

Enhancing Democratic Representation: A Comprehensive Analysis of Women's Reservation Policies

Kajal Nagar¹, Dr. Anjali Dixit²

¹LL.M. Student, School of Law Lingaya's Vidyapeeth, Faridabad

²Associate Professor, School of Law, Lingaya's Vidyapeeth, Faridabad

ABSTRACT

This research paper delves into the multifaceted landscape of women's reservation policies, examining their impact on democratic representation and gender equality. Drawing upon a comparative analysis of global practices, with a focus on the study navigates through historical developments, legislative frameworks, and societal responses to women's reservation in political spheres. The research critically evaluates the effectiveness of such policies, considering their influence on governance, policy priorities, and societal attitudes. The paper not only investigates success stories and positive outcomes resulting from increased female representation but also scrutinizes the challenges and criticisms faced in the implementation of women's reservation policies. Special attention is given to the intersectionality of these policies, acknowledging the diverse experiences of women from different backgrounds.

The paper provides insights into the status of women's reservation policies, identifies areas for improvement, and offers recommendations for policymakers. The research contributes to the broader conversation on fostering inclusive democracies that reflect the diverse voices of society.

KEYWORDS: Criticism, Gender equality, Legislative framework, Societal attitude, Intersectionality

INTRODUCTION

In the context of research on women's reservation, the term typically refers to affirmative action or policies that aim to increase the representation of women in political positions, especially in legislative bodies. The reservation system allocates a certain percentage of seats or positions specifically for women candidates, with the intention of addressing historical gender imbalances and promoting greater gender equality in decision-making processes.

The primary objective of women's reservation policies is to create a more inclusive and diverse political landscape by ensuring that women have a fair and equitable opportunity to participate in governance. This may involve the implementation of quotas or reserved seats for women at various levels of government, such as local councils, state assemblies, or national parliaments. The rationale behind such reservations is often grounded in the recognition of systemic barriers and discrimination that have historically limited women's access to political power. By providing a designated space for women in elected positions, policymakers aim to foster a more representative democracy that reflects the diversity of the population.

LITERATURE REVIEW

Charting the Path to Gender Equality in Indian Politics: The Women's Reservation Bill and Beyond

by Kritika Joshi

This paper discusses India's recently passed Women Reservation Bill, which aims to reserve 33 percent of political seats for women in the Lok Sabha, state assemblies, and National Capital Territory of Delhi.

Women Reservation and national development by R.K.Sumangala

This paper seeks to understand the role of reservation for women in the process of nation building and its implications. The most recent Lok Sabha (17th) session witnessed the highest number of women ever in the Indian Parliament, with 78 women MPs elected from all over the country. Women's representation in the Lok Sabha has increased from 11.3 percent in 2014 to 14 percent in 2015, coming across as a positive development.

The Women of the Women's Reservation Bill by Indu Agnihotri

This paper discuss on the freedom struggle and in the Constituent Assembly, women members vociferously argued against reservation with former Lok Sabha member Renuka Ray decisively stating that "when there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances if the consideration is of ability alone." Reservation, she argued, would be 'an impediment to our growth and an insult to our very intelligence and capacity.'

In the context of the passage of the 128th Amendment, it is important to contextualize the shift in the debate in women's movement in the post-independence period.

Reservations for Women: The Way Forward by Rajeev Dhavan

This article deals with the issue of political reservations for women in the Union Parliament and the State legislatures. Examining the case for representation for women in the present constitutional framework in India, this article studies various factors which have contributed to the low political representation of women. Comprehensively studying the Women's Reservation Bill, first proposed in 1996, the political climate at the time and the subsequent developments which have followed, this article rejects the objections to reservation for women and argues as to why reservation of seats in legislatures would facilitate women's empowerment. In conclusion, the author posits that the best solution is to enact the Bill and allow Parliament or the political parties to evolve the mechanism to distribute seats across the social and economic spectrum and end, once and for all, the perpetuating political procrastination on the proposal.

Women's Reservation in Politics A systematic review by Jagroop Singh

India is the largest democratic country in the world, where the women folk constitute nearly half of its population. Here the constitution guarantees equality to women along with the men, but there is very less participation of women in politics. The aim of this article is to explain about the women's reservation in India and to improve the participation of women in politics. The representation of women is low not only in parliament but also in state assemblies, urban or rural local bodies. For instance the participation of women in politics the women's reservation bill must be approved by both of the houses (Lok Sabha and Rajya Sabha) of parliament. Though there has not been any major development regarding the passing of

Women's Reservation Bill in the recent months, if the current government takes steps for its upliftment, there is hope that the bill will be passed in Lok Sabha soon.

RESEARCH GAP

The reason for the research is that it is not an understatement to say that the passed Bill is a landmark moment in Indian politics, considering its history and how long it has taken to get to this point.

RESEARCH OBJECTIVES

This paper looks at women's reservation in the Legislative assembly and also the role of the women reservation bill that has expedited the process of women participation.

RESEARCH METHODOLOGY

Doctrinal. Doctrinal legal research methodology, also called "black letter" methodology, focuses on the letter of the law rather than the law in action. Using this method, a researcher composes a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations).

ANALYSIS & DISCUSSIONS

The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 has been unanimously passed from Lok Sabha and Rajya Sabha. The Bill seeks to reserve one-third of the total number of seats in Lok Sabha and state legislative assemblies for women.

Reservation for Women:

The Bill provided for inserting Article 330A to the constitution, which borrows from the provisions of Article 330, which provides for reservation of seats to SCs/STs in the Lok Sabha. The Bill provided that reserved seats for women may be allotted by rotation to different constituencies in states or Union Territories. In the seats reserved for SCs/STs, the Bill sought to provide one-third of the seats to be reserved for women on rotational basis. The Bill introduces Article 332A, which mandates the reservation of seats for women in every state Legislative Assembly. Additionally, one-third of the seats reserved for SCs and STs must be allocated for women, and one-third of the total seats filled through direct elections to the Legislative Assemblies shall also be reserved for women.

Reservation for Women in NCT of Delhi (New clause in 239AA):

Article 239AA to the constitution grants special status to the Union Territory of Delhi as national capital with regards to its administrative and legislative functioning. Article 239AA(2)(b) was amended by the bill accordingly to add that the laws framed by parliament shall apply to the National Capital territory of Delhi.

Commencement of Reservation (New article - 334A):

The reservation will be effective after the census conducted after the commencement of this Bill has been published. Based on the census, delimitation will be undertaken to reserve seats for women. The reservation will be provided for a period of 15 years. However, it shall continue till such date as determined by a law made by Parliament. Rotation of Seats reserved for women will be rotated after each delimitation, as determined by a law made by Parliament.

History of Reservation for Women in India:

The issue of reservation for women in politics can be traced back to the Indian national movement. In 1931, in their letter to the British Prime Minister, submitting the official memorandum jointly issued on the status of women in the new Constitution by three women's bodies, leaders Begum Shah Nawaz and Sarojini Naidu. The National Perspective Plan for Women recommended in 1988 that reservation be provided to women right from the level of the panchayat to that of Parliament. These recommendations paved the way for the historic enactment of the 73rd and 74th amendments to the Constitution which mandate all State governments to reserve one-third of the seats for women in Panchayati Raj Institutions and one-third of the offices of the chairperson at all levels of the Panchayati Raj Institutions, and in urban local bodies, respectively. Within these seats, one-third are reserved for Scheduled Caste/Scheduled Tribe women. The National Policy for the Empowerment of Women (2001) had stated that reservation will be considered in higher legislative bodies. In May 2013, the Ministry of Women and Child Development constituted a committee on the status of women, which recommended ensuring at least 50% reservation of seats for women in the Local bodies, State Legislative Assemblies, Parliament, Ministerial levels and all decision-making bodies of the government. In 2015, the Report on the Status of Women in India noted that the representation of women in state assemblies and Parliament continues to be dismal. It recommended reserving at least 50% seats for women in local bodies, state legislative assemblies, Parliament, ministerial levels, and all decision-making bodies of the government.

It was in 1974 that the Committee on the Status of Women in India undertook the most comprehensive review of women's status since independence. The report made a specific note of the "difficulties being experienced by women in obtaining adequate representation" and the "declining trend in the number of women legislators" which may result in women "losing faith in the political process to change their conditions in life, [and] may opt out of the political system and become either passive partners or rebels." However the members of the committee chose not to recommend reservations, prompting two of its members to submit a dissent note. In the note, professors Lotika Sarkar and Vina Mazumdar (the latter was also the member secretary of the committee) pointed out that despite never having been supporters of special representation or class representation in any form, they were compelled to confront the question and disagree with the majority view in the committee because "a political system cannot be based on ideology alone but must keep in touch with the actualities of the social situation and so adjust its operation as to achieve the desired goals of the society. The mechanics of the system, if they do not grapple with the needs of a society, can defeat the ultimate objective in the long run. It is for this reason that we are compelled to dissent from the Committee's decision on this point."

Women representation in politics is a vital step towards gender equality. However, according to Global Gender Gap Report 2022, India ranks 48th out of 146 in Political Empowerment. Notwithstanding its rank, its score is quite low at 0.267. Some of the best-ranking countries in this category score much better. For instance, Iceland is ranked 1 with a score of 0.874 and Bangladesh is ranked 9 with a score of 0.546. The number of women MPs has increased from 5% in the first Lok Sabha to 15% in the 17th Lok Sabha; but the number continues to be quite low. A 2003 study about the effect of reservation for women in panchayats showed that women elected under the reservation policy invest more in the public goods closely linked to women's concerns. The Standing Committee on Personnel, Public Grievances, Law and Justice (2009) had noted that reservation of seats for women in local bodies has enabled them to make

meaningful contributions. If a group is not represented proportionally in the political system, its ability to influence policy-making is limited. The Convention on the Elimination of All Forms of Discrimination Against Women provides that discrimination against women must be eliminated in political and public life. The various surveys do indicate that women representatives from Panchayati Raj have worked commendable in the development and overall well-being of society in villages and many of them would definitely want to work on the larger scale, however, they face various challenges in the political structure.

A more diverse legislature that includes a significant number of women can bring a broader range of perspectives to the decision-making process. This diversity can lead to better policy formulation and governance. Women's reservation in politics empowers women at various levels. It not only encourages more women to participate in politics but also inspires women to take on leadership roles in other sectors. Women in politics often prioritize and advocate for issues that directly affect women, such as gender-based violence, women's health, education, and economic empowerment. Their presence can lead to the prioritization of these issues in policy discussions. Women leaders in politics can serve as role models for young girls, encouraging them to aspire to leadership positions in various fields. Representation in politics can break stereotypes and inspire future generations.

Indira Gandhi served as the first and only women Prime Minister of India from 1966 to 1977. Sushma Swaraj was the second woman external affairs minister of India after Indira Gandhi. Women are not a homogeneous community like, say like, a caste group. Therefore, the same arguments made for caste-based reservations cannot be made for women. Reserving seats for women is opposed by some who claim that doing so violates the Constitution's guarantee of equality. If there is a reserve, they claim, women won't be competing on merit, which could decrease their status in society. The reservation shall come into effect only after delimitation is undertaken and delimitation will be undertaken only after the relevant figures of the next census are published. The date of the next census is entirely undetermined. So the delimitation is doubly indeterminate. The women's reservation bill, which reserves 33% of seats for women in the Lok Sabha and state assemblies, does not include a quota for women from the OBCs. Geeta Mukherjee Committee (1996) recommended extending women reservation to OBCs.

Establish an independent monitoring system or committees that explicitly prohibits family members from influencing the decision making process of women representatives. It can be implemented by reducing the influence of patriarchal mindset. Creating awareness among women about their rights and the importance of their participation in politics is essential. Educational programs and awareness campaigns can help to increase women's political participation. Gender-based violence and harassment are major obstacles to women's participation in politics. Addressing these issues through policy and legal measures can create a safer and more supportive environment for women in politics. Reforms such as introducing proportional representation and preferential voting systems can help to increase women's representation in politics by ensuring that more women get elected.

The Atal Bihari Vajpayee government then cleverly introduced the Eighty Fourth Amendment Bill in the Lok Sabha on December 14, 1998. Amidst several adjournments, pandemonium and loud protests greeted this measure from those opposing the move. The Eighty-Fourth Amendment Bill did not bring about any changes to the joint Select Committee report. Changes were suggested to the Article 330A and Article

332A proposed by the Joint Select Committee to substitute the words "nothing less than one-third" by "as nearly as may be, one third". It was also stated that in the States where the seats reserved in the Lok Sabha was less than three seats, in the first term, one seat was to be reserved for women, in the second term, the second seat would be reserved for women and in the third term both the seats could be treated as general or unreserved. In states or Union Territories with only one seat, the first term would be reserved for women and the second and the third terms shall be treated as general. Changes were also proposed to Article 239AA(2)(b) substituting the phrase "Scheduled Castes" with "Scheduled Castes and the women". Amendments were suggested to Article 333 so as to ensure that one of the members nominated from the Anglo-Indian community shall be a woman. This had been proposed by the Joint Select Committee and was accepted. Article 334A in the Joint Select Committee report wherein the review of the provision was reduced from 50 years to 15 years was presented without any changes.”

To some extent, women are being empowered. At the same time, their power is being manipulated and opposed by social forces, strongly and sometimes viciously. The second part of the Constitutional package is the creation of a National Commission for Women as a statutory body. Its reports show incomplete and not always satisfactory interventions. Thirdly, while there has been a considerable mobilization of women through special publications (for example, Manushi), specialized NGOs (for instance, the Lawyers Collective work on Domestic Violence), and special efforts (including the drafting of the law on sexual harassment), some feel this may have gone too far.'

The literacy levels of women continue to remain low which is reflective of, and one of the prime causes of, perpetuation of the lower social position of women. However, according to various studies, the literacy rates do not appear to have any direct correlation with the political representation of the women in the country. Kerala enjoys the highest female literacy rate at 86% and the social set-up is also highly conducive to active political participation of women. But the representation of women in the State Legislature or political parties is somewhat limited. At the other end is the case of Rajasthan where the literacy rate is extremely low at 20%. There is some correlation between literacy and the political representation of women. The percentage of women in the Kerala Legislative Assembly rose from less than 1% in 1967 to 6% in 1991, while in Rajasthan it increased from 4% to 8%.

Case Law

Indra Sawhney v. Union of India (1992) Supp. 3 S.C.C. 215.

The Union of India held that reservations cannot be applied in promotions. 1992 Indra Sawhney & Others v. Union of India judgment laid down the limits of the state's powers: it upheld the ceiling of 50 per cent quotas, emphasized the concept of "social backwardness", and prescribed 11 indicators to ascertain backwardness.

The court in its judgment laid down the following rules.

- Backward classes under Article 16(4) cannot be identified on the basis of economic criteria but the caste system also needs to be considered.
- Article 16(4) is not an exception to clause 1 but an instance of classification as envisaged by clause
- Backward classes in article 16(4) were different from the socially and educationally backward classes mentioned in Article 15(4).

- The concept of a creamy layer was laid down and it was directed that such a creamy layer be excluded while identifying backward classes.
- Article 16(4) does allow the classification of backward classes into backward and more backward classes.
- Reservation shall not exceed 50 percent, moreover, reservation in promotions shall not be allowed.
- Any new disputes regarding criteria were to be raised in the Supreme Court only.

Recommendations of the Joint Select Committee

The joint Select Committee set up to evolve a consensus on the vexed issues raised during the short time that the Bill was debated was headed by a CPI Member of Parliament, Mrs. Geeta Mukherjee. It comprised 20 members from the Lok Sabha and 10 members from the Rajya Sabha, having 13 women members out of 30 (besides a woman as the chairperson) - a representation of nearly 43%. Significantly, the Committee included several women MPs who had campaigned actively in favor of such reservations.

The Committee began its deliberations on 23 October 1996. In the Joint Select Committee, the main discussions centered on two issues - the issue of extension of reservations to Rajya Sabha and the issue of extension of reservations to the OBCs. Ultimately, the Committee recommended the passage of the Bill in its present form though suggesting reservation for OBCs in the future "at an appropriate time". The recommendations were, however, accompanied by 4 dissent notes - by Jayant Malhotra (Independent) who expressed his opposition to the Bill and favored reservation at the ticket distribution stage, by Hannan Mollah (CPIM) and Chandra Kala Pandey who opposed reservation for OBCs, by Ram Kirpal Yadav (3D) and Mukhtar Anis who submitted a joint dissent note insisting on reservations for OBCs, and by Nitish Kumar (Samata) and P. N. Siva (DMK) who laid stress on the OBC reservation as a pre-condition. The Justice N Rajagopalan Ayyangar Committee report stated, in no uncertain terms, that the patent system was a quid pro quo system: the monopoly that a patentee obtains is only in exchange for the disclosure of the invention to the public, free to be used after the monopoly period is over. The quid pro quo, according to the report, also included the obligation on the part of the patentee to work on the invention in India.

The report also underscored, rather emphatically, that the patent system had failed in India because it had failed to spark the kind of innovation that it sought to encourage – underdeveloped countries could not yield the same result from the patent system as their more developed counterparts could. The patent system was recommended to be continued only because there was no better alternative to achieve better results – in their form at the time, patents were the lesser evil. The report was unequivocal in its apprehension that foreign patentees could misuse the patent system to capture large markets in India at the cost of domestic innovation while simultaneously not investing in the manufacture of the patented product.

Amongst its other suggestions, the Committee recommended:

- a. Review of the provision after 15 years from the date of the commencement of the Act, thus recognizing that such reservation ought only to be a transient measure.
- b. Substituting the words "not less than one-third" by "as nearly as may be, one third", since it felt that the former set of words is "vague" and "liable to be interpreted differently" and as conferring power "to make reservations which may far exceed the limit of one-third".
- c. The extension of reservation to the Rajya Sabha and the Legislative Councils (but it left the modalities to be worked out by the Government);

- d. Measures for extending the benefit of reservation of seats for women belonging to the SC/ST in States where less than three seats were reserved in Lok Sabha (the Bill denies reservation for women where there are less than three seats reserved for SC or ST), suggesting that in case of two members being sent to Lok Sabha in the first term one seat could be reserved for women, in the second term the second seat could be reserved for women and in the third term both the seats could be treated as "general" or unreserved. In case of States or Union Territories where there is only one seat, the Committee recommended that the seat in the first term shall be reserved for women while in the second and third terms it shall be treated as general. The Report observes: "By rotation of seats in this way, over a period of three terms, one-third seats for women can be ensured even in a State or Union Territory which has only one or two seats in the House of People.
- e. Appropriate amendments to the Bill to extend the benefit of reservation to women in those States and Union Territories to which the number of seats allotted in the Lok Sabha is less than three, viewing such a move as "unjustified", and having the effect of denying the benefit of the amendment to the women in those States and Union Territories.
- f. The principle of rotation should apply to the members nominated from the Anglo-Indian community so as ensure that one of the members nominated from that community 'shall' be a woman.
- g. Appropriate amendments to be made to bring Union Territories, namely the National Capital Territory of Delhi and Union Territory of Pondicherry - each of which has a Legislative Assembly - within the purview of the provisions of the enactment.
- h. Omission of the proviso to sub-clause (3) of Article 332A which provides that no reservation of seats for women shall be made in the Legislative Assembly of a State so long as the number of seats allotted to such State is less than three, since "no such State exists with an allotted number of seats less than three".

CONCLUSION

The low political representation of women has only worked to perpetuate the unequal status of 'suffering' by them. The inevitable consequence has been that their concerns and fundamental needs are never adequately articulated. The programs for their welfare are not backed by any political will due to which their implementation remains only on paper. In fact, they are just populist measures announced by the party in power from time to time.

Various laws that are passed do not consider the 'woman's viewpoint' which often results in discriminatory provisions in the laws. Low representation makes it impossible for women to make their voices heard and obliges them to make compromises. This goes against the ethos of a democratic society committed to equality irrespective of sex. Thus, it becomes necessary to reserve seats for women in the legislatures. Empowerment through reservation of seats in legislation would enable the women to voice their demands for justice. Ultimately, politics is but a microcosm of the society; and such a measure would inevitably bring about social and economic empowerment of women.

It is axiomatic that any attempt to empower should be beset with hurdles, hitches, and hiccups. In the past, such dilatory tactics were visible in the passage of Bills seeking to extend protection to women in certain areas. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 was passed only in 1994 after much time had lapsed since its introduction in 1991. The amendment to the Dowry Prohibition Act, 1961 took four years to be passed and various provisions discriminating against women

in various laws are still to be removed.

In the case of the present Reservation Bill, the expectations of easy and speedy passage were high since the move to reserve seats for women in the Lok Sabha and the State Legislative Assemblies had, ostensibly, received unanimous support from all quarters. However, the Government and the other political parties developed cold feet once the Bill was introduced. The fate of the Bill remains, yet, unknown, amidst reports that attempts are being made to bring suggestions of the Bill round to accepting a much watered-down Bill which would provide only 15% or 20% reservation to women.

The stance adopted by the various parties' smacks of nothing but thinly disguised hypocrisy and rank opportunism. Publicly they declare that they are in favor of the Bill being passed at the earliest to keep up pretense of being progressive. Opposition parties use the existence of the Bill and its defects as a weapon to attack the party in power. None of them have the courage to come out openly against Bill. Successive governments have been the worst culprits in this regard, failing to lead from the front and preferring to wait and watch till such time as the women members of their own parties and the activists are tired, and stop putting pressure on the Government to pass the Bill.

SCOPE OF FUTURE RESEARCH

It's a moment where the political glass ceiling can finally be shattered. An important aspect of the Bill is that it also applies to the state level. Women's issues can't be addressed if only 15% of state legislatures are women. Bill will tackle that lack of representation head-on. With Bill's temporal framework, it can be extended after 15 years. While it's true that the implementation of this legislation will take time, it sets the stage for a future where women's participation in Indian politics will be substantive and not as a token. There has been some criticism of the Bill, from the opposition, considering a demand for an internal quota for women of OBCs. However, this shouldn't be used as a delay tactic. Local bodies show that having reservations for women leads to their increased participation.

This Bill also sends a message to the world that often lectures India on human rights. In several substantive areas, India is ahead of several countries. For example, India is the only major democracy with affirmative action for women in local bodies. The passage of the Bill will set an important and fairly loud precedent to have such an affirmative action policy on this scale.

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