before the law means that among equals, the law should be equal and should be equally administered, that like should be treated alike.[[2]](#footnote-3)Further, equality before the law denies any special privilege, status or disability of any person in the sphere of enforcement of law.[[3]](#footnote-4) But concept of equality is abstract as law focused on maintain equality, rather than achieving it in real sense.

India is a country of great social and cultural diversity often we take pride in the country's colorful cultural diversity. Hence, social and economic disparities are indeed despairingly vast. India is the homeland of people, who are different to each other on the basis of language, religion, caste, race and communities.

Many a times reservation is used to justify classification, in terms of providing for reservation, treating equals as equals to remove social and economic disadvantage. In India, the classification in terms of reservation, is based on castes. However, there is also another approach to reservation in educational and other institutions depending upon there geographical locations which is known as Domicile reservation.[[4]](#footnote-5)

Domicile according to Halsbury's laws of England, [[5]](#footnote-6)is the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law.The domicile of a person is in that country in which he either has or is deemed by law to have his permanent home. Permanent home means where the person reside for long period of time. It does not necessarily mean that person have a home to reside. It is a legal concept for the purpose of determining what the personal law applicable to an individual is and even if an individual has no permanent home, he is invested with a domicile.

There are two kinds of domicile of origin and domicile of choice. The domicile of origin that is a domicile that is invested to each person by operation of law at birth, that is the domicile of his father or his mother according as he is legitimate or illegitimate. Domicile of choice is a domicile which every person or full age is free to acquire in substitution for that which he presently possesses. The domicile of origin attaches to an individual by birth while the domicile of choice is acquired by residence in a territory subject to a distinctive legal system, with the intention to reside there permanently or indefinitely. In India only one Domicile is recognized by Article 5 of Constitution that is domicile of India as it states explicitly “*domicile in the territory of India”*.[[6]](#footnote-7)

It’s a common notion to refer ‘domicile’ as ‘state domicile’. But it is stated by the apex court that it is detrimental to refer it as State domicile as it is detrimental to the concept of unity and integrity of India. It is dangerous to use legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in long run tend to break up the unity and integrity of India.[[7]](#footnote-8)

# Background of Domicile Reservation

The reservations came into existence as a policy for backward classes of citizens, and include, as part of the constitutional scheme. These reservations are divided in to two: Horizontal and Vertical reservations. Horizontal reservations are for categories of persons with disabilities, women, and ex-servicemen. Vertical reservation includes reservation for Scheduled and Backward classes. Domicile-based reservation is part if vertical reservation.[[8]](#footnote-9)

This provision of domicile reservation is held non-discriminatory by Parliament as mentioned in Article 16 of the Indian Constitution. However, many a time state governments have taking advantage of the provision and enacted laws without parliamentary authorization and/or in the absence of a parliamentary enactment permitting them to do so, pursuing policies of localism. The Parliament has exercised very little control over these policies.[[9]](#footnote-10) Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957 that abolished all existing residence requirements in various states and provided for exceptions only in the case of the special instances of Andhra Pradesh, Manipur, Tripura, and Himachal Pradesh.[[10]](#footnote-11) This means that the central government has only given the aforementioned states the right to issue directions for setting residence requirements.

In *State of Jammu & Kashmir v. Triloki Nath Khosa & Ors*[[11]](#footnote-12) the court held that equality of opportunity under Article 16 for any office under the state is done by meeting the necessary qualifications and further, based on capability. This does not act as an impediment to the state development. But in the subsequent part of this paper it will be explained how the policy of reservation on the basis of residence although held valid in terms of provisions of Constitution by judiciary, will ultimately do more harm than good to the country.

# Position of domicile reservation in NLUs

NLUs are not central universities, but state universities. None of the law universities has been declared as an ‘institute of national importance’ by UGC, AICTE and Ministry of Human Resources Development. As a result, reservation policies in each law university has been determined by state governments as they deemed necessary. While NLS out of 80 seats for B.A., LL.B. (Hons.) reserves-12 seats for SCs (15%), 6 seats for STs (7.5%), 2 seats for Persons with Disabilities (3%) and 5 seats for Foreign Nationals, other NLUs and five-year law colleges have different admission policies in place.NALSAR is the only Tier-1 NLU which provides for 20% state domicile reservation. By Tier-1 we refer to NLS, NALSAR, NUJS and NLU-Delhi. It is important to note, that NALSAR which until 2014 had 30% horizontal reservation or women, decided to discontinue with the same in 2015. This is probably explained by the fact that since women anyway form near 50% of student bodies in NLUs, such reservation not particularly needed.[[12]](#footnote-13)

Other NLUs, apart from NLU-Jodhpur and NLU-Odisha have implemented affirmative action in varying degrees and forms. Depending upon the local requirements and considerations, NLIU-Bhopal and HNLU-Raipur provide for considerable reservation for state-domiciled STs. Whereas RMLNLU-Lucknow and CNLU-Patna provide for state-domicile reservation only for SCs, STs, EBCs, BCs and OBCs. That is, in these two colleges no state-domicile reservation exists for general category, but only through all India merit could one get in general categories through both colleges.[[13]](#footnote-14)

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# Need of reservation for achieving equality in development: Myth or reality

The Supreme Court of India in while answering the issue of legality of domicile reservations has stated on favor of the policy in case of ***Dr. Pradeep Jain v. Union of India***[[14]](#footnote-15)where it stated two reasons why reservation is necessary step to be taken by state government. One of the reason was financial assistance by the state and backwardness of particular region. The state government provide all facilities from money derived from the taxes paid by the people domiciled in that particular state.

Further in the case of ***DP Joshi v. State of Madhya Pradesh[[15]](#footnote-16)***, the court stated that the objective of encouraging education by providing some concession in the fees to the residents of that particular state is legitimate fulfills the requirement of Article 14 of the Constitution of India.[[16]](#footnote-17)The court further held that State’s claim of promoting education amounts to legitimate object and the classification based on domicile is a rational nexus with such object. But many a times it is suggested by its judgment that test of classification need to be havereasonable nexus to the objective and impact of it is beneficiary or non-beneficiary group becomes relevant enquiry depending on the facts of the particular case.[[17]](#footnote-18)

Contrary to judgment of *Pradeep Jain* and *DP Joshi*the recent judgment in case of ***Sandeep v. Union of India[[18]](#footnote-19)***, the court emphasized that reservation based on residence compromises on merit of students. Although due to technicalities court cannot overrule the reservation, it expressed that such reservation does not qualify as a means of achieving equality, but, act as a means for achieving equality, but, acts as a force strengthening regionalism, creating more of a region based identity than an egalitarian national identity.

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# Impact of reservation at national level

In judgments like *Pradeep Jain[[19]](#footnote-20)* and *DP Joshi[[20]](#footnote-21)* court justifies domicile reservation on grounds of development and progress of states but it does not elaborate upon the effect at national level. The impact of these policies on the group which is non-beneficiary especially the states which lack high-ranked educational institution is an equally important aspect to consider as the students of these states will go to other states for better education where the seats are already reserved. It known that every state is different in terms of its capabilities of development. There are several states which have a good number of educational institutions providing opportunity for the students in diversity of fields whereas some regions do not able provide that quality of educational opportunities.

It is also important to understand that the domicile based reservation does not going to result in the elevation of weaker section of the states because no state in India is homogenous in terms of backwardness and there is large gap called urban-rural divide. This gap will increase because of reservation is given to residents only. This reservation will provide stronger position to the stronger and advanced section without substantially contributing to the alleviation of weaker section of the states.

When the whole reservation is seen at the national level in country like India which is ethnically and culturally diverse, the domicile reservation will lead to decline in regional diversity. Many philosophers emphasized on the idea that important contribution of universities as social institutions is fulfilled when it provide a space for a distinctive interaction between students from different communities and backgrounds.[[21]](#footnote-22)

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# Constitutionality of Domicile Reservation

Residence in a locality or a state is a forbidden ground of classification under Article 16(2) in respect of employment or appointment to any office under the state. But this classification is not prohibited under Article 15 and Article 14 of the Indian constitution. Courts in India have upheld the constitutional mandates of the domicile reservation with the simple logic of treating all citizens as equal, while recognizing that unequal’s cannot be treated equally. The Indian Constitution, in fact, expressly provides for affirmative action and “reservations,” or quotas.[[22]](#footnote-23)

On this line in case of Pradeep Jain[[23]](#footnote-24)the Supreme Court held that classification on the basis of residence or domicile is constitutionally valid. Also in case of *D.P Joshi[[24]](#footnote-25)* and *N.Vasundharav. State of Mysore[[25]](#footnote-26)* in respect of admissions in medical college, court held that such classification does not violate the principle of equality enshrined in Article 14. Once it is held by the court that residence or domicile is a permissible basis for classification, it cannot but mean residence or domicile in a geographical division in India, because no question of classification on the ground of residence or domicile can arise on the basis of all India residence or all India level.[[26]](#footnote-27)

Justice Jagannaghas has observed that since the personal laws subjects like marriage, succession etc. are now covered by all-India legislations, the concept of any regional State domicile is unnecessary, irrelevant and uncalled for and Basu has warned that “*the introduction of such concept would be pernicious and encourage the separatist forced which are at work in the different states in India and against which the Constitution makers provided provisions like one citizenship, one judiciary and one integrated public services.*”

Justice Bhagwati also in the case of *Pradeep Jain*, observed that it would not, therefore, be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India” and that it “would be highly detrimental to the concept of unity and integrity of India to think in terms of State.

In case of ***Meenakshi v. Union of India***[[27]](#footnote-28) has stated that anyone everywhere irrespective of his or her language or religion, place of birth or residence, is entitled to be affordable equal chance for admission to any secular educational course for cultural growth, training facility, Speciality or employment. This domicile reservation is flawed concept against the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B.

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# Points in favor of reservation

1. **Welfare of native students**

By not giving reservation to native students, the right of the State Government to regulate the process of admission and their desire to provide for their own students should be also be accorded due deference.[[28]](#footnote-29)

1. **University wise preference loses relevance**

Where the students from different states appear at a common entrance test the rule of university wise preferences loses its relevance.

1. **Institutions for development of backward areas**

To develop education system in the backward areas, government establishes these law institutions so that the resident of those areas got equal opportunity to study like other developed areas of state. But by giving students of different states same opportunity as them, made the whole purpose of establishment of these institutions futile.[[29]](#footnote-30)

1. **Reduce anxiety, pressure and mental distress**

When the students have to move to another states for pursuing their studies, many a times they do not able to perform well because they did not feel belonged to that new culture and surrounding. In their own culture and traditions they will able to perform with their full potential.

# Points in against of reservation

1. **Discrimination on the basis of “Place of Birth”**

Many who are against the reservation argue that place of birth mentioned in Article 15 was synonymous with domicile. But in case of ***Saurabh Chaudri v. Union of India***[[30]](#footnote-31)the apex court clarified that the term place of birth occur in Article 15(1)[[31]](#footnote-32) but not domicile. However, Article 16(2)[[32]](#footnote-33) refers to both domicile and residence apart from place of birth. A distinction, therefore, has been made by the makers of the constitution themselves to the effect that the expression “place of birth” is not synonymous with the expression “domicile” and they reflect two different concepts.

1. **Reservation is not within permissible limits**

The rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than the permissible limit.

1. **Migration of population from one state to another**

If domicile reservation is available in every state, then people will shift to those places where top law institutions because domicile is given when person is not permanent resident.

1. **Threat to unity and integrity of country**

The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal situation which may in the long run tend to break up the unity and integrity of the country.[[33]](#footnote-34) Therefore, the state government should avoid this wrong use of expression domicile in rules and regulations regulating admissions to their educational institutions.

1. **Limited competition for students**

Not able to adapt the competition outside the stage when they apply for jobs outside the state. This will in turn bring anxiety and irritation in the minds of student and further decline their productivity.

1. **Heterogeneous distribution of courses**

There are some superspeciality law courses distributed all over India in a heterogeneous manner. And states not having any government law institutions offering these courses were deprived of the opportunity to participate in the entrance examination and that allegedly votes Articles 14 and 16 of the Constitution of India.

1. **Admission of less Meritorious**

The reservation policy will lead to admission of less meritorious students when more meritorious students are available only because they are not resident of that particular state. This exclusion of meritorious students on the grounds of reservation would likely to promote sub-standard candidates and bring about fall in medical competence, injurious in long run in upliftment of talent.

# Conclusion and suggestions

The contrary view of judiciary and as discussed above harmful impact of the reservation on the unity, diversity and development of whole country at large is highlighting a conclusion that the policy of domicile reservation need reconsideration by legislators. The foremost concern before the judiciary is to determine the correct method of the allocation requirement of the reserve category based on the respective state rule. And by this policy, states may continue to distinguish between citizen and non-citizens so long as there is a valid and substantial reason for doing so as courts by themselves allows this discrimination as valid and in line with the provisions of constitution. More Judicial intervention is necessary to make sure that any extreme use of this reservation policy.

The domicile reservation policy promote division of states and in line of destroying unified fabric of a state, and the values of nationalism and comity are not welcome. It is important for policymakers to engage in the discussion considering the effects of this policy not only on state but on the country at large and made changes in the current scenario to achieve the development of the backward states not only on papers but in reality. These policies of welfare of any backward states have to be done and developed, keeping in mind the need to balance the respective state and national interest, and the greater national importance of the commodity.

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