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Bridging the Gap: Women’s Reservation and The Right to Equality

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The Right to Equality, enshrined in the Indian Constitution, remains a cornerstone of the nation's social and political fabric. However, the historical and ongoing underrepresentation of women in decision-making raises critical questions about achieving true equality. The Women's Reservation Bill (WRA)¹, proposed in 1996 and still under debate, seeks to address this imbalance by mandating one-third reservation for women in elected bodies². This paper delves into the interplay between the right to equality and the Women's Reservation Act,³ exploring various perspectives and potential implications. Women are an essential part of society, and their existence, power, contribution, and status in any area need to be significantly examined and studied. In the Indian context, women have been given special status and additional provisions to encourage them to participate in various political, social, and economic processes. Today, various inequalities are prevalent in society, which have obstructed the representation of women in society. It also analyses the legal and social arguments surrounding the Act. The paper emphasises the critical insights into the potential benefits and challenges of implementing this Reservation Act⁴. The paper contributes to the ongoing discourse on achieving gender equality in India through legislative measures. The paper will explore the prospective outcomes of the Women's Reservation Act⁵, which is an essential issue for the nation where women come from different backgrounds. Additionally, the

¹ The Constitution (Eighty-First Amendment) Bill 1996

² *Ibid*

³ The Constitutional (One Hundred and Twenty-Eight Amendment) Bill 2023

⁴ The Constitution (One Hundred and Sixth Amendment) Act 2023

⁵ *Ibid*

Indian society needs to discuss and implement this to increase women's participation for the betterment of society. In conclusion, the paper provides a comprehensive view of the right to equality and the Women's Reservations Act and how they are relevant to our society.

Keywords: *reservation, women's reservation bill, right to equality.*

INTRODUCTION

In this paper, we discuss the Women's Reservation Bill, a bill that has the potential to alter the structure of Indian politics⁷. It has been the subject of intense debate in Parliament and beyond that, women's reservation is urgently needed. Various scholars and thinkers also share this view, arguing that we should implement women's reservation gradually across all sectors by increasing the number of seats and addressing the barriers that restrict women's entry into various fields. Also, at the same time, the goal of equality is to ensure that women and men are represented in the decision-making process in a balanced manner, which is essential for the proper functioning of democracy. Justice is the right of each citizen because it promotes harmony in society and Article 15(3) also says the same that the state can make laws for women and children.⁸ The constitutional maker included this with the intent to provide proper justice to women for active participation in each field.

The Women's Reservation Bill⁹ is one of India's most important legislation topics and has the potential to transform India's political structure. There are numerous debates both in support of and in opposition to this bill. Some individuals argue that it is merely a political manoeuvre aimed at increasing votes for personal gain, while others contend that it represents a significant advancement in promoting women's participation in the decision-making process. It is essential to consider the approaches taken by other countries and to implement women's reservations in a manner that does not infringe upon the rights of others. Countries like Nepal, which is still in

⁶ *Ibid*

⁷ The Constitutional (One Hundred and Twenty-Eight Amendment) Bill 2023

⁸ Constitution of India 1950, art 15

⁹ The Constitutional (One Hundred and Twenty-Eight Amendment) Bill 2023

the process of maturing as compared to India's democracy, still have implemented women's reservations in their parliament. However, they have managed to increase the participation of women in the decision-making process. Therefore, we must adopt their effective policies and implement them in such a way that it will provide real justice to the women in society.

THE WOMEN RESERVATION BILL: A STEP TOWARDS EQUAL PARTICIPATION

The 106th Amendment Act 2023 provides for a reservation of one-third of all seats in the Lok Sabha, in State legislative assemblies, and the Legislative Assembly of India, including reserved seats for Scheduled Castes and Scheduled Tribes¹⁰. The reservation will take effect after the census is conducted after the Act enters into force and will last for 15 years, with the possibility of extension being decided by Parliament. State bodies need to identify the places in their respective area and after that, we need to look into the problems faced by women, especially those who come from socially and educationally backward classes, we need to make a committee that identifies those groups and based on which we have to frame policies. There is a lot of old data that we can use to identify those groups provided by the Ministry of Education and based on those indicators, we will have to implement those policies.¹¹

The Women's Reservation Bill, also known as the Constitution (108) Amendment Bill, 2008, is a pending Bill in the Parliament of India¹². This Bill proposes to amend the Constitution of India by reserving 33% of the seats in the lower house of Parliament of India, in the Lok Sabha of India, and all the state legislative assemblies of India for women. These seats were to be reserved on a rotation basis, with a draw of lots for each seat being reserved once in every three consecutive general elections. The Bill was passed by the Rajya Sabha on 9 March 2010, but the Bill was never voted on by the Lok Sabha. The Bill lapsed after the dissolution of the fifteenth Lok Sabha in the year 2014.¹³

¹⁰ Constitution (One Hundred and Sixth Amendment) Act 2023

¹¹ *Ibid*

¹² 'Women's Reservation Bill [The Constitution (108th Amendment) Bill, 2008]' (*PRS India*) <<https://prsindia.org/billtrack/womens-reservation-bill-the-constitution-108th-amendment-bill-2008-45>> accessed 01 September 2024

¹³ Priyanka Kansara, 'Do We Need A Women Reservation Bill' (*iPleaders*, 13 December 2016) <<https://blog.ipleaders.in/need-women-reservation-bill/>> accessed 01 September 2024

This bill will not only help women but will also help in framing the best policies for society at large. Since women have been discarded from mainstream society for a very long time, it is the right time to secure seats for women in the decision-making process. If we educate one woman, she becomes aware of health, education, and other economic opportunities. This insight will not only empower the woman but also her family members. Since women play a vital role in the family as housewives, mothers, and caregivers, they significantly influence the attitudes and behaviours of their children and spouses. Therefore, educating one woman can result in the well-being of the family also.

Similarly, providing women with opportunities to participate in the decision-making process will ultimately enhance our administrative system. Women possess valuable insights into the challenges faced by their peers, which can inform the formulation of more effective policies. By integrating the perspectives of both women and men, we can foster a more just and equitable society. Implementing women's reservation will not only help to transform the male-centric paradigm but will also create equal opportunities for both men and women.

EMPOWERING WOMEN BY STRENGTHENING DEMOCRACY

India is a democratic country and hence, we need to increase women's representation in various domains of society. In contemporary times, it is evident that the participation of males in political administration is more as compared to women. Without proper representation of women in decision-making roles, it is difficult to envision a just and fair society. Reservation is not a right for the empowerment of women in society, but it is certainly true that women have gone a long way to achieve their potential. They suffer from poor education, inadequate healthcare, unemployment, and poor social status, which results in crimes like female foetal homicide, dowry homicide, and domestic violence. To solve the critical problem of the high rate of crimes against women, we need to increase the participation of women. Since independence, issues related to women have been addressed predominantly by a male-dominated society. By increasing women's participation, we empower them to articulate their unique challenges, which ultimately enhances the effective implementation of laws. Mahatma Gandhi asserted that the challenges of poverty can be most effectively understood by those experiencing it or by those living close to them. This understanding led him to introduce the concept of Panchayati Raj at

the village level. Similarly, the issues faced by women are best comprehended by women themselves, which facilitates informed decision-making and enhances the proper implementation of laws.

Women's representation in the apparatus of policymaking is essential to the process of developing a nation. Women who have obtained the requisite education and skills have demonstrated their ability to compete on an equal basis in several domains. Unfortunately, they have not been able to acquire the necessary traction in the political sphere. All these trends indicate that women's representation in politics requires special attention and affirmative action.¹⁴ This Bill is a crucial affirmative step towards enhancing the participation of women in the State legislatures and Parliament, thereby increasing their role in the democratisation of the country. In the true democratic spirit, no class/community should be excluded from the decision-making due to the social and economic barriers placed upon that gender, and merely hypothetical tokenism or symbolic participation must be avoided. Reservation is a sociological term used to describe the process of social reengineering. Therefore, reservation for women is necessary for the democratic process to be inclusive. The fight for the political rights of women's groups is among the longest in India's history, as the proposed constitutional amendment bill has been tabled by successive governments on several occasions since 1996. While the Indian Constitution is among the most progressive in the world and guarantees equal rights for women and men, Indian women have been waiting for decades for their aspirations to be fulfilled.

It is worth noting that India, the world's biggest democracy, falls well short of other nations, particularly its neighbours Pakistan and Afghanistan, in terms of the representation of women in politics. With only 15% per cent of women representation in the Lok Sabha and 13% per cent in the Rajya Sabha currently, India ranks 150th among 198 countries, according to the comparative data by the Inter-Parliamentary Union. According to the Gender Gap Report 2023 of the World Economic Forum, India ranked 127 out of 146 in terms of gender parity.¹⁵

¹⁴ Ibid

¹⁵ 'In Charts: What Women's Representation in India's Parliament, Assemblies Looks Like Now' *The Wire* (20 September 2023) <<https://thewire.in/government/in-charts-what-womens-representation-in-indias-parliament-assemblies-looks-like-now>> accessed 01 September 2024

A closer look at the facts and circumstances which prevail at present reveals that women are impoverished in every sphere of activity not by choice but by systematic exclusions from policy options and protective measures. Neither social legislation nor landmark judgments on these have had a major effect on rendering gender justice on this count. In the general election of the 16th Lok Sabha (2014), a total of 543 MPs were elected, 62 were women.

RIGHT TO EQUALITY: MEANING AND CONCEPT

The right to equality under the Indian constitution is given to Article 14 to Article 18,¹⁶ where each article has its importance and relevance, but at the same time, these rights are not absolute, and they come with certain restrictions. We need to maintain a balanced approach toward the right to equality and reservation. If we look into the deep interpretation of Article 14, it says that equality among equals means that like should be treated alike irrespective of their caste or gender.¹⁷ They are all equal before the law, but at the same time, to achieve this goal of equality among equals, we need to first ensure that those who are socially, culturally, and educationally backward need to be uplifted first like other people who are not backward. Only then can we achieve equality among equals. Women were suppressed for a very long time, and they were not given equal rights as compared to men, so this basic idea of Article 14 was not followed.¹⁸ We need to create a free environment for women so that they can express themselves to achieve the goal of equality. We need to first talk about this matter and raise this issue at a national level we have seen that various sectors are still dominated by males, whether it is defence, finance, or construction. However, now the government is opening the defence sector for women also, but recruitment speed is very low, and it is still far behind the desired goal. We also need to note that in our constitution, women's reservation in public employment is not expressly mentioned, but on the other hand, no one should be discriminated against on the grounds of sex.¹⁹ Therefore, it is recommended to provide only horizontal reservation to women as compared to vertical

¹⁶ Constitution of India 1950

¹⁷ Constitution of India 1950, art 14

¹⁸ Constitution of India 1950, art 15

¹⁹ Constitution of India 1950, art 16(2)

reservation and this was said by the Supreme Court in a landmark judgment in *Indra Sawhney's* case (1992).²⁰

The Directive Principle of State policy of the Indian constitution talks about creating a just society. However, DPSP is not enforceable and is merely a guideline that the State wants to achieve. The DPSP was included in our constitution, but it is not enforceable because during the time of Independence, we were not in the position to implement all those things that were necessary for us, but these are those principles that we want to achieve to create a just society. The State must create avenues for women to participate in a variety of fields. The time has come for society to acknowledge women's participation in the political sphere. Consequently, it is crucial to make sure that the new laws for women are in line with the Directive Principles of State Policy (DPSP) and the core goals that are intended to establish a just society. The State can create an atmosphere where women's contributions are respected and included in all facets of community life and government by doing this.

It is acknowledged that untouchability is a crime that can be punished. Women have also experienced prejudice based on their mental and physical capabilities, which has frequently resulted in issues with their ability to make decisions.²¹ Even though they are less developed, nations like Rwanda and Nepal have made progress in enabling women to take part in decision-making. But it's important to understand that to keep a balanced approach, some rights might need to be limited. To prevent abusing the rights of others, it is crucial to make sure that the participation of men and women is proportionate. Consequently, when making decisions, it's critical to consider those who are equally competent and qualified for responsibilities.²²

India is also a member of the UDHR (Universal Declaration of Human Rights) and it promotes equality before the law and prohibits discrimination in all its forms.²³ India is a member of UDHR and one of the signatories' countries thus, it is binding on every country that signed the international treaty and they are bound to follow their fundamentals. India is aggressively

²⁰ *Indra Sawhney Etc. v Union of India and Ors* (1993) 3 SCC(SUPP) 217

²¹ Constitution of India 1950, art 17

²² *Ibid*

²³ Universal Declaration of Human Rights 1948, art 2

working to fulfil the requirement of the UDHR by providing reservations to women in various sectors like colleges and schools, but there are a lot of gaps that we need to fill to create a just society, and we can create this only by providing reservations to women in decision making with a balanced approach.²⁴

RESHAPING THE WOMEN RESERVATION BILL

In 1996, the first draft of the bill for reservation for women was tabled in the Lok Sabha (81ST Constitutional Amendment Bill) by the United Front Government of H. D. Deve Gowda, but it did not get the assent because several Members of Parliament, particularly those from the Other Backward Classes, expressed opposition to the bill, which led to its referral to a Select Committee of Parliament, which was chaired by Geeta Mukherjee. The goal of the bill was to allocate one-third of seats in parliament and state legislatures for women. Twenty-one members of the Geeta Mukherjee Committee (1996) came from Lok Sabha and Rajya Sabha. The panel observed that while seats for women had been set aside under the SC/ST quotas, OBC women were not eligible for this benefit since there was no OBC reservation clause. To ensure that OBC women receive the benefits of reservation, it was suggested that the government may consider extending reservations to OBCs also at the appropriate time. In 1998, the bill was tabled again in the Lok Sabha by the 84th constitutional amendment bill by the Vajpayee-led NDA government. In 1999, the NDA government reintroduced the bill. In 2002, the bill did not get assent in the House. When the corresponding Lok Sabha dissolved in 1996, 1998, and 1999, the first three Bills came to an end.²⁵

In 2003, the Bill was tabled twice in Parliament. In 2008, the UPA government tabled the bill in Rajya Sabha to prevent it from lapsing. The 1996 Bill was examined by a Joint Committee, whereas the 2008 Bill was examined by the standing committee on personnel, public grievances, law, and justice.

²⁴ Ibid

²⁵ Jasmin Nihalani, 'Women Reservation Bill: In 20 States & UTs less than 10% MLAs are female | Data' *The Hindu* (24 December 2023) <<https://www.thehindu.com/data/women-reservation-bill-in-20-states-uts-less-than-10-mlas-are-female-data/article67338512.ece>> accessed 01 September 2024

The standing committee on personnel, public grievances, law, and justice presented its 36th report on the Constitution (One Hundred and Eight Amendment) Bill 2008 on December 17, 2009, under the chairmanship of Smt. Jayanthi Natarajan. The committee expressed its opinion that reservation for women is necessary to ensure their participation in the democratic process and to provide them with adequate political representation. It also noted that reservation in panchayats and municipalities would create a positive effect on women at the grassroots level and argued that this further supports the need for women's reservation in state assembly and parliament. The committee also suggested that the 15-year time limit for a reservation should be reconsidered so that women are adequately represented in the parliament and state assembly. The committee also noted that the process for determining the constituencies reserved for women in the Bill was not clearly defined in the Act and urged the government to consider this matter.

INTERFACE OF RIGHT TO EQUALITY AND WOMEN RESERVATION BILL

Throughout history, women have faced numerous challenges and had limited participation in various fields such as defence, political parties, educational institutions, and government jobs. In 2021, the Honourable Supreme Court of India passed a judgment allowing women to take part in the NDA exam, highlighting how society has historically restricted women's participation. The decision made by the Supreme Court in this case is closely connected to the Indian Constitution, which ensures equal opportunities for all citizens of India regardless of gender.²⁶ So, to achieve this idea, we need to uplift those who belong to the weaker section of society. For a very long time, we have seen that every sector was dominated by male members of society, so to overcome this, we need to make women more capable in every field, whether it is education, politics, or defence, and only then will we be able to achieve the idea of equality among equals. Research has indicated that augmenting the involvement of women in public and governmental domains results in improved policy formulation that caters to the interests of the whole populace. Women frequently bring diverse viewpoints and priorities to the table, which

²⁶ Constitution of India 1950, art 14

produces more equal and inclusive results. A robust democracy must have a representative, diversified government.²⁷

A report published by the World Bank in 2020 on global trends in women's participation found that although women's graduation rate is higher than men's, women are still less likely to undertake STEM fields (Science, technology, engineering, Mathematics)²⁸. So, this is not just limited to India it is the problem among all the developing countries. It is incorrect to claim that women's reservations infringe upon the rights of citizens. The issue stems from historically excluding women from mainstream society. Now is the right time to increase women's participation in decision-making processes, a vision that we have long sought to achieve. Increasing women's participation in various sectors will help to rectify past mistakes and the Constitution supports this by allowing the state to make special provisions for protecting the interests of women and children. Therefore, the Constitution itself endorses the creation of special provisions, and since Article 15 is part of the fundamental rights, it does not infringe upon the rights of other citizens.²⁹

Since independence, India has had one female Prime Minister and two female Presidents. Since then, fifteen women have held the post of Chief Minister. In the judicial system, the Supreme Court has had no female Chief Justice until August 2023. As of then, three women judges were serving in the Supreme Court, out of the total of 34.6% of the sanctioned strength of 106 judges in the 25 High Courts and 7,199 judges in the 25 Lower Courts. In 2027, Justice BV Nagarathna is expected to become India's first female Chief Justice.³⁰ In the defence and police service, there are 6,993 female officers in the armed forces (Indian Army) and 748 female officers in the navy (Indian Air Force), excluding medical staff, who make up 1.1 million of India's 2.5 million strong police force. In the aviation industry, India leads the globe in the percentage of female pilots to

²⁷ M P Jain, *Indian Constitutional Law* (5th edn, Kamal Law House 1998)

²⁸ 'The Equality Equation: Advancing the Participation of Women and Girls in STEM' (*World Bank Group*, 23 November 2020) <<https://www.worldbank.org/en/topic/gender/publication/the-equality-equation-advancing-the-participation-of-women-and-girls-in-stem>> accessed 01 September 2024

²⁹ Constitution of India 1950, art 15(3)

³⁰ Neelesh Singh, 'Female Judges of the Supreme Court of India' (*Success Mantra*, 09 October 2024) <<https://www.successmantra.in/blog/female-judges-of-the-supreme-court-of-india>> accessed 01 September 2024

male pilots, with 15% of the country's 10,000 pilots being female, compared to 5% worldwide.³¹ In 2022, the sector with the largest percentage of female workers is agricultural, with 62.9% female involvement. Followed by the manufacturing sector with 11.2% of women workers. Millions of Indian women work as domestic helpers and daily wage workers in unorganised sectors. In the Corporate sector, women held 18.2% of the board seats at NIFTY 500 businesses; the largest percentage of female board presence was recorded by the life sciences industry, at 24%. Although women make up a large portion of the workforce in the tech sector (34%), they are underrepresented in executive roles as compared to other countries. In 8.9% of businesses, women hold senior management positions.

Reservations are a vital instrument for improving the representation of women, but these are not a permanent solution. Creating a society where women have equal access to education, employment prospects, and social support should be the goal. People should be encouraged to invest in girls' education because knowledge gives more power to women, and it will help us to end the cycle of poverty.³² This will also encourage gender equality. Employers should promote gender equality in the workplace because this will address problems like unconscious bias and foster a friendly work environment. Changing societal attitudes is also one of the important aspects of increasing women's participation. Community involvement and social awareness efforts are necessary to counter-cultural norms that hinder women from pursuing careers.

CONCLUSION

The Women's Reservation Bill³³ came to India after facing too many difficulties, as it has been argued for a very long time in Parliament. This bill is one of the most contentious bills in the Parliament. It is also one of the infrequent instances in which the major national parties have come to a political understanding for the good faith of the society. Passing the Bill is a wonderful step in India's development because it also has the potential to spark a trend of women's empowerment throughout the region. The participation of women has been a critical issue since independence. Now, women will be able to contribute more to society by participating more in

³¹ Ministry of Civil Aviation, *Share of women Pilots in India is 15% which is significantly higher than the international average of 5% PIB (2021)*

³² Singh (n 30)

³³ The Constitutional (One Hundred and Twenty-Eight Amendment) Bill 2023

employment. This will also help India to grow its economy by bringing the demographic shift. The problem of gender biases is reduced if women participate more in decision-making. If they participate more, they can come up with solutions to problems that they face in society, and it will motivate the government to pass an act or bill to cater to the solution. The Women's Reservation Bill is also important because, since independence, the majority of the offices and social roles were controlled by a male-dominated society. So, this bill can become a potential instrument for changes in society because people who face troubles or problems have the best solution to that problem. After passing the bill, women started feeling that they also had some stake in society by being part of policymakers.

Countries like Uganda and Argentina, by implementing affirmative action in their policies, increased the participation of women in the decision-making process. Countries like Rwanda and Nepal also implemented women's reservation bills. So, women's reservation seems to be a tried and tested tool to increase women's participation in legislative bodies. We can also take the idea of Uganda and how they use affirmative action to increase the participation of women. Our constitution states the same thing: that the state can make special provisions for women and children if we implement this right more effectively without violating the rights of others, we will be able to achieve the goal of increasing the participation of women in decision-making.³⁴

³⁴ Constitution of India 1950, art 15(3)