



# A BRIEF STUDY ON STATE'S RESERVATION IN PRIVATE SECTOR JOBS

Name – Anant Hooda

Email- ananthooda79@gmail.com

## Abstract

It was on the 5th of November of 2020, the state of Haryana under Manohar Lal Khattar government passed the Haryana State Employment of Local Candidates Bill. Then on 26th February 2021 it came into news that Governor Satyadeo Narayan Arya gave his assent to the bill thereby making it an act. This year in the first half itself i.e. March 2021 saw another bill introduced by the Hemant Soren government, Jharkhand State Employment of Local Candidates Bill which had a resemblance to the one introduced in Haryana too which piques our interest that why are the states introducing these employment bills. So, let's delve deeper into our subject.

Amid the pandemic era and lockdown, many Indian states have been facing economic slowdown including a rise in the rates of unemployment. To deal with this quandary many states have resolved to different methods. A few months back the state of Haryana passed a bill regarding 75% job reservation to the natives of the state in the private sector which became a debatable topic. But it is to be taken into account that Haryana was not the first state where such a type of reservation policy was introduced. Even before it states like that of Andhra Pradesh, Madhya Pradesh and Karnataka too introduced it. But here a million dollar question arises whether these incentives taken by the government are right? Is it legally correct? But before pondering upon these points we need to get acquainted with the provisions pertinent to the reservation policy.

Key Words- Unemployment, Assent, Reservation, Private Sector, Local, Domiciled, Geographical Classification..etc.

## Introduction

Andhra Pradesh last year become the first state in the country to introduce reservation in the private sector.

Besides Andhra Pradesh, there is a law in Maharashtra that if any industry that gets an incentive from the State Government, then 70% of people at a particular level (basically unskilled workers of that industry) have to be locals.

Recently, The Haryana government has recently brought in the Haryana State Employment of Local Candidates Act 2020, which provides for reservation in certain categories of private sector employment. The law has been subject to critical judicial scrutiny while it is also objected to by industry associations. Haryana Assembly has passed the Haryana State Employment of Local Candidates Bill, 2020 to reserve 75% of private-sector jobs in the state for local residents. Similar demands have come up in different states like Karnataka, Madhya Pradesh, Maharashtra, and Gujarat

## THE SALIENT FEATURES OF THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT 2020

### RESERVATION IN THE PRIVATE SECTOR:

- On January 15, 2022, the government notified the “Haryana State Employment of Local Candidates Act, 2020”.
- The law makes it mandatory for all employers in the state to reserve 75 percent of the jobs offering a monthly gross salary or wages of up to ₹30,000 for candidates “domiciled in the state of Haryana”.
- The state government also relaxed the residency requirement from 15 to five years for a person to get a bona fide resident certificate in the state to provide some flexibility to the private companies in hiring.
- This law applies to new recruitments and will not come into effect from retrospective effect. Exclusion has been made for Central and State governments and entities owned by them.

### APPLICATION OF THE ACT:

- The Act applies to all the ‘Employers’ in the state.
- This includes all companies, partnership firms, societies, trusts, limited liability partnership firms and.
- Any person or employer that employs 10 or more employees in any trade, business, manufacturing unit, or enterprise.
- The law provides for fines between ₹10,000 and ₹2 lakh for violation of the provisions.

### SUNSET CLAUSE:

- The law will have a sunset clause and will cease after ten years of enactment.

### MANDATORY REGISTRATION:

- All employers in the state have been directed to register their existing employees garnering a monthly pay of not exceeding ₹30,000 on the designated portal within three months and can now initiate any new recruitment in this pay bracket only after completing this process.

### ENSURING COMPLIANCE:

- All employers will also need to file a quarterly report on the government’s designated portal providing information regarding the local candidates employed and appointed in this pay bracket.
- These reports would be subject to scrutiny by designated officials, who will be empowered to ask the employer to furnish the documents or conduct verification.

### PROVISION OF EXEMPTION:

- The government may 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 labor, domestic work, and promotions and transfers within the state.
- There is a provision also for an exemption if an adequate number of local candidates of desired skill or proficiency are not available for a particular category of jobs. But the government can accept or reject the claim or direct the company to train local candidates in the desired skills.

### THE ARGUMENTS OF THE GOVERNMENT IN FAVOUR OF THE ACT

- One of the key arguments of the government has been that urbanization and industrialization have led to substantial land acquisition in the state, which has historically been an agrarian society.
- The government believes this has led to a reduction in employment opportunities in the agriculture sector for the local youth and the law will help create new job opportunities for them and also encourage skill development.
- It also believes it will reduce the dependency of employers in Haryana on migrant workers and improve their efficiencies.

- The private jobs reservation was part of the election manifesto of the alliance partner in the coalition government in the state.
- Social justice is an important aim of any welfare state, and the law is enacted in this direction.
- According to the state, the Act makes a valid classification by grouping local candidates who are unemployed and domiciled in Haryana, irrespective of their caste, creed, sex, place of origin or place of birth and their social status, to achieve the object of providing suitable employment in the private sector.
- It says that the Act makes a “geographical classification” based on domicile and in furtherance of the fundamental right to life, livelihoods, and health conditions of persons domiciled in the state.
- It claimed that there is no restraint against a state legislature from creating geographical classification to incentivize and grant concessions to citizens or industrial units.

## A CRITICAL SCRUTINY OF THE ACT

### CONCERNS OF THE INDUSTRY:

- Industry bodies have raised concerns about the implementation of a law that is discriminatory and against the concept of one nation. They believe this will substantially increase their compliance burden, especially on small and micro-enterprises.
- One of the key concerns of the industry is also whether enough workers will be even available for jobs in trades that are dominated by workers from certain clusters of the country, such as construction and manufacturing as well as in the services sector such as hospitality and retail.
- Almost all of the employees in MSMEs fell under the ₹30,000 pay bracket. Such industries hire and let go of workers as per demand, it would not always be possible to find local employees when required.

### IMPACT ON INVESTMENT CLIMATE:

- It is said that this will impact the business-friendly image of the state’s ease of doing business rankings and may also discourage fresh investments by industries.
- The Federation of Indian Chambers of Commerce and Industry (FICCI) has said that the law would “spell disaster” for private investment in the state and impede industrial development.
- This law is also held to be going back to Inspector Raj prevalent in the pre-1990 LPG era.

### STATE INTERVENTION IN THE MARKET:

- Any rule which tries to artificially control the internal functioning of a private enterprise against the market will affect its competitiveness in the market and hurt its productivity.
- Minimal government interference is usually an indicator of a mature economy; in this case, that appears to have gone out of the window and is also against “Minimum Government and Maximum Governance”.

### CHANCES OF RELOCATION OF INDUSTRIES:

- If companies in Haryana have difficulty finding skilled resources as a result of a law, they may be forced to relocate to other cities due to insufficient local manpower.
- This will further reduce the scope of employment.

### ECONOMIC FRAGMENTATION:

- This Act violates the fundamental idea of the Indian economy as one unit and dilutes steps to integrate the markets, which may lead to labor market fragmentation.
- There would be an exodus of low-paid workers as they would be unable to find work unless their states of origin give them sufficient job opportunities.
- What if the other states also start following the Haryana way?

### **IMPACT ON COMPANIES:**

- Jobs in the private sector is based “purely” on the “skills and the analytical bent” of the employee.
- Other than potentially increasing costs for companies, the compliance burden on them will be huge, which also may provide opportunities for rent-seeking for bureaucracy.

### **CONSTITUTIONAL ISSUES:**

- It is held that the new law went against constitutional provisions and violates Articles 14, 15, and 19 of the Constitution ((Read ahead)
- The core issue is whether a state could restrict employment based on domicile that too in the private sector.
- The stay granted by the Punjab and Haryana High Court was vacated by the Supreme Court. But it directed the
- High Court to decide on the issue within a month and asked the state government not to take any coercive steps against the employers for the time being.

### **CONSTITUTIONAL ISSUES INVOLVED IN THE ACT**

#### **VIOLATES ARTICLE 14 and 15:**

- The plea filed in the Court states that the Act violates Article 14 (equality before law) and Article 15, which prohibits discrimination on various grounds religion, race, caste, sex, or place of birth.

#### **VIOLATES ARTICLE 16:**

- 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 a law that requires residence within a State for appointment to a public office.
- This enabling provision is for public employees and not for private-sector jobs. And the law needs to be made by Parliament and not by a State legislature.

#### **VIOLATES ARTICLE 19:**

- It stands in violation of Article 19 of the Indian Constitution, which guarantees the right to freedom, including to reside and settle in any part of the Indian territory and practice any profession, business, or trade.
- 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 a 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.

#### **CONTRARY TO COMMON CITIZENSHIP:**

- The plea states that the Act is contrary to the very idea of common citizenship for the Union of India and that it fails to uphold the federal structure of the Union of India, which is part of the basic structure of the Constitution of India.
- India was envisaged as a Union of States with Single citizenship, which necessarily implied that States were not entitled to either bestow citizenship individually or any resembling privilege.

### **VIOLATES 50 PERCENT NORM:**

- The question of permissibility also arises if the *Indira Sawhney vs Union of India* case is considered, where the Supreme Court had capped the reservation limit in public sector jobs at 50% in 1992.
- Legal experts have said that one may then contend that the reservation limit in private sector employees should not exceed that prescribed for public services.

### **AGAINST RESERVATION JURISPRUDENCE:**

- 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 could 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 because they discriminated against more meritorious candidates.

### **POLITICS OF DOMICILE RESERVATION: AN OVERVIEW**

Domicile politics (Sons of the soil) is nothing new to India, and Haryana is far from the first state to enact such restrictive laws. Earlier, Maharashtra, Andhra Pradesh, Karnataka, and Madhya Pradesh enacted laws requiring locals to be given preference in private jobs. However, each had to overcome its own set of obstacles, ranging from Constitutionality to compliance. Andhra Pradesh was the first state to enact such a law in the face of rising unemployment in 2019, but it was challenged in the High Court there. Karnataka too passed such laws, most recently in October last year, asking the private sector to give preference to local candidates, but companies did not know how to ensure compliance. Madhya Pradesh too has promised to bring in a 70% private sector job reservation quota for locals. In August last year, Maharashtra too joined the bandwagon and announced that it would make it mandatory for the private sector to reserve 80% of its jobs for residents only.

### **ANDHRA PRADESH EMPLOYMENT OF LOCAL CANDIDATES IN THE INDUSTRIES/FACTORIES ACT, 2019**

The Andhra Pradesh law, passed by the Assembly in July 2019, and notified promptly next month, reserved 75% of jobs for locals in industries and factories, including any joint venture and project taken up under the public-private partnership (PPP) model. Where suitable local candidates were not available, the industry or factory would be given three years to train local candidates with “active collaboration of the Government”. The government also laid down that industry would have to apply for any exemptions from the Department of Labour, Employment and Training before sourcing employees from other states. For now, the priority for the state, according to industry experts, is on getting new industries to absorb the local candidates in phases, as implementing the law for the existing workforce would entail terminating employees who may be from other States. The government is not forcing employers to implement the Act for various reasons, which mainly include the prevailing gloomy industrial scenario, largely attributable to the pandemic’s aftermath.

While the government has begun training programs to develop skilled labor to cater to various sectors and implement the Act, an advocate has filed a writ petition challenging the law’s constitutional validity. The state, the advocate, stated, has no power to prescribe the domicile or place of birth or place of residence as a requirement for public employment.

### **THE WAY FORWARD**

#### **HUMAN CAPITAL FORMATION:**

- When it comes to investment, Haryana has not been lacking. But, Investors, stakeholders, and industry bodies on multiple occasions have stated that there is a shortage of adequately skilled local workforce — especially in the technology sector.
- Thus, skill development programs need to be undertaken on a war footing in collaboration with industries, vocational training institutes, etc.



- The states need to work in tandem with the Ministry of Skill Development and Entrepreneurship for implementing the National Skill Development Mission etc.

### **RAPID EMPLOYMENT GENERATION:**

- According to CMIE data, Haryana's unemployment rate has been higher than the national average for the past four years. In April 2020, approximately 40% of Haryana's job seekers returned home empty-handed.
- Thus, it is imperative to fast-track employment opportunities for the youth, and a good start would be filling up the state level and national level vacancies in governmental posts that run into lakhs.
- Secondly, start-up ecosystems need to be promoted for entrepreneurship and employment generation.

### **PERSUASION THAN COERCION:**

- Given the bleak employment situation in the backdrop of the reported loss of millions of jobs during the pandemic, it is no surprise that the leadership in every state seeks to find employment opportunities for its youth.
- But, a more persuasive and incentivizing approach can achieve the objective than a coercive approach. For instance, tax incentives for companies employing local candidates, ease of compliance for such companies, land concessions, subsidies, etc.
- If reservations have to be made, they should begin with a lower threshold of 20%-25% and give time for the state's youth to inculcate and hone their specialized skill sets.

### **JUDICIAL DETERMINATION:**

- Even though the Constitution allows the Parliament to prescribe a residential criterion for employment to public posts, it is doubtful whether such a measure can be extended to the private sector.
- Thus, an authoritative pronouncement by the apex Court would provide clarity to the issue.

### **SHUN POLITICAL NATIVISM:**

- The broader trend of raising the sons of the soil issue for electoral gains in States will hurt the investment climate across the country.
- If more states follow suit, there will surely be an extreme level of talent crunch across industries in different States, and the free movement of India's manpower resources within the nation will be threatened.
- Thus, political nativism may lead to parochial economics which in turn can create social unrest in the polity.

### **BALANCED AND RAPID REGIONAL DEVELOPMENT:**

- The rise in regional inequalities (east vis-a-vis west and south) since the 1990s has deepened social divisions, with migration largely headed towards the western and southern States where infrastructure is better developed.
- The setting up of educational and skills institutions in backward areas can bridge the gap between the states and within the states(urban-rural) and these regions can turn into hubs of economic activity.
- The Aspirational District Programme of the GoI and various schemes for MSME development have huge potential in this regard.

### **Conclusion:**

The Constitution conceptualizes India as one nation with all citizens having equal rights to live, travel, and work anywhere in the country. These State laws seem to 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. Beyond the question of Constitutionality, what is flagged by such developments is the state of the economy, especially the labour economy. Thus, sustainable

employment generation policies and programs formed and implemented with wide-ranging consultations, especially with the industries, will surely be considered as good politics and good economics.

### References:

- Haryana State Employment of Local Candidates Bill
- Jharkhand State Employment of Local Candidates Bill
- new Information Technology Enabled Services (ITES
- *Indira Sawhney vs Union of India* case

