Haryana's Job Reservation Law – Rationale and Legal Questions

What is the issue?

- The Haryana State Employment of Local Candidates Bill, 2020 passed earlier was notified recently.
- Here is a look at the government's rationale for this law, and the constitutional questions such laws would face if challenged in court.

What does the law say?

- The law requires private companies to set aside 75% of jobs for domiciles.
- This applies for jobs up to a monthly salary of Rs 50,000 or as may be notified by the government from time to time.
- It is applicable to all the companies, societies, trusts, limited liability partnership firms, partnership firms and any person employing 10 or more persons.
- It would also include an entity as may be notified by the government from time to time.
- In July 2019, the Andhra Pradesh government had passed a similar law, which was challenged in court.
- The Andhra Pradesh High Court had made a prima facie observation that the move might be unconstitutional.
    - But the challenge is yet to be heard on merits.

What is Haryana government's rationale?

- Haryana's unemployment rate has been far in excess of the national average since August 2017.
- It reached a peak in April 2020 when four out of every 10 people looking for a job failed to get one.
- The Covid-induced lockdowns have been removed and the economy opened up.
- But Haryana's unemployment rate has continued to be high and is still rising.
- The work opportunities in the government is also shrinking.
- The law thus comes at addressing these or dealing with these.

What are the legal issues in such laws?

- **Domicile reservation in jobs** - Domicile quotas in education are fairly common.
- However, courts have been reluctant in expanding this to public employment.
- The Madhya Pradesh government recently decided to reserve all government jobs for "children of the state."
- This raised questions relating to the fundamental right to equality of citizens.
- **Private sector** - Another more contentious question is the issue of forcing the private sector to comply with reservations in employment.
- For mandating reservation in public employment, the state draws its power from Article 16(4) of the Constitution.
- The Constitution thus places the responsibility of ensuring equality of all citizens squarely on the state.
- The Constitution has no manifest provision for private employment from which the state draws the power to make laws mandating reservation.
- The Courts will have to see if the state was delegating its role to the citizens, and whether that is permissible.

What are the governments' arguments in bringing such laws?

- Public sector jobs constitute only a minuscule proportion of all jobs.
- Legislators have thus talked about extending the legal protections to the private sector.
- The objective is to really achieve the constitutional mandate of equality for all citizens.
- Another argument is that private industries use public infrastructure in many ways.
- E.g. accessing land through subsidised allotment, receiving credit from public banks, tax exemptions and in many cases subsidies for fuel, etc
- So, the state has a legitimate right to require them to comply with the reservation policy.
- A similar argument was made in requiring private schools to comply with the Right to Education Act, which the Supreme Court also upheld.
- Besides these, such laws may be seen as populist move too.

What are the likely implications of such laws?

- Domicile reservations might lead to balkanisation of India's labour market.
- Free mobility of labour corrects several demographic and economic imbalances among states.
- Curbing this mobility will inhibit overall economic growth and employment generation.

- With Haryana too, the law is likely to hurt the low-skilled workers.
- It might push the state's industrial and services sector towards greater "informalisation".
- In other words, the same workers will be paid less and have next to nothing social security because they will not be formally on the payrolls.
- According to the Periodic Labour Force Survey, nearly 97% of workers in the private sector draw a salary of less than Rs 50,000 a month.
- So the Rs 50,000 monthly salary limit would cover most of the private sector employment in the state.

Do other countries take such affirmative action in employment?

- Affirmative action is adopted in many countries in the context of race and gender.
- E.g. in the US, there is no statutory requirement for employers to have quotas.
- But courts can order monetary damages and injunctive relief, including "such affirmative action as may be appropriate", for victims of discrimination.
- This power comes from the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, colour, national origin, religion, and sex.
- Canada has the Employment Equity Act in place.
- It protects minority groups, especially aboriginals from discrimination in federally regulated industries, even in the private sector.

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