Constraining Interstate Mobility of labour through Job Reservation for Locals: Implications for National Level Citizenship

Erosion of the Right of Citizens to seek employment outside their own state within the country

The problems of non-materialization of full citizenship rights exist not only for persons arriving from other countries but also for those who have moved from one state to another within the country. These problems arise in forms and contexts different from those of the international migrants. The interstate migration within a country is mostly an outcome of economic causes or displacements due to developmental projects, differential rates of growth in population/labour force and inequalities in the levels of development across the states. This is sharp contrast with the international migration that is often linked with political, cultural and aspirational factors. As is the case of countries restricting international migrants, states, under the federal system, are also putting restrictions on employment linked migration directly by setting conditions for their employment and reserving certain types of jobs for the locals and indirectly by stipulating language or residence requirements that tend to put the migrants at a disadvantage.

Importantly, Indian Constitution through its Article 16 guarantees the right of equal opportunity to all citizens. It mandates equal opportunity for all citizens in public employment - for appointment in any office under the State. 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 this regard. It is important to note that public employment comprises jobs under any public authority including state funded establishments, besides the government departments. However, recruitment procedures in government departments as well as public agencies under it, have specified requirements such as knowledge of local language etc., in many states, that discourage people from outside applying for these jobs. Employment in private sector, on the other hand, has by and large been the prerogative of the employers. However, many of the state governments have encouraged the private sector to reserve certain percentage of jobs for the locals and increase their share through indirect measures.

A noted exemption from the Constitutional provision is that of Jammu and Kashmir wherein, due to the special category of the state, laws have been passed by the State Assembly to reserve a large proportion of jobs for the people of the state. Interestingly, similar provisions were made in case of Telangana region in the state of Andhra Pradesh, when the State was formed in 1956. The Public Employment (Requirement as to Residence) Act was passed in 1957 with the objective of enhancing employment opportunities for the people in Telangana, the most backward region of the state. However, in 1969, the Supreme Court held the relevant provision of the Act as unconstitutional since it was designed to safeguard the interest of people of a region - Telangana, at the cost of the others. It would thus appear that residence based job reservation by State Governments is in violation of the spirit of the Constitution except under exceptional circumstances.

Notwithstanding the constitutional and legal provisions, the popular sentiment, particularly among the youth, is that the locals have greater claim over the jobs available in the state, particularly those generated in the public sector. A study conducted by the Centre for the Study of Developing Societies in 2016 noted that the support for job reservation for the domiciles of the state is widespread in several states\(^2\). While the economic arguments at macro level are in favour of free movement of labour, the popular sentiments are quite the opposite. This has been explained in terms of the acute shortage of employment opportunities in the states and people’s preference to find employment within their state. Interestingly, in states like Punjab, Haryana and Kerala, where there is acute shortage of unskilled or semi-skilled labour, there has been no demand for restricting in-migration. These are the States that have abundance of skilled labour and exported large number of skilled and enterprising workers to places outside the country. In most other states, however, there have been demands for job reservation particularly for unskilled workers.

In the context of the spirit of the Constitution, particularly the Article 16, the federal government has tried to facilitate movement of labour across the states by protecting their basic rights and ensuring their access to basic amenities while the state governments have complemented the efforts by passing the complementary legislations. Political leadership and government functionaries at the state level, have, however, responded to the populist demand by making political pronouncements from time to time, declaring their intentions to reserve a large percentage of certain categories of jobs like the blue collar work in industries, government and semi government sectors for the people of their own State. Many state governments in India have stipulated conditions also for employers in private sector requiring them to incorporate domicile documents, language proficiency etc. in their recruitment policy. Occasionally, they have passed laws that generally got into legal complexities. An attempt has been made in the following section to critically overview the recent developments to facilitate and protect the rights of the migrants as also those in reserving jobs for local people in different states of the country.

**Statutory provision for the protection of interstate migrants**

The issue of interstate migrants did receive the attention of the Government leading to passing a legislation - Inter-state migrant workmen (regulation of employment and conditions of service) act, 1979\(^1\), to regulate the employment conditions of interstate migrants. The Act applies to every establishment where five or more inter-State migrant workmen are employed and to every contractor who employs or employed five or more inter-State migrant workmen on any day in the preceding twelve months. The purpose of introducing this statute is noted as eliminating the system of employment of inter-State migrant labour (known in Orissa as Dadan Labour), prevalent in Orissa and other States that were extremely exploitative. Dadan Labour was recruited in different regions in India through contractors or agents called Sardars/Khatadars to work in large construction projects, outside their State. This system lent itself to various abuses. Though the Sardars promised that wages, calculated on piece-rate basis, would be settled every month at the time of recruitment, this usually did not happen. Worker coming under the clutches of the contractors were taken to far-off places by paying them only the train fare. No working hours were fixed and they had to work for 7 days a week under extremely harsh conditions in gross violation of various labour laws.

As per this law, establishments proposing to employ inter-State migrants are required to be registered with officers appointed by the Central or the State Governments. Likewise, every contractor recruiting or employing inter-State migrants would have to obtain a licence from the specified authorities, both of the home State and the host State and furnish particulars regarding the workmen to them on a regular basis. The contractors are also required to issue pass books, containing the details of employment, to every workman employed. The act also provides guidelines regarding the wages payable to these workmen. They are entitled to appropriate residential accommodation, adequate medical facilities, protective clothing to suit varying climatic conditions, besides suitable working environment. Besides, they are entitled to a displacement and journey allowance, as per certain norms. Finally, power has been given to the State Governments of the home States to appoint, after consultation with the Government of the host State, inspectors for visiting the establishments wherein workmen are employed. Inspectors are appointed to ensure compliance of the provisions of the Act.

Clearly these well-meaning but stringent conditions have discouraged the law abiding establishments from employing migrant workers from outside the state. In situations where the workers are not sufficiently unionised to gain critical bargaining powers, they could not demand the protection of their rights as that will adversely affect their employment prospect. This was because a large segment of the migrants seeking employment in factories and businesses come from the economically disadvantaged sections of the society in the backward states. In many cases, these workers did not claim migrant status and the employers conveniently provided them with a local addresses to bypass the law. Unfortunately, no statistics on the interstate migrants registered under this act has been published by the Government.

As per the last NSS survey on migration (2007-2008), 15 and 9 percent of the urban migrants came from rural and urban areas respectively of other states. The survey further revealed that 48 percent of the urban migrants were working before migrating and the figure improved to 67 percent after migration.

**Andhra Pradesh**

Pursuant on the election promises, Andhra Pradesh Government passed a Bill to impose 75% quota for local Andhra youths in private industrial sector. It has, thus, become the first state in the country to introduce such a legal provision for the private sector. The Andhra Pradesh Employment of Local Candidates in Industries/Factories Act, 2019 was approved by the Assembly on the 22nd July, 2019. It further stipulates that if an industrial unit fails to find enough skilled local workers, it will have to train them with support of the state government. The unit is also required to ensure strict compliance of the new law and submit report on quarterly basis. Importantly, a person residing in the state for more than 10 years is eligible to claim local status. It is mandatory for employer/occupier/ owner of a proprietary factory, a joint venture or Public-Private Partnership unit, to verify domicile requirements of local candidates before employing them. Interestingly, in spite of the Act and several pronouncements by some of the State Governments, to prefer local candidates in jobs, no serious effort has been made to enforce this decision. However, hard statistics on this have not come yet into public domain to permit assessment of the implementation of the statute in the state.

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Tamil Nadu

Taking a clue from the Act passed by Andhra Pradesh and similar demands in other states, one of the prominent political parties, has demanded 80 per cent job reservation for the local people in Tamil Nadu. The immediate provocation for this demand appears to be the decision by Government of Karnataka to reserve jobs for locals. Interestingly the first call for job reservation in private sector in Tamil Nadu was raised in mid 1990s when the Ford Motor set up its plant there by the same party. However recently other political outfits have also joined the call. These demands appear to be rather a part of competitive populism since the threat of non-locals crowding out the locals in this job market is not very high in Tamil Nadu, given its own youth moving out for seeking jobs in metros and neighbouring states.

Karnataka

Demands for jobs for locals is not new to Karnataka given that several public sector behemoths set up in the Sixties in Bangalore had recruited skilled manpower from neighbouring States where skilled and trained manpower were available in abundance. An industrial policy announced in 2014 by the then Congress Government had mandated that for every new public sector or private industrial unit to avail of government sops related to land, water and the like, Kannadigas have to comprise 70% of the employees on an overall basis and 100% at the Group D level, which includes, among others, security and housekeeping personnel. In fact there were demands for the implementation of the Sarojini Mahishi report submitted in 1984 which recommended 100 per cent reservation for Kannadigas in all state sector units and Group C and group D jobs in Central government departments and PSUs operating in Karnataka. It further suggested that the private industries should appoint local people on priority, except in IT and Biotech industries. The Gokak movement led by Matinee idol Rajnikant has demanded that 70 per cent of private sector jobs must go to people from the state.

In pursuance of all these, the government has made an announcement in September 2020 to reserve jobs for ‘Kannadigas’, identified as those who has stayed in the state for more than 10 years and has studied Kannada as a language until Class 10, in both the public and private sector, along the lines of Andhra Pradesh. It has set aside cent percent jobs in Group C and D category for the locals that include mechanics, clerks, accountants, supervisors, peons, helpers and other office staff. The directive also notes that preference should be given to Kannadigas in the A and B categories as well, that include management-level positions. This will be applicable across all industries and companies regardless of whether they have availed benefits and concessions offered by the state government.

As per recent news reports the present BJP Government in Karnataka is in the process of drafting a legislation that will mandate 75% reservations for locals in various sectors, including private industries. The ‘Karnataka Employment of Local Candidates in Factories, Shops, Commercial Establishments, MSMEs and Joint Ventures Bill’ will be similar to what neighbouring Andhra Pradesh implemented last July. The Labour Minister is quoted as saying that it wasn't a matter of discrimination against anyone, but was only in the interest of the locals that such a law was being thought of. According to the Minister “Anyone who is

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residing in Karnataka for the past 15 years and who knows, reads and writes in Kannada will be considered a Kannadiga”.

**Maharashtra**

Government of Maharashtra had introduced 80% reservation for locals in industries that seek state incentives, as early as in 2008. In December 2019, the current Siva Sena - NCP government declared as part of its Common Minimum Programme, its intent to reserve 80 per cent of jobs in private sector for the local population. At present, there is a 2008 government resolution, which mandates that all industries that avail concessions and incentives from the state reserve 50% of jobs for locals in supervisory roles, and 80% in non-supervisory roles. This resolution was originally issued in 1968 and revised several times.

**Gujarat**

In the backdrop of large-scale reverse migration of workers from the state of Gujarat in early October 2018 following an incidence of violence involving a migrant worker, the Chief Minister while addressing the Federation of Indian Chambers of Commerce & Industry had announced that 80 per cent jobs in the private sector should be given to local youths. He further informed that the state government is taking steps for providing technical and soft skills training for local youths “to ensure that industries get good local work force”. Like Maharashtra, Gujarat government, too, has introduced one paper in local language in the competitive exams for jobs in public sector.

**Rajasthan**

The present government in Rajasthan is planning to grant 75 per cent reservations for locals in big private industries who are receiving benefits from the state government, besides those running under public private partnership and small industries receiving incentives from the government. The proposal was discussed by the Government in last September 19 with the representatives of industries. However, there are many challenges in the implementation of such proposals where hiring is generally done on a pan-India basis. If implemented, the decision would adversely affect prospects of persons seeking jobs from Bihar and West Bengal, two states providing large number of migrant workers to Rajasthan.

**Madhya Pradesh**

The government in Madhya Pradesh after taking office in 2019 had announced to bring out legislation for reserving 70 per cent of jobs in state and private sector for people belonging to the state and provide incentives for that purpose. In fact just before the Madhya Pradesh Investment Summit in October 2019, the then Congress government passed two industrial laws—70% reservation for locals in the industries and restriction on lockouts and strikes in industries under MP Industrial Resolution Act, 1960 (MPIR Act). The party then in power is no longer running the government and there has been no further discussion on such a policy in recent days.

**Uttar Pradesh**

Uttar Pradesh, responsible for the largest number of interstate outmigrants in the country, however, is proposing to impose restrictions on labour migration from a different
perspective. Although its officials often make statements for job reservation for the immigrating labour but the large scale return migration caused by the lockdown, enforced due to the Covid 19 pandemic under extremely harsh conditions, has made the policy makers concerned about the welfare of the outmigrants. The Chief Minister has announced that anyone wanting to hire workers from his state will first have to seek an approval from the state government. This, he thinks, has become necessary to ensure socio-legal-monetary rights of the migrant workers as it was felt that the migrant labourers from UP were not ‘properly taken care’ in different States before and after the corona virus lockdown. Such proposals coming from any state is likely to be in violation of the spirit of the Constitution as it guarantees every individual the freedom to take up employment at any place in the country without any restriction under article 16. No action appears to have been initiated by the UP government to implement this controversial and widely commented proposal. However, on May 25th the CM announced the state government’s decision to set up a Migration Commission for employment of migrant labourers returning to the State.

Other States

The government of West Bengal has adopted measures to favour selection of local candidates by including one paper in local language in the competitive exams for jobs in public sector that benefit local residents. Goa has also proposed to reserve 80 per cent jobs in private sector to locals. Similar pronouncements have been made by concerned Ministers and senior functionaries of the governments in several other states. These, however, have not been followed up by passing of laws or of any administrative orde

Overview of job reservation demands for locals.

Delays in translation of pronouncements into actions and non-implementation of the laws passed by the state governments to restrict employment of persons from other States are not difficult to explain. Labour laws are noted as one of the most retarding factors in employment generation in private sector and any firmness in implementing these is likely to be resisted by it. Also, there are practical difficulties in monitoring the implementation of a large number of labour legislations over thousands of companies. Most of the time, the State governments do not have the resources to scrutinise the records of the establishments and verify their adherence to the different clauses of the statute dealing with labour. Given the non-implementation of the labour laws relating to migration and lack of earnestness of the state governments to implement the agenda of generating employment for local people in private sector, there has been no great impact of the legal and administrative measures so far on the flow of labour across state boundaries.

Integration of the national economy through increased labour mobility is often posited as a prerequisite for accelerated economic growth. This was one of the expected outcomes of the introduction of a national GST. Free movement of labour is certainly a prerequisite for this. Apart from the fact that migration decision is a strategy adopted at the individual or household level for improving their economic status, declaration of India as a nation state also implies the freedom of movement and availing jobs anywhere in the country without any legal or administrative restrictions.

Currently, there is a concern regarding disruption in many sectors of the economy leading to widespread unemployment, owing to Covid 19 pandemic. The reverse migration and delays in their returning back to the host states is likely to create some stress in labour market for
select sectors. State governments as matter of political expediency are more likely to call for localisation of jobs and reservation for local candidates. To what extent, these would result in creation of additional bureaucracy/ formalities and restrictions on the citizens right to free movement for employment, would depend on the competing political factors against the strength of Constitutional provisions.

It is interesting to note that demands for reserving jobs for locals in both private and public sector has come all political denominations while coming to power in different states. Though such demand may look like an act of political expediency especially in view of the lacklustre implementation we have seen so far, it has the potential to unsettle the migration scenario. It can seed anti migrant attitude among local population and create interstate tensions. As of now the Central government or the Courts have not spoken anything on these state legislations that could tantamount to a direct violation of the constitutional rights of the citizens.