

# State Legislative Brief

## HARYANA

### Haryana State Employment of Local Candidates Bill, 2020

#### Key Features

- The Bill seeks to reserve 75% of new jobs for local candidates in private establishments.
- Private establishments may claim exemptions if candidates of desired skill are not available.
- Establishments must mandatorily register all employees earning less than 50 thousand rupees on a designated portal.

#### Key Issues and Analysis

- A state law providing for reservation in private establishments on the basis of residence may not be constitutional.
- Reservation to the extent of 75% may violate the guidelines laid down by the Supreme Court.
- Constraints on private establishments in hiring may be detrimental to their efficiency.

The Haryana state assembly passed the Haryana State Employment of Local Candidates Bill, 2020 in November 2020.<sup>1</sup> The Bill seeks to reserve 75% of new jobs for local candidates in various companies, societies, trusts, and limited liability partnership firms situated in the state of Haryana. This reservation will be for local candidates for all jobs with a compensation below Rs 50,000 per month. According to the Statement of Objects and Reasons of the Bill, the Bill is desirable as there has been an influx of a large number of migrants in the state, competing for low-paid jobs. As per 2011 Census, the net in-migration for Haryana during 2002-2011 was eight lakh persons, which was the fourth highest amongst states in the country (after Maharashtra, Gujarat, and Delhi).<sup>2</sup>

Over the last few years, many other states have also announced or taken measures to provide reservation in employment for local residents. Table 1 provides a summary of measures taken by states in the last few years to provide for reservation in (public or private) employment.

**Table 1: Measures taken by states for providing reservation in employment (last five years)**

| State          | Year | Reservation   | Sector               |
|----------------|------|---|----------------------|
| Haryana        | 2020 | 75% reservation for locals in private industry                        | In private sector    |
| Andhra Pradesh | 2019 | 75% reservation for locals in industry/factories (including PPP mode) | In private sector    |
| Karnataka      | 2016 | 100% reservation for locals in blue-collar jobs (draft)               | In private sector    |
| Rajasthan      | 2019 | 5% reservation to certain communities                                 | In public employment |
| Maharashtra    | 2018 | 13% reservation to certain communities                                | In public employment |
| Telangana      | 2017 | Reservation for backward classes, SC and ST increased to 62%          | In public employment |

Sources: Various state laws and regulations; PRS.

#### Key Features

- **Applicability:** The Bill applies to: (i) all companies, partnership firms, societies, trusts, limited liability partnership firms, (ii) any person employing 10 or more persons. It does not apply to the central or state government, or any organisation owned by them. It will be in force for a period of 10 years.
- **Reservation for local candidates:** All such employers must provide 75% of new jobs with a gross monthly salary of up to Rs 50,000 to local candidates (candidates who have a domicile in the state).
- **Compulsory registration:** Within three months of the Bill coming into effect, employers in the applicable establishments must register employees with a monthly salary below Rs 50,000 on a designated portal. An employer cannot employ a new person till such registration is complete.
- **Exemptions:** Employers may claim an exemption from providing reservation to locals if adequate number of local candidates of desired skill, qualification, or proficiency are not available. This claim will be evaluated by an officer of the rank of Deputy Commissioner or higher. The officer may: (i) accept the claim, (ii) reject the claim with recorded reasons, or (iii) direct the employer to train local candidates to achieve the desired skill or proficiency.
- **Offences and penalties:** The Bill specifies penalties for various offences. For example, failure to provide 75% of new employment to local candidates will attract a fine between Rs 50,000 and two lakh rupees, with an additional penalty of Rs 1,000 for each day till the contravention continues.

## Key Issues and Analysis

### Constitutional issues related to the Bill

The Constitution guarantees certain fundamental rights to all citizens. These include the right to equality before law, the right to freedom to reside in any part of the country, and the right to practice any occupation or business. It prohibits any discrimination based on grounds of religion, race, caste, sex, or place of birth. However, the state may provide for the advancement of certain sections of the society through reservation in education or employment. This reservation may be on the basis of domicile (residence), or backwardness.

For instance, the Constitution provides Parliament the power to make a law regarding employment to an office under the State providing requirements such as residence within that state (under Article 16(3)). The State may make provisions for the advancement of socially and educationally backward class of citizens or Scheduled Castes and Scheduled Tribes (under Article 15(4)). Further, the State can make provisions for reservation of appointments or posts in favour of any backward classes of citizens who are not adequately represented in the services of the State (under Article 16(4)).

The Bill mandates all private establishments in Haryana to provide 75% of new jobs to local candidates. This raises three potential issues. First, reservation in private institutions may violate their right to carry on an occupation or business. Second, a state law providing for reservation based on domicile may not be constitutional. Third, 75% reservation in employment may violate the guidelines laid down by the Supreme Court in the past. We examine these issues below.

#### Reservation in private institutions may violate their right to carry on an occupation or business

The Bill mandates all companies, societies, trusts, partnership firms, or any person in the state of Haryana employing 10 or more persons to provide 75% of the new jobs to local candidates. Under Article 19(1)(g), all citizens have a fundamental right to practice any profession, or to carry on any occupation, trade or business as a fundamental right. Mandating private institutions to employ a certain set of candidates may encroach upon an institution's right to carry on its occupation.

In 2002, the Supreme Court held that unaided private educational institutions must have autonomy in their administration and management.<sup>3</sup> In 2005, the Court ruled that the State cannot insist on private educational institutions which do not receive aid from the State to implement reservation on any criterion except merit.<sup>4</sup> It held that merely because the resources of the State in providing professional education are limited, private educational institutions cannot be forced by the State to provide for reservations. In doing so, the Court observed that the right to establish and administer an educational institution is also an occupation under Article 19(1)(g).

Subsequently, the 93<sup>rd</sup> Constitutional Amendment Act was passed in 2005 to allow the State to make provisions for the advancement of socially and educationally backward class of citizens or Scheduled Castes and Scheduled Tribes in matters relating to admission in private educational institutions.<sup>5</sup> However, the Amendment does not provide the State with the power to make such provisions for employment in private institutions. Therefore, the provision for reservation in the Bill may violate Article 19(1)(g) of the Constitution.

#### State law providing for reservation solely on the basis of domicile may not be constitutional

The Bill mandates establishments to provide reservation in employment to local candidates. Local candidates are persons who have a domicile in the state of Haryana. In 1957, the Public Employment (Requirement as to Residence) Act, 1957 was passed to repeal all existing laws prescribing any requirement of residence within a state for public employment.<sup>6</sup> Further, Article 16(2) of the Constitution specifically prohibits any discrimination based on place of birth or residence in matters of public employment. However, some states in the past have taken measures to provide for reservation based on domicile. In these cases, the Supreme Court has held that reservation in employment based solely on domicile is violative of Article 14 (equality before law) and Article 16(2) of the Constitution. The Court held that domicile in itself does not provide any valid or reasonable classification for providing reservation.

For example, in 2002, the Supreme Court declared the appointment of government teachers in Rajasthan where the state gave preference to applicants belonging to a particular region, as unconstitutional.<sup>7</sup> It held that geographical classification can be used for categorisation of socio-economic backwardness. However, residence by itself in a state cannot be a ground for reservation, except as provided in Article 16(3). Note that the power under Article 16(3) to make a law providing for residence as a ground for reservation (in public employment) is vested only with the Parliament. Similarly, in 1995, the Supreme Court struck down rules by the Andhra Pradesh government providing preference for candidates with Telugu medium in public services.<sup>8</sup> It held that such provision will weed out the best candidates and would give undue advantage to less meritorious students.

However, in recent years, some other states have also taken measures to provide for reservation for local candidates in the private sector. In July 2019, the Andhra Pradesh government passed a law to provide for 75% reservation to locals in industries or factories. The Act has been challenged in the Andhra Pradesh High Court.<sup>9</sup> In May 2020, the High Court observed that quota for locals in private jobs may be unconstitutional, and sought a reply from the government. The case is currently pending.

### **Reservation in employment to the extent of 75% may violate the guidelines laid down by the Court**

Under the Bill, all establishments are required to provide 75% of new jobs to candidates with domicile in the state of Haryana. This may be in violation of the guidelines laid down by the Supreme Court. In 1992, the Supreme Court laid down guidelines restricting the ambit of reservation provided through Article 16(4) for backwardness.<sup>10</sup> It held that the reservation under Article 16(4) (i.e., reservation for backward classes in public services) cannot exceed 50% to maintain efficiency in administration. Further, the backwardness envisaged here is mainly social backwardness. The Court, however, held that while 50% is the rule, extraordinary situations may require the rule to be relaxed.

In recent years, Telangana (Backward Classes Scheduled Castes and Scheduled Tribes Act 2017), Rajasthan (Backward Classes Amendment Bill, 2019), and Maharashtra (Socially and Educationally Backward Classes (SEBC) Act, 2018) have passed laws providing for reservation in public services which breach the 50% reservation limit prescribed by the Supreme Court. In September 2020, the Supreme Court examined the Maharashtra SEBC Act, 2018, and stayed its implementation. It held that the social, educational and economic backwardness of a community and existence of data regarding inadequacy in public services are not 'exceptional circumstances' for providing reservations in excess of 50%.<sup>11</sup>

### **Mandating companies to employ local candidates may be detrimental to their competitiveness**

The Bill mandates all companies, societies, trusts, partnership firms or any person in the state of Haryana employing 10 or more persons to provide 75% of new jobs to local candidates. Placing constraints on businesses in hiring may lead to an adverse effect on them as: (i) adequate skilled domestic labour may not be available which may hurt their efficiency and competitiveness, and (ii) it restricts the pool of candidates from which they can hire which means they may not be able to employ the best candidates.

According to news reports, industrial bodies have raised concerns regarding the Bill due to lack of skilled labour.<sup>12</sup> Lack of skilled domestic workforce can hurt the productivity of the private industry and make them uncompetitive compared to industries in other states or countries. Note that the Economic Survey 2019-20 observes that government intervention often ends up undermining the ability of markets to spur investments and economic growth.<sup>13</sup> It recommended that such interventions need to be minimised.

The Bill allows an employer to claim exemption from providing reservation if adequate number of local candidates of desired skill, qualification, or proficiency are not available. However, this exemption will be granted based on the decision of the designated officer. The designated officer may also direct the company claiming an exemption to train local candidates in the required skills. This will lead to additional costs for the private companies. Note that non-compliance with any provision of the Bill is punishable with a penalty between Rs 10,000 and Rs 50,000, with an additional penalty for every day till the contravention continues.

<sup>1</sup> [The Haryana State Employment of Local Candidates Bill, 2020](#).

<sup>2</sup> Census 2011, Office of the Registrar General & Census Commissioner, Ministry of Home Affairs.

<sup>3</sup> T.M.A. Pai Foundation vs. State of Karnataka (2003), AIR 2003 SC 355.

<sup>4</sup> PA Inamdar vs. State of Maharashtra (2005), AIR 2005 SC 3226.

<sup>5</sup> [The Constitution \(Ninety-Third Amendment\) Act, 2005](#).

<sup>6</sup> [The Public Employment \(Requirement as to Residence\) Act, 1957](#).

<sup>7</sup> Kailash Chand Sharma vs State of Rajasthan (2002), AIR2002 SC 2877.

<sup>8</sup> Sunanda Reddy vs State of Andhra Pradesh (1995), AIR1995 SC 914.

<sup>9</sup> ["75 per cent quota for locals may be unconstitutional: Andhra Pradesh High Court"](#), New Indian Express, May 7, 2020.

<sup>10</sup> Indra Sawhney and Ors. vs Union of India and Ors. (1992), AIR 1993 SC 477.

<sup>11</sup> Laxmanrao Patil vs. The Chief Minister and Anr. (202), The Supreme Court of India, 2020(5) ALLMR607.

<sup>12</sup> ["Employers feel reservation in private sector could hamper Gurugram's economic recovery"](#), Hindustan Times, July 2020.

<sup>13</sup> ["Undermining Markets: When Government Intervention Hurts More Than It Helps"](#), Economic Survey 2019-20.

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