



Domicile Reservations: Challenges and Alternatives

This editorial is based on [“Parochial law: On Haryana’s 75% quota to locals in private sector”](#) which was published in The Hindu on 22/11/2023. It criticises the Haryana State Employment of Local Candidates Act, 2020, which mandates 75% reservation for local candidates in private sector jobs.

For Prelims: [Article 16\(4\)](#), [Art 16\(2\)](#), [Art 19\(1\)\(g\)](#), [Article 19\(1\)\(d\) and \(e\)](#), [Constitutional morality](#), [Periodic Labour Force Survey](#), [Haryana State Employment of Local Candidates Act, 2020](#),

For Mains: Reservation based on Domicile: Validity, Arguments for and against, Way forward

The Punjab and Haryana High Court has done the right thing by quashing the [Haryana State Employment of Local Candidates Act, 2020](#) that provides for **75% reservation to State domiciles in the private sector in jobs**. The court stated that it was beyond the purview of the State to legislate on the issue and restrict private employers from recruiting people from the open market.

The court said that by allotting 75% reservation for “locals”, the **Act militates against the rights of citizens of the rest of the country**, and that such acts could lead to other States coming up with similar enactments, in effect putting up “artificial walls” throughout India.

What was the Law and Why it was Challenged?

- **The Law:** The Bill passed by the Haryana Assembly in November 2020 **reserved 75% of jobs in the private sector that offered a monthly salary of less than Rs 30,000** (originally Rs 50,000) for residents of Haryana.
 - The Bill received the Governor’s assent on March 2, 2021, and came into effect on January 15, 2022.
 - All companies, societies, trusts, limited liability partnership firms, partnership firms, and large individual employers were covered under the Act. Any person employing 10 or more people on salary, wages, or other remuneration for manufacturing or providing any service, as well as any entity that may be notified by the government, were included.
- **The Challenge:** The Faridabad Industries Association and other Haryana-based associations went to court, contending that Haryana wanted to create reservations in the private sector by introducing a **policy of “sons of the soil”, which was an infringement of the constitutional rights** of employers.
 - The petitioners argued that **private sector jobs are purely based on skills and an analytical bent of mind**, and employees have a fundamental right to work in any part of India.
 - They also argued, “The act of the government forcing the employers to employ local candidates in the private sector is the **violation of the federal structure framed by the Constitution** of India, whereby the government cannot act contrary to public interest and

cannot benefit one class”.

- **The Government’s Response:** The Haryana government argued that it had the power **to create such reservations under Article 16(4) of the Constitution**, which says that the right to equality in public employment does not prevent the State from “making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”.

Is Haryana the Only One to Implement such a Law?

Haryana is not the first state to adopt a nativist stance to address the unemployment crisis. States such as Maharashtra (up to 80% reservation), Karnataka (75%), Andhra Pradesh (75%) and Madhya Pradesh (70%) have similar laws for local residents and most of these have been challenged in courts.

Can the Governments discriminate on the basis of Domicile?

- On one hand the **Art 16(2) of the Constitution** says, “No citizen shall, **on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated** against in respect of, any employment or office under the State.”
 - On the other hand the **clause 4 of the same article says that nothing in this article shall prevent the State** from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
 - But these provisions are applicable in government jobs.
- **Art 19(1)(g)** provides all citizens the **right to practise any profession**, or to carry on any occupation, trade or business.
 - Thus imposing such limitations by State Governments infringe upon an individual's constitutional right to engage in their chosen profession, trade, or business, as stated in **Article 19(1)(g)**.
- Furthermore, the High Court in its decision stated that “The concept of **constitutional morality has been openly violated** by introducing a secondary status to a set of citizens not belonging to the state of Haryana and curtailing their fundamental rights to earn their livelihood.”
 - The Andhra Pradesh High Court observed that the Andhra Pradesh’s Bill for providing reservation on the basis of domicile, passed in 2019, “may be unconstitutional”, but it is yet to hear the case on merits.

What are the Arguments in favor of States' laws providing Reservation on the basis of Domicile?

- It is a way of **ensuring that the local people of a state get adequate representation** and opportunities in the public and private sectors. This can **encourage employment opportunities for local candidates** in the state and to secure their livelihoods.
 - Haryana has the **fourth highest rate of unemployment** (9% as per **Periodic Labour Force Survey, 2021-22**) in the country.
 - It is higher than the national average (4.1%) and that of its neighbouring states of Uttar Pradesh, Himachal Pradesh, Rajasthan and Punjab.
- It can also be seen as a **measure of affirmative action for the disadvantaged sections of the society** who may face discrimination or lack of access to education and employment in other states.
 - By providing reservation for the natives, the state governments **can empower them and enhance** their social and economic status.
- It can also be justified on the grounds of preserving the cultural and linguistic identity of the local people. **By giving preference to the natives, the state governments can protect their interests** and promote their culture and language.
 - This can also **foster a sense of belonging and loyalty** among the local people towards their state.

What are the Arguments against such Laws?

- These laws may **violate the fundamental rights** of citizens to move freely and work anywhere in India, as guaranteed by **Article 19(1)(d) and (e)** of the Constitution.
 - **Labour migrates as per demand and wages** and industry seeks to hire the best talent irrespective of their domicile status.
 - Migrant labour has contributed to building and sustaining the economies of industrialised states such as Haryana, Maharashtra and Andhra Pradesh.
 - In fact, that is how successful economies manage the world over.
- These laws **may strangle the private sector, which depends on the availability of skilled, qualified and efficient workforce**, by imposing arbitrary and unreasonable restrictions on their hiring and recruitment policies.
 - They **may discourage investment and development in the state**, as the private sector may prefer to relocate or expand in other states that offer more favourable and flexible conditions for doing business.
- These laws are an **intrusion into the freedom and autonomy of private employers** to recruit based on their requirements and suitability for the job, which affects their right to carry out business and trade under Article 19(1)(g) of the Constitution .
- These laws are **counterproductive and detrimental to the economic growth and competitiveness of the state**, as they hinder the access to a diverse and skilled workforce from different parts of the country, which is essential for the operations and innovation of various sectors .
- These laws are **not a feasible or effective solution to address the problem of unemployment** among local youth, as they do not address the root causes of the issue, such as lack of education, training, and opportunities, and instead infringes upon the rights of others .
- These laws are a **populist and protectionist measure that could trigger a backlash from other states** and lead to **balkanisation of the labour market**, which is opposed to the vision of having an integrated and mobile labour market in the country to achieve the objective of 'One nation, One market' .

What could be the Alternative to Such Laws?

- **Adopt pro-market policies** that create a conducive environment for the private sector to grow and flourish, by reducing the regulatory and bureaucratic hurdles, providing incentives and subsidies, ensuring fair competition and transparency, etc.
- **Focus on human development** that enhances the skills, education and employability of the local candidates, by investing in quality education, vocational training, skill development, entrepreneurship, etc.
- **Provide stimulus packages** that provide financial and social support to the local candidates, who are affected by unemployment, by offering schemes such as unemployment allowance, job guarantee, [social security](#), etc.
- **Provide incentives and subsidies** to private sector entities that employ local candidates, instead of imposing a mandatory quota. This could encourage voluntary compliance and reduce the burden on employers.
- **Promote the development of local industries** and sectors that have a high demand for local candidates, instead of restricting the employment of non-local candidates. This could create more job opportunities and economic growth for the state and its people.

Conclusion

The debate on state-imposed domicile reservations in private employment in India involves balancing local interests and constitutional freedoms. Proponents emphasize representation and cultural preservation, while critics highlight constitutional concerns and economic drawbacks. Exploring alternatives like pro-market policies and targeted incentives is crucial for a constructive path forward, as the resolution will shape the trajectory of employment policies.

Drishiti Mains Question:

Assess the arguments for and against state-imposed domicile reservations in private employment in India. What are the key considerations that policymakers should take into account when addressing these issues?

Legal Insights: [Judgment on Haryana Domicile Reservation](https://www.drishtijudiciary.com/en)

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