



WOMEN RESERVATION ACT, 2023: A CRITICAL ANALYSIS

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Abstract

The Legislation addressing women's representation in politics has historically been a topic of discussion in India which seeks to provide 33% of the seats to women in the parliament and state legislatures. While it has been championed as a historic step as a means to promote equal opportunity for women to participate in politics, a critical examination of the Women Reservation Act, 2023 reveals complex nuances that warrant careful consideration. The paper begins with the introduction to the Act and examines its key provisions followed by tracing the historical context of Women Reservation Act, 2023. The critical analysis delves into the multifaceted aspects of the Act, examining both its positive contributions and potential shortcomings. The analysis explores the Act's role in promoting gender equality in politics, questions its implementation, and assesses its impact upon accessibility to politics in India. Towards the end, this paper proposes alternative strategies essential for achieving real and equal representation in the Indian political landscape.

Keywords: Women Reservation Act, Parliament, state legislature, politics, gender equality. Equal representation.

I Introduction

THE NOTION of ensuring all gender's equal rights, opportunities, and treatment—regardless of their identity, expression, or biological sex—is commonly referred to as gender equality. It involves the idea that everyone should have equal access to rights, responsibilities, and

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opportunities in every aspect of life, including employment, politics, education, and personal relationships, regardless of gender. Since politics influence laws, regulations, and societal norms, politics is essential to gender equality. In a theoretical sense, women's representation and participation in politics are essential for promoting laws that take gender equality into account, confronting discrimination, and ensuring equal rights. Participation in politics creates the institutional shifts required for achieving gender equality, influences decision-making, and elevates women.¹ Studies about women's representation in the Parliament show that, regardless of a significant increase in the number of women voting, the proportion of women in leadership has remained low when compared to that of their male counterparts.² In an effort to give Indian women the opportunities to participate in elections, The Women's Reservation Act/Nari Shakti Vandan Adhiniyam, officially known as the Constitution (108 Amendment) Act, 2023, received assent from the Indian President on September 29, 2023.³ The Act seeks to provide 33% of seats to be reserved in the Lok Sabha and state legislative bodies for women.⁴ The primary focus of the legislation is to strengthen the political representation of women and their participation in decision-making at the highest levels of government. The Act has been hailed as a significant milestone in the nation's struggle for gender equality.⁵

¹ Sandra Pepera, Why Women in Politics. *available at:* <https://women.deliver.org/why-women-in-politics/> (Visited on Sept. 30, 2023)

² Trishali Chauhan, In politics and bureaucracy, women are severely under-represented. *available at:* <https://indianexpress.com/article/opinion/columns/in-politics-and-bureaucracy-women-are-severely-under-represented-8492805/> (indianexpress.com) (Visited on Sept. 30, 2023)

³ Poulomi Ghosh, Women's Reservation Bill Signed into Law by President Droupadi Murmu, Hindustan Times. *available at:* <https://www.hindustantimes.com/india-news/womens-bill-signed-into-law-by-president-droupadi-murmu101695987639732.html> (Visited on Sept. 30, 2023).

⁴ Women Reservation Act 2023, The Constitution (128 Amendment) Act, 2023

⁵ Pugazh Murugan, The Women Reservation Bill: A Historic Step Towards Gender Equality in Indian Politics, *News Today*. *available at:* <https://newstoday.net.com/2023/09/20/the-women-reservation-bill-a-historic-step-towards-gender-equality-in-indian-politics/> (Visited on Sept. 30, 2023).

II Significant Provisions of Women Reservation Act, 2023

The significant provisions of the Women Reservations are mentioned below:-

- a) The Act proposes one-third i.e 33% seats of the seats to be reserved for the women in Lok Sabha, state assemblies and Delhi Assembly.⁶
- b) It reserves 33% seats for SC/ST women within the existing SC/ST reservations.⁷
- c) The Act would go into effect once the exercise of the delimitation process is undertaken after the census which were delayed in 2021 are conducted.⁸
- d) According to the Act seats will be reserved on the rotational basis and reservation will cease after 15 years.⁹

III Historical Background of the Women Reservation Act, 2023

Only 14% of the members of Indian Parliament are women.¹⁰, the highest till date, highlighting the immediate need for policy implementation for ensuring equal representation of women in politics and establishing gender parity in India. Political reservation of women has been a centuries old demand dating back to the time before independence. Here is the historical background of the Women Reservation Act 2023;

In 1931, the three women's groups wrote to the British Prime Minister requesting political representation for women for the first time.

⁶ The Constitution (One Hundred and sixth Amendment) Act, 2023

⁷ *Ibid.*

⁸ *Supra* note 6.

⁹ *Ibid.*

¹⁰ Flavia Agnes, "A Look at Women Representation in Parliaments of 10 Democracies", *Indian Express*. available at: <https://indianexpress.com/article/explained/everyday-explainers/women-representation-parliament-democracies-8946800/> (last visited on Sept. 30, 2023).

However, clearly rejecting women reservation, Prominent leader and freedom fighter Sarojini Naidu¹¹ mentioned that women are not weak, timid or meek and that “To seek any form of preferential treatment would be to violate the integrity of the universal demand of Indian women for absolute equality of political status.”¹²

Then, the matter of reservations for women was laid out in the Constituent Assembly but leaders like Renuka Ray, Purnima Banerji and others refused women reservation on the notion that democratic system and Universal adult franchise nature of Indian constitution would automatically guarantee equal representation to women and other groups and that reservation policy would be unnecessary.¹³

Although, In the decades that followed, it soon became evident that this would not be the scenario. The Committee of the Status of Women in India, formed in 1971, reported concerns on the decline in political representation of women in India. The 14 member Committee on 'National Perspective Plan for Women 1988-2000 (NPP)' made 353 comprehensive recommendations to the prime minister such as creating a uniform civil code, restoring women the right to own property, reserving seats in elected bodies for women, outlawing sex-determination tests, and making dowry-related harassment of wives a grounds for divorce, etc. It undoubtedly proposed reservation for women from the panchayat level up to the level of Parliament.¹⁴

These recommendations later paved the way for Constitutional Amendments 73rd Act and Constitutional Amendment 74th Act

¹¹ Shishir Tripathi, What is Women's Reservation Bill, Its History and What Would Change with the Proposed Law| explained, *available at*: <https://www.the hindu businessline. com/ blexplainer/bl-explainer-all-you-want-to-know-about-womens-reservation-bill-2023/ article 67324017.ece> (Visited on Sept. 30, 2023)

¹² *Ibid.*

¹³ Constituent Assembly Debates (Proceedings) . *available at*: <https://loksabha.nic.in/writereaddata/cadebatefiles/vol4.html> (Visited on 23rd September, 2023).

¹⁴ *Ibid.*

mandating 33% of the seat reservation for women in local bodies¹⁵. Many States, including Rajasthan, Maharashtra, Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, and Kerala, adopted laws ensuring 50% women reservation in local authorities.¹⁶

Nevertheless, implementation of the reservation Act for women at Parliament and state legislative assemblies level was still a challenge. The Women Reservation bill was for the first time introduced by the Deve Gowda Government in 1996. However, the bill lapsed due to the no consensus on reservations for OBC women and following the dissolution of Lok Sabha.¹⁷

Later, Prime Minister Shri IK Gujral subsequently made an attempt to pass the bill, however met the same fate and the bill lapsed.¹⁸

In 2004, to prevent it from lapse once more, the UPA government included the bill on the women reservation in its Common Minimum Programme and introduced it in the Rajya Sabha.¹⁹

Later in 2010, The Constitution (108th Amendment) Bill, which included the Women's Reservation Bill, was approved by the Rajya Sabha. However, Lok Sabha again failed to pass the bill due to opposition from parties like RJD, JD(U) and SP demanding 33% of the seat reservation for OBC women within the existing 33% of the overall quota.²⁰

Thirteen years later, the union cabinet under the Modi government gave the Women Reservation bill a nod to be tabled again and on September

¹⁵ 73rd Constitutional (Amendment) Act, 1991 and 74th Constitutional (Amendment) Act, 1992.

¹⁶ Ministry of Panchayati Raj, Representation of Women in Panchayat System. *available at*: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1776866> (Visited on 24th September, 2023).

¹⁷ Shishir Tripathi, "What is Women's Reservation Bill, its History and What Would Change with the Proposed Law | EXPLAINED", *News 18*, . *available at*: <https://www.news18.com/explainers/what-is-womens-reservation-bill-parliament-special-session-8582997.html> (Visited on Sept. 30, 2023).

¹⁸ *Ibid.*

¹⁹ *Supra* note 17.

²⁰ *Ibid.*

18, 2023 the bill got a new lease of life when both houses of the parliament passed the women reservation bill 2013 which finally got the assent of President, Droupadi Murmu on 29th September 2023.²¹

IV Women Reservation Act, 2023: A Critical Analysis

A critical analysis of the Women's Reservation Act in India encompasses several dimensions. The basic objective of the Women Reservation Act, 2023 is to provide equal representation to women in politics from lower to top levels in India. It aims to address the historical underrepresentation of women in India's legislative bodies and ensure that equal opportunity exists for women to participate in decision-making for the country's development. Since the national movement leaders refused the reservation policy for women owing to their notion that women are not weak, and demanding reservation would mean preferential treatment for the women which is admission on the part of their 'inferiority' but women have equally participated in the struggle of Independence and that democracy would automatically provide equal representation to all groups.²² Despite their ideas and hopes, women remain underrepresented in the Parliament today. The lack of women participation in politics is not due to their lack of ability or weakness; in fact, it is because of the political environment and deeply rooted societal norms that refuse to embrace them. Although women in panchayats and local bodies often act as a rubber stamp for their husbands or fathers, they are more inclined to make choices that support the needs of women. There is now indication that women break down societal stereotypes, proved to be more approachable than men, and they have made considerable investments in public goods like drinking water, assisted other women in finding better ways to express themselves, reduced corruption, given nutritional results importance, and

²¹ "President Droupadi Murmu Gives Nod to Women's Reservation Bill, Becomes Law", India Today. *available at*: <https://www.indiatoday.in/india/story/president-droupadi-murmu-gives-nod-to-womens-reservation-bill-becomes-law-2442393-2023-09-29> (Visited on Sept. 30, 2023).

²² *Supra* note 17.

transformed the agenda for development at the grassroots level. As of present time, India struggles with high rates of crimes against women, a small percentage of women in the labour force, poor nutrition standards, and an uneven sex ratio. It is argued that more intervention of women is expected in decision-making to address all of these issues.²³

Nevertheless, the nature of the Act seeks to provide equal representation to the women but there has been several criticism of the political propaganda and opportunism behind the Act. This results in delay in its implementation, missing intersectionality, using women as tokenism and proxis and no reservation in Upper House ie Rajya Sabha and legislative Councils, etc which are discussed below:-

Political Propaganda and opportunism

It is argued that the Act could be exploited as a tool for politics to garner support from women voters by the current Indian government in the upcoming 2024 general elections without a sincere commitment to emancipating women. The intentions behind enactment of the legislation promoting gender justice by a party that has been often criticised for extending sexual predators a platform within the party and for enabling rapes and various forms of sexual violence against women, especially against women from faith minorities and Dalit and tribal women, in the country, are questionable. Many experts suggest that this will assist the UPA government in strengthening the women vote bank, which is increasingly serving as a sort of kingmaker in elections due to their large figures, high turnout, and independent voting that crosses caste/class divides.²⁴

²³ Radhika Santhanam, "explained | on Reservation for Women in Politics", The Hindu. *available at* :<https://www.thehindu.com/news/national/explained-on-reservation-for-women-in-politics/article66624358.ece> (Visited on Sept. 30, 2023).

²⁴ Amitabh Tiwari, Not Implementing Women's Reservation Bill (WRB) with Immediate Effect is Risky for BJP, Money Control.Com. *available at*: <https://www.moneycontrol.com/author/amitabh-tiwari-11811/> (Visited on Sept. 30, 2023).

Delay in implementation of the Act

The Act will come into effect after delimitation is being exercised which will be conducted only after the first census since the enactment of the legislation. The census, however, has been delayed, and politically sensitive issues could also influence the delimitation. The delimitation process cannot begin until after the 2021 census, which is expected to take place post the 2024 general elections. The Union Home minister Amit Shah has informed that the provisions of the legislation will come into effect only after the 2029 general elections.²⁵ The implementation of the Act would be delayed, which will further reinforce women's under-representation and hamper efforts to strengthen their political and social status in India.

Missing Inter-sectionality

One of the primary arguments against the Act since its introduction for the first time has been that OBC women should be given 33% reservations within the general women reservations.²⁶ Given that only 27 of the about 716 women who have been elected to the Lok Sabha are Muslims, it was also put up that Muslim women should also have quotas within the general reservation policy in India²⁷. In the present times when violence against muslim women scaling rapidly and they are subjected to dual discrimination on the account of both, their faith identity as well as their gender under the current government,²⁸ ensuring Muslim women reservation opportunities has become

²⁵ Geeta Pandey, Nari Shakti: India Okays Women's Reservation Bill - but Nothing Will Change Soon, Money Control.Com. *available at*: <https://www.bbc.com/news/world-asia-india-66878565> (Visited on Sept. 30, 2023).

²⁶ Mohammad Anas, Women's Reservation Bill: A missed opportunity for OBCs and Muslim women, *available at*: <https://theleaflet.in/womens-reservation-bill-a-missed-opportunity-for-obcs-and-muslim-women/> (Visited on Sept. 30, 2023)

²⁷ Rhea Charles, Muslim Women in Indian Politics. *available at*: <https://www.indian-school-of-democracy.org/post/muslim-women-in-indian-politics> (Visited on Sept. 30, 2023)

²⁸ Nikita Jain, The Gradual Normalization of Violence Against Indian Muslim Women. *available at*: <https://womensmediacenter.com/women-under-siege/the-gradual-normalization-of-violence-against-indian-muslim-women> (Visited on Sept. 30, 2023)

important. Nonetheless, The Act continues to overlook the reservation for women for both faith minorities and OBC women. In addition, there is a demand for a horizontal reservation for the transgender community by several transgender activists, but neither this Act nor any other have made any reference to that.²⁹

Impact on Marginalised Women

According to some opponents, the legislation may predominantly benefit women from privileged roots, while marginalised women from deprived communities may not see significant benefits.

Women as tokenism and proxis

It has been argued that increasing the number of women in politics without significantly altering the socio-political structure of the country would not bring much change in the lives of women and that women would merely serve as a symbolic proxy for representation for parties run by men. Moreover, Panchayats in India have witnessed an upsurge of "Panchayat Patis," who contest through seats which are given to women using their wife as proxies and control the actual political power. With the introduction of reservations for women in Parliament, there are concerns that the "MP and MLA Patis" might become more prevalent.

Reservation in Rajya Sabha and legislative councils

The Act does not provide for women's reservation in upper house and state legislative councils. Compared to the lower house, the Upper House presently has a lower percentage of women members. The idea of representation must be established in Rajya Sabha as well as State legislative councils.

²⁹ Sukhmani Malik, Reservation for Transgender Community: What the Demand for 'horizontal' Reservation Is, The Indian Express. *available at:* <https://indianexpress.com/article/explained/explained-law/transgender-demand-horizontal-reservation-explained-8694004/> (Visited on Sept. 30, 2023).

Long-Term Effectiveness

As the Act comes with an expiry date of 15 years after it comes into effect, The long-term sustainability of the reservation system and its impacts have come under question. Would introducing a '15-year reservation policy' for women resolve the issue of women's lesser participation, which is caused by the society's deep rooted and uneven socio-political environment of India?

Inadvertent Repercussions

There is concern surrounding the possibility that the measure will exclude women from open constituents, thereby limiting their ability to run in general elections.

Some opponents to the Act also argues that women are not homogenous groups, so women's reservations are not comparable to caste-based reservations, and the two cannot be justified using the same logic and the legislation is against the principles of 'Equality' provided by the constitution and some people have also argued that reservation for women will limit the options for the voters.³⁰

Conclusion

The Women Reservation Act 2023 or Nari Shakti Vandan Adhiniyam 2023 in India is a complex and multifaceted issue. While it surely aims to address the gender disparity in Indian politics, it also raises questions about the political intentions, practical implementation, potential tokenism and proxis culture and broader electoral and societal reforms. In any case, whether the Act is considered propaganda or a legitimate effort depends on one's viewpoint and the context in which it is being discussed. It's important to engage in informed discussions and consider various perspectives on this matter. Critical analysis of the Act reveals

³⁰ *Supra* note 29.

achieving true gender equality in politics requires a comprehensive approach that goes beyond seat reservations and includes proactive efforts to empower women and marginalised groups across the political spectrum. With the aim to establish an equal and safer political environment for women, gender and sexual minorities in India, the Act should not be interpreted as black or white but rather as having certain grey areas. Throughout the exploration of the Act, It is obvious that achieving the intended objective of equal opportunity for women to actively participate in politics would require more than just the implementation of a reservation policy; a grassroots political environment transformation is necessary. Politics will continue to be an unwelcome place for women as long as political parties engage in crimes against women such as rape and other gender-based violence, and as long as the parliament and other executive branches do not encounter misogynist, sexist, and other hateful remarks³¹, and for as long as the government does not condone sexual violence against any group of Indian society. Women would continue to be used as a scapegoat by political parties, by husbands and fathers to more easily gain political power than by actually struggling for it themselves. There remains a possibility that women from marginalized communities and gender minorities will remain unrecognized and unheard. In an effort to build a more welcoming and safer profession, political reservation for women can be used as a tool for combating unequal representation. However, it should be a part of a larger plan that also addresses cultural norms, education, economic empowerment, and social transformation.

³¹ "Disturbing Statements Made by Indian Politicians on Women". *available at*: <https://www.herzindagi.com/society-culture/shocking-misogynistic-statements-made-by-indian-politicians-on-women-article-173192> (Visited on Sept. 30, 2023).