

Critically Analysing Participation and Contribution of Women Representatives in the Making of the Constitution of India: Bouquets and Brickbats

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Abstract

The Sustainable Development Goals emphasise need for women's political participation and leadership. While the sex ratio of India has improved drastically since Independence, however, the political representation of women is yet to be realised. This paper critically analyses an under-analysed issue of great importance to gender representation and participation in the making of the Constitution.

Despite enthusiastic participation of women in various spheres of India's freedom struggle, the political participation was limited owing to the qualifications of the electorate that disenfranchised many women from voting. Ultimately, 15 women members formed part of the 299 member Constituent Assembly that drafted the Constitution of India.

The Constituent Assembly Debates, other reports and literature are referred in this paper which (i) examines the participation of women, including the women representatives, in the Constitution Making Process (ii) critically analyses the evolution of the Constitution owing to women's participation and contribution with emphasis on the fundamental rights, and (iii) discusses concerns that needed more deliberation. This critical analysis lays the foundation for the contemporary debate surrounding women's reservation in legislative bodies by providing a feminist perspective of constitution making process and establishes better understanding of the importance of gender representation in the Constitution making, how it structures the Constitution, and contributes to making the Constitution more gender-representative, participative and inclusive.

Keywords: Women's Representation, Constituent Assembly of India, Constitutional Legal History, Political Participation of Women, Feminist perspective of constitution making

1. Introduction

The Constitution of India emerged from a tumultuous freedom struggle that witnessed participation of women in all spheres. Continuing this legacy 15 women representatives formed an integral part of the Constituent Assembly of India that drafted the Constitution for independent India. Since then, it was realised that participation of women in political processes at various levels of governance, local, national and global, is essential to making the political system more inclusive, participative, representative and progressive.

The Sustainable Development Goals emphasise need for women's political participation and leadership in Goal 5. Indicator 5.5.1 places attention on the Proportion of seats held by women in (a) national parliaments and (b) local governments to measure of Goal 5.¹ Despite this, the United Nations General Assembly (UNGA) Resolution 66/130 on Women and Political Participation 2011² recognises that "Women ...continue to be largely marginalized from the political sphere." and it has been observed that women 'do not have the leadership positions they deserve'³.

The 2023 Statistics for Women in Parliament by the Inter-Parliamentary Union ranks India at 140 with 15% women representatives, lower than Rwanda (61.3%), Cuba (53.4%), Nicaragua (51.7%) and members of the South Asian Association for Regional Cooperation (SAARC) viz. Nepal 54 (33%), Bangladesh 107 (20.9%), Pakistan 110 (20.5%) and Bhutan 131 (17.4%).⁴ The participation of few women who overcome hurdles to political representation owing to individual capacities/circumstances does not commensurate to the equal participation and representation as envisaged.⁵ Since 75 years of India's independence, the sex ratio has improved from 1020 women for 1000 men,⁶ yet with 15.1% women representatives in the Indian Parliament the political participation and representation of women remains a challenge.⁷ In order to understand this disparity meaningfully, it is pertinent to examine the constitutional legal history regarding women's participation and representation in the Constitution making process.

This paper discusses and critically analyses an under-analysed issue of great importance that is gender representation and participation in the making of the Constitution. Of the 299 members, there were 15 women members in the Constituent Assembly of India. This paper (i) examines the participation of women, including the women representatives, in the Constitution Making Process (ii) critically analyses the evolution of the Constitution owing to women's participation and contribution with emphasis on the fundamental rights, and (iii) discusses concerns that needed more deliberation.

2. Feminist Perspective of the Constitution Making Process

The process of making the constitution of a democratic country is as important as the final document. Appreciating the feminist view of the constitutional legal history⁸ this section examines the extent of women's participation and representation in the constitution making process.

¹ 'Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development' UN Doc. A/RES/71/313 (UN Stats) <https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202023%20refinement_Eng.pdf> accessed 22 December 2023.

² UNGA Res 66/130 (19 December 2011) UN Doc. A/RES/66/130

³ Statistics Division, UN Department of Economic and Social Affairs, 'Progress on the Sustainable Development Goals: The gender snapshot 2021' <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2021/Progress-on-the-Sustainable-Development-Goals-The-gender-snapshot-2021-en.pdf>> accessed 22 December 2023.

⁴ Inter-Parliamentary Union, 'Women in Politics: 2023' <<https://www.ipu.org/resources/publications/infographics/2023-03/women-in-politics-2023>> accessed 22 December 2023.

⁵ 'Facts and figures: Women's leadership and political participation' (UN Women, 15 January 2021) <<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>> accessed 20 December 2023.

⁶ 'National Family Health Survey-5' (NFHS-5) <http://rchiips.org/nfhs/factsheet_NFHS-5.shtml> accessed 20 December 2023.

⁷ Supra note 4 and Arpita Mallick & Analiya Dutta Choudhury, 'Vital Stats: Women in Parliament and State Assemblies' (PRS India, 19 September 2023) <https://prsindia.org/files/bills_acts/bills_parliament/2023/Vital_Stats-Womens_Reservation.pdf> accessed 22 December 2023.

⁸ Vicki C. Jackson, 'Feminisms and Constitutions' in *The Public Law of Gender: From the Local to the Global* (Kin Rubenstein & Katherine G. Young eds., Cambridge University Press 2016) at 41.

2.1. Missing Women from the Electorate

The members of the Constituent Assembly from British India were chosen by indirect election by members of the Provincial Legislatures. The electorate had restricted franchise through qualifications of tax, property and education which made only 28.5% of adult population eligible to vote.⁹ The 1941 Census reveals literacy rate of only 7.30% for women compared to 24.9% for men,¹⁰ thereby, placing majority women out of the electoral process. This disenfranchisement of majority of Indians, especially women, raised concerns over the representative nature of the Constituent Assembly. Alladi Krishna Swami emphatically highlighted incorporation of adult franchise in the Constitution at the time of its adoption on November 26, 1949 that, '[i]f any such qualifications were introduced, that would have disfranchised ... a large number of women-folk.'¹¹ However, at the deliberations in the Constituent Assembly the question of absence of women was not raised.

2.2. Who were the Women Members?

The women members were freedom fighters, lawyers, reformists, politicians and had taken part in freedom movements in India.¹² Sucheta Kripalani, Purnima Banerji and Renuka Ray were freedom fighters and political activists. Dakshayani Velayudan was a Dalit activist and leader of the oppressed classes. Vijalakshmi Pandit was Indian diplomat and politician. Hansa Mehta was a reformist, social activist, educator, independence activist and feminist. Sarojini Naidu was a proponent of civil rights and women's emancipation. There were two members from the royal family viz. Rajkumari Amrit Kaur hailed from royal family of Kapurthala and Begum Aizaz Rasul who was also the only Muslim woman member. G. Durgabai and Annie Mascarene were lawyers and social activists. Malati Chowdhury was a civil rights activist and Gandhian. Ammu Swaminathan, Leela Ray and Kamla Chaudhri were social workers and political activists. Five of the members were from the United Provinces, three from Madras, two from Bengal, one each from Bombay, Orissa, Bihar, the Travancore and Cochin Union, and the Central Provinces and Berar.

2.3. Participation of Women Members in the Constituent Assembly

There were 15 women members out of 299 members in the Constituent Assembly,¹³ thereby, constituting 5% of the total members. The effective participation of these members seems further declined in terms of frequency of interactions, content and attendance¹⁴.

⁹ Granville Austin, *The Indian Constitution—Cornerstone of a Nation* (India Paper Back Edition OUP 1999) at 12.

¹⁰ 'Chapter 6: State of Literacy' in the Census of India, 2011, p. 103 <https://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter6.pdf> accessed 15 December 2023.

¹¹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume XI, 23 November 1949 (6th Reprint, Jainco Art India, New Delhi, 2014) <https://eparlib.nic.in/bitstream/123456789/763263/1/cad_23-11-1949.pdf> accessed 15 December 2023.

¹² Rajya Sabha Secretariat, 'Selected Speeches of Women Members of the Constituent Assembly' (Secretary General, Rajya Sabha, April 2012) <https://rajyasabha.nic.in/rsnew/publication_electronic/Selected%20Women%20Speech_Final.pdf> accessed 20 December 2023.

¹³ 'Constituent Assembly Membership' (Rajya Sabha) <https://rajyasabha.nic.in/rsnew/constituent_assembly/constituent_assembly_mem.asp> accessed 20 December 2023.

¹⁴ Surbhi Karwa, "Constitution Itself is a Feminist Document"—Is It?: Locating Answers in the Constituent Assembly of India (LL.M. Dissertation, National Law University Delhi, 2019). For additional information, refer, Granville Austin, supra note 9; 'Women Architects of the Indian Republic' (15 for the republic) <<https://15fortherepublic.wordpress.com>> accessed 20 December 2023; 'Constituent Assembly Members' (Constitution of India) <https://www.constitutionofindia.net/constituent_assembly_members> accessed 20 December 2023; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*,

2.3.1. Frequency of interaction

The frequency was limited as out of the 15 women members, only 10 interacted in the Assembly's deliberations and of these, five women members placed comments more than five times. The active participants included, Begum Aizaz Rasul (12 times), Dakshayani Velayudan (6 times), G. Durgabai (16 times), Purnima Banerji (13 times) and Renuka Ray (12 times).¹⁵ Sucheta Kripalani, Rajkumari Amrit Kaur, Malathi Chowdhury, Leela Ray and Kamala Chaudhari did not participate in the deliberations in the Constituent Assembly though Sucheta Kripalani sang the Vande Matram and National Songs on two occasions.¹⁶ Still, as some of the women members were part of various committees, they participated in that capacity in the process of Constitution making. For instance, Rajkumari Amrit Kaur was part of many committees and contributed in that capacity. However, the voices of Sucheta Kripalani, Malathi Chowdhury, Leela Ray and Kamala Chaudhari remained absent as they were not part of any Committees.¹⁷ Hansa Mehta and Annie Mascarene spoke thrice, Sarojini Naidu spoke twice, and Ammu Swaminathan and Vijaylakhmi Pandit spoke only once.¹⁸

2.3.2. Attendance

At the first meeting on December 9, 1946 only nine women members were present. All 15 women members were not present together at any of the sessions.¹⁹ Further there were vacancies as Malati Chowdhury resigned to work with Mahatma Gandhi in Noakhali and for upliftment of farmers, Dalits, tribals and children;²⁰ Vijaylakhmi Pandit resigned in 1947 to serve as India's Ambassador to the Soviet Union²¹, Leela Ray resigned as a mark of protest against the partition of India²² and Sarojini Naidu left for heavenly abode on March 2, 1949. Thus, the participation in deliberations was less than 5%.

2.3.3. Content of interactions

Regarding the content of debates and discussions in the Constituent Assembly, fewer women members deliberated on the substantive provisions of the Constitution. Most women members seldom spoke or played ceremonial roles. For instance, Sucheta Kripalani only sang on two occasions, Vijaylakhmi Pandit spoke once on Centrality of New Asia, Sarojini Naidu spoke twice on the inclusive Constituent Assembly and resolution on National Flag, Hansa Mehta presented the National Flag, and Annie Mascarene paid Tribute to Sardar Patel and presented Time-Table for the House.²³ While these aspects were important,

Volumes I-XII, 9 December 1946 to 24 January 1950 (6th Reprint, Jainco Art India, New Delhi, 2014) <<https://eparlib.nic.in/handle/123456789/760448>> and <<https://eparlib.nic.in/handle/123456789/4>> accessed 15 December 2023.

¹⁵ Selected Speeches of Women Members of the Constituent Assembly, Supra note 12.

¹⁶ See 'Singing of the song Vande Mataram' and 'Singing of the National Songs' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume V, 14 August 1947, Supra Note 14a at 1 and 11.

¹⁷ For other (women) members of the Committees, see Granville Austin, supra note 9, at 415-419.

¹⁸ Selected Speeches of Women Members of the Constituent Assembly, Supra note 12.

¹⁹ See generally, Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volumes I-XII, 9 December 1946 to 24 January 1950, Supra note 14.

²⁰ 'Malati Chaudhary' (Constitution of India) <<https://www.constitutionofindia.net/members/malati-chaudhary/>> accessed 19 December 2023.

²¹ 'Vijayalakshmi Pandit (1900-1990)' (15 For The Republic) <<https://15fortherepublic.wordpress.com/2016/08/14/vijayalakshmi-pandit-1900-1990/>> accessed 20 December 2023.

²² 'Leela Roy (1900-1970)' (15 for the republic) <<https://15fortherepublic.wordpress.com/2016/07/22/leela-roy-1900-1970/>> accessed 20 December 2023.

²³ Supra note 19.

but it is of note that the substantive provisions were not deliberated by some of the women members. Thus, the extent of representation and participation in deliberations was not reflective of the number of women that composed Independent India. The next section critically examines contribution of women members to the present Constitution.

3. Evolution of the Constitution through Women Representatives in the Constituent Assembly

The women members, despite paucity in strength and non-frequent participation, contributed to some of the provisions of the present Constitution as discussed hereunder:

3.1. Preamble

While discussing the Objectives Resolution, Hansa Mehta emphasised ‘social justice, economic justice, and political justice’ and ‘not only equality of status but equality of opportunity’ and D. Velayudan emphasised ‘power comes from the people’.²⁴ D. Velayudan addressed the Harijan demand of separate guarantees by stating safeguards for all and bestowing belief that ‘Harijans will be free only in a Socialist Republic India’. Velayudan made a request to Dr Ambedkar for joining the Harijan forces with the other sections since it appeared that any request for separate/special safeguards were seen as favouring separatism. Vijaylaxmi Pandit regarded rights of minorities would be protected in Independent India by the fullest ‘social, economic and cultural justice’. Pandit discussed the central place of India in Asia as it stood for democracy throughout the years and has ‘fought for the will of the people to triumph’.²⁵ Most of the Objectives Resolution ideals transformed into the Preamble to Indian Constitution.

Purnima Banerji proposed amendment to first line of the Preamble to ‘We on behalf of the people of India from whom is derived all power and authority of the Independent India,...’ as the ultimate sovereignty lies with people.²⁶ In recognition of this, Banerji was not content with the idea of sovereignty with people by virtue of their voting in five years, but wanted an explicit statement of that sovereignty vested with people. She further appreciated the Preamble as ‘life-breath of the Constitution’ even though not legally binding. Though the proposal was rejected, we do find ‘we the people’ as the beginning of the preamble.

3.2. Fundamental Rights

3.2.1. Right to Equality

Interestingly, article 15 (3) granted the State the power to make special provision for women and children, but at the deliberations on articles of Draft Constitution corresponding to Articles 14 and 15, the women members did not participate. Hansa Mehta and Renuka Ray, speaking generally, expressed equality in formal sense in contradiction to substantive equality, seeing all men and women as equal irrespective of the socio-economic condition of women.²⁷

²⁴ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume I, 19 December 1946, Supra note 14.

²⁵ ‘Debate over Pandit Jawaharlal Nehru’s Resolution regarding Aims and Objectives’ in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume II, 20 January 1947, Supra note 14, Supra note 14.

²⁶ ‘Discussion on the Preamble to the Constitution’ in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume X, 17 October 1949, Supra note 14.

²⁷ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume I, 19 December 1946, Supra note 14; Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IV, Supra note 14; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 9 November 1948, Supra note 14.

D. Velayudan made contribution regarding Article 17 by mandating proper propaganda by both the Central and Provincial Governments against the practice of untouchability. Velayudan had desired to table resolution before the Constituent Assembly for declaring that untouchability should be made unlawful so that it would absolve necessity of incorporating a clause in the Constitution.²⁸ But it was not considered as the Assembly found it appropriate to address in the Constitution as a provision for future generations to imbibe. As a Harijan herself, Velayudan requested for inclusion of Harijans as Hindu Candidates from Muslim Provinces for election to Advisory Committee. She insisted that Harijans represent not only the community but also belong to the Hindu fold.²⁹ The members recognised Harijans as requiring special protections but did not vote on Velayudan's suggestion.

3.2.2. Liberty

Regarding provision of Article 22 that provides for Preventive Detention, G. Durgabai and Purnima Banerji contributed in the deliberations. G. Durgabai supported Article 15A of the Draft Constitution (now Article 22) moved by Dr Ambedkar by recognising the need to acknowledge both individual liberties and exigencies of the State, viz. (a) State stands for freedom of several individuals; (b) power exercised when individual tampers with public order or defence services; and (c) ample limitations and restrictions on the power.³⁰

Purnima Banerji deliberated on Article 22 on three occasions, expressing concern of the draft Article 15A depriving of the rights under draft Article 15 (now Article 21) and proposed maximum limit of fifteen days for production of the person detained, condition of High Court/Board having heard the person detained, direct dependents to be paid maintenance allowance, and deletion of Article 22 (7) that provided Parliament the power to decide circumstances of detention without approval of Advisory Board.³¹ G. Durgabai was in favour of detained person to be heard. Regarding Article 22(7) other members also raised concerns. Dr Ambedkar addressed these concerns addressing mitigating factors.

D. Velayudan commended Clause 11 of the Interim Report of Fundamental Rights by Advisory Committee on Right to Freedom from Begar as need to contain traffic in human beings and recognising that if not begar, then other forms of 'compulsion exists throughout India and the majority of the people are subjected to exploitation, economical and in all sorts of ways'.³² G. Durgabai commented on Prof. Shah's amendment to draft Article 17 (now Article 23) to address Devadasi by recognising Devadasi system as 'worst form of custom' but did not support the amendment as it is addressed by enactments in Madras.³³ Renuka

²⁸ 'Discussion on Article 11 of the Draft Constitution, regarding 'untouchability'' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 29 November 1948, Supra note 14.

²⁹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume II, 24 January 1947, Supra note 14.

³⁰ 'Discussion on Article 15A of the Draft Constitution regarding protection against certain arrests' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 16 September 1949, Supra note 14.

³¹ 'Discussion on Article 15A of the Draft Constitution regarding protection against certain arrests' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 16 September 1949, Supra note 14; Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume XI, 15 November 1949, Supra note 14; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume XI, 16 November 1949, Supra note 14.

³² 'Discussion on Clause 11 of Interim Report on Fundamental Rights pertaining freedom from 'Forced Labour 'as one of the Rights of Freedom' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume III, 1 May 1947, Supra note 14.

³³ 'Discussion on Article 17 of the Draft Constitution, regarding involuntary servitude' in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 3 December 1948, Supra note 14.

Ray opined that Devdasi system is addressed in the Article in its present form.³⁴ We find the articulation of ‘other similar forms of forced labour’ in Article 23. Purnima Banerji, Renuka Ray, Durgabai and Begum Aizaz Rasul deliberated on the now deleted Article 31 recommending compensation in line of compulsory acquisition of property.³⁵

3.2.3. Right to Religion and Minority rights

G. Durgabai wanted to secure the benefit in a wider way and to make it applicable to all classes and sections under Article 25 which was appreciated by Rohini Kumar Chaudhari and Pandit Lakshmi Kanta Maitra.³⁶

Renuka Ray discussed the need to ensure no religious instruction in educational institutions under Article 28 by reference to ‘prostitution of what we call religion’³⁷ D. Velayudan, Renuka Ray and Begum Aizaz Rasul deliberated the Report of Committee on Minority Rights.³⁸ Purnima Banerji and Renuka Ray expressed concerns that students attending schools should not be forced to attend religious classes. Religious education in school.³⁹ Though Bannerji’s amendment was negated, the suggestion of both were appreciated by Sriyut Rohini Kumar Chaudhury as ‘ideal of secular education’.

Begum Aizaz Rasul recommended substituting ‘any section of the citizens’ with ‘minority’ in Article 29 on the premise that minorities have distinct language and script. This was not accepted on the grounds of providing a wider scope to Article 29.⁴⁰

3.2.4. Constitutional Remedies

G. Durgabai in her deliberations on Article 32 recognised the purpose of the article to secure an ‘effective remedy to the fundamental rights guaranteed under this Constitution.’⁴¹ Recognising the writs available in England, Durgabai appreciated inclusion of habeas corpus as one of the writs; and answered important concerns regarding the exclusivity of Supreme Court jurisdiction and whether refusal of High Court to grant remedy would prohibit pursuing it in Supreme Court. Durgabai stated that vesting of the right in the Supreme Court does not divest the High Courts to provide remedy or the Parliament to confer the power on any other court. Further, these were not matters of res judicator, hence a person may approach the Supreme Court when the High Court refuses the remedy. The articulation signifies deeper understanding of the provisions of the draft Constitution.

3.3. Other Provisions of the Constitution of India

The women members made meaningful contribution to other provisions regarding:

³⁴ Ibid

³⁵ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 10 September 1949 and 12 September 1949, Supra note 14.

³⁶ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 6 December 1948, Supra note 14.

³⁷ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 7 December 1948, Supra note 14.

³⁸ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume V, 28 August 1947, Supra note 14; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 25 May 1949, Supra note 14.

³⁹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume V, 30 August 1947, Supra note 14.

⁴⁰ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 8 December 1948, Supra note 14.

⁴¹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 9 December 1948, Supra note 14.

3.3.1. The Union Executive and Legislature

Begum Aizaz Rasul deliberated on representation of States for election of President under Article 55,⁴² the constitution of Parliament under Article 79,⁴³ assent to Bills under Article 111.⁴⁴ Renuka Ray commented on the method and manner of introduction of bill under Article 107⁴⁵ and G.Durgabai listed qualifications for membership of Parliament under Article 84.⁴⁶

3.3.2. State Executive and Legislature

G. Durgabai made emphatic speech on Appointment of Governor under Article 155 and Conduct of business of the State under Article 166.⁴⁷

Begum Aizaz Rasul deliberated composition of Legislative Assemblies under Article 170 and Renuka Ray discussed Constitution of State Legislatures under Article 168.⁴⁸ Purnima Banerji made meaningful contributions to Composition of the Legislative Councils under Article 171, Qualification for membership of the State Legislature under Article 173 and Voting in Houses, power of Houses to act notwithstanding vacancies and quorum under Article 189.⁴⁹

3.3.3. Judiciary

G. Durgabai deliberated on the Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to Civil matters under Article 133, abolition of Privy Council jurisdiction, and appointment of judges to ensure independence of judiciary and integrity.⁵⁰ Regarding the State judiciary, G. Durabai raised concern about appointment of provincial judiciary and establishment of High Courts.⁵¹

3.3.4. Finance, Elections, Official Language and Emergency Provisions

Purnima Banerji addressed the Assembly on power to levy taxes by local bodies under Article 276.⁵² Annie Mascarene on Article 324 on 16 June 1949 against central control of provincial election.⁵³ G. Durgabai recommended Hindusthani language having an amalgamation of various languages as the Official

⁴² Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 13 December 1948, Supra note 14.

⁴³ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 3 January 1949, Supra note 14.

⁴⁴ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 20 May 1949, Supra note 14.

⁴⁵ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 1 August 1949, Supra note 14.

⁴⁶ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 18 May 1949, Supra note 14.

⁴⁷ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 31 May 1949, Supra note 14; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 2 June 1949, Supra note 14.

⁴⁸ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VII, 6 January 1949, Supra note 14.

⁴⁹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volumes I-XII, 19 August 1949, 30 July 1949, 2 June 1949, 16 June 1949, Supra note 14.

⁵⁰ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 6 June 1949, Supra note 14; Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 17 September 1949, Supra note 14; and Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IV, 29 July 1947, Supra note 14.

⁵¹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IV, 21 July 1947 and 28 July 1947, Supra note 14.

⁵² Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 9 August 1949, Supra note 14.

⁵³ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume VIII, 16 June 1949, Supra note 14.

Language.⁵⁴ Renuka Ray and G. Durgabai deliberated on Centre's powers in Emergency under Article 354.⁵⁵

3.3.5. Schedule VII

List-1, Entry 57A 'Promotion of scientific researches and of higher technical and technological education' moved by Basanta Kumar Das was appreciated by Renuka Ray and it was adopted.⁵⁶ List-1, Entry 70A on 'the sanctioning of cinematograph films for exhibition' moved by Dr Ambedkar was appreciated by G. Durgabai provided provincial interests are assured.⁵⁷ On insistence by Brajeshwar Prasad to move Entry-4 regarding 'police' to List-II, Purnima Banerji clarified the understanding of police.⁵⁸ The amendment was adopted. In List-3, G. Durgabai and Purnima Banerji discussed Entry 6 and Entry 34 respectively.⁵⁹

Apart from these provisions of the Constitution, women members interacted during the adoption of the Constitution (G. Durgabai, Ammu Swaminathan, Purnima Banerji, Begum Aizaz Rasul, Hansa Mehta, Renuka Ray and Annie Mascarene), championed for amendment of rules of the house (G. Durgabai) representation of flag on behalf of women (Hansa Mehta), Flag Revolution (Sarojini Naidu), placed request for separate electorates in Provinces (Renuka Ray), recommendations on steering committee (G. Durgabai), motion to join commonwealth (Begum Aizaz Rasul) and made statement on presentation of draft constitution (Begum Aizaz Rasul and D. Velayudan).

4. Contribution of Women Members: Bouquets and Brickbats

In order to transform the legal system into gender-representative and participative system it is pertinent to encourage women's participation and representation in political processes. The contribution of women members to this ideal is salutary amidst the many odds.

4.1. Participation entailed Discussion on Substantive Provisions

Some of the women members debated regularly on some issues, even though not gender specific as discussed in the previous section. For instance, G. Durgabai raised issues of judiciary at the Centre and State level, amendment to the rules of the House and entries in Schedule VII. Purnima Banerji on Article 22 of the present Constitution. The women interacted on the provisions of the Draft Constitution and also on other matters such as membership of the commonwealth, evaluation of Committee Reports and presentation of the National Flag. The deliberations on various constitutional provisions such as untouchability, begar, minority rights, preventive detention, constitutional remedies, organisation of the executive and legislature in Centre and State, judiciary and other matters made the debates richer in the Constituent Assembly. Though proposals by the women members were mostly not adopted, yet it garnered attention to issues raised by them and means of addressing the same in the Constitution.

⁵⁴ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 14 September 1949, Supra note 14.

⁵⁵ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 19 August 1949 and 20 August 1949, Supra note 14.

⁵⁶ Supra note 19.

⁵⁷ Ibid.

⁵⁸ Supra note 19.

⁵⁹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IX, 3 September 1949, Supra note 14.

4.2. Participation was Seldom and faced Gendered Response

Article 312F of the Draft Constitution (now repealed Article 388 of present Constitution) was being debated that provided that those casual vacancies for the provisional Parliament belonging to Sikh or Muslim community should be filled by persons of that community. Purnima Banerji insisted returning seats to women that were vacated by women in the Constituent Assembly on grounds that, (i) extension of the same provision to women and (ii) as state is no longer a police state and is to perform certain social functions such as education and health makes association of women in the field of politics indispensable.⁶⁰ This was met with resistance and misogynist remarks from H.V. Kamath who referred to Aristotle regarding ‘the capability of women for government and administration is that woman is ruled more by the heart than by the head’ thus would find it ‘awkward and difficult’.⁶¹ Dr Ambedkar agreed with Banerji’s argument but left it to rule-making powers of the President. Banerji withdrew the amendment with leave of the Assembly.

Hesitation in participation is evident from Malati Chowdhury writing a letter 25 years after resigning from the Constituent Assembly, wherein she stated that she found herself unfit for the duty as a ‘helpless school student’ amidst company of eminent jurists and further had reservations about borrowing the Constitution from other countries.⁶² Further, the debates present gender stereotypes by members such as H.V. Kamath’s reference to ‘married maiden’, P.T. Chacko’s comparing the Centre to ‘Mother-in-law’, ‘step-motherly treatment’ to denote lack of fair treatment and other instances.⁶³

4.3. Absence of Discussion on Special Provisions for Women

The women members did not press demands for political participation of women, except Purnima Banerji who withdrew the proposal. Harboursing an idealist vision of Independent India, the women members felt that in future women may get elected without any specific provisions. But even now India has not been able to reach 20% representation of women in legislatures. Prof. K.T. Shah while moving amendment to his proposal to now Article 15(3) recognised ‘*unfortunate legacy of the past*’ in relation to Scheduled Castes and backward tribes but expressed special protection for women to ‘*safeguard, protect or lead their betterment*’.⁶⁴ This points to protective understanding rather than substantive equality. Hansa Mehta, as Indian delegate to the UN Commission on Human Rights, had emphasised phrasing of Article 1 of the Universal Declaration on Human Rights as ‘*All human beings are born free and equal*’ instead of ‘*All men...*’.⁶⁵ Mehta highlighted the historical injustices faced by women, but reminded ‘we have never asked for privileges’.⁶⁶ Similarly Renuka Ray and other women members ‘opposed to the reservation of seats for women’.⁶⁷ Earlier, women who had voiced reservation as temporary measure, were influenced by the

⁶⁰ ‘Discussion on Article 312F of the Draft Constitution’ in Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume X, 11 October 1949, Supra note 14.

⁶¹ Ibid.

⁶² ‘Malati Devi Choudhury (1904 – 1998)’ (15 for the republic) <<https://15fortherepublic.wordpress.com/2016/08/02/malati-devi-choudhury-1904-1998/>> accessed 20 December 2023

⁶³ Surbhi Karwa, Supra note 14.

⁶⁴ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume X, 29 November 1949, Supra note 14.

⁶⁵ ‘UN Chief honours Indian reformer Hansa Mehta’s role in shaping Universal Declaration of Human Rights’ (Economic Times, Dec 7, 2018) <<https://economictimes.indiatimes.com/news/politics-and-nation/un-chief-honours-indian-reformer-hansa-mehtas-role-in-shaping-universal-declaration-of-human-rights/articleshow/66983960.cms?from=mdr>> accessed 20 December 2023.

⁶⁶ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume I, 19 December 1946, Supra note 14.

⁶⁷ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report*, Volume IV, 18 July 1947, Supra note 14.

sentiment that saw special treatment as antithesis to unity amidst the separate electorate politics.⁶⁸ It is noteworthy that the debate on women reservation in political institutions continued resulting in the Women Reservation Bill 2023 being passed by both the houses of the Parliament of India when the percentage of women representatives to the Parliament was lower than the global average of 26.5%.⁶⁹ The enforcement of this reservation of 33% to women in Parliament is scheduled after the delimitation.

5. Conclusion

The paper analysed the evolution of the Constitution of India through the gender lens by critically examining participation of the women members in the Constituent Assembly thereby providing a comprehensive understanding of the legacy of their contribution and the necessity of women's representation in legislative bodies. The qualifications for participating in the electoral process as voters disenfranchised many women. This clubbed with the few women members, lesser participation by the women members and resistance from some members raises concern regarding the effective participation and representation of women in the Constitution making process. Of the limited women members, few interacted on more than five occasions. It is, however, laudable that the women members, despite hesitation and gendered reactions, deliberated on some key constitutional provisions apart from performing certain ceremonial roles. Though the women members distanced themselves from raising women specific concerns (except on rare occasions) as it was seen harbouring separatist ideas, their deliberations ushered a more progressive participation of women in the Constitution making and added weight to some of the important provisions. The contribution of women members is appreciable, however even now the percentage of women legislators in India remains low, thereby making it pertinent to progressively move towards more egalitarian gender representation and participation in political institutions.



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⁶⁸ See generally, Anupama Roy, *Gendered Citizenship: Historical and Conceptual Explorations* (Orient Blackswan 2013)

⁶⁹ 'India passes law to reserve seats for women legislators' (UN Women, 4 October 2023) <<https://www.unwomen.org/en/news-stories/feature-story/2023/10/india-passes-law-to-reserve-seats-for-women-legislators>> accessed 23 December 2023. See generally, 'Women's Reservation Bill 2023 [The Constitution (One Hundred Twenty-Eighth Amendment) Bill, 2023]' (PRS India) <<https://prsindia.org/billtrack/the-constitution-one-hundred-twenty-eighth-amendment-bill-2023>> accessed 23 December 2023.